

**US GENERAL SERVICES ADMINISTRATION
FREEDOM OF INFORMATION ACT ANNUAL REPORT
2009 FOIA Report**

I. Basic Information

1. If you have questions about the report, please contact:

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2. If you would like to access this report on the Internet, click on the link below and select 2008 FOIA Report.

<http://www.gsa.gov/Portal/gsa/ep/programView.do?pageTypeId=8199&ooiid=28492&programPage=%2Fep%2Fprogram%2FgsaDocument.jsp&programId=16382&channelId=-24918>

3. To obtain a paper copy of the report, please contact Sharon Lighton at the address listed above.

II. How to make a FOIA request

1. The General Services Administration's (GSA's) instructions on requesting information through FOIA, and the names, addresses and telephone numbers of GSA regional FOIA contacts are available on the World Wide Web. Click on the following links:

http://www.gsa.gov/Portal/gsa/ep/contentView.do?CONTACT_ID=FOIA&CONTACT_TYPE=GROUP&contentType=GSA_CONTACTS

2. GSA will release information in response to requests under the FOIA unless an exemption applies and GSA has a compelling reason to invoke the exemption. Even if the information falls clearly within an exemption, GSA will disclose it unless the Government or some other person would suffer harm if it is disclosed. Exemptions 2 through 7 may apply to GSA records.

- a. 5 U.S.C. 552(b)(2): second statutory exemption. Generally, Exemption 2 covers purely internal operational material, such as procedures for processing promotions. Exemption 2 applies when the disclosure of the information would lead to or risk circumvention of statutes and agency regulations, such as when disclosing a job crediting plan would allow candidates to tailor their applications in such a way as to obtain unfair advantage in selections. This exemption may also be applied to records or documents relating to building protection and security.

- b. 5 U.S.C. 552(b)(3): third statutory exemption. The primary Exemption 3 statute that applies to GSA records is the National Defense Authorization Act for Fiscal Year

1997, 41 U.S.C. 253(b). This statute provides that proposals in a competitive procurement may not be disclosed under FOIA. The Procurement Integrity Act (41 U.S.C. 423 (a)) also prohibits the release of "contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates."

c. 5 U.S.C. 552(b)(4); fourth statutory exemption. GSA may withhold commercial or financial records submitted to the Government by a person (e.g., a business), if release of the information would involve a substantial risk of competitive injury to a business which directly or indirectly furnished information to GSA or when release would impair the Government's ability to obtain this information in the future. Lease files are especially likely to contain information protected from release under this exemption. Correspondence from prospective lessors frequently reveals information regarding the manner in which a prospective lessor operates or manages its building, which, if released, could be commercially harmful to the lessor in subsequent leasing actions for non-Government space within the building. Examples of proprietary business information that may qualify for this exemption include:

1. Private business sales statistics.
2. Technical designs.
3. Research data.
4. Non-Federal customer and supplier lists.
5. Overhead and operating costs.
6. Non-public financial statements.
7. Resumes of company employees.
8. Names of consultants and subcontractors.
9. Details of production or quality control systems information.
10. Internal operating procedures and staffing patterns.

d. 5 U.S.C. 552(b)(5): fifth statutory exemption. Records that may be withheld under the fifth statutory exemption include predecisional agency memorandums that reflect and describe the agency's decisionmaking process and predecisional documents generated by the Government in the process leading up to the award of a contract.

1. Records that are part of GSA's decisionmaking process. When screening records for documents that should be withheld under the fifth statutory exemption, GSA will ask whether the document is predecisional and whether it reflects the deliberative process (makes recommendations or expresses opinions or advice). Examples of typical predecisional, deliberative material are drafts and internal memoranda expressing an opinion on a proposed policy or course of action. Predecisional material can retain its exempt status even after the final decision is made. GSA will disclose material of a purely factual nature that can be reasonably extracted from exempt material unless the factual material is exempt under some other criteria.

2. Records that are generated by the Government in the process leading up to the award of a contract. GSA may withhold records under the fifth statutory exemption if disclosure would cause commercial harm to the Government; e.g., place the Government at a competitive disadvantage in preaward negotiations. Examples include realty appraisals generated by the Government in the course of soliciting buyers for

Government property and Government cost estimates. Some of these documents may lose their exempt status after award if the potential for commercial harm no longer exists. Other documents, such as cost estimates, may continue to qualify for withholding if disclosure is likely to harm a similar ongoing procurement action.

3. Records that contain other legally recognized privileges. GSA may withhold records that are covered by attorney-client privilege or that may be classified as attorney work products.

e. 5 U.S.C. 552(b)(6): sixth statutory exemption. GSA's primary consideration in invoking the sixth statutory exemption under FOIA is protecting the privacy of the person who is the subject of a requested file. The public interest in disclosure must be balanced against personal privacy interests that may be invaded by disclosing the record. GSA will determine whether to release personal information under this exemption or when applying the personal privacy exemption for law enforcement records (5 U.S.C. 552(b)(7)(c)) by using a four-step process:

1. Is an identifiable personal privacy interest involved? If there is none, this exemption does not apply.

2. Is a public interest involved; e.g., would disclosure benefit the general public in light of content and context of the information? If there is no general public interest to be served by disclosure, the personal information should be protected.

3. Does the identified public interest qualify for consideration; e.g., is it an interest which would shed light on the agency's performance of its statutory duties? If disclosure of requested information would not serve this interest, the personal privacy interest should be protected.

4. Where an identifiable personal privacy interest and qualifying public interest are present, which is greater? If the privacy interest is greater, the information should be withheld. If the public interest is greater, this exemption does not apply.

f. 5 U.S.C. 552(b)(7): seventh statutory exemption. The seventh statutory exemption allows agencies to withhold law enforcement records in order to protect the law enforcement process from interference.

III. Acronyms, definitions, and exemptions

1. Agency-specific acronyms or other terms: None.

2. Basic terms:

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.

Additional, 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 a 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 satisfied 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 volume and/or simplicity of records requested.

iii. 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.

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. Perfected 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 a final action in all respects.

p. Range in Number of Days - the lowest and highest numbers 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 20 working days from a proper receipt of a perfected FOIA request).

3. 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 GSA information.

Statute	Type of Information Withheld	Case Citation	Number of Times Relied upon	Total Number of Times Relied upon by Agency
41 U.S.C. 253(b)	Proposals of unsuccessful bidders	Hornbostel v. U.S. Dept. of Interior 305 F. Supp. 2d 2	30	30
Rule 6(e)	Matters occurring before a grand jury	Fund for Constitutional Gov't v. Nat'l Archives and Records Admin 656 F.2d 856, at 869	3	3

V. GSA FOIA Requests

A. Received, processed and Pending FOIA Requests

	Number of GSA Requests Pending as of Start of Fiscal Year	Number of GSA Requests Received in Fiscal Year	Number of GSA Requests Processed in Fiscal Year	Number of GSA Requests Pending as of End of Fiscal Year
Agency Overall	90	1558	1534	114

B. (1) Disposition of GSA 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	1306	168	51	6	0	1	2	0	0	0	0	0	1534

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
0	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)	Ex8	Ex9
Agency Overall	0	32	33	166	42	63	16	4	17	0	3	0	0	0

VI. Administrative Appeals of Initial Determinations of GSA FOIA Requests

A. Received, processed and pending Administrative GSA Appeals

Number of GSA Appeals Pending as of Start of Fiscal Year	Number of GSA Appeals Received in Fiscal Year	Number of GSA Appeals Processed in Fiscal Year	Number of GSA Appeals Pending as of End of Fiscal Year
0	16	16	0

B. Disposition of Administrative Appeals – All GSA 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
14	2	0	0	16

C. (2) GSA 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
5	0	0	2	0	0	0	0	0	0	0

C. (3) GSA 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
0	0

D. GSA 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	Median Number of Days	Average Number of Days
Agency Overall	114	15	23	0	0	0	0	0	0

E. GSA Pending Requests – Ten Oldest Pending Perfected Requests

Agency Overall	10th Oldest Request and Number of Days Pending	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Request and Number of Days Pending
		7/16/09	8/4/09	8/4/09	7/31/09	7/29/09	7/08/09	7/27/09	7/23/09	7/22/09
	47 days	57 days	57 days	59 days	63 days	64 days	65 days	69 days	70 days	337 days

VIII. GSA 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	5	5	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	0	20	20

IX. GSA FOIA Personnel and Costs

Note: These figures do not adequately portray GSA's work year investment in FOIA activities. GSA's FOIA program is very decentralized; the agency relies on the program officials who maintain the records to respond to requests for them. Therefore, in one sense, every GSA employee may be responsible for FOIA related work at some time.

	PERSONNEL			COSTS		
	Number of “Full-Time FOIA Employees”	Number of “Equivalent Full-Time FOIA Employees”	Total Number of “Full-Time FOIA Staff”	Processing Costs	Litigation- Related Costs	Total Costs
Agency Overall	3	5	7	\$2,100,345	\$10,000	\$2,110,345

X. GSA Fees Collected for Processing Requests

	Total Amount of Fees Collected	Percentage of Total Costs
Agency Overall	\$83,986	25.1

XI. GSA FOIA Regulations

http://www.access.gpo.gov/nara/cfr/waisidx_01/41cfr105-60_01.html

XII. GSA 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	10	0

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

	Number of Request 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
Agency Overall	1460	1558	1457	1534

	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	2	10

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

	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
Agency Overall	18	16	18	16

	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