



United States Department of Justice Office of Information Policy

Refresher Training on the 2008 Guidelines

for

Preparation of Annual FOIA Reports

Melanie Ann Pustay

Director

Office of Information Policy

Introduction

The OPEN Gov't Act of 2007 amended subsection (e) of the FOIA, adding new reporting requirements to the Annual Report.

Significantly, the Report must now provide information for principal components and for the agency overall.

New Data Elements

- 1. Number of times Exemption 3 statutes were relied upon**
- 2. Average age of pending requests**
- 3. Average and range of time to process requests**
- 4. Number of requests processed in 1-20, 21-40 . . . day increments**
- 5. Median, average, and range of time to process requests where information was granted**

- 6. Median, average and range of time to process appeals**
- 7. Ten oldest pending requests and ten oldest pending appeals**
- 8. Number of requests for expedited processing which were granted and denied, median and average time to do so, and the number granted/denied within the ten-day time limit**
- 9. Number of requests for a fee waiver which were granted and denied and the median and average time to do so**
- 10. Concise descriptions of FOIA exemptions and overview of categories of agency records to which the exemptions apply.**

Department of Justice 2008 Guidelines for Agency Preparation of Annual FOIA Reports

- **Include the new reporting requirements**
- **Define the types of requests to include in the Report**
- **Add new reporting requirements on backlogs**
- **Clarify previously existing requirements**

Types of Requests to Include in Report

Continue to give incoming requests the potential benefit of access under both the FOIA and the Privacy Act (PA).

However, do not include Privacy Act requests in the Annual Report when the FOIA is not used in any way to process the request.

- Do not include PA requests when you search exclusively within PA “system of records” and you do not claim any PA exemptions.
- On the other hand, include PA requests when FOIA is utilized in the response.
 - A search goes beyond PA “system of records,” and so involves a FOIA search, or
 - PA exemptions apply to the request, and so access the FOIA is then considered.



Guidance Points

- **Ensure accurate data and reliable systems so that the Report is accurate and meaningful.**
- **Use the Guidance template format.**
- **Count days from receipt of a perfected request; use working days, unless otherwise stated.**
- **As has been done in the past, Section V of Report reflects both perfected & non-perfected “purported” requests, whereas Section VII (“Response Time”) reflects perfected requests.**

Guidance Points (continued)

- **Calculating Median and Average Age/Time**

Median for Components: The middle number. With numbers 20, 35 and 80, the median request age is 35.

Median for Agency: The agency's median request age is not the median age of all of the components' medians combined.

Rather, determine the agency median from a comprehensive list of ages of all requests of all components.



- **Calculating Median and Average Age/Time (continued)**

Average for Components: The sum of the ages of requests divided by the number of requests. With numbers 20, 35 and 80, the average request age is 45.

Average for Agency: Provide the weighted average. For each component, multiply the number of requests by the average age of those requests. Add the resulting numbers from each component. Then add the number of requests from all components. Finally, divide the first number by the total number of requests. This is the average age of the agency's requests.

I. Basic Information Regarding Report

- Provide the standard basic information.

II. Making a FOIA Request

- Provide components' contact information for receipt of requests.
- Describe why some requests are not granted & describe the general categories of exempt records at the agency (*new)

III. Acronyms, Definitions & Exemptions

- Include agency acronyms and definitions of terms used in the Report (These have been revised.)
- Include concise descriptions of the Exemptions (*new)

IV. Exemption 3 Statutes



Statute	Type of Information Withheld	Case Citation	Number of Times Relied upon per Component	Total Number of Times Relied upon by Agency
			Component A # Component B #	
			Component A # Component B #	

V. FOIA Requests

- **For charts in this Section, include all “purported” FOIA requests, both perfected and non-perfected.**
- **Non-perfected requests are further reflected in various columns in Chart B (1) below, which describes the disposition of all processed requests.**

V. FOIA Requests

A. Received, Processed & Pending FOIA Requests

Column 1

Column 2

Column 3

Column 4

	Number of Requests Pending as of Start of Fiscal Year	Number of Requests Received in Fiscal Year	Number of Requests Processed in Fiscal Year	Number of Requests Pending as of End of Fiscal Year
Component A				
Component B				
AGENCY OVERALL				

B. (2) Disposition of FOIA Requests – “Other” Reasons for “Full Denials Based on Reasons Other than Exemptions”

Component	Description of “Other” Reasons for Denials from Chart B (1) & Number of Times Those Reasons Were Relied upon	TOTAL
Component A	Description # Description #	
Component B	Description # Description #	

VI. Appeals of Initial Determinations of FOIA Requests

A. Received, Processed & Pending Appeals

Column 1

Column 2

Column 3

Column 4

Number of Appeals Pending as of Start of Fiscal Year	Number of Appeals Received in Fiscal Year	Number of Appeals Processed in Fiscal Year	Number of Appeals Pending as of End of Fiscal Year

B. Disposition of Administrative Appeals – All Processed Appeals

Number Affirmed on Appeal	Number Partially Affirmed & Partially Reversed/Remanded on Appeal	Number Completely Reversed/Remanded on Appeal	Number Closed for Other Reasons	TOTAL

C. (2) Reasons for Denial on Appeal – Reasons Other than Exemptions

No Records	Records Referred at Initial Request Level	Request W/drawn	Fee-Related Reason	Records not Reasonably Described	Improper Request for Other Reasons	Not Agency Record	Duplicate Req. or Appeal	In Litigation	Appeal Based Solely on Denial of Request for Exp. Process.	Other *Explain in chart below

C. (3) Reasons for Denial on Appeal – “Other” Reasons from Section VI, C (2) Chart

Description of “Other” Reasons for Denial on Appeal from Chart C (2) & Number of Times Those Reasons Were Relied upon	TOTAL
<p data-bbox="566 851 999 911">Description #</p> <p data-bbox="566 1003 999 1063">Description #</p>	

C. (4) Response Time for Administrative Appeals

Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days

VII. FOIA Requests: Response Time for Processed & Pending Requests

- **Include response times for perfected requests only.**
- **Begin counting from date of receipt of the perfected request.**
- **If using a multi-track system, report for each track separately. At a minimum, report separately requests which have been granted expedited processing.**



E. Pending Requests – Ten Oldest Pending Perfected Requests (continued)

Agency Overall	10 th Oldest Request & Number of Days Pending	9 th	8 th	7 th	6 th	5 th	4 th	3 rd	2 nd	Oldest Request & Number of Days Pending
	Date									
	Number of Days									

VIII. Requests for Expedited Processing & Requests for Fee Waiver

- Report only requests for expedited processing and requests for fee waiver which you have adjudicated, i.e., granted or denied.
- Do not report the requests which became moot for various reasons and were, thus, neither granted nor denied.
- Request for a fee waiver -- Count only the days spent adjudicating the request for a fee waiver (i.e., the time taken to determine whether to grant or deny the request.)

VIII. Requests for Expedited Processing & Requests for Fee Waiver (cont'd)

- Request for expedited processing – Count calendar days starting the day request for expedited processing is received through the day you provide notice to Requester of your determination to grant or deny the request for expedited processing.
- Section VIII is no longer an optional Section.

A. Requests for Expedited Processing

- Count calendar days, not working days.

	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate	Number Adjudicated Within Ten Calendar Days
Component A					
Component B					
AGENCY OVERALL					

B. Requests for Fee Waiver
- Count working days.

	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate
Component A				
Component B				
AGENCY OVERALL				

IX. FOIA Personnel & Costs

Column 1

Column 2

	PERSONNEL			COSTS		
	Number of “Full-Time FOIA Employees”	Number of “Equivalent Full-Time FOIA Employees”	Total Number of “Full-Time FOIA Staff” (Sum of Columns 1 and 2)	Processing Costs (At initial request and appeal levels)	Litigation- Related Costs	Total Costs
Comp. A						
Comp. B						
Agency Overall						

A. Personnel



- **“Full-time FOIA employee”**: Performs FOIA duties 100% of the time.
- **“Equivalent full-time FOIA employee”**: Created by adding the percentages of time spent on FOIA duties by employees doing less than full-time FOIA duties.
- **Employees performing less than full-time FOIA duties are either:**
 - a) **Part-time employees who perform FOIA duties all or part of the time, OR**
 - b) **Full-time employees who perform FOIA duties less than 100% of the time.**

Examples of how to calculate the number of “Equivalent full-time FOIA employees”

Example #1

Assume three full-time employees with part-time or occasional FOIA duties. If Employee #1 performs FOIA duties 50% of the time, and Employee #2 and #3 each perform FOIA duties 25% of the time, together they perform 100% (50+25+25) FOIA duties. Therefore, the FOIA duties of these three employees are the equivalent of 1 “full-time FOIA employee,” because a “full-time FOIA employee” is equal to 100%.

Thus, the number “1” would be reported in Column 2 of the chart.

Example #2

Assume six full-time employees with part-time or occasional FOIA duties. If Employees #1, #2, #3 and #4 each perform FOIA duties 50% of the time, Employee #5 performs FOIA duties 75% of the time, and Employee #6 performs FOIA duties 10% of the time, together they perform 285% ($50 \times 4 + 75 + 10$) FOIA duties. Because a “full-time FOIA employee” is equal to 100%, the FOIA duties of these six employees are the equivalent of 2.85 “full-time FOIA employees.”

Thus, the number “2.85” would be reported in Column 2 of the chart.

Example #3

Assume Employee #1 is a part-time employee who works 20 hours/week and performs FOIA duties half of his time. As a part-time employee working 20 hours/week, the most FOIA work he could perform is 50%. Because he performs FOIA duties only half of his part-time schedule, he performs 25% FOIA duties (i.e., half of the 50% max.). Assume Employee #2 is a part-time employee who works 32 hours/week and performs FOIA duties all of her time. As a part-time employee working 32 hours/week, the most FOIA work she could perform is 80%. Because she performs FOIA duties all of her time, she performs 80% FOIA duties. Together, the employees perform 105% (25+80) FOIA duties. Therefore, their combined FOIA duties are the equivalent of 1.05 “full-time FOIA employees.”

Thus, the number “1.05” would be reported in Column 2 of the chart.

B. Costs



- **Processing Costs**

- **costs for processing at both the initial and administrative appeal levels**
- **agency budget will often be useful resource for this information.**

- **Litigation Costs**

- **agency budget will often be useful resource for this information.**

X. Fees Collected for Processing Requests



	Total Amount of Fees Collected	Percentage of Total Processing Costs
Component A		
Component B		
AGENCY OVERALL		

XI. FOIA Regulations

- **Provide an electronic link to the agency's FOIA regulations, including the fee schedule.**

XII. Backlogs, Consultations & Comparisons

A. Backlogs of FOIA Requests and Administrative Appeals

	Number of Backlogged Requests as of End of Fiscal Year	Number of Backlogged Appeals as of End of Fiscal Year
Component A		
Component B		
AGENCY OVERALL		

B. Consultations on FOIA Requests – Received, Processed, and Pending Consultations

(Note: Report consultations received from other agencies, not sent to other agencies)

	Column 1	Column 2	Column 3	Column 4
	Number Received that Were <u>Pending</u> at Your Agency as of <u>Start</u> of the Fiscal Year	Number <u>Received</u> During the Fiscal Year	Number Received that Were <u>Processed</u> by Your Agency During the Fiscal Year	Number Received that Were <u>Pending</u> at Your Agency as of <u>End</u> of the Fiscal Year
Component A				
Component B				
AGENCY OVERALL				

C. Consultations on FOIA Requests – Ten Oldest Pending Consultations (continued)

Agency Overall	10 th Oldest Consult. & Number of Days Pending	9 th	8 th	7 th	6 th	5 th	4 th	3 rd	2 nd	Oldest Consult. & Number of Days Pending
	Date									
	Number of Days									

**D. Comparison of Numbers of Requests Received, Processed & Backlogged
(Previous Annual Report vs. Current Annual Report)**

	NUMBER OF REQUESTS RECEIVED		NUMBER OF REQUESTS PROCESSED	
	Number Received During Fiscal Year from Last Year's Annual Report	Number Received During Fiscal Year from Current Annual Report	Number Processed During Fiscal Year from Last Year's Annual Report	Number Processed During Fiscal Year from Current Annual Report
Comp A				
Comp B				
Agency Overall				

(To be included beginning with the 2009 Annual Report)

Column 1

Column 2

	Number of Backlogged Requests as of End of the Fiscal Year from Previous Annual Report	Number of Backlogged Requests as of End of the Fiscal Year from Current Annual Report
Component A		
Component B		
AGENCY OVERALL		

E. Comparison of Numbers of Administrative Appeals Received, Processed & Backlogged

(Previous Annual Report vs. Current Annual Report)

	NUMBER OF APPEALS RECEIVED		NUMBER OF APPEALS PROCESSED	
	Number Received During Fiscal Year from Last Year's Annual Report	Number Received During Fiscal Year from Current Annual Report	Number Processed During Fiscal Year from Last Year's Annual Report	Number Processed During Fiscal Year from Current Annual Report
Comp A				
Comp B				
Agency Overall				

(To be included beginning with the 2009 Annual Report)

Column 1

Column 2

	Number of Backlogged Appeals as of End of the Fiscal Year from Previous Annual Report	Number of Backlogged Appeals as of End of the Fiscal Year from Current Annual Report
Component A		
Component B		
AGENCY OVERALL		

F. Discussion of Other FOIA Activities (Optional)

- **Report any further information about agency efforts to improve FOIA administration.**

Submitting the Annual Report

- Submit Annual Reports to the DOJ, Office of Information Policy (OIP) by or before **January 4th** for review.
- Once cleared by OIP, agencies shall post their Annual Report on their FOIA website. The Reports will also be posted on the DOJ's centralized Annual FOIA Report link.
- Maintain previous Reports on agency website for at least seven years.