



June 13, 2006

TO: The Secretary
Through: DS _____
COS _____
ES _____

FROM: Assistant Secretary for Public Affairs *ACD*

SUBJECT: Freedom of Information Act Review/Plan--ACTION

PURPOSE

Executive Order 13392, Improving Agency Disclosure of Information, requires Executive Branch departments to reform their Freedom of Information Act (FOIA) programs in order to be more citizen-centered. The Executive Order requires a review of agency FOIA operations and FOIA Improvement Plan. The Plan includes specific activities to eliminate or reduce the FOIA backlog, changes to streamline FOIA processing, and specific activities to increase public awareness.

With input from the 12 FOIA offices in HHS, ASPA has assembled this FOIA Review and Improvement Plan for the U.S. Department of Health and Human Services with milestones, timetables, and achievable outcomes and metrics to measure success is attached.

RECOMMENDATION

I recommend that you sign the cover memo, submitting the plan to the Office of Management and Budget and the Department of Justice.

Suzanne C. DeFrancis
Suzanne C. DeFrancis

Attachments:

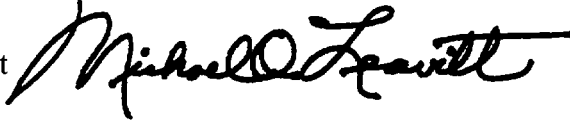


THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

JUN 14 2006

To: Alberto Gonzalez
Attorney General
U.S. Department of Justice

Rob Portman
Director, Office of Management and Budget
Executive Office of the President

From: Michael O. Leavitt 
Secretary
U.S. Department of Health and Human Services

SUBJECT: Freedom of Information Act Review/Plan, Executive Order 13392

Executive Order 13392, Improving Agency Disclosure of Information, requires Executive Branch departments to reform their Freedom of Information Act (FOIA) programs in order to be more citizen-centered. The Executive Order requires a review of agency FOIA operations and FOIA Improvement Plan. The Plan includes specific activities to eliminate or reduce the FOIA backlog, changes to streamline FOIA processing, and specific activities to increase public awareness. The FOIA Improvement Plan for the U.S. Department of Health and Human Services with milestones, timetables, and achievable outcomes and metrics to measure success is attached.

Attachment

TAB B

**U.S. Department
of Health and Human Services**

Freedom of Information Act
Operations Review/Plan
2006

A. Overall Nature of Agency Operations

The Department of Health and Human Services is a very large and complex agency with a great range of Freedom of Information Act (FOIA) activities. Across the Department, more than 200,000 FOIA requests are received each fiscal year. There were over 24,000 backlogged requests accounted for in the 2005 Annual FOIA Report.

Overall, FOIA requests that come to HHS are challenging due to the magnitude, sensitivity, or location of some of the requested records. The overall HHS FOIA program is decentralized and reflects the broad and diverse nature of the Department. Each agency has its own FOIA Request Service Center (FRSC) which receives, reviews, controls, coordinates and routes all FOIA requests to the appropriate action office which searches for information and responds back to their agency's office. Many agencies have multiple levels of FOIA coordinators below the FRSC; for example, Centers for Medicare & Medicaid Services (CMS) has 92 FOIA contact sites within its agency.

In addition to a heavy workload of FOIA requests, the HHS/Office of the Secretary (OS) FRSC handles processing or review of all HHS FOIA appeals; has responsibility to provide FOIA policy and processing oversight, training, and guidance for the entire Department. Additionally, requests involving more than one agency's FRSC are coordinated by the OS FRSC or the Public Health Service (OPHS) FRSC. In addition, the OS FRSC has responsibility for processing, administration and coordination of Privacy Act requests and issues throughout the Department.

It should be noted that most HHS FRSCs reported no backlog or a relatively small processing backlog. These include the Administration on Aging (AOA); the Administration on Children and Families (ACF); the Agency for Healthcare Research and Quality (AHRQ); the Health Resources and Services Administration (HRSA); the Office of Public Health and Science (OPHS); and the Substance Abuse and the Mental Health Services Administration (SAMHSA). As of the end of FY 2005, the Centers for Disease Control had a somewhat higher number (221) of cases pending, still a relatively modest number given its caseload. The majority of requests are received by a handful of HHS' FRSCs – the Office of the Secretary (OS), National Institutes of Health (NIH), CMS, the Indian Health Service (IHS) and the Food and Drug Administration (FDA).

B. Areas Selected for Review

In consultation with the Department's FRSCs, several areas were selected for review:

- Contributing factors to the Department's FOIA request backlog;
- Steps currently taken to process FOIA requests; and
- Resources

C. Review Summary

The results of the review indicate that the HHS, overall, handles a very large volume of FOIA

requests, and responds to the great majority of these requests in a timely and efficient manner. However, there is a substantial backlog that has built up over time and must be addressed by instituting several steps.

The overall review found common contributing factors across FRSCs to the backlog, including:

- The complex and voluminous nature of many FOIA requests;
- The sheer number of FOIA requests;
- The need to provide original submitters notice when proprietary data may be at issue;
- An increase in requests involving litigation;
- The need to frequently perform detailed, line-by-line, word-by-word review of material located that may be responsive to FOIA requests;
- Complicated coordination of many requests, which require substantive research and work involving multiple offices across the Department;
- An increased or more complex workload which exceeds staff resources.

Added together, these many components mean that it will be difficult to achieve complete elimination of the Department's backlog in the short term. Strategies for both short-term and long-term solutions must be addressed.

Across the Department, reviews were also performed to address the issue of procedures. Specifically, should the Department continue its current decentralized approach or undertake centralization of all FOIA requests? The review found that – due to the complexity of requests and diversity of issues involved – a decentralized system continues to be the most efficient organization. Each FRSC has developed a strong knowledge base on its programs, which makes them best-equipped to efficiently handle their particular requests.

The final area of review was resources, specifically workload demands placed on staff members' time. It is evident that the gradual increase in the FOIA workload has not corresponded with a similar increase in staff. For this reason, important activities beyond day-to-day requests from the public – such as updated regulations, guide books, adoption of electronic files and web-based systems and training – have suffered. For example, OS FRSC had several long-term staff vacancies which, coupled with increasing requests, have significantly contributed to the current backlog. These vacancies had been filled before June 1, 2006.

D. List of Improvement Areas

The following improvements have been identified as well as specific FRSC's which will focus on these areas:

- **Reduce backlog** – FRSCs with significant outstanding backlogs will focus on strategies to reduce their current load. This area will be a particular focus for FDA, NIH, CMS and OS.
- **Improve processing** – The goal is to reduce steps or time needed to perform various procedures. Potential strategies include greater utilization of electronic processing. NIH, OS, FDA, SAMHSA CMS and HRSA will focus on this area.
- **Improve Resources** – FRSCs will seek to better allocate staff resources as well as increase FOIA knowledge.

- **Increase Public Awareness** – The Department will seek to better inform the public about FOIA and its processes as well as improve access to agency records.

E. Improvement Areas

HHS has targeted specific steps – reducing backlog, improving processing, improving resources and increasing public awareness – which will help reach the goal of reducing the current Department backlog by 5 percent in CY 2006. In addition, these actions will make FOIA processes more transparent and responsive to the public.

Reduce Backlog

The majority of the Department's FOIA requests are received by a handful of FRSCs – OS, FDA, NIH, CDC and CMS. In particular, these agencies will focus on implementing strategies to substantially reduce their request backlog.

Specific steps planned include:

1. Staffing Resources

- OS established and hired one new staff position before June 1, 2006.
- OS filled the vacant senior specialist position before June 1, 2006.
- FSRCs will conduct a review to assess feasibility of increasing participation of other staff in FOIA request processing by December 31, 2006. Examples include reallocation of some staff resources outside of FSRC to help with redaction and administrative matters.
- CMS will develop measures to regularly monitor staff caseloads and assess productivity, to be completed by December 2006.

2. Verification of Older FOIA Requests

- FRSCs will initiate an ongoing practice by December 2006 of preparing and sending letters to verify that requesters of older FOIA requests remain interested in receiving responses to their requests. The agency will request confirmation that the requester's informational needs have not changed over time, rendering the completion of the original request unnecessary.
- FRSCs will conduct a review by December 31, 2006 of every request received prior to January 2006 to confirm appropriateness of the routing and whether the request is placed in the correct track.
- Upon completion of the review, FRSCs will implement necessary corrective actions including rerouting files which are incorrectly assigned and closing of simple track requests by March 31, 2007.
- The NIH will complete processing of FOIA requests in nine NIH components with requests pending since 2004 or earlier by June 30, 2006.
- The NIH will complete processing of FOIA requests in one NIH component with requests pending since 2004 or earlier by September 30, 2006.
- FRSCs will develop and implement requirements for analysts to routinely seek status from FOIA contacts regarding a division's or office's progress in responding to FOIA

requests for incorporation into the performance plans of all FOIA specialists, to be completed by December 2006.

3. Internal Accountability

- FRSCs will contact their component offices with backlogs quarterly for status and establish action plans to address problems. These quarterly reports will commence by September 30, 2006.
- The OS will initiate regular meetings with OS FOIA Coordinators to discuss issues and coordinate actions (ongoing), initial completion by December 2006.

Improve Processing

The goal is to reduce steps or time needed to perform various procedures. Potential strategies include greater utilization of electronic processing and development of standardized response letters. NIH, OS, CMS, FDA, SAMHSA and HRSA have indicated an increased emphasis on this area.

Distinct steps planned include:

1. Streamline Certain Routine Processes

- OS will develop standardized/formatted response letters to decrease time needed in responding to some FOIA requests by December 31, 2006. These will be shared with Department FRSCs.
- OS will initiate effort to arrange for the Department-wide coordination of information as to requesters that have outstanding FOIA processing fees by December 2006.
- FRSCs will seek to simplify the review and approval process for more routine tasks, such as acknowledgement and referral letters, to be completed by December 2006.
- The FDA will develop a checklist by December 31, 2006, for use by its component FOI offices. This checklist will improve the processing of incoming FOI requests by ensuring proper routing, consistency in assigning requests into particular tracks when multi-track systems are used, and enhance the use of FDA FRSC in providing previously released records.
- The FDA organizational components which use a multi-track system will work to develop standardized procedures for assigning incoming FOIA requests by December 31, 2006, which will help ensure consistency in FDA component offices.

2. Increase Utilization of Electronic Processing/Tracking Capabilities

- The OS FRSC will ascertain the availability of funds for, and to review the potential utilization of, a document scanner; and review the potential utilization of redaction software by December 2006.
- CMS FRSC will establish a FOIA tracking system with target dates for each step of the process, which will highlight missed target dates for follow-up within a reasonable amount of time, to be completed by December 2007.
- The FDA FRSC will work with all FDA component offices, to confirm file status for legacy databases, which were combined into the new tracking system, which was instituted on January 2, 2006. Because each component office had its own tracking system and the systems were unable to communicate, the combination of data has

resulted in system errors, which are being addressed individually. This reconciliation will be completed by the component offices by the close of calendar year 2006.

- The FDA FRSC will examine the use of e-mail to send automatic acknowledgement letters. Studies will be completed by December 31, 2006 with final determinations and recommendations for action to be implemented by December 31, 2007.
- The FDA FRSC will conduct a feasibility study to examine the use of email/internet, to receive new FOIA requests electronically. Final recommendations will be received by March 2008.
- FDA will continue its efforts to examine electronic redaction tools, and complete a pilot study of one software system by the close of FY 2006. Results of this pilot study will be shared with all HHS FOIA offices.
- The SAMHSA FRSC will conduct a review to assess the feasibility to purchase software/equipment to forward FOIA acknowledgement letters by electronic mail, to be completed by December 31, 2006.

Improve Resources

FRSCs will seek to better allocate staff resources as well as increase FOIA knowledge.

Distinct steps planned include:

1. Revising Staff Guidance

- The NIH FRSC will revise General Guidance provided to those who provide/submit information to the NIH by December 31, 2006.
- FDA will complete revisions to the agency's "Staff Manual Guide" for processing FOIA requests, which will establish standardized policy throughout component offices. A revised guide will be completed and distributed to FDA FOIA coordinators by the December 31, 2006.
- The OS FRSC will hold regular meetings with FOIA Officers to discuss issues and problems. Ongoing meetings were implemented in April 2006.
- All FRSCs will hold regular meetings with their FOIA coordinating officers to discuss issues and problems. Ongoing meetings will commence by July 1, 2006.

2. Training

- The NIH FRSC will develop an online training module for NIH staff by December 31, 2007.
- All FRSCs will look for more opportunities to increase staff training on specific FOIA topics on an ongoing basis.

3. Staffing Resources

- OS will establish and hire one new staff position by December 31, 2006.
- OS will fill the vacant senior specialist position by December 31, 2006.
- FSRCs will conduct a review to assess feasibility of increasing participation of other staff in FOIA request processing by December 31, 2006. Examples include reallocation of some staff resources outside of FSRC to help with redaction and administrative matters.
- The CMS will develop measures to regularly monitor staff caseloads and assess productivity, to be completed by December 2006.

Increase Public Awareness

The Department is seeking to provide a greater emphasis on customer service in its FOIA system. Through updating public guidance and increasing use of the Web, HHS seeks to better inform the public about FOIA and its processes as well as improve access to agency records.

Distinct steps planned include:

1. Better Guidance for the Public

- OS will develop, issue for public comment and finalize a revised HHS FOIA regulation. This will be published in the Federal Register for public comment by December 2006 and finalized by December 2008.
- The FDA will revise and expand its FOI Handbook, which is available to the requester community through FDA's internet website. The revisions could include information relating to the new Service Center; the names, addresses and telephone numbers for the Public Liaisons; additional information on how to submit a request for expedited processing; a description of the multi-track process, as revised; and information on categories of frequently requested records. Revisions will be completed by December 31, 2006 and uploaded to the agency's internet site.
- The SAMHSA FRSC will update the SAMHSA FOIA Guide Book, and post the revised Guide Book on the SAMHSA FOIA webpage by December 2007.

2. Web-Based Tools

- OS will take steps to accept Web-based FOIA requests, through the OS FRSC web page, by December 2006.
- The HRSA FRSC will work with the HRSA Office of Information Technology staff and the HRSA grants office to assess feasibility of releasing electronic copies of grant documents which are the most frequently requested documents, to be completed by December 31, 2006.
- The HRSA FRSC will identify frequently requested records and make them available through the Electronic Reading Room to be completed by December 31, 2006; and will assign one staff person to conduct a quarterly review the information available through the Electronic Reading Room and make additional links available as needed.
- The FDA Central FOIA Office will implement enhanced, web-based tracking system by July 1, 2006.

3. Internet Sites

- OS FRSC will review its FOIA website and make recommendations by July 1, 2006 on ways to make it more user-friendly for the general public.
- OS FRSC, working with the HHS Web Communications Division, will conduct usability testing on the HHS FOIA website with the goal of improving customer service. This testing will be completed by December 31, 2006.
- OS and the HHS Web Communications Division will conduct a review of FRSC websites to ensure easy access and linking capabilities for records and information online by March 1, 2007.
- Working with the HHS Web Communications Division, OS will issue recommendations to standardize FRSC websites by June 1, 2007.
- The FDA FRSC will assess how to best enhance the use of the internet, to include proactive posting and posting frequently requested records. Review will be completed by December 31, 2007.

F. For the entire plan, group the improvement areas into the following time periods:

1. Areas anticipated to be completed by December 31, 2006

A. Reduce Backlog – Staffing Resources and Internal Accountability

B. Improve Processing – Streamline Certain Routine Processes

C. Increase Public Awareness – Web-Based Tools

D. Resources – Revising Staff Guidance and Staffing Resources

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

A. Reduce Backlog – Verification of Older FOIA Requests

B. Improve Processing – Increase Utilization of Electronic Processing/Tracking Capabilities

C. Increase Public Awareness – Internet Sites

D. Resources -- Training

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

A. Increase Public Awareness – Better Guidance for the Public