

**Executive Order 13,392 Plan/Report**  
**June 14, 2006**

**Committee for Purchase From People Who Are Blind or Severely Disabled**

**A. Overall nature of agency's FOIA operations**

The Committee for Purchase From People Who Are Blind or Severely Disabled (Committee) is a small, independent Federal agency that administers the Javits-Wagner-O'Day (JWOD) Act. Its mission is to create jobs for people who are blind or who have other severe disabilities in the manufacture and delivery of products and services to the Federal Government. The Committee's primary means of accomplishing this mission is to set aside Federal contracts for products and services that are suitable for provision by people who are blind or severely disabled working in nonprofit agencies authorized to participate in the JWOD Program.

For the three years prior to 2005, the Committee received an average of 26 FOIA requests per year, had an average processing time of 9.5 days, and had no backlog. These requests were primarily from commercial contractors or their agents, seeking information about the Committee's decision to place a certain Federal requirement for a product or service in the JWOD Program. In 2005, the Committee received 42 FOIA requests, and had an average processing time of 11 days, with no backlog. These requests were from two primary groups – commercial contractors and members of the press. Since January 1, 2006, the Committee has experienced another increase in FOIA requests, primarily from members of the press, regarding compliance of nonprofit agencies participating in the JWOD Program. In light of the increased requests, the Committee now has a backlog.

As a small agency, the Committee does not have full-time staff dedicated to handling FOIA requests. The Committee staff responsible for FOIA processing include (1) the Chief FOIA Officer and Executive Director, Leon A. Wilson, Jr.; (2) the FOIA Liaison and Assistant General Counsel, Stephanie Hillmon; and (3) the FOIA Administrator and Public Affairs Specialist, Stephanie Lesko. It should be noted that due to the increased volume of requests in 2006, the FOIA Administrator now spends the majority of her time on FOIA processing. Many of the Committee's FOIA processing functions are manually performed, as discussed below. For an agency of the Committee's size and scope, electronic tools have previously been deemed not economically advantageous or practical.

Procedurally, FOIA requests are handled by the FOIA Administrator upon receipt by mail or fax, using a first-in-first-out approach. The FOIA Administrator logs each request, gathers the applicable information, confers with the legal department as necessary, and redacts information that is covered by one of the FOIA exemptions if applicable. The FOIA Liaison reviews the prepared cover letter and responsive documents, along with a synopsis of the request and the issues related to the Committee's response. Upon approval, the package is routed to the Chief FOIA Officer for review, clarification and/or concurrence, approval and signature. The package is mailed or faxed, depending on the requester's preference, and the FOIA Administrator logs out the FOIA request.

## **B. Areas selected for review**

1. Affirmative disclosure under subsection (a)(2)
2. Proactive disclosure of information
3. Overall FOIA Web site improvement
4. Improvement of agency's FOIA Reference Guide
5. Automated tracking capabilities
6. Electronic FOIA – automated processing
7. Electronic FOIA – responding to requests
8. Multi-track processing
9. Trouble-shooting of any existing problems with existing request tracking
10. Case-by-case problem identification
11. Expedited processing
12. Backlog reduction/elimination
13. Politeness/courtesy
14. Forms of communication with requesters
15. Acknowledgment letters
16. Training (formal and/or on-the-job)
17. Recycling of improvement information gleaned from FOIA Requester Service Centers

## **C. Statement summarizing results of review**

The agency handles FOIAs expeditiously, accurately, and effectively with the resources it has at its disposal. As a result of the review, which represents a snapshot in time, the agency has identified a number of actions that may be taken to improve upon its FOIA operations, consistent with the Committee's strategic objective for continuous improvement (more detail is provided below and in Section D).

### **1. Affirmative disclosure under subsection (a)(2)**

The Committee posts online its authorizing statute and agency regulations, all recent policy statements and updated administrative memoranda. This information is located within the Library section, "Agency Info" menu of the Committee's website (the sections include Public Notices, Committee Policy, External Memos of Support, the Javits-Wagner-O'Day (JWOD) Act, Committee's Regulations, Federal Acquisition Regulations, and the JWOD Strategic Plan). As the Committee continues to update its policies and memos, it will continue to update the website accordingly, and all staff associated with policy development must ensure timely posting. At the time of the review, it was found that the agency needs to upload its policy statement / Administrative Memo #6.

### **2. Proactive disclosure of information**

The Committee is currently increasing the quantity of records it makes available to the public without the necessity of a FOIA request. For example, in January 2006, the Committee began posting its official meeting minutes, which are of broad interest and are in the public domain as

they are minutes of a public meeting. Also, in May and June 2006, the Committee provided requesters with its recent correspondence to an agency stakeholder, making this time-sensitive and high-interest information available outside of the FOIA process. The agency will continue to review this area and identify opportunities for further proactive disclosure.

### **3. Overall FOIA Web site improvement**

The Committee has recently updated its FOIA main page to be in compliance with DOJ's FOIA Service Center guidance. As discussed in items 1 and 2 above, the Committee has begun increasing the scope and quantity of agency information it posts online, to provide greater access to records that are in the public domain and do not require a FOIA request. One of the Committee's priorities as it expands the availability of information is to ensure that the materials are timely and accessible to people who are blind or visually impaired, e.g. providing documents in a text format enables people who are blind to use assistive technology and software such as JAWS to have their computer read the document to them aloud.

### **4. Improvement of agency's FOIA Reference Guide**

Currently, the agency does not have a FOIA Reference Guide, though the Committee's website provides basic instructions for submitting a FOIA request. Therefore, the Committee needs to create a FOIA Reference Guide or a FOIA requester handbook, as an aid to potential FOIA requesters in accordance with the requirements of subsection (g) of the FOIA Act as added in the 1996 FOIA Amendments. Once the Committee has compiled and published the requisite documents, it will need to maintain the manual and update it regularly to ensure that the information remains comprehensive and up to date.

### **5. Automated tracking capabilities**

The Committee currently tracks FOIA requests manually. The small size of the agency and historical volume of FOIA requests do not warrant purchasing FOIA software at this time.

### **6. Electronic FOIA – automated processing**

The Committee currently processes FOIA requests manually. The small size of the agency and historical volume of FOIA requests do not warrant purchasing FOIA software at this time.

### **7. Electronic FOIA – receiving/responding to requests**

The Committee currently responds to FOIA requests manually through regular or priority mail, facsimile, or with CDs/discs, depending on the format requested. Whenever possible, the Committee accommodates the requesters' needs for the specific format in which the requester would like to receive the responsive documents. The Committee has adopted a new policy to accept email FOIAs; the Committee will post this new policy on its website and explain how it will receive and respond to emailed FOIA requests.

### **8. Multi-track processing**

Given its limited staff resources, the Committee is unable to process requests on a multi-track basis at this time. Earlier this year, several requesters were taking advantage of this option, resulting in the backlog that now exists. The Committee understands, however, that through the 1996 FOIA Amendments, Congress encourages agencies that have backlogs of pending FOIA requests to establish multi-track processing systems for the processing of their requests, see 5 U.S.C. § 552(a)(6)(D), and the Executive Order calls upon agencies to examine this as well, see Exec. Order No. 13,392, Sec. 3(a)(iii)(C). In examining this, the Committee considered a full range of questions: whether a multi-track system should be established and whether the existing number of tracks is sufficient in light of the Committee's current operations and its aspirations for backlog-related improvement. See the "Backlog reduction/elimination" section for further elaboration on this topic.

### **9. Trouble-shooting of any existing problems with existing request tracking**

At this time, no problems have been identified regarding the Committee's method of tracking FOIA requests. The FOIA Administrator manually logs all FOIA requests on an Excel spreadsheet, accurately and efficiently.

### **10. Case-by-case problem identification**

At this time, no problems have been identified regarding the Committee's overall FOIA operations, other than the items delineated elsewhere in this report. The Committee is considering making a more formal Standard Operating Procedures manual to share information with others on the staff that might be tasked to work with FOIA. (This action may be worked concurrently with the "Improvement of Agency's FOIA Reference Guide" above.)

### **11. Expedited processing**

Both Congress and the Executive Order speak to expediting the processing of certain FOIA requests upon request. See 5 U.S.C. § 552(a)(6)(E); Exec. Order No. 13,392, Sec. 3(a)(iii)(B). In the past, the Committee expedited FOIA responses for any FOIA requester that requested priority status; however, with the Committee's current backlog, its policy is to adhere to the established descriptions of what is deemed an emergency situation; and the current requests the Committee has received do not fall into that emergency category.

According to statute, 5 USC 552 (a)(6)(E)(i)-(ii), each agency shall promulgate regulations, pursuant to notice and receipt of public comment, providing for expedited processing of request for records—in cases in which the person requesting the records demonstrates a compelling need and in other cases determined by the agency. Compelling need means that a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal government activity.

The recent requests the Committee has received from the press to make their FOIA requests a priority do not sufficiently demonstrate an urgency to inform the public. The Committee only looks at compelling need if the individual makes a written and certified statement that the request for expedited processing is necessary. A phone call or email stating that there is urgency is insufficient.

For a reporter to show an “urgency to inform” and thereby a compelling need, he or she needs to show: (1), whether the request concerns a matter of current exigency to the American public; (2) whether the consequences of delaying a response would compromise significant interests; and (3) that the request concerns Federal government activity. It is unlikely, considering the type of program administered by the Committee, that any request from the press would meet the first two elements of this test.

A request for information about the Committee’s activities is not necessarily urgent. The Committee has to look at the actual or alleged action that it has taken or in which is about to partake. The requested information should pertain to a matter of current exigency to the public, such that a reasonable person might conclude that the consequences of delaying a response to a FOIA request would compromise a significant recognized interest. The public’s right to know would not, by itself, be sufficient to satisfy this standard. The question of whether there is urgency to inform is both a matter of fact and law; there is no deference to the agency when it determines something is not urgent. The aforementioned language about exigency and the press can be found in *Al-Fayed v. CIA*, 254 F.3d 300.

If the individual does not show urgency/compelling need then the Committee must document its rationale for not handling the request on an expedited process. The Committee acknowledges the importance of documenting its rationale for stating that the matter is not a compelling or urgent need, as the requester may seek judicial review, and the agency’s actions will be carefully scrutinized.

The Committee needs to change its regulations to comply with the FOIA statute, but in the interim, the Committee is statutorily bound to act as if it has already put this requirement in its regulations. The Committee’s regulations would simply implement the statute, so it is appropriate for the Committee to use the statute as a guide to FOIA processing until it actually changes the agency’s regulations, which it is in the process of doing.

## **12. Backlog reduction/elimination**

Currently, the Committee has a FOIA backlog. The Committee understands that agency backlogs of pending requests have been a concern both under the FOIA and as identified in Executive Order 13,392, Sec. 3(a)(v). In response to the Executive Order’s call to identify methods by which the backlogs can be reduced, the Committee proposes to take the following steps:

1. The Committee will contact all FOIA requesters whose requests have not been processed, and
2. The Committee will advise the requester of the estimated timeframe in which the Committee will be able to respond, and

3. The Committee will provide each requester with an opportunity to limit the scope so the request can be processed more swiftly. Exec. Order No. 13,392, Sec. 3(a)(v); see also id. at Sec. 3(b)(ii).

Note: this strategy is aligned with the “Acknowledgement letters” section below.

### **13. Politeness/courtesy**

The Committee’s FOIA staff members are consistently polite and courteous to its FOIA requesters. It is noted that this improvement area is no less integral to the overall customer-service theme of the Executive Order, see Exec. Order No. 13,392, Sec. 1(b), and by contrast with other areas, it is one that does not involve any significant consumption of agency resources or time. The Committee needs no improvement in this area.

### **14. Forms of communication with requesters**

The Committee pays careful attention to such things as the clarity of all communications between the agency and the requester. See, e.g., Exec. Order No. 13,392, Sec. 2(c)(iii). There are opportunities for improvement in the Committee’s standard forms of communication with requesters, thus the Committee is revising its process to include use of official acknowledgement letters. The Committee typically uses email or verbally discusses FOIA issues with requesters regarding their status upon the requester’s request. See below for further discussion on this topic. Also, the agency will soon implement a policy to receive and respond to electronically-submitted FOIA requests, as described in the “Electronic FOIA – receiving/responding to requests” section.

### **15. Acknowledgment letters**

The Committee does not currently send acknowledgment letters to requesters unless the requesters ask informally for a status of their request. Prior to the current backlog situation, the agency’s average response time was 11 days; it was not necessary to send acknowledgment letters because there was essentially an immediate turn-around. However, with the current backlog, the agency is now unable to meet the 20-day deadline, and it needs inform its requesters of that change.

The Committee needs to make FOIA requesters aware of the status of their pending requests, both responsively (through its FOIA Requester Service Centers) and proactively as well. Acknowledgment letters are a vital tool for the Committee; if the Committee promptly makes it clear to requesters what they can expect regarding their FOIA requests, requesters will have an opportunity to revise the scope of their request, if desired. In addition, this is a significant area for communications improvement; by keeping requesters apprised of the situation, they will not perceive that the Committee has denied their request and will understand that they are being served on a first-come-first-served basis.

### **16. Additional training (formal and/or on-the-job)**

The Committee takes advantage of the government-wide FOIA training that is available. The new Assistant General Counsel attended training in January 2006 and it would be beneficial for the FOIA Administrator to attend a one-day refresher training this year.

### **17. Recycling of improvement information gleaned from FOIA Requester Service Centers**

The Committee is taking full advantage of the information that it is currently obtaining through the new FOIA Requester Service Center, specifically any feedback provided through the new [FOIA@jwod.gov](mailto:FOIA@jwod.gov) email account that the FOIA Administrator asked the Committee's Information Technology (IT) staff to create, in order for the Committee can be as customer friendly as possible. The Committee has a formal process for such requester-provided information, so that the information can be considered when making generic improvements required by the Executive Order. The FOIA Administrator will respond to emails that arrive to that account and incorporate feedback, as practicable, into the updates on the website.

### **D. List areas chosen as improvement areas for agency plan**

Acknowledgment letters  
Additional Training (formal and/or on-the-job)  
Affirmative disclosure under subsection (a)(2)  
Backlog reduction/elimination  
Improvement of agency's FOIA Reference Guide  
Overall FOIA Web site improvement

### **E. Improvement area information**

#### **Improvement Area #1: Acknowledgment letters**

#### **Goal(s)/objective(s)**

The Committee needs to formally notify FOIA requesters in writing of the status of their pending requests and of the Committee's policy to process them on a first-come-first-served basis.

#### **Steps planned to be taken**

1. Review FOIA log to identify all requests that have not been processed.
2. Retrieve the contact information of those requesters.
3. Send an acknowledgment letter to requesters to let them know the Committee received their request and will be processing it in the order in which it was received.
4. Include in the acknowledgement letter how many FOIA requests are ahead of them in line, so the requesters have a realistic expectation of how long to wait for a response.

#### **Time milestones**

The Committee will begin this practice by July 2006; the Committee will send letters to all of the requesters currently in the queue to be processed. In the future, the Committee will send

acknowledgement letters to all incoming FOIA requests within 10 working days of receipt of the requests.

### **Means of measurement of success**

Currently, the Committee has 22 FOIA requests that have not received an acknowledgment letter. By July 2006, the Committee will send everyone in its queue an acknowledgment letter. The Committee's future practice will be to check each FOIA request to be sure a letter has been sent by the tenth working day, and if the Committee has not sent an acknowledgment letter, it will do it then. This way, the Committee will keep the amount of acknowledgment letters it sends at 100 percent.

### **Improvement Area #2: Additional Training (formal and/or on-the-job)**

#### **Goal(s)/objective(s)**

The FOIA Administrator, as the agency's primary subject matter expert, will attend a one-day refresher course this year, and will train a back-up staff member in basic FOIA procedures.

#### **Steps planned to be taken**

1. Sign-up for a one-day refresher training.
2. Attend the training.
3. Impart FOIA information to back-up staff member.

#### **Time milestones**

This improvement area will be completed by December 31, 2006.

### **Means of measurement of success**

Success will be determined by milestone measurement of the FOIA Administrator's attendance of training and the identification and on-the-job training of an additional staff member.

### **Improvement Area #3: Affirmative disclosure under subsection (a)(2)**

#### **Goal(s)/objective(s)**

The Committee must ensure that recent or revised policy statements, such as Administrative Memo #6, are promptly posted on its website.

#### **Steps planned to be taken**

1. The FOIA Administrator will work with the Committee's web master and IT staff to post the lacking memo, Administrative Memo #6.
2. The FOIA Liaison will remind all Committee staff to provide copies of new or revised policy statements to the agency's webmaster for posting online.

#### **Time milestones**

The FOIA Administrator will coordinate the posting of Administrative Memo #6 and any other new or revised policy statements by July 2006. In the future, new or revised agency policy statements or memos should be posted within two weeks of final signature.



**Means of measurement of success**

The measurement will be the posting of Administrative Memo #6 by July 1, 2006 and the tracking of posting any new or revised policy statements thereafter within two weeks of final signature.

**Improvement Area #4: Backlog reduction/elimination****Goal(s)/objective(s)**

The Committee needs to reduce its current FOIA backlog.

**Steps planned to be taken**

1. Contact all of the FOIA requesters whose requests have not been processed (this solution also is aligned with the "Acknowledgement letters" section).
2. Advise of the estimated timeframe to receive the response.
3. Provide the requester with an opportunity to limit its scope so that the request can be answered more quickly.

**Time milestones**

The Committee will have eliminated its backlog by December 31, 2007. By six months, the goal is to reduce the backlog by 25 percent; by 12 months, by 50 percent; and by 18 months, by 100 percent.

**Means of measurement of success**

Measurement will be based on meeting the above milestones for reducing the number of FOIA requests the Committee has in a backlog status; until it is ultimately eliminated.

**Improvement Area #5: Improvement of agency's FOIA Reference Guide****Goal(s)/objective(s)**

Currently the agency does not have a FOIA Reference Guide; and therefore, the Committee needs to create one and update it regularly.

**Steps planned to be taken**

1. Review FOIA Reference Guides (external) published by other Federal agencies.
2. Adapt content to provide an aid for potential FOIA requesters specific to the Committee's FOIA operations.
3. Incorporate the FOIA itself, Privacy Act, 1996 Amendments, relevant Executive Orders, Committee's regulations, previous Committee FOIA annual reports, etc.
4. Compile Frequently Asked Questions and Answers
5. Post the Reference Guide on the FOIA page of the Committee's website.
6. Assemble applicable information, including previous responses and examples on usage of FOIA exemptions, into staff Standard Operating Procedures manual (internal).

**Time milestones**

The guide will be an on-going project; it will be fully complete by December 31, 2007.

**Means of measurement of success**

Success will be determined by milestone measurement of compiling the guide contents and publishing them accordingly.

**Improvement Area #6: Overall FOIA Web site improvement****Goal(s)/objective(s)**

On a monthly basis, the Committee will review and make any required improvements to its website, to include the proactive posting agency information that is in the public domain.

**Steps planned to be taken**

1. Identify additional agency information that is in the public domain and is of broad interest.
2. Obtain legal review and clearance to ensure records are, in fact, in the public domain and appropriate for posting.
3. Work with webmaster/IT staff to post records.
4. Ensure that the materials posted are up-to-date and accessible to people who are blind or visually impaired.
5. On a monthly basis review FOIA website for timeliness, thoroughness and accessibility of information.

**Time milestones**

Identify current information by December 31, 2006, work with legal department by April 30, 2007, work with webmaster by July 31, 2007, and have it posted by December 31, 2007. Review process to repeat thereafter.

**Means of measurement of success**

Measurement will be the resulting increase in quantity and scope of information accessible on the website, until all areas of improvement are addressed on the website.

**F. Improvement areas in time periods:****1. Areas anticipated to be completed by December 31, 2006**

Acknowledgment letters  
Additional training (formal and/or on-the-job)  
Affirmative disclosure under subsection (a)(2)

**2. Areas anticipated to be completed by December 31, 2007**

Backlog reduction/elimination  
Improvement of agency's FOIA Reference Guide  
Overall FOIA Web site improvement

**3. Areas anticipated to be completed after December 31, 2007-**

All six areas will be completed prior to December 31, 2007; however, the Committee will continually monitor the website to ensure timely and accurate updates are implemented in accordance with DOJ guidance and subsequent Executive Orders.