

POLICY ISSUE (Information)

January 10, 2006

SECY-06-0009

FOR: The Commissioners

FROM: Luis A. Reyes
Executive Director for Operations /RA/

SUBJECT: SUBMISSION OF THE ANNUAL FREEDOM OF INFORMATION ACT REPORT

PURPOSE:

This paper conveys to the Commission a copy of the Nuclear Regulatory Commission's (NRC's) annual Freedom of Information Act (FOIA) Report for Fiscal Year (FY) 2005.

BACKGROUND:

With the enactment of the Electronic Freedom of Information Act Amendments of 1996, Public Law 104-231, 101 Stat. 3048, Congress revised Subsection (e) of the FOIA, which pertains to the submission of annual FOIA reports by Federal agencies. The revision directed the U.S. Department of Justice (DOJ), in consultation with the Office of Management and Budget, to issue guidelines for Federal agencies to use in preparing and submitting their annual FOIA reports.

Under the guidelines, Federal agencies are to send their annual reports to the DOJ Office of Information and Privacy and identify in their reports the agency-specific uniform resource locator (URL) for Web-based access to the report. DOJ provides a single point of access on its Web site for all annual FOIA reports, through links to agency FOIA pages, and notifies Congress when all reports have been posted on the Web site.

CONTACT:
Russell A. Nichols, OIS
301-415-7169

DISCUSSION:

Enclosed is the NRC's Annual FOIA Report for FY 2005. Section VIII (page 7) of the enclosed report compares NRC's FY 2005 data to FY 2004. The median number of days for pending FOIA requests rose from 54 in FY 2004 to 94 at the close of FY 2005. The increase was caused by eight complex FOIA cases that had been opened for more than 300 days, three of which had been opened for more than 350 days. Ten additional cases that had been opened more than 200 days also contributed to the aggregate increase in median days. In the first quarter of FY 2006 the FOIA/Privacy Team closed six of the over-300-days cases and nine of the over-200-days cases. As of January 1, 2006, the median number of days of pending requests had dropped to 55.

The NRC staff will submit the enclosed FY 2005 Annual FOIA Report to the DOJ Office of Information and Privacy and will place the report on the NRC's public Web site by February 1, 2006. The URL for the NRC's FY 2005 Annual FOIA Report will be <http://www.nrc.gov/reading-rm/foia/foia-privacy.html>.

/RA/

Luis A. Reyes
Executive Director
for Operations

Enclosure: U.S. Nuclear Regulatory Commission
Annual Freedom of Information Act
Report: Fiscal Year 2005

**ANNUAL FREEDOM OF INFORMATION ACT REPORT
FISCAL YEAR 2005**

I. Basic Information Regarding Report

A. Name, title, address, and telephone number of person(s) to be contacted with questions about the report.

Russell A. Nichols
Freedom of Information Act and Privacy Act Officer
Mail Stop T-6 D8
United States Nuclear Regulatory Commission
Washington, DC 20555-0001
Telephone: 301-415-7169 Fax: 301-415-5130

B. Electronic address for report on the World Wide Web

www.nrc.gov/reading-rm/foia/foia-privacy.html

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

Contact the U.S. Nuclear Regulatory Commission (NRC) Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, MD 20852-2738, telephone 301-415-4737 or 1-800-397-4209, E-mail PDR@NRC.GOV or by fax at 301-415-3548. The mailing address is Public Document Room, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

II. How to Make a FOIA Request

A. Names, addresses, and telephone numbers of all individual agency components and offices that receive FOIA requests.

Freedom of Information Act and Privacy Act Officer
Mail Stop T-6 D8
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Telephone: 301-415-7169 Fax: 301-415-5130
E-mail: FOIA@NRC.GOV

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

41% within 4 weeks
61% within 6 weeks
73% within 8 weeks

Enclosure

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

To protect privacy (34%)

To prevent compromise of a pending investigation or proceeding (10%)

To protect the agency's pre-decisional deliberative process or attorney-client privilege, or attorney work products (25%)

To protect proprietary information (13%)

III. Definitions of Terms and Acronyms Used in the Report

A. Agency-specific acronyms or other terms.

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.
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. 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 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 multi-track processing places in its fastest (non-expedited) track based on the volume and/or simplicity of records requested.
8. Complex request -- a FOIA request that an agency using multi-track 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. 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 agency during current fiscal year.

1. Brief description of type(s) of information withheld under each statute.

- 41 U.S.C. §253b(m)(1), Contractor Proposals
- 42 U.S.C. §2167, Unclassified Safeguards Information
- 42 U.S.C. §2161-2165, Restricted or Formerly Restricted Data

2. Statement of whether a court has upheld the use of each statute. If so, then cite example.

- 41 U.S.C. §253b(m)(1) - Hornbostel v. U.S. Department of Interior, 305F Supp. 2d21 (DDC 2003)
- 42 U.S.C. §2167 - Va. Sunshine Alliance v. NRC, 509 F. Supp. 863 (D.D.C. 1981), aff'd, 669 F.2d 788 (D.C. Cir. 1981)
- 42 U.S.C. 2161-2165 - Meeropol v. Smith, No. 75-1121 (D.D.C., February 29, 1984)

V. Initial FOIA/PA Access Requests

A. Numbers of initial requests.

- | | | |
|----|--|-----|
| 1. | Number of requests pending as of end of preceding fiscal year (09/30/04) | 54 |
| 2. | Number of requests received during current fiscal year | 371 |
| 3. | Number of requests processed during current fiscal year | 345 |
| 4. | Number of requests pending as of end of current fiscal year (09/30/05) | 80 |

B. Disposition of initial requests.

- | | | |
|----|--------------------------|-----|
| 1. | Number of total grants | 108 |
| 2. | Number of partial grants | 99 |
| 3. | Number of denials | 13 |

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

- | | |
|---------------------|----|
| (1) Exemption 1 | 2 |
| (2) Exemption 2 | 28 |
| (3) Exemption 3 | 5 |
| (4) Exemption 4 | 25 |
| (5) Exemption 5 | 46 |
| (6) Exemption 6 | 31 |
| (7) Exemption 7(A) | 18 |
| (8) Exemption 7(B) | 0 |
| (9) Exemption 7(C) | 32 |
| (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 (total)	125	
	a. no records		58
	b. referrals		0
	c. requests withdrawn		26
	d. fee-related reason		29
	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		1
	i. other (no response to identify verification (5), no response to release authorization (3), lack of response (2), outside scope (1))		11

VI. Appeals of Initial Denials of FOIA/PA Requests

A. Number of appeals.

1.	Number of appeals received during fiscal year	14
2.	Number of appeals processed during fiscal year	12

B. Disposition of appeals.

1.	Number completely upheld	1
2.	Number partially reversed	3
3.	Number completely reversed	4
a.	number of times each FOIA exemption used (counting each exemption once per appeal)	
	(1) Exemption 1	0
	(2) Exemption 2	2
	(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)	1
	(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 (total)	4
	a. no records	3
	b. referrals	0
	c. requests withdrawn	0
	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

VII. Compliance with Time Limits/Status of Pending Requests
FY 2005 median day calculations are based on working days.

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

1.	Simple requests (Track A).	
	a. number of requests processed	303
	b. median number of days to process	12
2.	Complex requests (Tracks B & C).	
	a. number of requests processed	28
	b. median number of days to process	75
3.	Requests accorded expedited processing.	
	a. number of requests processed	14
	b. median number of days to process	20

B. Status of pending requests.

1.	Number of requests pending as of end of current fiscal year: 80
	Track A 57
	Track B 23
2.	Median number of days that such requests were pending as of that date:
	Track A 32
	Track B 247

VIII. Comparisons with Previous Year(s)

Calculations are based on working days.

		<u>FY 04</u>	<u>FY 05</u>	<u>% Change FY 04 to FY 05</u>
A.	Number of requests received	372	371	0%
B.	Number of requests processed	389	345	(11%)
C.	Median number of days requests were pending as of end of fiscal year	54	94	74%
D.	Other statistics significant to agency:			
	Expedited Processing - Received	29	34	
	Granted	5	14	

E. Other agency efforts to improve timeliness of FOIA performance and to make records available to the public:

List of FOIA requests by subject that were completed during the year placed on the FOIA page of the NRC Web site.

Training on the FOIA process was provided to various staff offices with emphasis placed on specific office needs.

Several internal agency service levels are used to enhance the agency's processing timeliness. Reports showing the status of open cases are provided to offices in an effort to heighten management awareness of pending cases.

In addition to providing general public access to material released under the FOIA, in FY 05 the NRC placed over 59,000 of its official agency records in its Agencywide Documents Access and Management System (ADAMS). These documents are available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records System (PARS) component of ADAMS. ADAMS is accessible from the NRC web site at <http://www.nrc.gov/reading-rm/adams.html> (the Electronic Reading Room). This extensive voluntary release program has resulted in 2.8 million documents being made publicly available either in paper, microfiche or electronically.

IX. Costs/FOIA Staffing

A. Staffing levels.

- | | | |
|----|--|---|
| 1. | Number of full-time FOIA personnel | 5 |
| 2. | Number of personnel with part-time or occasional FOIA duties (in total work-years) | 4 |
| 3. | Total number of personnel (in work-years) | 9 |

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

- | | | |
|----|---|--------------|
| 1. | FOIA processing (including appeals) | \$ 1,016,677 |
| 2. | Litigation-related activities (estimated) | \$ 00 |
| 3. | Total costs | \$ 1,016,677 |
| 4. | Comparison with previous year: FY04 (9.8% decrease) | \$ 1,127,003 |

X. Fees

A. Total amount of fees collected by agency for processing requests \$43,081

B. Percentage of total costs 4.2%

XI. FOIA Regulations

10 CFR Part 9 (Internet location:

www.nrc.gov/reading-rm/doc-collections/cfr/part009/index.html)

Fee Schedule (2004)

Search and Review

SES/Commissioners (ES-4)	\$82.93/hr.	\$1.38/min
Professional (GG-13/6)	\$48.49/hr	\$0.81/min
Clerical (GG-7/7)	\$23.64/hr	\$0.39/min

Duplication: \$0.20 per page

Minimum fee: \$15.00 (No fee will be charged unless total fee is equal to or greater than \$15.00)