

**U.S. Small Business Administration
Freedom of Information Act Annual Report
Fiscal Year 2007**

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, Mail Code: 2441
409 Third St., SW
Washington, DC 20416
202-401-8203

- B. Report may be obtained online at: www.sba.gov/foia/report.html.

- 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.

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 (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 **initial requests** in FY 07 was 7 working days. 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withheld includes: commercial financial information; trade secrets; business plans; information on pending, declined, withdrawn, or canceled applications; information on defaults, delinquencies, losses; business owner's personal history, home address, birth date, social security number,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 (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 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 SBA in FY 07.

SBA offices reported no instances of citing Exemption 3 in FY 07.

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V. Initial FOIA/PA Access Requests

A. Numbers of initial requests

1.	pending end of FY 06	<u>46</u>
2.	received during FY 07	<u>3333</u>
3.	processed during FY 07	<u>3348</u>
4.	pending end of FY 07	<u>31</u>

B. Disposition of initial requests

1.	total grants	<u>2820</u>
2.	partial grants	<u>168</u>
3.	denials	<u>77</u>

a. number of times each exemption used

(1) Exemption 1	<u>0</u>
(2) Exemption 2	<u>10</u>
(3) Exemption 3	<u>0</u>
(4) Exemption 4	<u>152</u>
(5) Exemption 5	<u>74</u>
(6) Exemption 6	<u>89</u>
(7) Exemption 7(A)	<u>1</u>
(8) Exemption 7(B)	<u>0</u>
(9) Exemption 7(C)	<u>1</u>
(10) Exemption 7(D)	<u>0</u>
(11) Exemption 7(E)	<u>0</u>
(12) Exemption 7(F)	<u>0</u>
(13) Exemption 8	<u>0</u>
(14) Exemption 9	<u>0</u>

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- 4. Other reasons for nondisclosure: total 283
 - a. no records 156
 - b. referral 40
 - c. request withdrawn 27
 - d. fee-related reason 11
 - e. records not reasonably described 11
 - f. not a proper FOIA request for some other reason 2
 - g. not an agency record 28
 - h. duplicate request 3
 - i. other 5 (not readily available; waiting for identification verification)

VI. Appeals of Initial Denials of FOIA/PA Requests

A. Numbers of appeals

- 1. appeals received during FY 07 21
- 2. appeals processed during FY 07 19

B. Disposition of appeals

- 1. completely upheld 9
- 2. partially reversed 2
- 3. completely reversed 4

a. number of times each exemption used

- (1) Exemption 1 0
- (2) Exemption 2 0
- (3) Exemption 3 0
- (4) Exemption 4 4
- (5) Exemption 5 2

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(6) Exemption 6	<u>5</u>
(7) Exemption 7(A)	<u>0</u>
(8) Exemption 7(B)	<u>0</u>
(9) Exemption 7(C)	<u>0</u>
(10) Exemption 7(D)	<u>0</u>
(11) Exemption 7(E)	<u>0</u>
(12) Exemption 7(F)	<u>0</u>
(13) Exemption 8	<u>1</u>
(14) Exemption 9	<u>0</u>

4. Other reasons for nondisclosure: total 4
- a. no records 0
 - b. referrals 0
 - c. request withdrawn 2
 - d. fee-related reason 0
 - 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 2 (remanded to initial office for proper response)

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. number of requests processed 3348
 - b. median number of days to process 7
 - 2. Complex requests (No response as tracks not used)
 - 3. Requests accorded expedited processing (No expedited processing requests received)
 - a. number of requests processed 0
 - b. median number of days to process 0

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B. Status of pending requests

1. requests pending at end of FY 07 31
2. Median number of days those requests were pending as of 9/30/07 12 days.

VIII. Comparisons (Optional)

A. Comparison of numbers of requests received:

There was a significant 60 % increase in requests received from 3739 in FY 05 to 6259 in FY 06. This increase was attributed to the major disasters in FY 05 (Hurricanes Katrina and Rita), resulting in requests for records related to disaster loan applicants, mainly first party requests for *Loss Verification Reports*. Subsequently, there was a 53% decrease in FY 07 as fewer requests were made for those past disaster records. Future disasters may also result in a temporary increase in such requests.

B. Comparison of numbers of requests processed:

See A above.

C. Comparison of median numbers of days requests were pending as of end of fiscal year:

There was a decrease from 15 to 12 days, which is insignificant.

D. The SBA received 0 requests for expedited processing as defined in 5 U.S.C. § 552(b)(6)(E) and granted 0 requests for expedited processing.

E. The SBA's internal FOIA Tracking System is fully deployed and is used by SBA FOIA Requester Service Center staff and FOIA Public Liaisons in program and field offices, along with the FOI/PA Office. The mandatory system was created to facilitate the Agency's decentralized tracking of access requests and includes data on the requester and the subject of the request, key dates, actions until final disposition, and which program or field office processed the request. The system does not provide all the data necessary to fulfill the Annual FOIA Report requirements. Much of the information must be manually compiled.

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IX. Costs/FOIA Staffing

A. Staffing levels

1. number of full-time FOIA personnel 2
2. number of personnel with part-time or occasional FOIA duties (in total work-years) 10.23
3. Total number of personnel (in work-years) 12.23
(The totals for #2 and #3 are estimated and based on percentages of time that individuals work on FOIA.)

B. Total costs

1. FOIA processing – approximately \$954,169.00
(This total includes a percentage of the average basic salary for employees in field and program offices plus the salary percentages of those working in the FOI/PA Office.)
2. Litigation-related activities (estimated) – \$.00
3. Total costs – approximately \$954,169.00

X. Fees

- A. Total fees collected by agency for processing requests \$38,790.50
- B. Percentage of total costs – approximately 4%

XI. FOIA Regulations

A copy of the current SBA Regulations on *Record Disclosure and Privacy*, 13 CFR § 102, is accessible electronically at www.sba.gov/library/cfrs/13cfr102.pdf.

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XII.

- A. Description of supplementation/modification of agency improvement plan.

No supplementation or modification necessary.

- B. Report on agency implementation of its plan, including its performance in meeting milestones, with respect to each improvement area.

SBA is in full compliance with the schedule for its two Executive Order Plan goals and all milestone dates have been met in this and the prior reporting period.

In strengthening the FOIA internal systems and processes requirements, the FOI/PA Office noticed improvements in initial processing responses for the selected offices. Providing proper appeal rights in appropriate instances has markedly improved.

All training initiatives have been successfully completed for each reporting period. The on-site training provided by DOJ/OIP was very well-received and a video of the training is posted on the SBA employee training site. Additional online FOIA training is mandatory annually for all agency personnel and contractors. The FOI/PA Office anticipates yearly improvements as necessary being made to this initiative to keep training up-to-date. Further training for the FOIA Case Tracking System was completed and is continual as personnel changes. A training video, slides, and a user's manual for the Tracking System are also available on the website.

In maintaining and expanding the use of the internet, FOIA Homepage changes were made to facilitate use of the information therein. The FOI/PA Office expects to monitor the availability of further information online and make additions and changes whenever needed.

- C. Identification and discussion of any deficiency in meeting plan milestones.

Not applicable.

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- D. Additional narrative statement regarding other executive order-related activities.

No additional comments.

- E. Concise descriptions of FOIA exemptions.

Exemption 1 (5 U.S.C. 552 (b)(1)): protects records that are currently and properly classified in the interest of national security;

Exemption 2 (5 U.S.C. 552 (b)(2)): covers records that relate solely to the internal personnel rules and practices of an agency;

Exemption 3 (5 U.S.C. 552 (b)(3)): pertains to records that are protected by a statute that specifically exempts the information from public disclosure;

Exemption 4 (5 U.S.C. 552 (b)(4)): protects trade secrets and privileged or confidential commercial or financial information obtained from a person which would cause substantial competitive harm to the submitter if disclosed;

Exemption 5 (5 U.S.C. 552 (b)(5)): protects inter-agency or intra-agency records not available by law to a party other than an agency in litigation with the agency; records may be deliberative in nature, part of the decision making process, and/or attorney-client or attorney work-product records;

Exemption 6 (5 U.S.C. 552 (b)(6)): guards personnel, medical, and similar files the disclosure of which would constitute an unwarranted invasion of individual privacy;

Exemption 7 (5 U.S.C. 552 (b)(7)): allows the withholding of investigatory records or information compiled for law enforcement purposes;

Exemption 8 (5 U.S.C. 552 (b)(8)): protects records relating to an agency's responsibility for the regulation or supervision of financial institutions; and

Exemption 9 (5 U.S.C. 552 (b)(9)): covers records that contain geological and geophysical information (including maps) concerning wells.

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F. Additional statistics:

1. Ten oldest pending FOIA requests

Calendar Year	2000	2001	2002	2003	2004	2005	2006	2007
Dates requests received	0	0	0	0	0	0	0	May 29 July 23 September 11 October 17 October 30 October 30 October 31 November 1 November 28 December 4

2. Consultations

a) Number of Consultations Received, Processed and Pending

Consultations Received From Other Agencies During FY 07	Consultations Received From Other Agencies That Were Processed by SBA During FY 07	Consultations Received From Other Agencies That Were Pending at SBA as of October 1, 2007
0	0	0

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b) Ten Oldest Pending Consultations Received From Other Agencies

Calendar Year	1999	2000	2001	2002	2003	2004	2005	2006	2007
Consults Received	0	0	0	0	0	0	0	0	0

G. Attachment: SBA's Executive Order 13392 Improvement Plan

<http://www.sba.gov/foia/EO13392ReportPlan.pdf>