



Department of Homeland Security

Freedom of Information Act Operational Review and Improvement Plan Report

2006

This Freedom of Information Act (FOIA) operational review and improvement plan reports on the Department's current FOIA operations and the plans of the Department's components for the improvement of those operations. Although the report is a good summary of the status of the program, it fails to present effective plans for improvement to the backlog that has arisen over the last 3 years. The proposed improvement plans -- produced by the offices and component agencies of the Department -- were insufficiently aggressive and non-responsive to such a degree that they could not be relied on to reduce the serious and growing FOIA backlog problem at the Department in a timely fashion.

I have directed, therefore, that a revised plan be produced within the next 90 days. At that time, we will share the revised action plan with the Department of Justice. The problems inherent in our current approach are structural, particularly at the United States Citizenship and Immigrations Service, and managerial and operational at virtually all the agencies and offices. Although a factor, the lack of adequate resources is not the only contributor to the backlog growth. More detailed analysis of each office's input, output and staffing are needed. These analyses will form the core of the 90-day review. Our goal will be substantially to eliminate the FOIA backlog by the end of 2007.

Michael P. Jackson
Deputy Secretary

A. OVERVIEW OF THE DHS FREEDOM OF INFORMATION ACT PROGRAM

The Department of Homeland Security (DHS) is responsible for leading the unified national effort to secure America by preventing and deterring terrorist attacks and protecting against and responding to threats and hazards to the nation. DHS ensures safe and secure borders, welcomes lawful immigrants and visitors, and promotes the free flow of people and commerce across the borders of the United States. To accomplish its mission, the Department is organized into directorates and components, which are described more fully in Appendix A. Like the organizational structure of the Department itself, DHS Freedom of Information Act and Privacy Act (PA)¹ operations are centralized for purposes of policy and programmatic oversight and decentralized for purposes of operational implementation.

The Chief Privacy Officer for DHS serves as the Chief FOIA Officer for the Department (hereinafter Chief FOIA Officer) and has agency-wide policy responsibility for efficient and appropriate compliance with the FOIA. The Chief FOIA Officer, however, does not currently have direct operational management authority over component and Directorate FOIA offices. A Director for Departmental Disclosure and FOIA reports to the Chief FOIA Officer, heads up the headquarters FOIA operation and team, and assists the Chief FOIA Officer to ensure that FOIA policies are implemented throughout the Department. The Director for Departmental Disclosure and FOIA also is responsible for handling FOIA/PA requests for records maintained by DHS senior management offices. The Chief Counsel to the Privacy Office provides legal review on particularly complex or sensitive FOIA requests for headquarters and assists in counseling component and directorate FOIA offices.

The FOIA Program at this new Department was created at the same time as the Department stood up, with limited resources available to implement a full-fledged consolidated operation. However, most of the 22 component agencies that were merged into DHS had pre-existing, established FOIA operations. Those operations continue today with increasing collaboration department-wide on policy and program issues through regular meetings of FOIA/PA managers that are hosted by the Chief FOIA Officer. FOIA/PA Officers within components and directorates are responsible for compliance with DHS FOIA policy guidance within their components and operationally decide whether to establish a centralized or decentralized FOIA program at the component or directorate level. The DHS Organizational Chart is provided at Appendix B. Names and contact information for DHS FOIA Officers are provided at Appendix C.

The FOIA Program has successfully established the FOIA processing policy for all of the DHS components and programs including establishment of the Department's interim FOIA regulations, creation of the statutorily-mandated FOIA website and reading room, and development of electronic tracking for requests.

¹ FOIA/PA and FOIA are, in most cases, used interchangeably in this report.

As a relatively new agency of significant size and scope, DHS programs and policies have been and continue to be the subject of numerous Freedom of Information Act requests because of high public interest in its operations. In Fiscal Year 2003² incoming FOIAs totaled 161,107; 2004 requests rose to 168,882; and in 2005, incoming requests numbered 162,949. The current pace, to date, of 2006 requests is running ahead of the 2005 rate.

While generating many inquiries because of its new status and mission, DHS also began its operations with an inherited FOIA backlog by virtue of the fact that several significant existing agencies were merged into DHS: the Coast Guard, Secret Service, United States Customs Service, Immigration and Naturalization Service, Federal Emergency Management Agency, Transportation Security Administration, Federal Protective Service, and the Federal Law Enforcement Training Center. At the time of the merger of these agencies into DHS, all maintained an FOIA backlog, ranging in size from 25,515 for the Customs Service to 1 for the Federal Training Center.

A number of the components of the Department have experienced a significant growth in the number of incoming FOIA requests and a rise in their backlogs. In 2005, for example, the DHS Privacy Office, which processes FOIA requests for the senior management offices of the Department, received 849 requests, an increase of more than 300 percent from the 282 requests in 2003. However, one component of DHS, the United States Citizenship and Immigration Services (USCIS), receives the vast majority of all FOIA requests to the Department and, similarly, holds the majority of the Department's FOIA backlog. In fact, USCIS is the source of nearly all the growth in the Department's FOIA backlog over the last 3 years.

From 2003 to 2005, the number of total requests to the Department has held relatively constant as seen in the figures above. During that time, however, the backlog has grown from 29,000 at year-end 2003, to 46,000 in 2004, to 83,000 at the end of 2005. Of this 54,000 growth in the request backlog, roughly 50,000 occurred at USCIS, from a backlog of 25,326 at the end of 2003 to 74,941 at the end of 2005.

Our analysis of the USCIS FOIA operations pointed up several areas for review including the levels of funding and staffing, and the beneficial application of technology enhancements. The most significant sources of the growing backlog problem however, is concentrated in two areas: the use of the FOIA process as a source of information for genealogy studies, and its use as a means of discovery in connection with immigration enforcement and court proceedings. USCIS has issued two notices of proposed rulemaking to positively address these unique challenges. The first rule would take requests for genealogy information out of the FOIA request process by channeling such requests into a newly established administrative information process. The second rule would establish a third track for FOIA processing for litigation-related information requests, in addition to the two existing tracks for simple and complex FOIA requests that are currently used. The separate third track may allow both USCIS and the Department

² All references to years in the report refer to Federal fiscal years.

to target better the backlog and complete resolutions on these unique requests to CIS, which now are believed to make up the vast majority its requests.

Overall, despite the unique challenges faced by USCIS and general Departmental resource constraints, staff completed a substantial workload of 126,126 FOIA requests and 885 appeals. The vast majority of these were answered by release of part or all of the records requested. The Department also implemented an improved, customer-friendly FOIA webpage and appointed FOIA Officers to additional DHS Headquarters' programs to improve customer service.

In response to Executive Order 13392, Improving Agency Disclosure of Information, the Department established on March 17 of this year its primary FOIA Requester Service Center and FOIA Public Liaisons were established for every FOIA component program to assist with public inquiries to the Center. Individual components have been tasked to similarly augment their FOIA information hot-lines to provide enhanced responsiveness to public inquiries about their FOIA programs. To increase public awareness of FOIA, the Privacy Office also sponsored a public workshop on April 5, 2006 on *Transparency and Accountability: The Use of Personal Information Within the Government*, and a major focus of the program explored the Freedom of Information Act and its implementation, along with the special requirements of the Executive Order. The Privacy Office had been meeting regularly with representatives from the Access Community and Immigration Attorneys and Advocates and continues to do so on FOIA matters.

While DHS FOIA staff clearly work diligently, a recent review of FOIA operations identified areas where further improvements could be made, especially in light of the growing backlog. In order to prepare the FOIA improvement plan, the DHS Chief FOIA Officer tasked all Departmental directorates and components to complete operational assessments and submit review summaries and improvement plans. The following sections of this report outline the review undertaken, the improvement goals established, and the milestones for measuring FOIA improvement efforts and Departmental success.

B. AREAS SELECTED FOR REVIEW

All DHS FOIA Officers were given a template for preparing a summary report on their current FOIA operations. The resulting reports provided an overview of the FOIA organizational structure within the DHS component or program, including budget and staffing figures, and information on FOIA operations. Much of the data is reported in the DHS FY 2005 annual report, posted on the Privacy Office and FOIA website. FOIA Officers were also asked to provide a request processing overview, including any field operations and administrative appeal functions. The remainder of the reports focused on an assessment of FOIA operations, including:

- the current FOIA case backlog,
- aspects of case processing such as implementation of multi-track processing, use of available FOIA-specific technology, and expedited request processing,
- the availability of component-wide employee FOIA training, and

- utilization of the component's FOIA website.

The concluding portions of these operations reports contained each component or office's recommendations for improvements that were then compiled into this DHS improvement plan.

C. SUMMARY OF RESULTS

The operations reports revealed that backlog issues and resource constraints are a significant concern throughout the agency. Processing FOIA requests is something that all agencies must do in addition to carrying out their missions and often the number of people who can be made available for this work is inadequate to the amount of work that is generated. USCIS, for example, has 107 staff currently available to process 140,000 requests, which means that each FOIA processor is responsible annually for over 1,300 responses to requests.

Backlog issues are also a concern for other DHS components and offices. ICE's organizational structure calls for 11 FOIA staff at the headquarters level, but many of these positions have been subject to turnover and have remained unfilled during critical times. Even a component as small as FLETC has a backlog because of a long-standing unfilled FOIA processor position that requires other FLETC employees to shoulder the workload in addition to their own. Resource constraints, including a shortage of full-time FOIA processors, and the unpredictable fluctuations in FOIA requests from events such as Hurricane Katrina and its aftermath, have resulted in increased backlog issues for a number of DHS components and offices.

Other common threads among the operations reports include a recognition that technological improvements would increase efficiency, additional emphasis on education and training would ensure consistent processing, and enhancements to public websites could increase customer awareness and knowledge. These common themes form the basis of the areas chosen for improvement in this and the next fiscal year.

D. AREAS SELECTED FOR IMPROVEMENT

The areas identified for improvement over the next two fiscal years are listed below. Following this list in Section E is a tabular presentation of how DHS and its components and offices intend to address these areas.

1. Backlog Reduction

All of the components except for TSA maintain a case backlog of FOIA requests that have not been answered within the statutory 20-day response window. The size of the backlog varies greatly by component, but this is clearly an area of concern for the Department. All components with a backlog reported that a significant factor contributing to delayed responses is a lack of staffing resources. Another significant contributor to delayed responses is the lack of response within the component's various program offices to FOIA search requests for documents.

2. Education and Training

Increased education and training can contribute to improvements in the FOIA process at DHS in several important ways. First, a renewed emphasis on the importance of FOIA that is conveyed from the top down to all agency employees will educate employees about the need for them to be active participants in the FOIA program at DHS. Second, education and training can ensure a consistent interpretation of key aspects of the FOIA administrative workload, such as when to grant a fee waiver or when to expedite a request. Consistent interpretation of these requirements benefits the requester community through a greater uniformity of treatment and also benefits DHS FOIA staff who can more quickly make decisions based on common standards. For components using decentralized processing by employees who perform FOIA duties only collaterally, enhanced education and training will also help facilitate consistent and timely processing. Education of the requester community can also help streamline the FOIA process as increased understanding of DHS operations will allow requesters to focus their inquiries and direct them to the appropriate offices in the first instance.

3. Technology Improvements to Enhance FOIA Processing and Delivery of Information

Although many DHS components and offices maintain a Web presence for FOIA matters, the operations review demonstrated that DHS can more aggressively use this resource to improve its FOIA operations. This is an effective means to communicate information to the public generally and to FOIA requesters in particular, at a relatively low cost.

E. SUMMARY OF IMPROVEMENT AREAS

1. Items to be Completed by December 31, 2006

Backlog reduction initiatives to be accomplished include submission of requests and justifications for additional FOIA staff for component offices; completion of surveys on backlog causes and recommendations for cures; and, revision and standardization of FOIA processing operations to streamline their efficiency.

Education and training initiatives to be accomplished consist of ensuring that all component FOIA processors have received at least one session of FOIA/PA training and that procurement of training courses and materials for DHS-wide use is completed. Memoranda from senior DHS leadership will also be distributed prior to the end of calendar 2006 reiterating the importance of FOIA compliance for all DHS employees.

Technology-related initiatives to be accomplished include evaluation of a variety of electronic FOIA processing programs to determine which will increase operational efficiency, and the update and enhancement of websites to increase information content.

2. Items to be Completed by December 31, 2007

By the end of 2007, DHS should have its backlog under control. In addition, training goals should be met, including development and distribution of consistent training

materials for all components. Also by this date all FOIA web enhancements should be made.

DHS expects that improving its FOIA operations will be an ongoing effort, but with the dedicated FOIA staff it currently has, augmented by planned new hires and contractors, together with enhanced FOIA learning throughout the Department and a more robust web presence, DHS FOIA operations should be efficient and effective in ensuring full compliance with the statutory mandates of the law.

APPENDIX A: COMPOSITION OF THE DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary: The Office of the Secretary oversees activities with other Federal, State, local, and private entities as part of a collaborative effort to strengthen our borders, provide for intelligence analysis and infrastructure protection, improve the use of science and technology to counter weapons of mass destruction, and to create a comprehensive response and recovery system. Within the Office of the Secretary there are multiple offices that contribute to the overall Homeland Security mission. These are:

The **Citizenship and Immigration Services Ombudsman** provides recommendations for resolving individual and employer problems with the United States Citizenship and Immigration Services in order to ensure national security and the integrity of the legal immigration system, increase efficiencies in administering citizenship and immigration services, and improve customer service.

The **Office for Civil Rights and Civil Liberties** provides legal and policy advice to Department leadership on civil rights and civil liberties issues, investigates and resolves complaints, and provides leadership to Equal Employment Opportunity Programs.

The **Office of Counternarcotics Enforcement**

The **Office of the Federal Coordinator for Gulf Coast Rebuilding** was created to help assist the region with long-term planning and coordinating the federal government's response to rebuild the Gulf Coast region devastated by Hurricanes Katrina and Rita.

The **Office of the General Counsel**

The **Office of Legislative and Intergovernmental Affairs** serves as primary liaison to members of Congress and their staffs, the White House and Executive Branch, and to other Federal agencies and governmental entities that have roles in assuring national security.

The **Privacy Office** works to minimize the impact on the individual's privacy, particularly the individual's personal information and dignity, while achieving the mission of the Department of Homeland Security.

The **Office of Public Affairs**

Other Components:

The **Directorate for Management** is responsible for Department budgets and appropriations, expenditure of funds, accounting and finance, procurement, human resources, information technology systems, facilities and equipment, and the identification and tracking of performance measurements.

The **Directorate for Preparedness** works with state, local, and private sector partners to identify threats, determine vulnerabilities, and target resources where risk is greatest, thereby safeguarding our borders, seaports, bridges and highways, and critical information systems.

The **Directorate for Science and Technology** is the primary research and development arm of the Department with the principal responsibility for coordinating and organizing research, development, test, and evaluation (RDT&E) activities in support of the Department of Homeland Security's mission.

The **Domestic Nuclear Detection Office** works to enhance the nuclear detection efforts of Federal, State, territorial, tribal, and local governments, and the private sector. It also works to ensure a coordinated response to such threats.

The **Federal Emergency Management Agency (FEMA)** prepares the nation for hazards, manages Federal response and recovery efforts following any national incident, and administers the National Flood Insurance Program.

The **Federal Law Enforcement Training Center** provides career-long training to law enforcement professionals to help them fulfill their responsibilities safely and proficiently.

The **Office of Inspector General** is responsible for conducting and supervising audits, investigations, and inspections relating to the programs and operations of the Department,

recommending ways for the Department to carry out its responsibilities in the most effective, efficient, and economical manner possible.

The **Office of Intelligence and Analysis** is responsible for using information and intelligence from multiple sources to identify and assess current and future threats to the United States.

The **Office of Operations Coordination** is responsible for monitoring the security of the United States on a daily basis and coordinating activities within the Department and with Governors, Homeland Security Advisors, law enforcement partners, and critical infrastructure operators in all 50 States and more than 50 major urban areas nationwide.

The **Office for Policy** is the primary policy formulation and coordination component for the Department of Homeland Security. It provides a centralized, coordinated focus to the development of Department-wide, long-range planning to protect the United States.

The **Transportation Security Administration (TSA)** protects the nation's transportation systems to ensure freedom of movement for people and commerce.

U.S. Customs and Border Protection (CBP) is responsible for protecting our nation's borders in order to prevent terrorists and terrorist weapons from entering the United States, while facilitating the flow of legitimate trade and travel.

U.S. Immigration and Customs Enforcement (ICE), the largest investigative arm of the Department of Homeland Security, is responsible for identifying and shutting down vulnerabilities in the nation's border, economic, transportation and infrastructure security.

U.S. Citizenship and Immigration Services is responsible for the administration of immigration and naturalization adjudication functions and establishing immigration services policies and priorities.

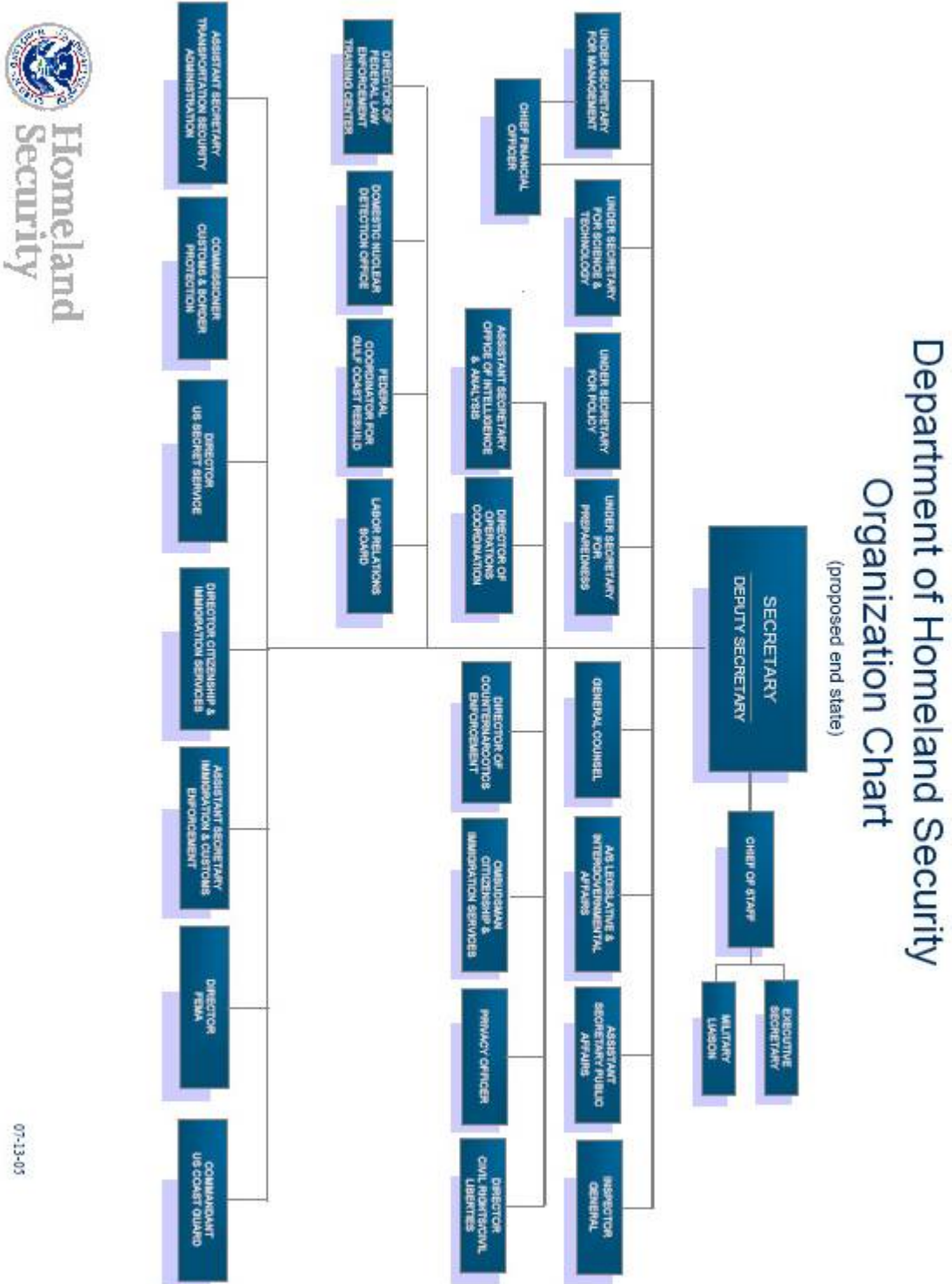
The **U.S. Coast Guard** protects the public, the environment, and U.S. economic interests—in the nation's ports and waterways, along the coast, on international waters, or in any maritime region as required to support national security

The **U.S. Secret Service** protects the President and other high-level officials and investigates counterfeiting and other financial crimes. This includes financial institution

fraud, identity theft, computer fraud, and computer-based attacks on our nation's financial, banking, and telecommunications infrastructure.

The **US-VISIT Program** enhances the security of our citizens and visitors, facilitates legitimate travel and trade, ensures the integrity of our immigration system, and protects the privacy of our visitors. The US-VISIT Program is part of a continuum of security measures that begins overseas and continues through a visitor's arrival in and departure from the United States. It incorporates eligibility determinations made by both the Departments of Homeland Security and State.

APPENDIX B: DHS COMPONENT CHART



APPENDIX C: NAMES, ADDRESSES, AND CONTACT NUMBERS FOR DHS FOIA OFFICERS

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