

Freedom of Information Act (FOIA) Annual Report

FY 2006

National Capital Planning Commission

Dated: January 31, 2007

I. Basic Information Regarding Report

A. Name, title, address, and telephone number of person(s) to be contacted with questions about the report.

Lois Schiffer, General Counsel
Chief FOIA Officer and Public Liaison for FOIA
National Capital Planning Commission
401 -9th Street, NW North Lobby 5th Floor
Washington, DC 20004
Telephone: 202-482-7223
Lois.Schiffer@ncpc.gov

B. Electronic address for report on the World Wide Web.

http://www.ncpc.gov/publications_press/FreedomofInformationActReport2006.pdf.

C. How to obtain a copy of the report in paper form.

Contact Chief FOIA Officer at the address, telephone number, or email address listed above.

II. How to Make a FOIA Request

A. Names, addresses, and telephone numbers of all individual agency components and offices that receive FOIA requests.

See http://www.ncpc.gov/privacy_foia.html

Send requests to: National Capital Planning Commission
401 – 9th Street, N.W. North Lobby 5th Floor
Washington, D.C. 20004
Attn.: Chief FOIA Officer

B. Brief description of the agency's response-time ranges.

With the exception of four related complex requests (two carry-overs from FY 2005) that required many hours of searching and hundreds of pages for response, NCPC responded to all FY 2006 requests within a few days of receipt.

C. Brief description of why some requests are not granted.

All requests were granted unless NCPC had no responsive documents or, in the case of the four large complex requests (see above) some documents were redacted or withheld on the basis of Exemption 5.

III. Definitions of Terms and Acronyms Used in the Report (to be included in each report)

A. Agency-specific acronyms or other terms.

None.

B. Basic terms, expressed in common terminology.

1. FOIA/PA request -- Freedom of Information Act/Privacy Act request. A FOIA request is generally a request for access to records concerning a third party, an organization, or a particular topic of interest. A Privacy Act request is a request for records concerning oneself; such requests are also treated as FOIA requests. (All requests for access to records, regardless of which law is cited by the requester, are included in this report.)
2. Initial Request -- a request to a federal agency for access to records under the Freedom of Information Act.
3. Appeal -- a request to a federal agency asking that it review at a higher administrative level a full denial or partial denial of access to records under the Freedom of Information Act, or any other FOIA determination such as a matter pertaining to fees.
4. Processed Request or Appeal -- a request or appeal for which an agency has taken a final action on the request or the appeal in all respects.
5. 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 in each track are processed on a first-in/first out basis. A requester who has an urgent need for records may request expedited processing (see below).
6. Expedited processing -- an agency will process a FOIA request on an expedited basis when a requester has shown an exceptional need or urgency for the records which warrants prioritization of his or her request over other requests that were made earlier.

7. Simple request -- a FOIA request that an agency using multi-track processing places in its fastest (non-expedited) track based on the volume and/or simplicity of records requested.

8. Complex request -- a FOIA request that an agency using multi-track processing places in a slower track based on the volume and/or complexity of records requested.

9. Grant -- an agency decision to disclose all records in full in response to a FOIA request.

10. Partial grant -- an agency decision to disclose a record in part in response to a FOIA request, deleting information determined to be exempt under one or more of the FOIA's exemptions; or a decision to disclose some records in their entirety, but to withhold others in whole or in part.

11. Denial -- an agency decision not to release any part of a record or records in response to a FOIA request because all the information in the requested records is determined by the agency to be exempt under one or more of the FOIA's exemptions, or for some procedural reason (such as because no record is located in response to a FOIA request).

12. Time limits -- the time period in the Freedom of Information Act for an agency to respond to a FOIA request (ordinarily 20 working days from proper receipt of a "perfected" FOIA request).

13. "Perfected" request -- a FOIA request for records which adequately describes the records sought, which has been received by the FOIA office of the agency or agency component in possession of the records, and for which there is no remaining question about the payment of applicable fees.

14. Exemption 3 statute -- a separate federal statute prohibiting the disclosure of a certain type of information and authorizing its withholding under FOIA subsection (b)(3).

15. Median number -- the middle, not average, number. For example, of 3, 7, and 14, the median number is 7.

16. 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.

IV. Exemption 3 Statutes

A. List of Exemption 3 statutes relied on by agency during current fiscal year.

None.

1. Brief description of type(s) of information withheld under each statute. n/a.

2. Statement of whether a court has upheld the use of each statute. If so, then cite example. n/a (I am not aware of any NCPC FOIA decision that has been challenged by lawsuit.)

V. Initial FOIA/PA Access Requests

A. Numbers of initial requests.

• Total of the numbers in Lines 1 and 2, minus the number in Line 3, should equal the number in Line 4.

- 1. Number of requests pending as of end of preceding fiscal year 2 (interrelated complex requests)_____
- 2. Number of requests received during current fiscal year 5 _____
- 3. Number of requests processed during current fiscal year 7 _____
- 4. Number of requests pending as of end of current fiscal year 0 .

(Enter this number also in Line VII.B.1.)

B. Disposition of initial requests.

- 1. Number of total grants 1 (note- for two requests we had no responsive documents)._____
- 2. Number of partial grants 4 _____
- 3. Number of denials 0 _____

a. number of times each FOIA exemption used

(counting each exemption once per request) - n/a (see above).

- (1) Exemption 1 0 _____
- (2) Exemption 2 0 _____
- (3) Exemption 3 0 _____
- (4) Exemption 4 0 _____
- (5) Exemption 5 4 _____
- (6) Exemption 6 0 _____

(7) Exemption 7(A) ____0_____

(8) Exemption 7(B) ____0_____

(9) Exemption 7(C) ____0_____

(10) Exemption 7(D) ____0_____

(11) Exemption 7(E) ____0_____

(12) Exemption 7(F) ____0_____

(13) Exemption 8 ____0_____

(14) Exemption 9 ____0_____

4. Other reasons for nondisclosure (total) ____2_____

a. no records ____2_____

b. referrals ____0____ (note, the requests and proposed disclosures were reviewed by discussed with/or reviewed by several affected sister agencies).

c. request withdrawn _0_____

d. fee-related reason __0_____

e. records not reasonably described ____0_____

f. not a proper FOIA request for some other reason ____0_____

g. not an agency record ____0_____

h. duplicate request ____0_____

i. other (specify) ____0_____

VI. Appeals of Initial Denials of FOIA/PA Requests

A. Numbers of appeals.

1. Number of appeals received during fiscal year ____1_____

2. Number of appeals processed during fiscal year ____1_____

B. Disposition of appeals. –

1. Number completely upheld _____0_____

2. Number partially reversed _____1 (reversal was on one document only)_____

3. Number completely reversed ___0_____

a. number of times each FOIA exemption used (counting each exemption once per appeal)

(1) Exemption 1 _____0_____

(2) Exemption 2 _____0_____

(3) Exemption 3 _____0_____

(4) Exemption 4 _____0_____

(5) Exemption 5 _____1_____

(6) Exemption 6 _____0_____

(7) Exemption 7(A) ___0_____

(8) Exemption 7(B) ___0_____

(9) Exemption 7(C) ___0_____

(10) Exemption 7(D) ___0_____

(11) Exemption 7(E) ___0_____

(12) Exemption 7(F) ___0_____

(13) Exemption 8 ___0_____

(14) Exemption 9 _____0_____

4. Other reasons for nondisclosure (total) ___0_____

a. no records _____0_____

b. referrals _____0_____

c. request withdrawn _____0_____

- d. fee-related reason _____0_____
- e. records not reasonably described _____0_____
- f. not a proper FOIA request for some other reason _____0_____
- g. not an agency record _____0_____
- h. duplicate request _____0_____
- i. other (specify) _____0_____

VII. Compliance with Time Limits/Status of Pending Requests

A. Median processing time for requests processed during the year. – Note: NCPC received two FOIA requests in FY 2005. Both were received in September and replied to in October, 2005 and again in November 2005. Two complex requests were received in FY 2006. .

1. Simple requests (if multiple tracks used).

- a. number of requests processed _____3_____
- b. median number of days to process __5_____

2. Complex requests (specify for any and all tracks used).

- a. number of requests processed _____4____(processing begun on 2 requests)_____
- b. median number of days to process __ 89 calendar days __

3. Requests accorded expedited processing.

- a. number of requests processed _____0_____
- b. median number of days to process __0_____

B. Status of pending requests.

- 1. Number of requests pending as of end of current fiscal year _____0_____
- 2. Median number of days that such requests were pending as of that date __n/a_____

VIII. Expedited processing.

A. Number of requests accorded expedited processing.

1. Number received _____0_____

2. Number granted ___0___

IX. Costs/FOIA Staffing

A. Staffing levels.

1. Number of full-time FOIA personnel _____0___

2. Number of personnel with part-time or occasional FOIA duties (in total work-years)
_____2 (1/5)___

3. Total number of personnel (in work-years) ___less than one._____

B. Total costs (including staff and all resources).

1. FOIA processing (including appeals) __Unknown—not separately calculated by agency_____

2. Litigation-related activities (estimated) __0___

3. Total costs __ - Unknown – Not separately calculated by agency_____

X. Fees

• This includes charges for search, review, document duplication, and any other direct costs permitted under agency regulations.

A. Total amount of fees collected by agency for processing requests
_____ \$1515_____

B. Percentage of total costs _unknown; we did not calculate total costs for processing the 4 interrelated substantial requests.____

XI. FOIA Regulations (Including Fee Schedule)

NCPC FOIA regulations appear at 1 CFR Part 546, available electronically at:

http://a257.g.akamaitech.net/7/257/2422/11feb20051500/edocket.access.gpo.gov/cfr_2005/janqtr/pdf/1cfr456.2.pdf.

http://a257.g.akamaitech.net/7/257/2422/11feb20051500/edocket.access.gpo.gov/cfr_2005/janqtr/pdf/1cfr456.4.pdf.

XII. Report on Executive Order 13392 implementation.

On December 14, 2005, the President issued Executive Order 13,392, entitled "Improving Agency Disclosure of Information," which established a "citizen-centered" and "results-oriented" approach to administration of the Freedom of Information Act. The Executive Order required each agency to conduct a review of its FOIA operations, to develop an agency-specific plan to improve its administration of the Act, and to include in its annual FOIA report a description of its progress in meeting the milestones and goals established in its improvement plan. This section of the annual FOIA report contains NCPC's description of its progress in implementing the milestones and goals of the agency's FOIA Improvement Plan. The reporting period for Section XII is different from that used for the rest of this report, which is based on data compiled for Fiscal Year 2006. The reporting period for this section concerning Executive Order implementation activities includes progress made through January 2007. This section of the report follows the format set forth by the Department of Justice in its Guidance.

A. Description of supplementation/modification of NCPC Improvement Plan (if applicable). NCPC is not supplementing or modifying its Plan at this time.

B. Report on implementation of NCPC plan, including its performance in meeting milestones, with respect to each improvement area:

1. Website/electronic availability of information to public. NCPC's improvement plan included four steps on this topic, with an expectation that three would be completed by December 31, 2006, and the fourth by December 31, 2007. The steps are: increase amount of historic material maintained electronically on website; increase material on ongoing projects available on website; make website information searchable; improve FOIA page on website. We have implemented the steps of improvement to FOIA page on website, and have increased the amount of material on ongoing projects on the website. As an additional feature of this element, and to carry out the purposes of this element of the Plan, NCPC will post on its website promptly after each Commission meeting the Commission Orders from that meeting, starting with the meeting of January, 2007. We will complete the work to implement this action by September 30, 2007. Making the website searchable depends on NCPC's completion of a website redesign that has been delayed because of technological and related problems; we anticipate completion by September 30, 2007. The commitment to increasing the amount of historic material maintained electronically on the website is reaffirmed for December 31, 2007. As described in the Plan, once the website redesign is complete we will show the website to a selected group of consumers to evaluate results.

2. Improved data for staff: NCPC has committed to the following distinct steps:

Introduce an electronic Central Files Information System (CFIS), NCPC's project record and information management system, to process and maintain agency planning data electronically; launch NCPC's Intranet; acquire necessary off-line storage capacity to extend the electronic data retention period; undertake digital conversion and incorporation of NCPC's historic paper-based project materials into the CFIS; consider and determine additional steps and funding for those steps (for example, improved on-line email archiving capability to enhance accessibility of agency electronic communications). NCPC noted that it had completed the first three steps at the time it filed its improvement plan (introduction of CFIS, launch of the NCPC Intranet, and acquiring of necessary off-line storage capacity) and these steps have been fully implemented. In addition, NCPC has instituted a process for applicants to submit materials for Commission review electronically, and that step has made information more easily and readily accessible to staff so that any public request for the information may be answered quickly. The fourth step – digital conversion and incorporation into CFIS of NCPC's historic paper-based project materials—is, as NCPC noted in its Improvement Plan, a massive and expensive project. NCPC continues to be enthusiastic about this project, but budget constraints, stemming in part from operating under continuing resolutions that we did not anticipate, have meant that we have not yet been able to undertake a pilot program, and we do not anticipate being able to undertake a pilot program as long as NCPC remains under a continuing resolution. We will continue to monitor our budget, and when funding becomes available will move forward on this project. The fifth step—analysis of additional steps—has been commenced and we anticipate completing it by September 30, 2007.

3. Improve logging and tracking: NCPC has committed to establish a new logging system separate from the agency's general controlled correspondence system and to implement the new system. As of this filing, the new logging system is developed and in place.

4. Politeness training. NCPC committed to identify or develop a short training program and to assure that the NCPC's public liaison for FOIA and the person response for NCPC's FOIA Requester Service Center attend the training. We could not identify appropriate training, and so planned and conducted our own training. That training is complete.

C. Identification and discussion of any deficiency in meeting plan milestones (if applicable). We have had deficiency in meeting one step in Plan Element 1, and two steps in Plan Element 2. First, one component of Plan Element 1, website/electronic availability of information to the public—making the website searchable--depends on completion of website redesign. Website redesign has been slowed by technological problems, and that has caused NCPC to miss this milestone; redesign is on track for completion in the next nine months and NCPC will then complete these improvement steps by September 30, 2007. Second, NCPC has a deficiency in meeting two elements of Plan Element 2, improved data for staff. The first of those is digital conversion of

NCPC's historic documents for use on the internal CFIS system. Budget constraints, in part from operating under continuing resolutions, have inhibited our plans for conducting a pilot program of putting historic materials in electronic format. Until funding improves, meeting this step will be deferred. Further, the fifth step—analysis of additional steps—has been commenced; the Plan commits to completion by December 31, 2006, and we focused our attention on steps that were specified in the Plan before we turned to addition steps. We now anticipate completing this step of looking for possible additional steps by September 30, 2007.

D. Additional narrative statements regarding other Executive Order-related activities (optional). NCPC has nothing to report.

E. Concise description of FOIA Exemptions (NCPC has copied this section from the Department of Justice 2006 Annual Report): “The nine exemptions to the FOIA authorize federal agencies to withhold information covering: (1) classified national defense and foreign relations information; (2) internal agency rules and practices; (3) information that is prohibited from disclosure by another federal law; (4) trade secrets and other confidential business information; (5) inter-agency or intra-agency communications that are protected by legal privileges; (6) information involving matters of personal privacy; (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; (8) information relating to the supervision of financial institutions; and (9) geological information on wells.”

F. Additional statistics:

1. Time range of requests pending, by date of request (or, where applicable, by date of referral from another agency)(as of the date of this report) – NCPC has no requests pending.

2. Time range of consultations pending with other agencies, by date of initial interagency communication (as of the date of this report) – NCPC has no requests pending.

G. Agency Improvement Plan: The NCPC FOIA Improvement Plan is at the following website:

<http://www.ncpc.gov/NCPC's%20Executive%20Order%2013392%20Implementation%20Plan.pdf>.