

**Council on Environmental Quality
Annual FOIA 2007 Report
October 1, 2006-September 30, 2007**

I. Basic Information Regarding Report

- A. Name, Title, Address, and Telephone Number of Person to be contacted with questions.

**Edward Boling
Freedom of Information Officer
Council on Environmental Quality
722 Jackson Place, NW
Washington, DC 20503
Telephone number: (202) 395-5750
Fax number: (202) 456-0753
E-Mail: efoia@ceq.eop.gov**

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

<http://www.whitehouse.gov/ceq/foia.html>

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

Request a copy from the address 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 Requests should be submitted by fax at (202) 456-0753 or E-Mail to efoia@ceq.eop.gov

- B. Brief description of the agency's response time ranges.

Median response time ranges from 58 days but up to 565 days due to complexity and need to consult with other agencies.

- C. Brief description of why some requests are not granted.

Since most FOIA requests pertain to deliberative process, exemption (b)(5) is used to withhold exempt material.

III. Definitions of Terms and Acronyms Used in the Report (to be included in each report)

- A. Agency-specific acronyms or other terms:

1. Council on Environmental Quality (CEQ),
2. Environmental Assessment (EA),
3. Finding of No Significant Impact (FONSI),
4. National Environmental Policy Act (NEPA).

- 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.
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.
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. Multitrack 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 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 multitrack 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 multitrack 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 a record in part 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 entirety, 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 the 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.

IV. Exemption 3 Statutes

A. List of Exemption 3 statutes relied on by agency during current fiscal year.

1. Brief description of type(s) of information withheld under each statute: None

B. Statement of whether a court has upheld the use of each statute. If so, then cite example: None

V. Initial FOIA/PA Access Requests

A. Numbers of initial requests.

1. Number of requests pending as of end of preceding fiscal year 10

2. Number of requests received during current fiscal year 27

3. Number of requests processed during current fiscal year 17

4. Number of requests pending as of end of current fiscal year 20

B. Disposition of initial requests.

1. Number of total grants 3

2. Number of partial grants 2

3. Number of denials 0

a. number of times each FOIA exemption used
(counting each exemption once per request)

1. Exemption 1 0

2. Exemption 2 0

3. Exemption 3 0

4. Exemption 4 0

5. Exemption 5 2

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) 0

13. Exemption 8 0

14. Exemption 9 0

4. Other reasons for nondisclosure: 12

a. no records 9

b. referrals 0

c. request withdrawn 0

d. fee-related reason 0

e. records not reasonably described 3

f. not a proper FOIA request for some other reason 0

g. not an agency record 0

h. duplicate request 0

i. other (overtaken by events) 0

VI. Appeals of Initial Denials of FOIA/PA Requests

A. Numbers of appeals.

1. Number of appeals received during fiscal year 0
2. Number of appeals processed during fiscal year 1

B. Disposition of appeals.

1. Number completely upheld 1
2. Number partially reversed 0
3. Number completely reversed 0
 - a. number of times each FOIA exemption used
(counting each exemption once per appeal)
 - (1) Exemption 1 0
 - (2) Exemption 2 0
 - (3) Exemption 3 0
 - (4) Exemption 4 0
 - (5) Exemption 5 1
 - (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) 0
 - (13) Exemption 8 0
 - (14) Exemption 9 0
4. Other reasons for nondisclosure 0
 - a. no records 0
 - 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) 0

VII. Compliance with Time Limits/Statutes of Pending Requests

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

1. Simple requests (if multiple tracks used.)
 - a. number of requests processed 17
 - b. median number of days to process 22
2. Complex requests (specify for any and all tracks used).
 - a. number of requests processed 0
 - b. median number of days to process 0
3. Requests accorded expedited processing 0
 - a. number of requests processed 0

- b. median number of days to process 0
- B. Status of pending requests.
 - 1. Number of requests pending as of end of current fiscal year 20
 - 2. Median number of days that such requests were pending as of that date 162

VIII. Comparisons With Previous Year(s)

	FY06	FY07
A. Comparison of numbers of requests received:	24	27
B. Comparison of number of requests processed:	23	17
C. Comparison of median numbers of days requests were pending as of end of fiscal year:	239	162

D. Other statistics significant to agency:

Our "median number of days to process" does not reflect the time our agency must spend on complex requests. Although all our FOIA requests are tracked as "simple requests" 6 of the 27 requests received in FY06 are in fact quite complex. Those complex requests relate to climate change topics and accounted for 6 of the 20 requests pending at the end of FY07. As of the date of this report those 6 requests are being processed within our "first in – first out" policy.

In 2004, CEQ adopted a "first in – first out" policy for managing an increasing number of requests. Under this policy, objectively simple requests may receive expedited processing. CEQ received no formal request for expedited processing during FY2007.

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 work-years) .77
- 3. Total number of personnel (in total work years) .77

B. Total costs (including staff and all resources).

- 1. FOIA processing (including appeals) 40,000.00
- 2. Litigation-related activities (estimated) 9,250.00
- 3. Total Costs 49,250.00

X. Fees

- A. Total amount of fees collected by agency for processing requests 00.00
- B. Percentage of total costs 00.00%

XI. FOIA Regulation

<http://www.whitehouse.gov/ceq/>

XII. REPORT ON EXECUTIVE ORDER 13392 IMPLEMENTATION

Issued by the President on December 14, 2005, Executive Order 13392, "Improving Agency Disclosure of Information," established a "citizen-centered," "results-oriented" approach to the administration of the Freedom of Information Act. Among its provisions, the Executive Order directed agencies to thoroughly review their current administration of the Act and, subsequently, to develop a plan to improve those processes. That plan in place, Executive Order 13392 directs agencies to use their annual FOIA reports to describe their various successes in meeting the milestones and goals set forth therein.

This section of the Council on Environmental Quality's annual FOIA report addresses CEQ's progress in implementing the steps set forth in its 2006 FOIA Improvement Plan.

Note that unlike previous sections of this report, which employ data compiled for FY07, Section XII covers Executive Order implementation activities through December 2007.

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

CEQ did not substantively modify its FOIA improvement plan during Fiscal Year 2007, although it specified new target dates for completion of Section D/E, #3, "FOIA Regulations Revisions," in its summer status report, <http://www.white.gov/ceq/ceq-foia-update07.pdf> (see below).

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

As discussed in CEQ's Annual FOIA Report for 2006 (<http://www.whitehouse.gov/ceq/ceq-foia-06.html>), CEQ has met many of the goals and milestones set forth in the report it submitted in response to Executive Order 13392 (see www.whitehouse.gov/ceq/ceq-foia-06.html). Noteworthy achievements have occurred in the area of making CEQ's FOIA process more comprehensible by, and accessible to, citizens through the redesign CEQ's website www.whitehouse.gov/ceq that now features a FOIA "center" with resources ranging from the full text of the Freedom of Information Act itself, CEQ FOIA regulations, Executive Order 13392, CEQ's Annual FOIA reports from 1998-2006, and a number of other items of importance to FOIA requesters. At the heart of the FOIA Center is CEQ's Online Reading Room, a virtual library of material designed to illuminate and simplify the FOIA process. Users can peruse environmental news, policies, and reports generated not only by CEQ but by other agencies. In addition, the Online Reading Room provides reference service. Users are directed to the Environmental Protection Agency's website to peruse copies of Environmental Impact Statements.

The most important posting to CEQ's Online Reading Room are the documents (in .pdf format) that CEQ has released under FOIA that, because of their subject matter, are likely to be the subject of other FOIA requests. Documents available online include written and email correspondence and other information deemed responsive to a particular FOIA request; material determined to be non-responsive is indicated within the text of the document. For ease of use, material is organized by subject and individual documents are indexed and numbered

chronologically. By making these documents available, CEQ hopes to save FOIA requesters time and money since they can review topical material online before submitting a formal request.

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

CEQ has been unable to revise its FOIA regulations, due in large part to its delay in replacing the long-time staff member who managed CEQ's FOIA Service Center. CEQ's record of FOIA accomplishments through FY 2006 was due primarily to this employee's diligent public service; replacing him upon his retirement at the end of July 2006 has not been easy. CEQ first published a Vacancy Announcement for a Paralegal Special on August 17, 2006, and again, on January 27, 2007; however, not until May 7, 2007, did a new Paralegal Specialist join CEQ's staff. That paralegal stayed at CEQ for approximately five months, leaving the agency in mid October 2007. Upon her departure, CEQ initiated a new search, although the position remained unfilled until December 2007. This means that during the 2006 and 2007 fiscal years, CEQ went without dedicated FOIA staff for approximately 12 out of 17 months.

Also during this period, CEQ was asked to respond to an inquiry from the House Committee on Oversight and Government Reform regarding climate change science and policy, which ultimately involved the production of 27,000 pages of documents and other materials. Time spent by CEQ staff in response to this request was not counted under FOIA staffing and costs, estimated in Section IX, *supra*. Midway through this document production, Citizens for Responsible Ethics in Washington ("CREW") brought suit against CEQ for refusing to reply in a timely fashion to its FOIA request documents related to climate change.

In light of competing demands from Congress and litigation, the goal of revising CEQ's FOIA regulations was temporarily set aside. Completion of revised FOIA regulations is a necessary precondition for developing a CEQ handbook on FOIA and records management. Training derived from the information in this handbook hinges on revised regulations as well. This milestone remains unmet due to the circumstances listed above.

1. FOIA Improvement Plan area to which the deficient milestone(s) relate.

The deficient milestones described below relate to Section D/E, 3-4 of CEQ's FOIA Improvement Plan: <http://www.whitehouse.gov/ceq/ceq-foia-06.html>

2. Deficient milestone(s) and the original target date from the FOIA improvement plan.

Section D/E, 3. Goal: Federal Register publication of draft and final revised FOIA regulations, incorporating the requirements of Executive Order 13392 and the 1996 Amendments to FOIA.

The original target date for completion of these tasks was January 5, 2007, for the publication of draft FOIA regulations; the target for final regulations was June 2007. CEQ changed the projection for final regulations to December 2007 in its FOIA update, but the goal remains unmet. See <http://www.whitehouse.gov/ceq/ceq-foia-update07.pdf>,

Section D/E 4. Goal: Develop a CEQ handbook on FOIA and records management for training CEQ staff.

The original target date for completing this task was within three months of the revision of CEQ's FOIA regulation or no later than September 2007. Given CEQ's target of December 2008 for final regulations, this product should be completed no later than March 2009.

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

CEQ first published a Vacancy Announcement for a Paralegal Special on August 17, 2006, and again, on January 27, 2007. Not until May 7, 2007, did a new Paralegal Specialist join the staff. When that employee left the agency in mid-October 2007, CEQ initiated a new search. The position was filled in December 2007.

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

Section D/E, 3:

- Review other agency regulations (February 2008).
- Coordinate with the Department of Justice Office of Information and Privacy and the Office of Management and Budget regarding the implementation of regulation revisions (February 2008).
- Submit draft FOIA regulations to the Federal Register (June 2008).
- Publish final FOIA regulations (December 2008).

Section D/E, 4:

- Review similar publications from other agencies and identify models for replication (March 2008).
- Draft text and circulate for review, coordinating with EOP's Office of Records Management and others as needed (May 2008).
- Publish electronically and make available to all staff (June 2008).
- Train CEQ staff (June 2008).

CEQ plans to fully implement its FOIA Plan by submitting draft FOIA regulations to the Federal Register no later than December 2008.

D. Additional narrative statement 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 cover: (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 by or 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 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 identify 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. Ten Oldest Pending FOIA Requests

Calendar Year	2000	2001	2002	2003	2004	2005	2006	2007
Requests	0	0	0	0	0	July 1 July 1 July 11 July 11	Feb 3 March 6 May 12 May 30	Jan 9 Feb 1

2. Consultations

CEQ's FOIA tracking system is unable at this time to compute any of these numbers regarding consultations. We have begun to collect this consultation date so that CEQ can report it for Fiscal Year 2008.

G. Attachment: Agency improvement plan in current form

<http://www.whitehouse.gov/ceq/ceq.foia-update07.pdf>