



THE DIRECTOR

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

June 14, 2006

Honorable Alberto R. Gonzales  
United States Attorney General  
Washington, D.C. 20530

Dear Mr. Attorney General:

In accordance with Section 3 of Executive Order 13,392 of December 14, 2005, "Improving Agency Disclosure of Information," enclosed is the Office of Management and Budget's (OMB) report that summarizes the results of its review of OMB's FOIA operations and encloses a copy of OMB's plan that addresses OMB's administration of the FOIA during fiscal years 2006 and 2007.

OMB looks forward to continuing to work with the Department of Justice on this important Presidential initiative. If your staff should have any questions regarding OMB's report, they may call Acting Deputy General Counsel Kimberley S. Luczynski at 202.395.7870.

Sincerely,

A handwritten signature in black ink that reads "Rob Portman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Rob Portman

Enclosure

**OFFICE OF MANAGEMENT AND BUDGET  
REPORT UNDER EXECUTIVE ORDER 13,392  
ON OMB'S ADMINISTRATION OF THE  
FREEDOM OF INFORMATION ACT  
(June 14, 2006)**

This is the report of the Office of Management and Budget (OMB) issued pursuant to Section 3(c) of Executive Order 13,392 of December 14, 2005, "Improving Agency Disclosure of Information."<sup>1</sup>

In accordance with the Executive Order, this report summarizes the results of the review that OMB has conducted (under Section 3(a) of the Order) of its Freedom of Information Act (FOIA) operations, and encloses a copy of OMB's plan that OMB has developed (under Section 3(b) of the Order) for ensuring that OMB's administration of the FOIA is in accordance with applicable law and the policies set forth in Section 1 of the Order. This plan addresses OMB's implementation of the FOIA during fiscal years (FYs) 2006 and 2007, and the plan has been approved by the OMB Director.

The outline of this report follows the template that was provided by the Department of Justice (DOJ) in the government-wide guidance that DOJ issued on April 27, 2006 ("Executive Order 13,392 Implementation Guidance," Part II, Plan/Report Template), and which is found at <http://www.usdoj.gov/oip/foiapost/2006foiapost6.htm>.

**A. Characterize overall nature of agency's FOIA operations (degree of detail optional), with optional reference to areas preliminarily considered for agency review. (Agencies may also describe any particular FOIA challenges that they face.)**

OMB receives relatively few FOIA requests, when compared to larger Departments and many other Federal agencies.

As of June 5, 2006, OMB had received 114 FOIA requests and 5 administrative appeals during FY2006, which began on October 1, 2005. This number of FOIA requests, at this point in the fiscal year, is consistent with the volume of requests that OMB received in the two prior fiscal years: FY2005 (169 initial requests) and FY2004 (152 initial requests).<sup>2</sup>

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<sup>1</sup> The Executive Order was published in the Federal Register at 70 FR 75373 (December 19, 2005), and is found on the White House website at <http://www.whitehouse.gov/news/releases/2005/12/20051214-4.html>.

<sup>2</sup> See <http://www.whitehouse.gov/omb/foia/annualrpt.html> (OMB's FOIA reports for FYs 2004 and 2005).

At the end of FY2005 (September 30, 2005), OMB had 8 pending FOIA requests, and the median number of days that these requests had been pending at OMB was 9 days.<sup>3</sup> The pending requests had all been received by OMB during September 2005, and OMB has subsequently responded to all of them. Accordingly, all of the FOIA requests that are currently pending at OMB were received during the current fiscal year (FY2006).

As of June 5, 2006, there were pending at OMB 11 initial requests and 2 administrative appeals.

OMB administers the FOIA on a decentralized basis. OMB's FOIA Officer, its FOIA Requester Service Center, and its Public Liaison are all located in OMB's Administration Office. Under OMB's decentralized system, a FOIA request is received by the Administration Office, is logged-in, and is assigned to a lead OMB office that is responsible for processing that request. The lead office is the OMB office that, in the Administration Office's view, is most likely to have documents that are responsive to the FOIA request in question. In the case of many FOIA requests, the lead role is assigned to one of the OMB program offices that are responsible for carrying out, or supporting, OMB's activities in the budgetary, legislative, regulatory, or management areas.<sup>4</sup> The lead office then conducts a search of its files and also coordinates additional searches by those other OMB offices that are reasonably likely to have agency records that are responsive to the FOIA request. In conducting and coordinating these searches, the OMB staff are advised and assisted by the FOIA Officer and by OMB's Office of General Counsel. The General Counsel's Office, working with the relevant program office and the FOIA Officer, conducts the document review to identify those responsive agency records that fall within one of the FOIA's nine exemptions in 5 U.S.C. § 552(b). Working together, these three offices prepare the response to an initial request. The response letter is signed by the FOIA Officer or, in his or her absence, by the Deputy Assistant Director for Administration (or a designee).

Administrative appeals are handled by the General Counsel's Office, with the assistance of OMB's FOIA officer and the relevant program office. The response letter is signed by the Deputy General Counsel.

FOIA litigation is handled by the General Counsel's Office, with the assistance of OMB's FOIA officer and the relevant program office.

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<sup>3</sup> See <http://www.whitehouse.gov/omb/foia/foiaan05.pdf> (OMB's FOIA report for FY2005). The pending FOIAs were initial requests. OMB had no pending administrative appeals at the end of FY2005.

<sup>4</sup> OMB's offices include the four Resource Management Offices (General Government Programs, Human Resource Programs, National Security Programs, and Natural Resource Programs); OMB's statutory offices (the Office of Federal Procurement Policy, the Office of Information and Regulatory Affairs, the Office of Federal Financial Management, and the Office of Electronic Government and Information Technology); and OMB-wide support offices (the largest two being the Budget Review Division and the Legislative Reference Division). See [http://www.whitehouse.gov/omb/omb\\_org\\_chart.pdf](http://www.whitehouse.gov/omb/omb_org_chart.pdf) (OMB's organizational chart). OMB has approximately 500 employees, who work in the Eisenhower Executive Office Building and the New Executive Office Building, both located in Washington, D.C.

## **B. List all areas selected for review**

### **Introduction.**

In the six months since the President issued Executive Order 13,392, OMB has taken a number of significant steps in implementing the Order.

In accordance with Section 2 of the Order, and as indicated on OMB's website, OMB has designated its Chief FOIA Officer, has designated its FOIA Public Liaison, and has established its FOIA Requester Service Center.<sup>5</sup>

Moreover, as part of its review of OMB's FOIA operations, and in order to monitor OMB's FOIA implementation,<sup>6</sup> OMB held a public-input session on May 10, 2006, in the White House Conference Center. OMB provided public notice of this session on the FOIA page of OMB's website,<sup>7</sup> and OMB's FOIA Officer also placed calls to OMB's more frequent FOIA requesters inviting them to the session. As the website notice explained, the purpose of the session was for OMB to receive "the input of members of the public regarding their experiences in submitting FOIA requests to OMB, and any recommendations that they may have for OMB's implementation of the Executive Order." The public-input session was well attended, and OMB received valuable input from the public that OMB has taken into account in OMB's ongoing review and the development of its plan (for ensuring that OMB's administration of FOIA is in accordance with the Executive Order's policies that agency FOIA operations be "citizen-centered" and "results-oriented").

As noted above, OMB concluded FY2005 with very few pending FOIA requests, and these open requests had been pending at OMB for a very short period of time (and OMB has subsequently responded to all of those requests). The up-to-date status of OMB's inventory at the end of FY2005 was the culmination of OMB's sustained and successful effort, which started in FY2004, to reduce and then eliminate the FOIA backlog that OMB had been carrying for several years.<sup>8</sup>

In addition, as noted above, OMB has received during the current fiscal year 114 FOIA requests and 5 administrative appeals as of June 5, 2006, of which 11 requests and 2 appeals were pending on that date.

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<sup>5</sup> See <http://www.whitehouse.gov/omb/foia/officers.html>.

<sup>6</sup> See Executive Order 13,392, Section 2(b)(ii).

<sup>7</sup> See <http://www.whitehouse.gov/omb/foia/index.html> (the notice has remained on OMB's website).

<sup>8</sup> See <http://www.whitehouse.gov/omb/foia/annualrpt.html> (OMB's FOIA reports for FYs 2003, 2004, and 2005).

## **Areas Selected for Review.**

Having eliminated its FOIA backlog by the end of FY2005, a major focus of OMB's FOIA efforts during this current fiscal year – and thus a major focus of OMB's review under the Executive Order – has been to ensure that OMB responds to incoming FOIA requests and administrative appeals as promptly as possible, taking into account the relative complexity of the specific FOIA request or appeal and consistent with OMB carrying out its other responsibilities (including its handling of FOIA litigation) within OMB's available resources.

To this end, OMB focused its Executive Order review of its FOIA operations on four main areas: (1) OMB's Processes for Tracking FOIA Requests and Appeals; (2) OMB's Responses to Relatively Simple FOIA Requests; (3) OMB's Dissemination of Information to the Public through its Website; and (4) the Role of the OMB FOIA Officer.

1. OMB's Processes for Tracking FOIA Requests and Appeals. One of the areas that OMB selected for review was the Administration Office's processes for (1) tracking the status of OMB's pending FOIA requests and appeals, (2) assigning the lead responsibility for handling a FOIA request to one of the OMB offices, and (3) sending periodic reminders to the relevant OMB lead offices that one or more of the FOIA requests (or appeals) to which they have been assigned "lead" responsibility are still pending on OMB's FOIA inventory. The purpose of this review was to ensure that FOIA requests (including requests for expedited processing, which under the FOIA such requests have to be acted upon within 10 calendar days of receipt) do not fall through the cracks but instead remain a focus of the lead OMB offices as well as of the Administration Office and the General Counsel's Office. Keeping people's attention on the status of the pending requests will help to ensure that the searches and reviews are conducted, and the responses are prepared and issued, as promptly as possible (taking into account the complexity of the request and the relevant offices' other responsibilities).

2. OMB's Responses to Relatively Simple FOIA Requests. A second area that OMB selected for review was the manner in which OMB responds to those relatively simple FOIA requests that ask for a limited number of readily-identifiable and publicly-available agency records (that is, those agency records that do not fall within one or more of the nine FOIA "exemptions" in 5 U.S.C. § 552(b)). The purpose of this review was to identify ways for the OMB "lead" office and/or for the Administration Office to more quickly and easily locate the responsive documents and then to prepare and send out the FOIA response. Making the FOIA process more efficient in responding to these relatively simple requests will enable OMB to focus more of its FOIA efforts on responding to the more complex requests.

3. OMB's Dissemination of Information to the Public through its Website. A third area that OMB selected for review was the ease by which the public can relatively easily find information on OMB's website, including on the FOIA section of OMB's website, that relate to topics that are of interest to OMB's FOIA requesters. This area can directly

relate to the second area of review (e.g., when OMB posts on its website those records that OMB has released in response to several FOIA requests). In addition, this area can involve OMB pro-actively posting on OMB's website publicly-available information that OMB offices believe may be of interest to the public. Finally, this area can involve OMB making it easier for the public to navigate OMB's website to locate information that is already posted on OMB's website (or perhaps on another Federal website) and may be of interest to them. "By placing publicly-available information on its website, an agency makes it easier for the public to obtain the information, which can reduce the number of FOIA requests that the agency receives and needs to process,"<sup>9</sup> thus enabling the agency to focus more of its FOIA efforts to responding to its remaining requests.

4. The Role of the OMB FOIA Officer. In the summer of 2004, OMB established the FOIA Officer position in OMB's Administration Office. The person who was hired as the FOIA Officer had experience in FOIA administration in another agency. The establishment of this position, and the hiring of that individual, played a significant part in OMB initially reducing its FOIA backlog, in eliminating the backlog by the end of FY2005, and in continuing to make progress during the current fiscal year. The person who was OMB's FOIA Officer has recently left OMB, and the Administration Office has posted a job announcement to fill the vacancy.

### **C. Include narrative statement summarizing results of review.**

The results of OMB's review are as follows.

1. OMB's Processes for Tracking FOIA Requests and Appeals. During the course of the past year, OMB has already significantly improved its processes for tracking the status of OMB's pending FOIA requests and appeals and for sending periodic reminders to the relevant OMB lead offices that one or more of the FOIA requests (or appeals) to which those offices have been assigned lead responsibility are still pending on OMB's FOIA inventory. These improvements have included (1) sending the reminders more frequently and (2) sending the reminders to the senior career managers of the lead offices (in addition to sending them to the administrative contacts for those offices). These changes have already had the positive effect of giving more prominence to the FOIA inventory and, thus, to the importance of processing FOIA requests and appeals as promptly as possible. As a result, OMB has been processing its FOIA requests and appeals on a timelier basis during FY2006 than in prior years.

Additional improvements can be made in this area. One area is in the periodic status reminders that the Administration Office sends to the lead OMB offices. For example, while the standard 20-day working day deadline (under the FOIA for responding to a request or an appeal) is already reflected in the initial assignment sheet for a new FOIA

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<sup>9</sup> OMB Memorandum M-06-04 of December 30, 2005 ("Implementation of the President's Executive Order 'Improving Agency Disclosure of Information'"), which is found on OMB's website at <http://www.whitehouse.gov/omb/memoranda/fy2006/m06-04.pdf>.

request or appeal, the subsequent status reminders can be reformatted to highlight the 20 working day deadline (and the 30 working day deadline, when a 10 day extension is issued). The status reminders could also be revised to distinguish further the status of pending FOIA requests by marking them off by additional time periods (e.g., pending for over 30 working days, for over 50 working days, for over 70 working days, etc.); this should reinforce to the relevant OMB offices the importance of processing FOIA requests and appeals as promptly as possible.

Another area for improvement is in the status-feedback that the relevant OMB lead offices provide to the Administration Office, both when a FOIA request has been initially assigned to the lead office and, later, when the status reminder has been sent to the lead office. At the beginning of OMB's handling of a new FOIA request, a more formal process could be developed for ensuring that an incoming FOIA request has been assigned to the appropriate staff person within the lead office and, in addition, that this person receives timely and appropriate advice and assistance from the Administration Office and from the General Counsel's Office. Later on, to address the cases when a FOIA request continues to remain on the inventory, a more formal process could be developed for ensuring that the lead office is taking timely action on that FOIA request and is receiving timely and appropriate assistance from the Administration Office and from the General Counsel's Office.

Staying on top of the status of each FOIA request and appeal, and ensuring that the relevant offices have identified the next steps that need to be taken as the request or appeal is being processed (and that these next steps are taken in a timely and appropriate manner) are two main ways by which OMB will ensure that FOIA requests and appeals are processed in as timely manner as possible (taking into account the relative complexity of the specific FOIA request and consistent with OMB carrying out its other responsibilities within OMB's available resources).

2. OMB's Responses to Relatively Simple FOIA Requests. One of the issues identified in OMB's review is that a significant number of OMB's FOIA requests ask for publicly-available records that relate to OMB's review and approval, under the Paperwork Reduction Act (PRA), of proposed collections of information. In most cases, such FOIA requests seek records relating to OMB's review and approval under the PRA of tax-return forms issued by the Internal Revenue Service (IRS), in particular the Form 1040 (and related schedules and forms filed by individual taxpayers. Making it easier for OMB to respond to such FOIA requests, and/or for the public to obtain such information on OMB's website (without the need to file a FOIA request), would enable the public to obtain this information sooner and also enable OMB to focus its FOIA efforts on its other (more complex) FOIA requests.

To this end, OMB has already posted, on its website's FOIA Reading Room, the OMB records relating to OMB's review and approval of the IRS Form 1040 and related schedules and forms filed by individual taxpayers.<sup>10</sup>

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<sup>10</sup> See <http://www.whitehouse.gov/omb/foia/reading.html> (index for OMB's FOIA Reading Room).

In addition, this summer, through the culmination of a multi-year project spearheaded by OMB's Office of Information and Regulatory Affairs (OIRA) and the Regulatory Information Service Center (RISC) of the General Services Administration, the public will be able to have access for the first time, via the Internet, to information and documentation regarding OMB's review and approval of the entire universe of PRA-covered collections of information. This access will be provided through ROCIS, which stands for the RISC and OIRA Consolidated Information System. ROCIS will enable Federal agencies to electronically submit proposed collection of information to OIRA for review. ROCIS will assign each submission a unique Reference Number, track the proposed collection through the OIRA review and approval process, and contain the documents relating to the collection that, until now, have been maintained in OMB's paper-based Records Management System for the PRA.<sup>11</sup> By making OMB's PRA information available to the public via the Internet, ROCIS should play a key role in reducing the number of FOIA requests that OMB receives, and, whenever OMB does receive a FOIA request for such information, ROCIS will make it far easier for OMB to respond quickly to such requests.

### 3. OMB's Dissemination of Information to the Public through its Website.

As noted immediately above, OMB has already posted on its website the records relating to OMB's review and approval of the IRS Form 1040 and related schedules and forms filed by individual taxpayers. In addition, the roll-out of ROCIS this summer will give the public the opportunity to access, on the Internet, the documents regarding OMB's review and approval of all PRA-covered collections of information that, up to now, have been maintained in OMB's paper-based library.

In addition, as part of the recent review, OMB has already taken initial steps to make it easier for potential FOIA requesters to locate information that is already on OMB's website. OMB has done so by expanding the number of listings on its FOIA Reading Room of information that is available elsewhere on OMB's website.<sup>12</sup> Further improvements to the FOIA section of OMB's website can be made to make the OMB website more "citizen-centered." Such improvements could include revising the FOIA section of OMB's website to provide a more visitor-friendly organization of OMB documents that are already on OMB's website, through the use of simple subject matter references that would provide a link to materials in other sections of OMB's website.

In addition, OMB needs to update its FOIA Handbook to facilitate greater public understanding of OMB's FOIA operations, including by adding descriptions of the FOIA exemptions that apply to OMB's records (in accordance with Section 2(b)(v) of Executive Order 13,392) and by adding information regarding OMB's FOIA Requester Service Center and FOIA Public Liaison.

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<sup>11</sup> See <http://www.whitehouse.gov/omb/gils/oira-gils.html> (description of the current paper-based Records Management Center for OMB's PRA records).

<sup>12</sup> See <http://www.whitehouse.gov/omb/foia/reading.html> (index for OMB's FOIA Reading Room).



4. The Role of the OMB FOIA Officer. The timely hiring of a new FOIA Officer (to replace the FOIA Officer who recently left OMB) will be a key element in OMB preserving the substantial gains that OMB has made over the past two years (in eliminating its FOIA backlog by the end of FY2005) and in continuing to make further progress in its FOIA operations. It will also be important to ensure that the new FOIA Officer becomes as familiar as possible, as quickly as possible, with OMB's FOIA operations and with the issues that frequently arise in responding to OMB's FOIA requests, so that the new FOIA Officer can make the maximum possible contribution to the daily processing of OMB's FOIA requests and appeals and to improving OMB's FOIA operations.

**D/E. Areas chosen as improvement areas for agency plan<sup>13</sup>**

1. OMB's Processes for Tracking FOIA Requests and Appeals.

As recounted above, OMB's goal is to make further improvements to OMB's processes for (1) tracking the status of OMB's pending FOIA requests and appeals, (2) assigning the "lead" responsibility for handling a FOIA request to one of the OMB offices, and (3) sending periodic reminders to the relevant OMB "lead" offices that one or more of the FOIA requests (or appeals) to which they have been assigned "lead" responsibility are still "pending" on OMB's FOIA inventory.

To this end, OMB will review and make appropriate revisions to the status reminder form that the Administration Office sends to the OMB lead offices for pending FOIA requests and appeals. In addition, OMB will develop and implement a more formal process for receiving feedback from the lead offices, and providing appropriate advice and assistance to those offices, both when a FOIA request is initially assigned to a lead office and, later, when the periodic status reminder is sent to the lead offices.

This review will be conducted, and these improvements will be made, by the Administration Office in consultation with the General Counsel's Office (and other OMB offices as appropriate). The review will be concluded, and the improvements will be made, by October 1, 2006.

2. OMB's Responses to Relatively Simple FOIA Requests.

As recounted above, OMB's goal is to identify those records that OMB releases, in response to FOIA requests, which should be posted on OMB's website because they are likely to be the subject of several FOIA requests.

To this end, OMB will establish a more formal process under which OMB will review the records that OMB releases in response to FOIA requests to identify those

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<sup>13</sup> For convenience of presentation, this section combines sections D and E from the Department of Justice template issued on April 27, 2006.

records that have become, or are likely to become, the subject of subsequent FOIA requests.<sup>14</sup> Such records will be posted on OMB's website in its FOIA Reading Room.

This process will be developed by the Administration Office in consultation with the General Counsel's Office (and other OMB offices as appropriate). The process will be developed and put into place by October 1, 2006.

### 3. OMB's Dissemination of Information to the Public through its Website.

As recounted above, OMB's goal is to expand the opportunity for members of the public, including potential FOIA requesters, to obtain publicly-available information on OMB's website quickly and easily.

To this end, OMB will complete the planned roll-out of ROCIS, which will make PRA-related information available on the Internet (without the need for a person to file a FOIA request) rather than maintaining those records in OMB's paper-based Records Management System. OMB's Office of Information and Regulatory Affairs is the OMB office that is responsible for the ROCIS roll-out. The ROCIS roll-out will occur by September 1, 2006.

In addition, OMB will review and update the FOIA section of OMB's website, including its FOIA Reading Room and FOIA handbook, to reflect the Executive Order and to make it easier for members of the public to identify information on OMB's website that might be of interest to them. This review will be conducted jointly by the Administration Office and the General Counsel's Office, in consultation with other OMB offices as appropriate. The review will be conducted, and the website's FOIA section will be updated, by December 31, 2006. In addition, by this same date, the Administration Office and the General Counsel's Office will also put into place a process for these offices to review the website's FOIA section on a periodic basis to identify any updates that are needed or improvements that should be made.

### 4. The Role of OMB's FOIA Officer.

As recounted above, OMB's goal is to fill the recent vacancy in the position of OMB's FOIA Officer and to provide the new FOIA Officer with appropriate training (or developmental experience) so that the new FOIA Officer becomes as familiar as possible, as quickly as possible, with OMB's FOIA operations and with the issues that frequently arise in responding to OMB's FOIA requests. This will ensure that the new FOIA Officer can make the maximum possible contribution to the daily processing of OMB's FOIA requests and appeals and to improving OMB's FOIA operations.

To this end, OMB will hire a new FOIA Officer by September 1, 2006. The new FOIA Officer will be hired by the Administration Office, in consultation with the General Counsel's Office.

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<sup>14</sup> See 5 U.S.C. § 552(a)(2)(D).

In addition, OMB will develop a training/development plan for the new FOIA Officer. The training/development plan will be developed by the Administration, in consultation with the General Counsel's Office. The training/development plan will be developed by November 1, 2006, and will be implemented during FY2007.

**F. For the entire plan, group the improvement areas into the following time periods:**

**1. Areas anticipated to be completed by December 31, 2006**

- Area # 1. OMB's Processes for Tracking FOIA Requests and Appeals.
- Area # 2. OMB's Responses to Relatively Simple FOIA Requests.
- Area # 3. OMB's Dissemination of Information to the Public through its Website.
- Area # 4. The Role of OMB's FOIA Officer (development but not implementation of the plan).

**2. Areas anticipated to be completed by December 31, 2007**

- Area # 4. The Role of OMB's FOIA Officer (implementation of the plan).

**3. Areas anticipated to be completed after December 31, 2007**

NONE.