



Chemical Safety and Hazard Investigation Board

Annual Freedom of Information Act (FOIA) Report for Fiscal Year 2009

February 5, 2010

I. BASIC INFORMATION REGARDING REPORT

1. Person to be contacted with questions about the Report:

Christopher Kirkpatrick
FOIA Officer
Chemical Safety and Hazard Investigation Board
Suite 650
2175 K Street, NW
Washington, DC 20037
(202) 261-7600

2. Electronic link for access to the Report on the agency Web site:

http://www.csb.gov/UserFiles/file/legal/FOIA_Report_FY_2009.pdf.

3. How to obtain a copy of the Report in paper form:

You may obtain a copy of this Report in paper form by mailing a written request to the person listed in section I.1., above.

II. MAKING A FOIA REQUEST

1. All FOIA requests for records believed to be in the possession of the Chemical Safety and Hazard Investigation Board (CSB) are received at the following address:

Chemical Safety and Hazard Investigation Board
ATTN: FOIA Officer
Suite 650
2175 K Street, NW
Washington, DC 20037
(202) 261-7600

Detailed information and instructions on how to make a FOIA request are provided in the [CSB FOIA Reference Guide](#), which can be accessed on the agency Web site at: http://www.csb.gov/UserFiles/file/legal/CSB_FOIAGuide.pdf. You also may obtain

a copy of the Guide in paper form by mailing a written request to the address listed above.

2. Brief description of why some requests are not granted and overview of certain general categories of CSB records to which the FOIA exemptions apply.

Why some requests are not granted:

- The requested records are exempt from disclosure pursuant to one of the nine exemptions under the FOIA.
- The requested records do not exist or are not yet in existence.
- The requested records were properly disposed of prior to the date of the request.
- The request would require the agency to compile or create records solely for the purpose of satisfying that request.
- The requester failed to comply with administrative requirements, e.g., reasonable description of records, agreement to pay fees.

Overview of certain general categories of CSB records to which FOIA exemptions apply:

- Records submitted to the CSB by the subjects of agency investigations that contain trade secrets and/or confidential commercial or financial information – Exemption 4.
- Records of communications between CSB personnel, or between CSB personnel and the personnel of other federal agencies, that are protected by a legal privilege, e.g., deliberative process privilege, attorney-client privilege – Exemption 5.
- Records containing private personal information about individuals, including Personally Identifiable Information – Exemption 6.

III. ACRONYMS, DEFINITIONS, AND EXEMPTIONS

1. Agency-specific acronyms or terms used in this Report:
CSB – the Chemical Safety and Hazard Investigation Board.
2. Definitions of terms used in this Report:
 - a. **Administrative Appeal** – a request to a federal agency asking that it review at a higher administrative level a FOIA determination made by the agency at the initial request level.
 - b. **Average Number** – the number obtained by dividing the sum of a group of numbers by the quantity of numbers in the group. For example, of 3, 7, and 14, the average number is 8.
 - c. **Backlog** – the number of requests or administrative appeals that are pending at an agency at the end of the fiscal year that are beyond the statutory time period for a response.

- d. **Component** – for agencies that process requests on a decentralized basis, a “component” is an entity, also sometimes referred to as an Office, Division, Bureau, Center, or Directorate, within the agency that processes FOIA requests. The FOIA now requires that agencies include in their Annual FOIA Report data for both the agency overall and for each principal component of the agency.
- e. **Consultation** – the procedure whereby the agency responding to a FOIA request first forwards a record to another agency for its review because that other agency has an interest in the document. Once the agency in receipt of the consultation finishes its review of the record, it responds back to the agency that forwarded it. That agency, in turn, will then respond to the FOIA requester.
- f. **Exemption 3 Statute** – a federal statute that exempts information from disclosure and which the agency relies on to withhold information under subsection (b)(3) of the FOIA.
- g. **FOIA Request** – a FOIA request is generally a request to a federal agency for access to records concerning another person (i.e., a “third-party” request), or concerning an organization, or a particular topic of interest. FOIA requests also include requests made by requesters seeking records concerning themselves (i.e., “first-party” requests) when those requesters are not subject to the Privacy Act, such as non-U.S. citizens. Moreover, because all first-party requesters should be afforded the benefit of both the access provisions of the FOIA as well as those of the Privacy Act, FOIA requests also include any first-party requests where an agency determines that it must search beyond its Privacy Act “systems of records” or where a Privacy Act exemption applies, and the agency looks to FOIA to afford the greatest possible access. All requests which require the agency to utilize the FOIA in responding to the requester are included in this Report.

Additionally, a FOIA request includes records referred to the agency for processing and direct response to the requester. It does not, however, include records for which the agency has received a consultation from another agency. (Consultations are reported separately in Section XII of this Report.)
- h. **Full Grant** – an agency decision to disclose all records in full in response to a FOIA request.
- i. **Full Denial** – an agency decision not to release any records in response to a FOIA request because the records are exempt in their entirety under one or more of the FOIA exemptions, or because of a procedural reason, such as when no records could be located.
- j. **Median Number** – the middle, not average, number. For example, of 3, 7, and 14, the median number is 7.
- k. **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 granted expedited processing are placed in yet another track. Requests in each track are processed on a first in/first out basis.

- i. **Expedited Processing** – an agency will process a FOIA request on an expedited basis when a requester satisfies the requirements for expedited processing as set forth in the statute and in agency regulations.
 - ii. **Simple Request** – a FOIA request that an agency using multi-track processing places in its fastest (non-expedited) track based on the low volume and/or simplicity of the records requested.
 - iii. **Complex Request** – a FOIA request that an agency using multi-track processing places in a slower track based on the high volume and/or complexity of the records requested.
 - l. **Partial Grant/Partial Denial** – in response to a FOIA request, an agency decision to disclose portions of the records and to withhold other portions that are exempt under the FOIA, or to otherwise deny a portion of the request for a procedural reason.
 - m. **Pending Request or Pending Administrative Appeal** – a request or administrative appeal for which an agency has not taken final action in all respects.
 - n. **Perfect Request** – a request for records which reasonably describes such records and is made in accordance with published rules stating the time, place, fees (if any) and procedures to be followed.
 - o. **Processed Request or Processed Administrative Appeal** – a request or administrative appeal for which an agency has taken final action in all respects.
 - p. **Range in Number of Days** – the lowest and highest number of days to process requests or administrative appeals.
 - q. **Time Limits** – the time period in the statute for an agency to respond to a FOIA request (ordinarily twenty working days from receipt of a perfected FOIA request).
3. Concise descriptions of the nine FOIA exemptions:
- a. **Exemption 1:** classified national defense and foreign relations information.
 - b. **Exemption 2:** internal agency rules and practices.
 - c. **Exemption 3:** information that is prohibited from disclosure by another federal law.
 - d. **Exemption 4:** trade secrets and other confidential business information.
 - e. **Exemption 5:** inter-agency or intra-agency communications that are protected by legal privileges.
 - f. **Exemption 6:** information involving matters of personal privacy.
 - g. **Exemption 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 person 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 investigations 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.

- h. **Exemption 8:** information relating to the supervision of financial institutions.
- i. **Exemption 9:** geological information on wells.

IV. EXEMPTION 3 STATUTES

A. Exemption 3 Statutes Relied upon to Withhold Information

Statute	Type of Information Withheld	Case Citation	Total Number of Times Relied upon by Agency¹
None	Not Applicable	Not Applicable	0

¹ The CSB processes FOIA requests and administrative appeals exclusively on a centralized basis. Thus, the CSB has no data to report by component. For this reason, in Section IV and all of the following sections of this Report, FOIA data is reported for the agency overall.

V. FOIA REQUESTS**A. Received, Processed and Pending FOIA Requests**

	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
AGENCY OVERALL	32	44	46	30

B. (1) Disposition of FOIA Requests – All Processed Requests

	Number of Full Grants	Number of Partial Grants/ Partial Denials	Number of Full Denials Based on Exemptions	Number of Full Denials Based on Reasons Other Than Exemptions									TOTAL
				No Records	All Records Referred to Another Component or Agency	Request Withdrawn	Fee-Related Reason	Records not Reasonably Described	Improper FOIA Request for Other Reason	Not Agency Record	Duplicate Request	Other *Explain in chart below	
AGENCY OVERALL	2	8	15	14	0	6	0	0	0	0	1	0	46

B. (2) Disposition of FOIA Requests – “Other” Reasons for “Full Denials Based on Reasons Other than Exemptions” from Section V, B (1) Chart

	Description of “Other” Reasons for Denials from Chart B (1) & Number of Times Those Reasons Were Relied upon	TOTAL
Agency Overall	None	0

B. (3) Disposition of FOIA Requests – Number of Times Exemptions Applied

	Ex. 1	Ex. 2	Ex. 3	Ex. 4	Ex. 5	Ex. 6	Ex. 7(A)	Ex. 7(B)	Ex. 7(C)	Ex. 7(D)	Ex. 7(E)	Ex. 7(F)	Ex. 8	Ex. 9
AGENCY OVERALL	0	2	0	6	6	6	15	0	5	5	7	0	0	0

VI. ADMINISTRATIVE APPEALS OF INITIAL DETERMINATIONS OF FOIA REQUESTS

A. Received, Processed and Pending Administrative Appeals

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
0	3	3	0

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 of Appeals Closed for Other Reasons	TOTAL
2	1	0	0	3

C. (1) Reasons for Denial on Appeal – Number of Times Exemptions Applied

Ex. 1	Ex. 2	Ex. 3	Ex. 4	Ex. 5	Ex. 6	Ex. 7(A)	Ex. 7(B)	Ex. 7(C)	Ex. 7(D)	Ex. 7(E)	Ex. 7(F)	Ex. 8	Ex. 9
0	0	0	0	2	1	0	0	1	1	1	0	0	0

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

No Records	Records Referred at Initial Request Level	Request Withdrawn	Fee-Related Reason	Records not Reasonably Described	Improper Request for Other Reasons	Not Agency Record	Duplicate Request or Appeal	Request in Litigation	Appeal Based Solely on Denial of Request for Expedited Processing	Other *Explain in chart below
0	0	0	0	0	0	0	0	0	0	0

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
None	0

C. (4) Response Time for Administrative Appeals

Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
20	23	20	30

C. (5) Ten Oldest Pending Administrative Appeals

	10 th Oldest Appeal	9 th	8 th	7 th	6 th	5 th	4 th	3 rd	2 nd	Oldest Appeal
Date of Receipt of Ten Oldest Appeals	None	None	None	None	None	None	None	None	None	None
Number of Days Pending	0	0	0	0	0	0	0	0	0	0

VII. FOIA REQUESTS: RESPONSE TIME FOR PROCESSED AND PENDING REQUESTS

A. Processed Requests – Response Time for All Processed Perfected Requests

	SIMPLE				COMPLEX				EXPEDITED PROCESSING			
	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
AGENCY OVERALL	20	19	1	20	268	360	8	1053	0	0	0	0

B. Processed Requests – Response Time for Perfected Requests in Which Information Was Granted

	SIMPLE				COMPLEX				EXPEDITED PROCESSING			
	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
AGENCY OVERALL	20	14	1	20	486	471	23	1053	0	0	0	0

C. Processed Requests – Response Time in Day Increments

Simple Requests

	1-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401+ Days	TOTAL
AGENCY OVERALL	32	0	0	0	0	0	0	0	0	0	0	0	0	32

Complex Requests

	1-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401+ Days	TOTAL
AGENCY OVERALL	1	2	0	1	0	0	0	1	0	0	3	0	6	14

Requests Granted Expedited Processing

	1-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days	181-200 Days	201-300 Days	301-400 Days	401+ Days	TOTAL
AGENCY OVERALL	0	0	0	0	0	0	0	0	0	0	0	0	0	0

D. Pending Requests – All Pending Perfected Requests

	SIMPLE			COMPLEX			EXPEDITED PROCESSING		
	Number Pending	Median Number of Days	Average Number of Days	Number Pending	Median Number of Days	Average Number of Days	Number Pending ²	Median Number of Days	Average Number of Days
AGENCY OVERALL	3	10	9	25	293	357	2	139	139

E. Pending Requests – Ten Oldest Pending Perfected Requests

Agency Overall	10 th Oldest Request and Number of Days Pending	9 th	8 th	7 th	6 th	5 th	4 th	3 rd	2 nd	Oldest Request and Number of Days Pending
		2/14/08 408	9/28/07 501	9/28/07 501	9/7/07 516	9/5/07 518	8/7/07 524	4/4/07 625	3/26/07 632	12/12/06 701

² These are two requests, from different requesters, for substantially the same records. Consistent with the expedited processing status accorded to the requests, releases of the records of greatest interest to the requesters were completed within 30 working days. The requests remain open, however, because some other records within the scope of the requests require complex disclosure determinations.

VIII. REQUESTS FOR EXPEDITED PROCESSING AND REQUESTS FOR FEE WAIVER

A. Requests for Expedited Processing

	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate	Number Adjudicated Within Ten Calendar Days
AGENCY OVERALL	2	0	10	10	2

B. Requests for Fee Waiver

	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate
AGENCY OVERALL	2	2	24	24

IX. FOIA PERSONNEL AND COSTS

	PERSONNEL			COSTS		
	Number of “Full-Time FOIA Employees”	Number of “Equivalent Full-Time FOIA Employees”	Total Number of “Full-Time FOIA Staff” (The sum of Columns 1 & 2)	Processing Costs (At initial request and appeal levels)	Litigation- Related Costs	Total Costs
AGENCY OVERALL	0	0.39	0.39	\$74,377	\$0	\$74,377

X. FEES COLLECTED FOR PROCESSING REQUESTS

	Total Amount of Fees Collected	Percentage of Total Costs
AGENCY OVERALL	\$2,844	4%

XI. FOIA REGULATIONS

The CSB FOIA regulations, including a fee schedule, can be accessed on the CSB Web site at: <http://www.csb.gov/UserFiles/file/legal/FOIARegulation.pdf>.

XII. BACKLOGS, CONSULTATIONS, AND 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
AGENCY OVERALL	26	0

Discussion/explanation of backlog:

In Fiscal Year (FY) 2008, the CSB reduced its FOIA backlog by 30%. That did not occur this year for several reasons. In FY 2009, the number of FOIA requests received by the CSB increased by almost 40 percent. The time available for processing these requests declined, however, by over 30 percent. While the CSB still managed to process a greater number of overall requests during the past fiscal year, the overall backlog grew by one request. However, the average number of days to complete processing of complex requests jumped from 391 days to 471 days. The average number of days backlogged complex requests had been pending also increased by 50 days. These dramatic jumps in requests, processing times, and pending times are a clear warning that further reduction of the backlog will be difficult unless the CSB invests additional resources into FOIA processing. Accordingly, the CSB has requested two additional positions in its budget requests who would have significant FOIA processing responsibilities.

During FY 2009, the CSB did achieve improvements to the agency's records management function, and the interface between the records management and FOIA functions, that should set the stage for future backlog reduction. The agency's newly-hired Information Assurance Specialist began a systematic effort to ensure the integrity, quality, and utility of the CSB's investigation case file records, which are the most frequent subject of FOIA requests. As a result of that effort, which is starting to bear fruit, newer investigation case files will be complete and ready for FOIA processing within a short time after an investigation closes – about the time the first FOIA requests for the investigation are received. Having these records promptly available for FOIA review should help the CSB to avoid falling behind in the first place. In another significant improvement, FOIA staff worked with Information Management staff to develop a method for conducting FOIA reviews directly in the CSB's electronic records management program. Previously, the CSB had been implementing a stand-alone electronic FOIA processing system. Although that solution made sense when the investigation records were mostly maintained in paper form, it proved to be a cumbersome and unnecessary approach for processing records already in electronic form. The new capability to review records in their native format where they reside should also greatly enhance FOIA processing efficiency going forward.

Nevertheless, the fact remains that CSB investigation files are voluminous – containing thousands of individual records – and complex – involving records that contain trade secrets/confidential business information, sensitive security information, and privileged information. While efficient handling and management of those records is a necessary condition for effective FOIA processing, it is not sufficient to ensure that releasable records are processed and disclosed as promptly as possible. The CSB will need to invest substantially more labor hours in order to reduce or eliminate its backlog and to improve FOIA processing times. Our best estimate is that at least 1.5 FTEs would be required starting in FY 2011 to maintain a robust FOIA program – including the proactive discretionary release of information, prompt processing of all requests, and the elimination of the backlog by the close of FY 2012.

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

	Number of Consultations Received from Other Agencies that Were <u>Pending</u> at CSB as of <u>Start</u> of the Fiscal Year	Number of Consultations <u>Received</u> from Other Agencies During the Fiscal Year	Number of Consultations Received from Other Agencies that Were <u>Processed</u> by CSB During the Fiscal Year	Number of Consultations Received from Other Agencies that Were <u>Pending</u> at CSB as of <u>End</u> of the Fiscal Year
AGENCY OVERALL	0	0	0	0

C. Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at CSB

Agency Overall	10th Oldest Consultation and Number of Days Pending	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Consultation and Number of Days Pending
	None 0	None 0	None 0	None 0	None 0	None 0	None 0	None 0	None 0	None 0

D. Comparison of Numbers of Requests from Previous and Current Annual Report – Requests Received, Processed, and Backlogged

	NUMBER OF REQUESTS <u>RECEIVED</u>		NUMBER OF REQUESTS <u>PROCESSED</u>	
	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
AGENCY OVERALL	32	44	40	46

	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
AGENCY OVERALL	25	26

E. Comparison of Numbers of Administrative Appeals from Previous and Current Annual Report – Appeals Received, Processed, and Backlogged

	NUMBER OF APPEALS <u>RECEIVED</u>		NUMBER OF APPEALS <u>PROCESSED</u>	
	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
AGENCY OVERALL	0	3	0	3

	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
AGENCY OVERALL	0	0