



U.S. Department of Justice

Office of Information and Privacy

Telephone: (202) 514-3642

Washington, D.C. 20530

June 26, 2008

MEMORANDUM FOR AGENCY CHIEF FOIA OFFICERS

FROM: Melanie Ann Pustay *Melanie Ann Pustay*
Director

SUBJECT: Guidance on Preparing Backlog Reduction Plans

This memorandum provides guidance for preparing Backlog Reduction Plans. All agencies with backlogs which have not made progress in reducing those backlogs over the last two years are required to prepare Backlog Reduction Plans by September 8, 2008. Each agency Chief FOIA Officer must, in turn, notify the Department of Justice and OMB by October 6, 2008, that he/she has approved their agency's Backlog Reduction Plan.

BACKGROUND

On May 30, 2008, the Attorney General issued his third Report to the President pursuant to Executive Order 13,392. This Attorney General Report is based on the Fiscal Year 2007 Annual FOIA Reports that agencies submitted earlier this year and provides an update on the agencies implementation of the FOIA and of their FOIA Improvement Plans. In accordance with Section 4(a) of the Executive Order, the Attorney General's Report includes recommendations for improving agency FOIA administration. The second recommendation requires each agency with a backlog of requests which has not made progress in reducing that backlog over the last two years to prepare a Backlog Reduction Plan. When doing so, the Attorney General's Report advises agencies to "consider whether appropriate staffing and agency support is being given to FOIA activities."

REPORTING REQUIREMENTS FOR BACKLOG REDUCTION PLANS

A. Determining Whether Your Agency Must Prepare a Backlog Reduction Plan

The requirement to prepare a Backlog Reduction Plan applies to all agencies which have a backlog of requests and which have not made progress in reducing that backlog over the last two years. A backlogged request is one which remains pending beyond the statutory time period. Because agencies were previously not required to report on the number of backlogged requests in their prior Annual FOIA Reports, they should refer to their numbers of requests "pending as of the end of current fiscal year," as reported in Section V of their Annual FOIA Reports, to determine whether they need to prepare a Backlog Reduction Plan.

To do so, agencies should first determine whether they have a backlog. Any agency which had no requests pending as of the end of Fiscal Year 2007, as reported in their Annual

FOIA Report for Fiscal Year 2007, need not prepare a plan. For those agencies which had requests pending as of the end of Fiscal Year 2007, they should compare that number with the number pending at the end of Fiscal Year 2005, as reported in the Fiscal Year 2005 Annual FOIA Report. If the number has decreased, then the agency is making progress and the agency need not prepare a plan. Conversely, for all agencies which have a backlog of pending requests, and for which the number of pending requests is higher at the end of Fiscal Year 2007 than it was at the end of Fiscal Year 2005, those agencies are required to prepare Backlog Reduction Plans.

In recognition of the fact that some agencies have been steadily working on reducing their backlogs and may have made progress in reducing them during the nine months subsequent to the close of Fiscal Year 2007, at their option, those agencies may calculate their number of pending requests as of July 9, 2008, and use that as the comparison point with the number of requests pending at the end of Fiscal Year 2005, as reported in the Fiscal Year 2005 Annual FOIA report.. If, as of July 9, 2008, the number of pending cases is lower than that pending at the end of Fiscal Year 2005, a Backlog Reduction Plan is not required.

All agencies which have been making progress in reducing their backlogs of pending requests should continue their beneficial work in this area. Those which have not made progress must prepare a Backlog Reduction Plan.

B. Timing of Preparation of the Backlog Reduction Plan

The Attorney General's Report states that those agencies required to prepare Backlog Reduction Plans to provide them to their Chief FOIA Officer by September 8, 2008.

Each agency Chief FOIA Officer must then notify both the Department of Justice and OMB that he/she has approved the plan. That notification must be made no later than October 6, 2008. Each agency must also post their Backlog Reduction Plan on its FOIA Website.

C. Preparing the Backlog Reduction Plan

Each agency required to prepare a Backlog Reduction Plan should examine its own FOIA processes and operations to determine how it can best bring about a meaningful reduction in its backlog. Every agency has its own distinct challenges and so necessarily will have varying approaches to reducing its backlog. The goal of each plan must be the same, however, and that is to reduce both the number and age of backlogged requests each year. To achieve this backlog reduction goal agencies' plans must include two elements. First, agencies should create a plan that focuses on reducing the overall number of backlogged requests and second, the plan should focus on reducing the age of the oldest of those backlogged requests. As to this second element, agencies should plan, at a minimum, to close their ten oldest backlogged requests each year. That will work in conjunction with the new reporting requirement for agency Annual FOIA Reports which requires agencies to list each year the date of their ten oldest requests which are still open. In creating their plans to accomplish this backlog reduction goal, agencies should be

guided by a few important principles.

First, as noted above, in the Attorney General's Report agencies were directed, in creating their Backlog Reduction Plans, to "consider whether appropriate staffing and agency support is being given to FOIA activities." Second, each agency should also be mindful of the principles set forth in Executive Order 13,392. The Executive Order itself encouraged agencies when developing their FOIA Improvement Plans to "include specific activities that the agency will implement to eliminate or reduce the agency's FOIA backlog, including (as applicable) changes that will make the processing of FOIA requests more streamlined and effective, as well as increased reliance on the dissemination of records that can be made available to the public through a website or other means that do not require the public to make a request for the records under the FOIA." Those same guidelines likewise apply to Backlog Reduction Plans.

Lastly, the goal of Backlog Reduction Plans is to enable agencies to make progress in reducing the number of backlogged requests. The number of such requests will be reported in each agency's Annual FOIA Report starting with Fiscal Year 2008 and so the Backlog Reduction Plan should look forward to Fiscal Year 2009 and 2010, with the goal being the reduction in the number of backlogged requests from year to year.

D. Notifying the Department of Justice and OMB

Each agency's Backlog Reduction Plan must be provided to the Chief FOIA Officer by September 8, 2008. Once the plan is approved, the Chief FOIA Officer must notify the Department of Justice by e-mail directed to doj.oip.foia@usdoj.gov and OMB by e-mail directed to FOIAreporting@omb.eop.gov by October 6, 2008.

Agencies with questions regarding this matter should contact Thomas E. Hitter or Kenneth A. Hendricks at the Department of Justice's Office of Information and Privacy at (202) 514-3642.