

**U.S. Small Business Administration  
Freedom of Information Act Annual Report  
Fiscal Year 2002**

I. Basic Information

- A. For questions concerning this Report, contact:

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- B. Report may be obtained online at: [www.sba.foia/](http://www.sba.foia/)
- C. Report may also be obtained by making a request to the address listed in A above or through the SBA Online FOIA Mailbox at [foia@sba.gov](mailto:foia@sba.gov).

II. How to Make a FOIA Request

- A. Our *Guide to Public Information*, located on SBA's FOIA Home Page at [www.sba.gov/foia/handbook.html](http://www.sba.gov/foia/handbook.html) details the different methods (postal mail, electronic mail, fax, in person) and requirements for submitting a FOIA request to the SBA.

- B. Agency response-time ranges:

The median response time for processing an **initial request** in FY '02 was one working day. For **appeals**, the median processing time was 19 working days.

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### C. Brief description of why **some** requests are not granted:

The nature of the information created and/or maintained at the SBA commonly involves businesses requesting or receiving assistance. Therefore the most frequently cited exemptions at the SBA are Exemptions 4, 5, and 6, when requests are made by third parties. Information withheld includes: commercial financial information; trade secrets; business plans; information on pending, declined, withdrawn, or canceled applications; information on defaults, delinquencies, losses; business owner's personal history, home address, birth date, social security number and medical information; internal documents not incorporated into final Agency actions; and attorney work-product on pending litigation.

### III. Definitions of Terms and Acronyms Used in this Report

#### A. SBA – U.S. Small Business Administration

#### B. Basic Terms:

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 FOIA.
3. Appeal -- a request to a federal agency asking that it review at a higher administrative level a full or partial denial of access to records under the FOIA, or any other FOIA determination such as a fee waiver or assessment.

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4. Processed Request or Appeal -- a request or appeal for which an agency has taken a final action in all respects on the request or the appeal.
5. Multi-track processing -- a system in which simple requests requiring relatively minimal review are processed on one track, and more voluminous and complex requests are processed on 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.
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 prior requests.
7. Simple request -- a FOIA request that an agency using multi-track processing assigns to its fastest (nonexpedited) track based on the volume and/or simplicity of records requested.
8. Complex request -- a FOIA request that an agency using multi-track processing assigns to a slower track based on the volume and/or complexity of records requested.
9. Grant -- an agency decision to disclose in full all records 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 it determines is exempt under one or more exemptions; or a decision to disclose some records in full, 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 the agency determines all the information in the requested records is exempt under one or more exemptions, or for some procedural reason (such as because no record is located in response to a FOIA request).

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12. Time limits -- the time period 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 remains no 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, among 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.

### **IV. Exemption 3 Statutes**

- A. List of Exemption 3 statutes relied on by the agency in FY '02.
  1. Brief description of type(s) of information withheld under each statute.
    - a. 26 U.S.C. § 6103 – tax returns and tax return information.
    - b. Rule 6(e) of the Federal Rules of Criminal Procedure – grand jury material.
    - c. 12 U.S.C. § 3401 et. seq. – documents obtained by a subpoena pursuant to the Right to Financial Privacy Act.

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2. Example when a court has upheld the use of each statute.
  - a. Lehrfield v. Richardson, 132 F.3d 1463 (D.C. Cir. 1998).
  - b. Fund for Constitutional Government v. National Archives & Records Service, 656 F. 2d 856 (D.C. Cir. 1981).
  - c. None found.

V. Initial FOIA/PA Access Requests

A. Numbers of initial requests

1. # of requests pending as of end of FY '01 132
2. # of requests received during FY '02 2050
3. # of requests processed during FY '02 2117
4. # of requests pending as of end of FY '02 65

B. Disposition of initial requests

1. # of total grants 1487
2. # of partial grants 213
3. # of denials 109
  - a. number of times each exemption used
    - (1) Exemption 1 0
    - (2) Exemption 2 1
    - (3) Exemption 3 7
    - (4) Exemption 4 147

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- (5) Exemption 5 84
- (6) Exemption 6 102
- (7) Exemption 7(A) 8
- (8) Exemption 7(B) 6
- (9) Exemption 7(C) 18
- (10) Exemption 7(D) 7
- (11) Exemption 7(E) 9
- (12) Exemption 7(F) 0
- (13) Exemption 8 2
- (14) Exemption 9 0

- 4. Other reasons for nondisclosure: total 308
  - a. no records 101
  - b. referral 70
  - c. request withdrawn 26
  - d. fee-related reason 18
  - e. records not reasonably described 27
  - f. not a proper FOIA request for some other reason 0
  - g. not an agency record 63
  - h. duplicate request 1
  - i. other 2  
(Glomar cited)

VI. Appeals of Initial Denials of FOIA/PA Requests

A. Numbers of appeals

- 1. # of appeals received during FY '02 18
- 2. # of appeals processed during FY '02 20

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B. Disposition of appeals

1. # completely upheld 6

2. # partially reversed 8

3. # completely reversed 1

a. number of times each exemption used

(1) Exemption 1 0

(2) Exemption 2 0

(3) Exemption 3 0

(4) Exemption 4 6

(5) Exemption 5 5

(6) Exemption 6 7

(7) Exemption 7(A) 1

(8) Exemption 7(B) 1

(9) Exemption 7(C) 3

(10) Exemption 7(D) 1

(11) Exemption 7(E) 1

(12) Exemption 7(F) 1

(13) Exemption 8 1

(14) Exemption 9 0

4. Other reasons for nondisclosure 5

a. no records 3

b. referrals 0

c. request withdrawn 1

d. fee-related reason 1

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 0:

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VII. Compliance with Time Limits/Status of Pending Requests

A. Median processing time for requests processed during the year

1. Simple requests (Tracks not used)
  - a. # of requests processed 2106
  - b. median # of days to process 1
2. Complex requests (No response as tracks not used)
3. Requests accorded expedited processing
  - a. # of requests processed 0
  - b. median # of days to process 0

B. Status of pending requests

1. # of requests pending at end of FY '02 65
2. Median # of days those requests were pending as of that date – varies by decentralized processing office.

VIII. Comparisons (Optional)

A-C. No comparisons noted.

D. SBA received no expedited processing requests.

IX. Costs/FOIA Staffing

A. Staffing levels

1. # of full-time FOIA personnel 2
2. # of personnel with part-time or occasional FOIA duties (in total work-years) 36
3. Total # of personnel (in work-years) 38  
(Note: the totals for #2 and #3 are estimated.)



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- B. Total costs
  - 1. FOIA processing - approximately \$356,578.00
  - 2. Litigation-related activities – \$2300.00
  - 3. Total costs – approximately \$358,878.00
  
- X. Fees
  - A. Total fees collected by agency for processing requests \$16,640.27
  - B. Percentage of total costs – approximately 4.6%
  
- XI. FOIA Regulations

A copy of the current SBA Regulations on *Record Disclosure and Privacy*, 13 CFR § 102, are accessible electronically at [www.sba.gov/foia/](http://www.sba.gov/foia/). Proposed Regulations with changes implementing the 1996 EFOIA Amendments were published September 11, 2002. The Final Rule is in the clearance stage within the Agency.