

**U.S. Small Business Administration
Freedom of Information Act Annual Report
Fiscal Year 1998**

I. Basic Information

- A. For questions concerning this Report, contact:

Kitty Higgins, Paralegal Specialist (catherine.higgins@sba.gov)
U.S. Small Business Administration
FOI/PA Office, Suite 5900
409 Third St., S.W.
Washington, D. C. 20416
202-401-8203

- B. Report may be obtained through the Internet at: www.sba.gov/foia/
- C. Report may also be obtained by making a request to the address listed in A above or through the SBA FOIA Mailbox at 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 details the different methods of making a FOIA Request to the SBA.

- B. Agency response-time ranges:

The average response time for processing an **initial request** in FY '98 was eight working days and the response-time range was from one to 37 days. For **appeals**, the average processing time was 17 working days and the response-time range was from one to 67 days.

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withheld includes: commercial financial information; trade secrets; business plans; information on pending, declined, withdrawn, or canceled applications; information on defaults, delinquencies, losses; business owner's personal history, home address, birth date, social security number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.
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.

SBA FOIA Annual Report FY '98 – page 3

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).
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).

SBA FOIA Annual Report FY '98 – page 4

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 '98.

1. Brief description of type(s) of information withheld under each statute.
 - a. Rule 6(e) of the Federal Rules of Criminal Procedure: Grand jury information.
 - b. The Privacy Act (5 U.S.C. § 552a): Social security number, home address, tax information, credit reports.
 - c. 26 U.S.C.A. § 6103: tax returns and tax return information.
2. Example when a court has upheld the use of each statute.
 - a. Fund for Constitutional Government v. National Archives & Records Service, 656 F. 2d 856 (D.C. Cir. 1981)
 - b. Provenzano v. United States Department of Justice, 717 F.2d 799 (3rd Cir. 1983), cert. granted, 466 U.S. 926 (1984), now moot since Congress enacted the Central Intelligence Agency Information Act in 1984.*
 - c. Lehrfeld v. Richardson, 132 F.3d 1463 (D.C. Cir. 1998)*

SBA FOIA Annual Report FY '98 – page 5

*As initial FOIA processing is decentralized, various field or program offices made these decisions at the initial level. The FOI/PA Office did not advise using either of these statutes, based on the Department of Justice Overview discussion.

V. Initial FOIA/PA Access Requests

A. Numbers of initial requests

1. # of requests pending as of end of FY '97 24
2. # of requests received during FY '98 2368
3. # of requests processed during FY '98 2293
4. # of requests pending as of end of FY '98 72

B. Disposition of initial requests

1. # of total grants 1438
2. # of partial grants 719
3. # of denials 121
 - a. number of times each exemption used
 - (1) Exemption 1 0
 - (2) Exemption 2 5
 - (3) Exemption 3 5
 - (4) Exemption 4 288
 - (5) Exemption 5 109
 - (6) Exemption 6 102
 - (7) Exemption 7(A) 3
 - (8) Exemption 7(B) 1
 - (9) Exemption 7(C) 12
 - (10) Exemption 7(D) 1
 - (11) Exemption 7(E) 2
 - (12) Exemption 7(F) 0
 - (13) Exemption 8 2
 - (14) Exemption 9 0

SBA FOIA Annual Report FY '98 – page 6

4. Other reasons for nondisclosure
 - a. no records 143
 - b. referral 73
 - c. request withdrawn 37
 - d. fee-related reason 17
 - e. records not reasonably described 14

- f. not a proper FOIA request for some other reason 6
- g. not an agency record 21
- h. duplicate request 2
- i. other 2
 - records destroyed
 - records in file pertained to unrelated loans

VI. Appeals of Initial Denials of FOIA/PA Requests

A. Numbers of appeals

- 1. # of appeals received during FY '98 32
- 2. # of appeals processed during FY '98 30

B. Disposition of appeals

- 1. # completely upheld 11
- 2. # partially reversed 15
- 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 10
- (5) Exemption 5 11
- (6) Exemption 6 10

SBA FOIA Annual Report FY '98 – page 7

- (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 11

- a. no records 5
- b. referrals 0
- c. request withdrawn 1
- d. fee-related reason 0
- e. records not reasonably described 0
- f. not a proper FOIA request for some other reason 1
- g. not an agency record 2
- h. duplicate request 0
- i. other 2 :
 appeals not sent within 45 days as required in 13 CFR § 102.

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 – data same for #1 and #2)
 - a. # of requests processed 2292
 - b. median # of days to process 12
 - 2. Complex requests (Tracks not used – data same for #1 and #2)
 - a. # of requests processed 2292
 - b. median # of days to process 12
 - 3. Requests accorded expedited processing
 - a. # of requests processed 1
 - b. median # of days to process 9

SBA FOIA Annual Report FY '98 – page 8

- B. Status of pending requests
 - 1. # of requests pending at end of FY '98 72
 - 2. Median # of days those requests were pending as of that date 10

VIII. Comparisons (Optional)

No comparisons with the nine month calendar year 1997 data.

IX. Costs/FOIA Staffing

A. Staffing levels

1. # of full-time FOIA personnel 2
3. # of personnel with part-time or occasional FOIA duties 163
4. Total # of personnel 165

B. Total costs

1. FOIA processing - approximately \$259,921.72
2. Litigation-related activities – approximately \$15,000.00
3. Total costs – approximately \$274,921.72

C. Statement of additional resources needed for FOIA compliance

The FOIA Office requested funding for scanning equipment to enable us to comply with requests for electronic records.

SBA FOIA Annual Report FY '98 – page 9

X. Fees

- A. Total fees collected by agency for processing requests \$8,397.20
- B. Percentage of total costs – approximately 3%

XI. FOIA Regulations

A copy of the current SBA Regulations on *Record Disclosure and Privacy* 13 CFR § 102, is attached. Proposed Regulations with changes required by the 1996 Amendments are in the clearance/comment stage within the Agency. Regulations are accessible electronically at www.sba.gov/foia/.

