

U.S. Chemical Safety and Hazard Investigation Board
Freedom of Information Act (FOIA)
Improvement Plan Under Executive Order 13,392

This Freedom of Information Act (FOIA) Improvement Plan has been developed by the U.S. Chemical Safety and Hazard Investigation Board (CSB) pursuant to the requirements of Executive Order 13,392, "Improving Agency Disclosure of Information," 70 Fed. Reg. 75,373 (2005), and Implementation Guidance issued by the Office of Information and Privacy of the U.S. Department of Justice, FOIA Post (posted on 4/27/06 at <http://www.usdoj.gov/oip/foiapost/2006foiapost6.htm>).

A. Nature of CSB FOIA Operations

The CSB is an independent federal agency with the mission of investigating chemical accidents and hazards and recommending actions to protect workers, the public, and the environment. The agency was created by the Clean Air Act Amendments of 1990, and was first funded and commenced operations in 1998. The CSB is a very small agency, consisting of about 40 employees. The CSB's only office is its headquarters in Washington, DC.

The CSB received 57 FOIA requests in Fiscal Year (FY) 2005. Although this is a small number of requests in absolute terms and in comparison to the request inflow of much larger agencies, it is a significant number of requests relative to the CSB's resources. This one-year total also does not capture the sharp increase in the number of requests received in recent years compared to the number received at the time the CSB FOIA program was established. From FY 1998 through FY 2002, the CSB received no more than 15 requests in a single year. Then, in FY 2003, the number of requests received more than doubled. The following year, FY 2004, the number of requests received was more than triple the FY98–FY02 benchmark. In FY 2005, the number of requests received nearly quadrupled from that benchmark.

The majority of FOIA requests received by the CSB seek records related to specific investigations, rather than general agency operations. In turn, many of the investigation-related requests ask for "any and all" records regarding a particular investigation. The number of such requests, which generally require the search and review of an entire investigation case file, has also been increasing. In FY 2005, the number of these requests received by the CSB was nearly three times the number received in FY 2002 (the last year before the overall increase in FOIA requests began). Processing requests for investigative records is complex and time-consuming. Investigation case files contain voluminous and varied records (e.g., documentary evidence, analytical records, research materials, and administrative records) in a number of formats and media (e.g., paper and electronic documents, printed and digitized photographs, and audio and video recordings). Many investigative records are potentially sensitive and must be carefully reviewed for trade secrets/confidential business information, privileged deliberative

information, private information, or information pertaining to other ongoing investigations.

FOIA requests received by the CSB are processed by an attorney in the Office of General Counsel, who serves as the agency FOIA Officer, in addition to other non-FOIA duties. The CSB also uses a summer law clerk to assist with administrative and preliminary review tasks.

Even before the issuance of Executive Order 13,392, the CSB had recognized the need to update its FOIA processes to better handle the increasing volume and complexity of requests received by the agency. As one means to that end, the CSB, in August 2005, awarded a contract for FOIA support services. The contractor provides the CSB with additional capacity to conduct preliminary reviews of voluminous investigation records, and also offers FOIA process management software. At the same time, the CSB began to formulate a strategy to reduce its backlog of complex requests. With this FOIA Improvement Plan, the CSB is integrating those initial efforts with the broader review and improvement objectives called for by the Executive Order.

B. Areas Selected for Review

The CSB reviewed the following potential improvement areas:

1. Informing the public on how to make more effective FOIA requests (including improvement of agency's FOIA Reference Guide)
2. Automated tracking capabilities
3. Electronic FOIA – automated processing
4. Multi-track processing
5. Backlog reduction

C. Narrative Statement Summarizing Results of Review

1. Informing the public on how to make more effective FOIA requests (including improvement of agency's FOIA Reference Guide): The CSB currently provides information to the public on how to make a FOIA request through the agency's FOIA Reference Guide. Detailed policies and procedures are contained in the CSB's FOIA regulations. Each annual FOIA report also includes a brief summary of the FOIA process. The CSB review found that these sources, all of which are available on the agency's Web site, serve well their basic purpose of making citizens aware of the FOIA, how to make a FOIA request, and the overall mechanics of the FOIA process (e.g., fees, processing times, exemptions, etc.).

However, the CSB review identified an opportunity to build upon this basic awareness of how to make a FOIA request and begin providing requesters with more information on how to make *better* FOIA requests. Cf. Exec. Order No. 13,392, sec.

3(b)(iii) (requiring plan to “include activities to increase public awareness of FOIA processing”). The review found that many requests, especially those for investigation records, are phrased either generically (i.e., request for “entire case file on investigation X”) or broadly (i.e., request specifies so many different categories of records that it ends up encompassing the entire case file). In the CSB’s experience, requesters construct their requests this way not so much because they want every single record on a particular investigation, but because they do not know what the universe of such records is and want to make sure they do not miss those records that are important to them. This approach has drawbacks both for requesters and the agency. For requesters, it can result in longer waits for disclosure, higher fees, and extraneous material to sort through. For the agency, it contributes to the request backlog and makes processing more laborious and expensive. Attempts to “scope down” these requests are less effective than they could be because requesters may not have enough information to aggressively focus their requests.

Based on these findings, the CSB concluded that it should begin making available to current and prospective requesters more information about the agency’s investigation files. Such information could include more detailed descriptions of the kinds of records typically included in investigation case files; explanations of what types of investigation records are typically releasable or, conversely, exempt from disclosure; and indices of case files in which there is high public interest. The availability of these kinds of information should enable the CSB and FOIA requesters to engage in a more active and informed dialogue about the making and scoping of requests. More effective scoping of requests should, in turn, support the CSB’s planned backlog reduction efforts, described below in Review Area 5.

The CSB’s FOIA Reference Guide on the agency Web site would be the primary means for disseminating this expanded information about investigation files, so the Guide will need to be revised and updated. The results of other changes to be made as a result of this Plan (e.g., refined processing tracks, as discussed below in Review Area 4), or as required by the Executive Order, should be reflected in the Guide, as well. The CSB notes that the Department of Justice will be “updating its own FOIA Reference Guide in accordance with the executive order to serve as a model for other agencies.” See [FOIA Post](#), “Executive Order 13,392 Implementation Guidance” at n. 5. The CSB intends to consult this best practice model in updating the CSB’s Guide.

2. Automated tracking capabilities: The CSB currently tracks FOIA requests on a spreadsheet. The CSB review found that this system has certain benefits, including simplicity, clarity for simple requests, and low cost. However, the review also found that the current system has certain limitations. It does not offer a way to readily track the status and manage the performance of the many concurrent tasks necessary to process complex requests. This reduces the overall efficiency of processing such requests and makes it more difficult to inform requesters on the progress of various parts of a complex request. Cf. [FOIA Post](#), “Executive Order 13,392 Implementation Guidance” (noting that the Executive Order, “places strong emphasis on the ability of an agency to provide information to FOIA requesters about the status of their requests” (citing Exec. Order No. 13,392, sec. 1(b))). The spreadsheet-based system also lacks the capability to generate reminders of key processing deadlines, which are

important for a FOIA staff that also has non-FOIA responsibilities. The current system also cannot automatically compile data for the annual FOIA report.

Based on these findings, the CSB concluded that it should purchase and install FOIA tracking and process management software. The CSB's FOIA support vendor offers such a software product and an optional task to deliver it had been written into the contract. After extensive review of that product and discussions with the contractor, the CSB determined that the software provides the desired capabilities and has decided to exercise the optional task for the implementation of the software.

3. Electronic FOIA – automated processing: The CSB currently manually processes almost all records responsive to FOIA requests. The CSB review found that manual processing is acceptable for requests that require the production of only a few records, but is unsustainable for the increasing number of requests that require the review, redaction, and release of voluminous records, such as an entire investigation case file or significant portions thereof. The inefficiency resulting from manual processing by the limited number of personnel with FOIA responsibilities is a significant contributing factor to the CSB's backlog of complex requests.

Based on these findings, the CSB concluded that it should implement automated processing for complex FOIA requests. The case for doing so is overwhelming. Automated processing will directly increase efficiency by allowing the same number of CSB FOIA personnel to accomplish significantly more processing work.¹ This, in turn, should allow the CSB to begin reducing its current backlog and minimize future backlogs by better keeping pace with current requests. For a small agency such as the CSB, this means of improvement is more realistic and cost-effective than increasing the number of FOIA personnel. Moreover, in-house use of automated processing will allow the CSB to interact more effectively and efficiently with its FOIA support contractor, whose reviewers already use an automated processing system. By having access to the same system, CSB FOIA personnel will be able to directly review and finalize the preliminary work done by the contractor. Therefore, the CSB will implement the automated processing features (on-line review and redaction) included with the FOIA tracking/process management software the agency is purchasing, as described above in Review Area 2.

4. Multi-track processing: The CSB currently processes FOIA requests on two tracks – simple and complex.² The CSB review found that this two-track system is highly

¹ Automated processing greatly reduces some of the most labor-intensive and time-consuming aspects of manual FOIA processing. For example, rather than photocopying an original record, making redactions on the photocopy with tape or marker, then photocopying the redacted record again (sometimes multiple times to totally obscure the redacted information), automated processing allows an original record to be scanned once, redactions to be made with the drag of a mouse on the scanned copy, and releasable copies to be either printed or burned to a CD. In the CSB's experience, as much as half of processing time for any given set of records is consumed not by substantive review and exemption decision making, but by the purely clerical tasks of obscuring redacted passages and making multiple photocopies.

² Although not delineated as such, requests for expedited processing are effectively treated as a separate track because of the requirement for a determination within 10 calendar days. The CSB receives very few requests for expedited processing and effectively handles those it does receive. Therefore, the review focused on the two formally defined and more frequently used tracks.

effective in separating requests that require the processing of few or no records from those that require the processing of voluminous records. This separation results in simple requests being processed much more quickly; almost always within 20 working days.

However, the CSB noted the guidance issued by the U.S. Department of Justice, Office of Information and Privacy (OIP) to “consider a full range of questions where applicable to this improvement area.” See [FOIA Post](#), “Executive Order 13,392 Implementation Guidance.” Thus, the CSB review also considered “whether the existing number of tracks is sufficient” and “whether the existing contours between tracks” continue to be appropriate. See [Id.](#)

As to the first question, the CSB concluded that the current two tracks are generally sufficient, but that the complex track should be subdivided into two categories. The CSB found that the two tracks effectively make a “rough cut” between very simple requests and all of the more complex requests. This benefits the simple requests and results in their timely processing. However, the complex track does not sufficiently distinguish between moderately complicated and highly complicated requests. Thus, under the CSB’s first in/first out processing principle, a moderately complicated request may become “stuck” behind an earlier highly complicated request, even when processing of the moderate request could be completed in less time and with less work. This inhibits the CSB’s ability to target moderately complicated requests for accelerated processing and closure as a means of backlog reduction. Moreover, as the CSB integrates the resources of its FOIA support contractor, it would improve efficiency to be able to readily distinguish between moderately complex requests (which can be processed with in-house capabilities) and highly complicated requests (which are well-suited to the contractor’s capacity to initially process large volumes of records).

As to the second question, the CSB concluded that, especially in light of the subdivision of the complex track, the existing contours between and within tracks should be refined. The CSB found that the multi-track system would be more useful and understandable to both agency personnel and requesters if the boundaries between the simple and complex track are more precisely defined. Of course, the boundaries between the new subdivisions within the complex track also need to be clearly defined.

5. Backlog reduction: The CSB currently has a backlog of complex FOIA requests. Even before the issuance of Executive Order 13,392, the CSB had identified backlog reduction as a priority and was developing strategies to achieve progress in this area. The CSB review found that the primary source of the backlog is requests for entire investigation case files. As described above in Section A of this Plan, processing such requests is time-consuming and labor-intensive. The review found that the CSB’s current method of processing these requests – manually plowing through every record of every requested investigation file – is not well-suited to the agency’s limited FOIA resources and not likely to keep pace with the increasing number of requests for investigation records.

Based on these findings, the CSB concluded that, to reduce its backlog of complex FOIA requests, it will need to take a more focused and sophisticated approach to processing these requests. The CSB's strategy for achieving this improvement is twofold – (1) make the requests in the backlog more manageable and (2) apply additional resources to the processing of backlog requests.

To pursue the first element of this strategy, the CSB will implement measures to reduce, or at least manage, the number and complexity of requests in the backlog. First, the CSB will contact every requester with a request in the backlog to verify their continued interest in pursuing the request. This measure is warranted by the CSB's finding that many of the FOIA requests the CSB receives for investigative records are submitted by attorneys for parties in litigation arising out of incidents investigated by the CSB. Where such a lawsuit has been settled or its discovery period closed after the FOIA request was submitted, the requester may no longer need the records and be willing to permit the CSB to close the request.

Second, for those requests in which requester interest has been confirmed, the CSB will produce an index of the records in the investigation case files that are the subject of the requests. The CSB will then provide these indices to the requesters and hold a telephonic scoping conference with each one. The objective of the conference will be to review the index with the requester; explain which records are likely to be releasable or exempt from disclosure, respectively; and assist the requester in narrowing the scope of their request, if they wish to do so. This measure is warranted by the CSB's finding, discussed above in Review Area 1, that requesters often make broad requests simply because they do not know exactly what records are available and want to make sure they obtain those that are important to them.

After using these measures to reduce the number and complexity of requests in the backlog, the CSB will then pursue the second element of its strategy by applying additional processing resources to the remaining backlog requests. As noted in Section A of this Plan, the CSB has already awarded a contract for FOIA support services, including preliminary record review. The CSB will use this additional capacity to increase the number of records being processed in response to backlog requests. A law clerk will also be used to supplement the CSB's record processing resources. Applying these additional resources to streamlined requests should result in progress in reducing the CSB's backlog of complex FOIA requests.

D. Areas Chosen as Improvement Areas for Plan

Based on the results of its review, the CSB selected the following areas for improvement:

1. Informing the public on how to make more effective FOIA requests (including improvement of agency's FOIA Reference Guide)
2. Automated tracking capabilities
3. Electronic FOIA – automated processing
4. Multi-track processing

5. Backlog reduction

E. Improvement Area Plans

1. Informing the public on how to make more effective FOIA requests (including improvement of agency's FOIA Reference Guide)

Goal: To assist requesters by providing them with more detailed information about CSB investigation case files. **Target completion: 6/30/2007.**

Steps:

- Develop a procedure for producing publicly releasable records indices for investigation case files with high levels of public interest. **To be completed by 12/31/2006.**
- Prepare detailed written descriptions of the kinds of records typically included in investigation case files. **To be completed by 3/31/2007.**
- Prepare written explanations of the types of investigation records that are, respectively, typically releasable or exempt from disclosure. **To be completed by 3/31/2007.**
- Incorporate the two preceding items into the draft of the revised CSB FOIA Reference Guide. **To be completed by 6/30/2007.**

Goal: To prepare an updated CSB FOIA Reference Guide. **Target completion: 9/30/2007.**

Steps:

- Compile list of all changes resulting from the CSB FOIA Improvement Plan, or required by the Executive Order, to be incorporated into the updated CSB FOIA Reference Guide. **To be completed by 6/30/2007.**
- Review updated Department of Justice FOIA Reference Guide to identify revisions that may also be appropriate for inclusion in the updated CSB Guide. **To be completed by 6/30/2007.**
- Prepare updated CSB FOIA Reference Guide and post on CSB Web site. **To be completed by 9/30/2007.**

Measurement of Success:

- After the stated milestone, detailed written descriptions of the kinds of records typically included in investigation case files are available for dissemination to FOIA requesters.
- After the stated milestone, written explanations of the types of investigation records that are, respectively, typically releasable or exempt from disclosure are available for dissemination to FOIA requesters.

- An updated CSB FOIA Reference Guide, which incorporates the two items listed above and any appropriate revisions from the Department of Justice Guide, is published on the agency Web site.
- For investigations with high levels of public interest, the CSB is able to prepare and make available to requesters a publicly releasable case file records index.

2. Automated tracking capabilities

Goal: To purchase and install FOIA tracking and process management software.

Target completion: 10/1/2006.

Steps:

- Issue order to FOIA support contractor for purchase and installation of its FOIA tracking and process management software. **To be completed by 7/31/2006.**
- Install and test software. **To be completed by 10/1/2006.**
- Train CSB FOIA personnel on the request tracking components of the software. **To be completed by 10/1/2006.**
- Begin using the software to track the processing of all newly received FOIA requests. **To be completed by 10/1/2006.**

Measurement of Success:

- Beginning on the first day of Fiscal Year 2007, all newly received FOIA requests are tracked on the software.
- The Fiscal Year 2007 annual FOIA report is compiled automatically and submitted by or before the deadline.

3. Electronic FOIA – automated processing

Goal: To improve the efficiency of processing responsive records by implementing tools for electronic review, redaction, and production. **Target completion:**

12/31/2006.

Steps:

- As described above in Improvement Area Plan 2, install and test FOIA tracking and process management software, which includes integrated electronic review, redaction, and production capabilities. **To be completed by 10/1/2006.**
- Train CSB FOIA personnel on the electronic review, redaction, and production components of the software. **To be completed by 12/31/2006.**
- Begin using the software's electronic review, redaction, and production tools in the processing of complex FOIA requests for voluminous records. **To be completed by 12/31/2006.**

Measurement of Success:

- After the stated milestone, automated processing tools are used in the processing of complex FOIA requests for voluminous records.

4. Multi-track processing

Goal: To improve the usefulness of the current two-track processing system by (1) distinguishing between moderately complicated and highly complicated requests within the complex track and (2) refining the definitions for each track. **Target completion: 6/30/2007.**

Steps:

- Write precise definitions for the simple track and the complex track, to include objective parameters (e.g., estimated number of responsive records, estimated hours of search and/or review time, etc.) to guide the placement of requests in one track or the other. **To be completed by 3/31/2007.**
- Create “moderately complicated” and “highly complicated” subdivisions within the complex track and write precise definitions for each, to include objective parameters (e.g., estimated number of responsive records, estimated hours of search and/or review time, etc.) to guide the placement of requests in one subdivision or the other. **To be completed by 3/31/2007.**
- Begin applying the refined track definitions and the complex track subdivisions to all newly received FOIA requests. **To be completed by 3/31/2007.**
- Review all pending complex track requests and assign each one to either the moderately complicated or highly complicated subdivision. **To be completed by 6/30/2007.**

Measurement of Success:

- Refined track definitions and new complex track subdivisions are written and in place by the stated milestone.
- After the stated milestone, each newly received request is formally assigned to either the simple or complex track, and such assignments are consistent with the objective parameters of the applicable track definition.
- After the stated milestone, each pending complex request is formally assigned to either the moderately complicated or highly complicated track, and such assignments are consistent with the objective parameters of the applicable subdivision definition.

5. Backlog reduction

Goal: To reduce the number of unprocessed or partially processed FOIA requests in the CSB’s backlog by (1) making the requests in the backlog more manageable and

(2) applying additional resources to the processing of backlog requests. **Target completion: 9/30/2008.**

Steps:

- Contact every requester with a request in the backlog to verify their continued interest in pursuing the request. Administratively close those requests which the requester no longer wishes to pursue. **To be completed by 9/30/2006.**
- Where needed, produce an index of the records in each investigation case file that is the subject of a backlog request that remains open. Provide these indices to the requesters. **To be completed by 12/31/2006.**
- Hold a telephonic scoping conference with each requester who has a pending backlog request for an investigation case file, and encourage/assist the requester to appropriately narrow the scope of their request based on the index provided. **To be completed by 12/31/2006.**
- For each fiscal year, identify two backlog requests for investigation case files for which a substantial amount of processing has already been done, determine what remains to be done to close out the requests, and apply additional resources (e.g., FOIA support contractor, law clerk) to complete the processing of those requests. **To be completed by 9/30/2006; 9/30/2007; 9/30/2008.**
- In FY 2007 and 2008, identify two backlog requests for investigation case files received prior to the current fiscal year, develop a specific plan for leveraging available additional resources (e.g., FOIA support contractor, law clerk) to process the requests, and execute the plan to complete the processing of those requests. **To be completed by 3/31/2007; 3/31/2008.**
- In FY 2007 and 2008, identify two backlog requests for investigation case files received during the current fiscal year, develop a specific plan for leveraging available additional resources (e.g., FOIA support contractor, law clerk) to process the requests, and execute the plan to complete the processing of those requests. **To be completed by 6/30/2007; 6/30/2008.**

Measurement of Success:

- An increased proportion of requests for entire investigation case files are successfully narrowed in scope before the processing of records begins.
- Median number of days requests were pending as of the end of FY 2007 is lower than that figure for FY 2006. Median number of days requests were pending as of the end of FY 2008 is lower than that figure for FY 2007.
- The number of pending complex FOIA requests in the backlog is reduced by 10% between September 30, 2006, and September 30, 2008.

F. Improvement Time Periods

Areas anticipated to be completed by December 31, 2006

- Automated tracking capabilities
- Electronic FOIA – automated processing

Areas anticipated to be completed by December 31, 2007

- Informing the public on how to make more effective FOIA requests (including improvement of agency’s FOIA Reference Guide)
- Multi-track processing

Areas anticipated to be completed after December 31, 2007

- Backlog reduction