

## ANNUAL FOIA REPORT FY 2007

### I. Basic Information Regarding Report

#### A. Person(s) to be contacted with questions about the report.

Name: Brenda Dolan  
Title: Departmental FOIA/PA Officer  
Address: U.S. Department of Commerce  
Office of Management and Organization  
Room 5327  
1401 Constitution Avenue, N.W.  
Washington, D.C. 20230  
Telephone: 202-482-3707

#### B. Electronic Address for report on the World Wide Web.

[www.osec.doc.gov/omo/FOIA/FOIAWEBSITE](http://www.osec.doc.gov/omo/FOIA/FOIAWEBSITE)

#### C. How to obtain a copy of the report in paper form.

Write to address or contact person listed in item I. A.

### II How to Make a FOIA Request

Instructions are shown on DOC FOIA Home Page at:  
[www.osec.doc.gov/omo/FOIA/FOIAWEBSITE](http://www.osec.doc.gov/omo/FOIA/FOIAWEBSITE)

FOIA requests must be in writing. Send requests to the address  
in item I. A. or via e-mail to [EFOIA@doc.gov](mailto:EFOIA@doc.gov)

#### A. Names, addresses, and telephone numbers of all individual agency components and offices that receive FOIA requests.

Brenda Dolan  
Departmental FOIA/PA Officer  
Office of Management and Organization  
Room 5327  
1401 Constitution Avenue, N.W.  
Washington, D.C. 20230  
202-482-3707

Bobbie Parsons  
FOIA Officer  
Office of the Secretary  
Office of Management and Organization  
Room 5327  
1401 Constitution Avenue, N.W.  
Washington, D.C. 20230  
202-482-3707

Mary C. Potter  
FOIA Officer  
Bureau of the Census  
Policy Office  
Room 8H028  
Suitland, Maryland 20746  
301-763-4207

Pamela Moulder  
FOIA Officer  
Bureau of Economic Analysis/Economic and  
Statistics Administration  
Office of the Under Secretary for Economic Affairs  
Room 4836  
1401 Constitution Avenue, N.W.  
Washington, D.C. 20230  
202-482-5997

O. Barry Bird  
FOIA Officer  
Economic Development Administration  
Office of the Chief Counsel  
Room 7001  
1401 Constitution Avenue, N.W.  
Washington, D.C. 20230  
202-482-4687

Julissa Hurtado  
FOIA Officer  
Bureau of Export Administration  
Office of Administration  
Room 6622  
1401 Constitution Avenue, N.W.  
Washington, D.C. 20230  
202-482-8093

Linda Bell  
FOIA Officer  
International Trade Administration  
Office of Organization and Management Support  
Room 4001  
1401 Constitution Avenue, N.W.  
Washington, D.C. 20230  
202-482-5436

Jedd Vertman  
FOIA Officer  
Minority Business Development Agency  
Room 5067  
1401 Constitution Avenue, N.W.  
Washington, D.C. 20230  
202-482-5045

Catherine Fletcher  
FOIA Officer  
National Institute of Standards and Technology  
Office of the Director for Administration  
100 Bureau Drive, Mail Stop 1710  
Gaithersburg, Maryland 20899-1710  
301-975-4074

Steve Needle  
FOIA Officer  
National Technical Information Service  
Office of Administrative Management  
Room 209, Forbes Building  
Springfield, Virginia 22161  
703-605-6404

Denise Marshall  
FOIA Officer  
National Telecommunications & Information Administration  
Office of the Chief Counsel  
Room 4713  
1401 Constitution Avenue, N.W.  
Washington, D.C. 20230  
202-482-1816

Jean Carter-Johnson  
FOIA Officer  
National Oceanic & Atmospheric Administration  
NOAA Central FOIA Facility  
1315 East-West Highway  
Room 10730  
Silver Spring, Maryland  
301-713-3540

Robert Fawcett  
FOIA Officer  
United States Patent and Trademark Office  
Box OGC  
Washington, D.C. 20231  
703-308-2000

Mark Madsen  
FOIA Officer  
Technology Administration  
100 Bureau Drive, Mail Stop 1052  
Gaithersburg, MD 20899  
301-975-2137

Carolyn A. Croak  
FOIA Officer  
Office of Inspector General  
Acting Counsel to the Inspector General  
Room 7892  
1401 Constitution Avenue, N.W.  
Washington, D.C. 20230  
202-482-5992

The FOIA Officers are also listed at:

[www.osec.doc.gov/omo/FOIA/FOIAWEBSITE](http://www.osec.doc.gov/omo/FOIA/FOIAWEBSITE)

B. Brief description of the agency's response-time ranges.

The Department of Commerce strives to answer all FOIA requests within the 20 day response time mandated by the Electronic FOIA Amendments. The response time for simple requests is approximately 20 days. The response for complex requests varied from 39 days to a maximum of 315 days.

C. Brief description of why some requests are not granted.

A request for records may be denied if the requested record contains information which falls into one or more of the nine categories listed below. If the requested record contains both exempt and nonexempt information, the nonexempt portions which may reasonably be segregated from the exempt portions will be released to the requester.

Categories of Exempt Information

Exemption One: Records which are specifically authorized under criteria established by an Executive Order to be kept secret in interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order.

Exemption Two: Records related solely to the internal personnel rules and practices of the Department of Commerce.

Exemption Three: Records specifically exempted from disclosure by statute, provided that such statute:

Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issues: or establishes particular criteria for withholding or

refers to particular types of matter to be withheld.

Exemption Four: Trade secrets and commercial or financial information obtained from a person that is privileged or confidential.

Exemption Five: Interagency or intra-agency memoranda or letters which would not be available by law to a private party in litigation with the Department of Commerce.

Exemption Six: Personnel, medical, and similar files (including financial files) the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Exemption Seven: Records compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records could reasonably be expected to interfere with enforcement proceedings; would deprive a person of a right to a fair trial or an impartial adjudication; could reasonably be expected to constitute an unwarranted invasion of personal privacy; could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished records on a confidential basis; would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or could reasonably be expected to endanger the life or physical safety of any individual.

Exemption Eight: Records that are contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for use of an agency responsible for the regulation or supervision of financial institutions.

Exemption Nine: Geological and geophysical information and data, including maps, concerning wells.

### III. Definitions of Terms and Acronyms Used in the Report

#### A. Agency-specific acronyms or other terms.

OS - Office of the Secretary

ESA - Economic and Statistics Administration

EDA - Economic Development Administration

BIS - Bureau of Industry and Security  
ITA - International Trade Administration  
MBDA - Minority Business Development Agency  
NIST - National Institute of Standards and Technology  
NTIS - National Technical Information Service  
NTIA - National Telecommunications & Information Administration  
NOAA - National Oceanic & Atmospheric Administration  
PTO - Patent and Trademark Office  
TA - Technology Administration  
OIG - Office of Inspector General

B. Basic terms, expressed in common terminology.

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 Freedom of Information Act.
3. Appeal - a request to a federal agency asking that it review at a higher administrative level a full denial or partial denial of access to records under the Freedom of Information Act, or any other FOIA determination such as a matter pertaining to fees.
4. Processed Request or Appeal - a request or appeal for which an agency has taken a final action on the request or the appeal in all respects.
5. Multi-track Processing - a system in which simple requests requiring relatively minimal review are placed in one processing track and more voluminous and complex requests are placed in 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 (see below).
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 requests that were made earlier.

7. Simple Request - a FOIA request that an agency using multi-track processing places in its fastest (nonexpedited) track based on the volume and/or complexity of records requested.
8. Complex Request - a FOIA request that an agency using multi-track processing places in a slower track based on the volume and/or complexity of records requested.
9. Grant - an agency decision to disclose all records in full 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 determined to be exempt under one or more of the FOIA's exemptions; or a decision to disclose some records in their entirety, 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 all the information in the requested records is determined by the agency to be exempt under one or more of the FOIA's 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 in the Freedom of Information Act 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 is no remaining 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, of 3, 7, and 14, the median number is 7.
16. Average Number - the number obtained by dividing the sum of a group 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 agency during current fiscal year.

###### 1. Brief description of type(s) of information withheld under each statute.

13 U.S.C. § 9 - prohibits the use, publication, or examination of any information collected by the Census Bureau, other than for the statistical purposes for which the information was supplied.

13 U.S.C. app. § 301(g) - prohibits the disclosure of Shippers' Export Declarations, submitted by shippers to the Census Bureau, unless the Secretary of Commerce determines that nondisclosure would be contrary to the national interest.

50 U.S.C. app. § 2411(c), Export Administration Act of 1979 § 12(c) - protects information obtained for the purpose of consideration of, or concerning, exporting license applications, unless the Secretary of Commerce determines that release of such information is in the national interest. This includes not only the applications themselves and the information contained therein, but also any information relating to an application, to include information on enforcement or export administration laws and regulations.

16 U.S.C. § 1881(a), Magnuson-Stevens Fishery Conservation and Management Act - pertains to statistical information contained in fishery management plans which has been submitted by fisheries under section 1853(a)(5). Information which may not be disclosed includes, but is not limited to, the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing took place, number of hauls, and the estimated and actual processing capacities of U.S. fish processors. The Secretary of Commerce may, however, promulgate regulations that provide for the release of such information in aggregate or summary form which does not disclose the identity or business of any person that submits statistics.

35 U.S.C. § 122 - provides that applications for patents shall be kept in confidence by the Patent and Trademark Office unless disclosure is necessary to carry out the provisions of any Act of Congress, or in special circumstances, to be determined by the Commissioner for Patents and Trademarks. This also includes materials in patent interference files.

41 U.S.C. §§ 253 - protects proprietary or source selection information in the possession of the Government during the conduct of any Federal procurement of property or services.

15 U.S.C. § 278n(d)(5) - provides that the FOIA does not apply to information submitted on a confidential basis, by joint ventures and members of joint ventures that receive funding under the Department's Advanced Technology Program. The Department must withhold information concerning the business operation or trade secrets possessed by any business or member of a joint venture that is receiving funding under the program.

2. Statement of whether a court has upheld the use of each statute. If so, then cite example.

13 U.S.C. § 9 - *Baldrige v Shapiro*, 455 U.S. 355 (1982)

13 U.S.C. § 301(g) - *Young Conservative Found v Department of Commerce*, No. 85-3982 (D.D.C. March 25, 1987)

50 U.S.C. § 2411(c) - *Export Information Twin Coast Newspapers, Inc. v Department of Commerce*, NO. 78-0978 (D.D.C. November 6, 1979)

16 U.S.C. § 1881(a) - no case

35 U.S.C. § 122 - *Irons & Sears v Dann*, 606 F.2d 1215 (1979); *Leeds v Quigg*, 720 F. Supp. 193 (D.D.C. 1989)

41 U.S.C. §§ 253B - *Hornbostel v Department of the Interior*, 305 F. Supp. 2d 21 (D.D.C. 2003)

15 U.S.C. § 278n(d)(5) - no case

## V. Initial FOIA/PA Access Requests

### A. Numbers of initial requests

1. Number of requests pending as of end of preceding fiscal year. 309
2. Number of requests received during current fiscal year. 1852

3. Number of requests processed during current fiscal year. 1949
4. Number of requests pending as of end of current fiscal year. 212

B. Disposition of initial requests.

1. Number of total grants. 769
2. Number of partial grants. 395
3. Number of denials. 133

a. Number of times each FOIA exemption used (counting each exemption once per request)

- |  |            |
|--|------------|
| (1) Exemption 1  | <u>5</u>   |
| (2) Exemption 2  | <u>87</u>  |
| (3) Exemption 3  | <u>113</u> |
| (4) Exemption 4  | <u>129</u> |
| (5) Exemption 5  | <u>120</u> |
| (6) Exemption 6  | <u>171</u> |
| (7) Exemption 7(A)   | <u>14</u>  |
| <hr style="width: 20%; margin-left: 0;"/> (8) Exemption 7(B) | <u>1</u>   |
| (9) Exemption 7(C)   | <u>17</u>  |
| (10) Exemption 7(D)  | <u>3</u>   |
| (11) Exemption 7(E)  | <u>4</u>   |
| (12) Exemption 7(F)  | <u>2</u>   |
| (13) Exemption 8   | <u>0</u>   |
| (14) Exemption 9   | <u>0</u>   |

4. Other reasons for nondisclosure (total) 652
  - a. no records 281
  - b. referrals 42
  - c. request withdrawn 82
  - d. fee-related reason 103
  - e. records not reasonably described 23
  - f. not a proper FOIA request for some other reason 41
  - g. not an agency record 6
  - h. duplicate request 20
  - i. other (publicly available information) 54

VI. Appeals of Initial Denials of FOIA/PA Requests

A. Number of appeals.

1. Number of appeals received during fiscal year 60
2. Number of appeals processed during fiscal year 59

B. Disposition of appeals.

1. Number completely upheld 14
2. Number partially reversed 4
3. Number completely reversed 2
  - a. number of times each FOIA exemption used (counting each exemption once per appeal)

- (1) Exemption 1   0
- (2) Exemption 2   1
- (3) Exemption 3   5
- (4) Exemption 4   6
- (5) Exemption 5  11
- (6) Exemption 6   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 (total)  39 
  - a. no records   1
  - b. referrals   0
  - c. request withdrawn   4
  - d. fee-related reason   7
  - e. records not reasonably described   0
  - f. not a proper FOIA request   3

g. not an agency record 1

h. duplicate request 6

i. other (specify):

untimely 4

adequacy of search 12

no response 0

publicly available 0

went to litigation 1

## VII. Compliance with Time Limits/Status of Pending Requests

### A. Median processing time for requests processed during the year.

#### 1. Simple requests (if multiple tracks used).

a. number of requests processed 1451

b. median number of days to process 13

#### 2. Complex requests (specify for any and all tracks used).

a. number of requests processed 496

b. median number of days to process 45

#### 3. Requests accorded expedited processing.

a. number of requests processed 2

b. median number of days to process 14

B. Status of pending requests.

1. Number of requests pending as of end of current fiscal year 212
2. Median number of days that such requests were pending as of that date 26

VIII. Comparisons with Previous Year(s) (Optional) -

A. Comparison of numbers of requests received:

FY02-2142 FY03-1975 FY04-2051 FY05-1804 FY06-2018 FY07-1852

B. Comparison of numbers of requests processed:

FY02-2063 FY03-1981 FY04-2035 FY05-1834 FY06-1987 FY07-1949

C. Comparison of median numbers of days requests were pending as of end of Fiscal Year:

FY02-30 FY03-22 FY04-21 FY05-60 FY06-26 FY07-26

D. Other statistics significant to agency

- 
1. Requests received for expedited processing 5
  2. Requests for expedited processing granted 2

E. Other narrative statements describing agency efforts to improve timeliness of FOIA performance and to make records available to the public (e.g., backlog-reduction efforts; specification of average number of hours per processed request; training activities; public availability of new categories of records).

1. Send interim responses to requesters on a rolling basis as we process documents.
2. Provide FOIA and records training for all employees.
3. Continue to monitor and update websites to include more publicly available information.

4. Enhanced FOIA processing with electronic solutions.

IX. Costs/FOIA Staffing

A. Staffing levels.

1. Number of full-time FOIA personnel 13
2. Number of personnel with part-time or occasional FOIA duties (in total work-years) 5.46
3. Total number of personnel 18.46

B. Total costs (including staff and all resources).

1. FOIA processing (including appeals) 1,329,011.40
2. Litigation-related activities (estimated) 269,823.92
3. Total Costs 1,598,835.32
4. Comparison with previous year(s) (including percentage of change) (optional) Optional data is not provided.

X. Fees

- A. Total amount of fees collected by agency for processing requests 74,695.17

- B. Percentage of total costs 4.67%

XI. FOIA Regulations (Including Fee Schedule)

15 C.F.R. part 4 (copy attached)

## XII. Report on FOIA Executive Order 13,392 Implementation

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

In October 2006, the Department of Commerce modified its improvement plan to include one additional backlog reduction goal. The goal is to decrease the existing backlog of pending FOIA requests, for each bureau where applicable, as of May 5, 2006 by 10%, by December 31, 2006; to decrease the existing backlog of pending FOIA requests, for each bureau where applicable, as of January 1, 2007 by 30%, by September 30, 2007; and to decrease the existing backlog of pending FOIA requests, for each bureau where applicable, as of October 1, 2007 by 50%, by September 30, 2008.

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

The Department of Commerce has met all but one of the milestones established in the improvement plan submitted in October 2006, in response to Executive Order 13,392, that were to be completed for this reporting period.

To increase employee awareness of FOIA procedures and requirements, a goal was set to provide additional training through a web based guide. The Freedom of Information Act Informational Guide was completed ahead of schedule on August 31, 2007, and is located on the Department's intranet.

The U.S. Patent and Trademark Office (USPTO) started using contract personnel on June 30, 2006 to assist with the processing of large-volume FOIA requests. The USPTO continues to use contractors for duplication of extremely large-volume FOIA requests.

The USPTO has selected a FOIA specific processing software. Several bureaus of the Department are considering selecting a software application to enhance FOIA processing capabilities.

The Bureau of the Census hired additional staff to work primarily with FOIA and installed a toll-free telephone line for ease of public access to FOIA staff.

The Department had two backlog reduction goals for this reporting period. The first goal was, for those bureaus where applicable, to identify the 10 oldest FOIA requests pending as of September 30, 2006 and implement steps to complete the processing of those requests and close them out by September 30, 2007. The second goal was, for those bureaus where applicable, to decrease their existing FOIA backlog as of January 1, 2007 by 30%, by September 30, 2007.

The 10 oldest FOIA requests pending as of September 30, 2006, were identified by two bureaus, the National Oceanic and Atmospheric Administration (NOAA) and the National Institute of Standards and Technology (NIST). NOAA met the milestone by closing out their 10 oldest pending FOIA requests. NIST missed the milestone, closing 5 of their 10 oldest pending FOIA requests.

The second backlog reduction goal to decrease the existing backlog of pending FOIA requests as of January 1, 2007, by 30%, for each bureau where applicable, by September 30, 2007 has been exceeded by all bureaus. The following bureaus identified a backlog for the reporting period:

<u>Bureau</u>	<u># Pending 1/1/07</u>	<u>#Pending 9/30/07</u>	<u>Percent</u>
OS	2	0	100%
NOAA	226	20	86%
NIST	15	6	40%
OIG	4	2	50%

C. Identification and discussion of any deficiency in meeting plan milestones (if applicable).

1. FOIA Improvement Plan area to which the deficient milestone relates.

Backlog Reduction

2. Deficient milestone and the original target date from the FOIA Improvement Plan.

National Institute of Standards and Technology (NIST) to close out the 10 oldest FOIA requests pending as of 9/30/06 by 9/30/07. Five of the 10 requests have been closed.

3. Steps take to correct the deficiency and the dates by which the steps were completed.

The five pending requests are all voluminous. Interim responses have been mailed to the requesters on a rolling basis for two of the five requests. NIST staff will continue to review and release documents on a rolling basis until the two requests are completed. Three of the requests are for records of the investigation into the cause and collapse of the World Trade Center, which contain voluminous photographs and videos. NIST staff continues to send submitter notices to the photographers and videographers to obtain disclosure determinations. Once disclosure determinations have been obtained, documents will be released on a rolling basis until the three requests are completed.

4. Future remedial steps and the dates by which the steps will be completed.

NIST will continue to review documents and release documents on a rolling basis. The target date for completing the five requests is September 30, 2008.

D. Additional narrative statements regarding other executive order-related activities (optional).

Not applicable

E. Concise descriptions of FOIA exemptions.

The nine exemptions to the FOIA authorize federal agencies to withhold information covering: (1) classified national defense and foreign relations information; (2) internal agency rules and practices; (3) information that is prohibited from disclosure by another federal law; (4) trade secrets and other confidential business information; (5) inter-agency or intra-agency communications that are protected by legal privileges; (6) information involving matters of personal privacy; (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 persons 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 investigation or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or (F) could reasonably be expected to endanger the life or physical safety of any individual; (8) information relating to the supervision of financial institutions; and (9) geological information on wells.

F. Additional Statistics:

1. Ten Oldest Pending FOIA Requests.

Using the template provided below, please list in the appropriate column labeled by year, each of our ten oldest pending requests as of January 1, 2008. Please list each request by the date it was received by your agency.

Calendar Year	2000	2001	2002	2003	2004	2005	2006	2007
Requests	0	0	0	0	Jun 14	Apr 19 Jun 3 July 6 July 28 Aug 8 Nov 7	Jan 11 Jan 16 Jan 18	0

2. Consultations.

a.) Number of Consultations Received, Processed, and Pending.

Please provide the number of consultations received, processed, and currently pending, in the appropriate column below.

Consultations Received From Other Agencies During FY07	Consultations Received From Other Agencies That Were Processed by Your Agency During FY07 (includes those received prior to FY07)	Consultations Received From Other Agencies That Were Pending at Your Agency as of October 1, 2007 (includes those received prior to FY07)
7	7	0

b) Ten Oldest Pending Consultations Received From Other Agencies

Using the template provided below, please list in the appropriate column labeled by year, each of your ten oldest pending consultations received from other agencies as of January 1, 2008. Please list each consultation by the date it was received by your agency.

Calendar Year	1999	2000	2001	2002	2003	2004	2005	2006	2007
Consults Received	0	0	0	0	0	0	0	0	Dec 31

G. Attachment: Agency improvement plan (in current form).

The FOIA Improvement Plan for the Department of Commerce is attached.