

NATIONAL SCIENCE FOUNDATION
FREEDOM OF INFORMATION ACT REPORT
FOR OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008

I. BASIC INFORMATION:

A. Point of Contact:

Leslie A. Jensen, NSF FOIA Officer
Office of the General Counsel
4201 Wilson Blvd, Room 1265
Arlington, VA 22230
(703) 292-5065

B. Electronic Address for report: The FY 2008 FOIA Report for the National Science Foundation (NSF) will be available as one of the choices under the References section of the FOIA page on the NSF web site: <http://www.nsf.gov/policies/foia.jsp>.

C. Paper Copies of report: Paper copies can be requested from the Point of Contact listed above.

II. HOW TO MAKE A FOIA REQUEST:

NSF policy is to make the fullest possible disclosure of information and records to any requester, without unnecessary expenses or delay. NSF's "Public Information Handbook" is available electronically as one of the choices under the References section of the FOIA page on the Foundation's web site:

http://www.nsf.gov/publications/pub_summ.jsp?ods_key=nsf07135.

There are four basic agency requirements for making a FOIA request:

- (1) request must be in writing (mailed correspondence, fax, or email) and include the requester's mailing address;
- (2) the envelope and letter content must identify the request as a FOIA request;
- (3) the request must provide enough detail to allow identification of the requested records; and
- (4) the request must include agreement to pay fees chargeable under NSF's fee schedule.

A. Agency Components:

Requests for records of the agency should be sent to the NSF FOIA Officer, Office of the General Counsel, Room 1265, 4201 Wilson Blvd, Arlington, VA 22230.

Phone: 703-292-5065, Fax: 703-292-9041. Email: foia@nsf.gov.

Requests for documents maintained by the Office of the Inspector General should be addressed directly to the OIG, FOIA, Room 1135, 4201 Wilson Blvd, Arlington, VA 22230.

Phone: 703-292-7100. Email: oig@nsf.gov

B. NSF response-time ranges:

The agency generally manages to respond to FOIA requests within three to four weeks for records that can be found at the agency (allowing for time to contact submitters of potentially proprietary information). Response times over 20 working days are generally the result of difficulty in contacting the submitter for clearance, need to track and retrieve documents from off-site storage at the Federal Records Center, voluminous number of potentially responsive records, or need to consult among agency components.

C. Why some requests are not granted:

Requests for records may not be granted if the records do not exist; if records have been transferred to the ownership of the National Archives and Records Administration (NARA); if records contain predecisional information that if released would cause harm to NSF's decision-making processes; if records contain personal and/or proprietary information; if records contain information compiled for law enforcement purposes; or if the requester asked for information specifically prohibited from disclosure by other statutes.

III. ACRONYMS, DEFINITIONS, AND EXEMPTIONS:

1. Agency-specific terms and acronyms:

NSF - National Science Foundation – The National Science Foundation was established by Congress to promote progress in science and engineering. The agency does so primarily through grants and cooperative agreements with colleges, universities, K-12 school systems, businesses, information science organizations and other research institutions throughout the U.S.

2. Basic terms:

- a. Administrative Appeal – a request to a federal agency asking that it review at a higher administrative level a FOIA determination made by the agency at the initial request level.
- b. 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.
- c. Backlog – the number of requests or administrative appeals that are pending at an agency at the end of the fiscal year that are beyond the statutory time period for a response.
- d. Component – for agencies that process requests on a decentralized basis, a “component” is an entity, also sometimes referred to as an Office, Division, Bureau, Center, or Directorate, within the agency that processes FOIA requests. The FOIA now requires that agencies include in their Annual FOIA Report data for both the agency overall and for each principal component of the agency.
- e. Consultation – the procedure whereby the agency responding to a FOIA request first forwards a record to another agency for its review because that other agency has an interest in the document. Once the agency in receipt of the consultation finishes its

review of the record, it responds back to the agency that forwarded it. That agency, in turn, will then respond to the FOIA requester.

- f. Exemption 3 Statute – a federal statute that exempts information from disclosure and which the agency relies on to withhold information under subsection (b)(3) of the FOIA.
- g. FOIA Request – a FOIA request is generally a request to a federal agency for access to records concerning another person (i.e. a “third-party” request), or concerning an organization, or a particular topic of interest. FOIA requests also include requests made by requesters seeking records concerning themselves (i.e., “first-party” requests) when those requestors are not subject to the Privacy Act, such as non-U.S. citizens. Moreover, because all first-party requesters should be afforded the benefit of both the access provisions of the FOIA as well as those of the Privacy Act, FOIA requests also include any first-party requests where an agency determines that it must search beyond its Privacy Act “systems of records” or where a Privacy Act exemption applies, and the agency looks to FOIA to afford the greatest possible access. All requests which require the agency to utilize the FOIA in responding to the requester are included in this report.

Additionally, a FOIA request includes records referred to the agency for processing and direct response to the requester. It does not, however, include records for which the agency has received a consultation from another agency. (Consultations are reported separately in Section XII of this Report.)

- h. Full Grant – an agency decision to disclose all records in full in response to a FOIA request.
- i. Full Denial – an agency decision not to release any records in response to a FOIA request because the records are exempt in their entireties under one or more of the FOIA exemptions, or because of a procedural reason, such as when no records could be located.
- j. Median Number – the middle, not average, number. For example, of 3, 7, and 14, the median number is 7.
- k. Multi-Track Processing – a system in which simple requests requiring relative minimal review are placed in one processing track and more voluminous and complex requests are placed in one or more other tracks. Requests granted expedited processing are placed in yet another track. Requests in each track are processed on a first in/first out basis.
 - i. Expedited Processing – an agency will process a FOIA request on an expedited basis when a requester satisfied the requirement for expedited processing as set forth in the statute and in agency regulations.
 - ii. Simple Request – a FOIA request that an agency using multi-track processing places in its fastest (non-expedited) track based on the low volume and/or simplicity of the records requested.

iii. Complex Request – a FOIA request that an agency using multi-track processing places in a slower track based on the high volume and/or complexity of the records requested.

- l. Partial Grant/Partial Denial – in response to a FOIA request, an agency decision to disclose portions of the records and to withhold other portions that are exempt under the FOIA, or to otherwise deny a portion of the request for a procedural reason.
- m. Pending Request or Pending Administrative Appeal – a request or administrative appeal for which an agency has not taken final action in all respects.
- n. Perfected Request – a request for records which reasonably describes such records and is made in accordance with published rules stating the time, place, fees (if any) and procedures to be followed.
- o. Processed Request or Processed Administrative Appeal – a request or administrative appeal for which an agency has taken final action in all respects.
- p. Range in Number of Days – the lowest and highest number of days to process requests or administrative appeals.
- q. Time Limits – the time period in the statute for an agency to respond to a FOIA request (ordinarily twenty working days from receipt of a perfected FOIA request).

3. Nine FOIA exemptions:

- a. Exemption 1: classified national defense and foreign relations information.
- b. Exemption 2: internal agency rules and practices.
- c. Exemption 3: information that is prohibited from disclosure by another federal law.
- d. Exemption 4: trade secrets and other confidential business information.
- e. Exemption 5: inter-agency or intra-agency communications that are protected by legal privileges.
- f. Exemption 6: information involving matters of personal privacy.
- g. Exemption 7: records or information compiled 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 of 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 identity 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 be reasonably be expected to endanger the life or physical safety of any individual.

- h. Exemption 8: information relating to the supervision of financial institutions.
- i. Exemption 9: geological information on wells.

IV. EXEMPTION 3 STATUTES:

Statute	Type of Information Withheld	Case Citation	Number of Times Relied upon per Component	Total Number of Times Relied upon by Agency
<u>41 U.S.C. § 253b</u>	Business Proposal Documents not incorporated in contracts	Hornbostel v. U.S. Dept. of Interior, 305 F. Supp. 2d 21 (D.D.C. 2003)	OIG: 1 NSF: 6	7
<u>35 U.S.C. § 122</u>	Confidential status of applications; publication of patent applications	<u>Irons and Sears v. Dann</u> , 606 F.2d 1215, 1220 (D.C. Cir. 1979), cert. denied., 444 U.S. 1075 (1980); <u>Lee Pharmaceuticals v. Kreps</u> , 577 F.2d 610, 615-617 (9th Cir. 1978), cert. denied, 439 U.S. 1073 (1979)	OIG: 0 NSF: 18	18

V. FOIA REQUESTS:

A. Received, Processed and Pending FOIA Requests (Perfectured and non-perfectured)

	Column 1	+	Column 2	-	Column 3	=	Column 4
	Number of Requests Pending as of Start of Fiscal Year		Number of Requests Received in Fiscal Year		Number of Requests Processed in Fiscal year		Number of Requests Pending as of End of Fiscal Year
OIG	0		39		37		2
NSF	2		314		315		1
Agency Overall	2		353		352		3

B. (1) Disposition of FOIA Requests – All Processed Requests

	Number of Full Grants	Number of Partial Grants/Partial Denials	Number of Full Denials Based On Exemptions	Number of Full Denials Based on Reasons Other than Exemptions									Total
				No Records	All Records Referred to Another Component or Agency	Request Withdrawn	Fee-Related Reason	Records not Reasonably Described	Improper FOIA Request for Other Reason	Not Agency Record	Duplicate Request	Other *Explain in chart below	
OIG	4	21	5	4		2			1				37
NSF	32	234	3	5		15	4	3		14		5	315

B. (2) Disposition of FOIA Requests – “Other” Reasons for “Full Denials Based on Reasons Other than Exemptions” from Section V,

B(1) Chart	Agency Overall	Description of “Other” Reasons for Denials from Chart B(1) & Number of times Those Reasons Were Relied upon	Total
	OIG	0	0
	NSF	<ul style="list-style-type: none"> • Records provided directly to requester from submitter <ul style="list-style-type: none"> • Records publicly available • Suspended, requester never responded to request for information 	2 2 1

B. (3) Disposition of FOIA Requests – Number of Times Exemptions Applied

	Ex. 1	Ex. 2	Ex. 3	Ex. 4	Ex. 5	Ex. 6	Ex. 7(A)	Ex. 7(B)	Ex. 7(C)	Ex. 7(D)	Ex. 7(E)	Ex. 7(F)	Ex. 8	Ex. 9
OIG		1	1	1	2	22	5		22					
NSF		2	24	87	12	203								
Agency Overall		3	25	88	14	225	5		22					

VI. ADMINISTRATIVE APPEALS OF INITIAL DETERMINATIONS OF FOIA REQUESTS

A. Received, Processed and Pending Administrative Appeals

Column 1	+	Column 2	-	Column 3	=	Column 4
Number of Appeals Pending as of Start of Fiscal Year		Number of Appeals Received in Fiscal Year		Number of Appeals Processed in Fiscal Year		Number of Appeals Pending as of End of Fiscal Year
0		10		10		0

B. Disposition of Administrative Appeals – All Processed Appeals

Number Affirmed on Appeal	Number Partially Affirmed & Partially Reversed/Remanded on Appeal	Number Completely Reversed/Remanded on Appeal	Number of Appeals Closed for Other Reasons	TOTAL
8	2	0	0	10

C. (1) Reasons for Denial on Appeal – Number of Times Exemptions Applied

Ex. 1	Ex. 2	Ex. 3	Ex. 4	Ex. 5	Ex. 6	Ex. 7(A)	Ex. 7(B)	Ex. 7(C)	Ex. 7(D)	Ex. 7(E)	Ex. 7(F)	Ex. 8	Ex. 9
			2	2	6	1		2					

C. (2) Reasons for Denial on Appeal – Reasons Other than Exemptions

No Records	Records Referred at Initial Request Level	Request Withdrawn	Fee-Related Reason	Records not Reasonably Described	Improper Request for Other Reasons	Not Agency Record	Duplicate Request or Appeal	Request in Litigation	Appeal Based Solely on Denial of Request for Expedited Processing	Other *Explain in chart below
1										

C. (3) Reasons for Denial on Appeal – “Other” Reasons from Section VI, C(2) Chart

Description of “Other” Reasons for Denial on Appeal from Chart C(2) & Number of Times Those Reasons Were Relied Upon	Total
0	0

C. (4) Response time for Administrative Appeals

Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
20	16.4	6	20

C. (5) Ten Oldest Pending Administrative Appeals

	10 th Oldest Appeal	9 th	8 th	7 th	6 th	5 th	4 th	3 th	2 rd	1 st Oldest Appeal
Date of Receipt of Ten Oldest Appeals	0	0	0	0	0	0	0	0	0	0
Number of Days Pending	0	8	7	6	5	4	3	2	0	0

VII. FOIA REQUESTS: RESPONSE TIME FOR PROCESSED AND PENDING REQUESTS

A. Processed Requests – Response Time for All Processed Perfected Requests

	Simple				Expedited Processing			
	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
OIG	13	12.3	1	33	0	0	0	0
NSF	17.5	21.12	1	229	0	0	0	0
Agency Overall	16	20.26	1	229	0	0	0	0

B. Processed Requests – Response Time for Perfected Requests in Which Information Was Granted

	Simple				Expedited Processing			
	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
OIG	13	11.9	1	33	0	0	0	0
NSF	19	23.18	1	229	0	0	0	0
Agency Overall	18	22.22	1	229	0	0	0	0

C. Processed Requests – Response Time in Day Increments

Simple Requests

	Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401+ Days	TOTAL
1-20 OIG	32	2												
NSF	202	81	22	5	1	1	1							
Agency Overall	234	83	22	5	1	1	1			1				

1

Requests Granted Expedited Processing

	Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401+ Days	TOTAL
1-20 OIG	0	0	0	0	0	0	0	0	0	0	0	0	0	0
NSF	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Agency Overall	0	0	0	0	0	0	0	0	0	0	0	0	0	0

D. Pending Requests – All Pending Perfected Requests

	Simple			Expedited Processing		
	Number Pending	Median Number of Days	Average Number of Days	Number Pending	Median Number of Days	Average Number of Days
OIG	2	9.5	9.5	0	0	0
NSF	1	272	272	0	0	0
Agency Overall	3	135	97	0	0	0

E. Pending Requests – Ten Oldest Pending Perfected Requests

	10 th Oldest Request and Number of Days Pending	9 th	8 th	7 th	6 th	5 th	4 th	3 th	2 rd	1 st	Oldest Request and Number of Days Pending
OIG		8	7	6	5	4	3	2	9/17/08	9/16/08	9/16/08
NSF									9	10	10
											8/27/07
											272

	10 th Oldest Request and Number of Days Pending	9 th	8 th	7 th	6 th	5 th	4 th	3 th	2 rd	1 st	Oldest Request and Number of Days Pending
Agency Overall		8	7	6	5	4	3	2	9/17/08	9/16/08	8/27/07
									9	10	272

VIII. REQUESTS FOR EXPEDITED PROCESSING AND REQUESTS FOR FEE WAIVER

A. Requests for Expedited Processing

	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate	Number Adjudicated Within Ten Calendar Days
OIG	0	0	0	0	0
NSF	0	0	0	0	0
Agency Overall	0	0	0	0	0

B. Requests for Fee Waiver

	Number Granted (Partial)	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate
OIG	0	0	0	0
NSF	0	0	0	0
Agency Overall	0	0	0	0

IX. FOIA PERSONNEL AND COSTS

A. Personnel

B. Costs

Column 1 + Column 2 = Column 3

	Personnel			Costs		
	Number of “Full-Time” FOIA Employees”	Number of “Equivalent Full-Time FOIA Employees”	Total Number of “Full-Time FOIA Staff”	Processing Costs	Litigation- Related Costs	Total Costs
OIG	0	0.16	0.16	\$20,278.00	0	\$20,278.00
NSF	0	3.6	3.6	\$275,061.00	0	\$275,061.00
Agency Overall	0	3.76	3.76	\$295,339.00	0	\$295,339.00

X. FEES COLLECTED FOR PROCESSING REQUESTS

	Total Amount of Fees Collected	Percentage of Total Costs
OIG	\$48.07	0.24
NSF	\$4,579.68	1.66
Agency Overall	\$4,627.75	1.57

XI. FOIA REGULATIONS

NSF FOIA regulations are published at 45 C.F.R. 612, available electronically at http://www.access.gpo.gov/nara/cfr/waisidx_05/45cfr612_05.html.

XII. BACKLOGS, CONSULTATIONS, AND COMPARISONS

A. Backlogs of FOIA Requests and Administrative Appeals

	Number of Backlogged Requests as of End of Fiscal Year	Number of Backlogged Appeals as of End of Fiscal Year
OIG	0	0
NSF	1	0
Agency Overall	1	0

B. Consultations on FOIA Requests – Received, Processed and Pending Consultations

	Column 1	+	Column 2	-	Column 3	=	Column 4
	Number of Consultations Received from Other Agencies that Were Pending at Your Agency as of Start of the Fiscal Year		Number of Consultations Received from Other Agencies During the Fiscal Year		Number of Consultations Received from Other Agencies that Were Processed by Your Agency During the Fiscal Year		Number of Consultations Received from Other Agencies that Were Pending at Your Agency as of End of the Fiscal Year
OIG	0		0		0		0
NSF	1		1		2		0
Agency Overall	1		1		2		0

C. Consultations On FOIA Requests – Ten Oldest Consultations Received From Other Agencies And Pending At Your Agency

	10 th Oldest Consultation and Number of Days Pending	9 th	8 th	7 th	6 th	5 th	4 th	3 rd	2 nd	Oldest Consultation and Number of Days Pending
	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0	0

	10 th Oldest Consultation and Number of Days Pending	9 th	8 th	7 th	6 th	5 th	4 th	3 rd	2 nd	Oldest Consultation and Number of Days Pending
Agency Overall	0	0	0	0	0	0	0	0	0	0

D. Comparison Of Numbers Of Requests From Previous And Current Annual Report – Requests Received, Processed And Backlogged

	Number of Requests Received		Number of Requests Processed	
	Number Received During Fiscal Year from Last Year's Annual Report	Number Received During Fiscal Year from Current Annual Report	Number Processed During Fiscal Year from Last Year's Annual Report	Number Processed During Fiscal Year from Current Annual Report
	* 340	NSF 314	*343	315
		OIG 39		OIG 37
Agency Overall	* Only reporting Agency overall as Component was not broken out in the 2007 Annual Report	353	343	352

	Number of Backlogged Requests as of End of the Fiscal Year from Previous Annual Report	Number of Backlogged Requests as of End of the Fiscal Year from Current Annual Report
OIG	0	0
NSF	2	1
Agency Overall	2	1

E. Comparison Of Numbers Of Administrative Appeals From Previous And Current Annual Report – Appeals Received, Processed, And Backlogged

	Number of Appeals <u>Received</u>		Number of Appeals <u>Processed</u>	
	Number Received During Fiscal Year from Last Year's Annual Report	Number Received During Fiscal Year from Current Annual Report	Number Processed During Fiscal Year from Last Year's Annual Report	Number Processed During Fiscal Year from Current Annual Report
OIG	* This component was not reported separately in 2007 Annual Report	3		3
NSF	4	7	4	7
Agency Overall	4	10	4	10

	Number of Backlogged Appeals as of End of the Fiscal Year from Previous Annual Report	Number of Backlogged Appeals as of End of the Fiscal Year from Current Annual Report
OIG	0	0
NSF	0	0
Agency Overall	0	0