

# **Office of the Director of National Intelligence**

## **FREEDOM OF INFORMATION ACT ANNUAL REPORT**

### **FISCAL YEAR 2006**

[This report contains information in the format specified in Department of Justice guidance to the EFOIA. Text in *italics* is the information provided in response to specified headings.]

#### **I. Basic Information Regarding Report**

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

*Mr. John F. Hackett  
Director, Information Management Office  
Office of the Director of National Intelligence  
Washington DC 20511  
(703) 482-1707*

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

*An electronic copy of this report will be posted to [www.dni.gov](http://www.dni.gov)*

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

*Write to the above address.*

#### **II. How to Make a FOIA Request**

*Submit a written request to the mail address provided. Transmission via facsimile also is acceptable, (703) 482-2144.*

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

*The mailing address in section I. A., is the single, central office that receives all FOIA requests for the Director of National Intelligence (DNI). However, FOIA requests received by components of the Office of the DNI (ODNI) are referred to Mr. Hackett.*

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

*For those FOIA cases closed in FY 2006, 100% were closed within 190 days; median response time was 43 days; average response time was 56 days.*

*For those Privacy Act cases closed in FY 2006, 100% were closed within 150 days; median response time was 127 days; average response time was 127 days.*

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

*Of the 20 requests completed in FY 2006, six were either withdrawn by the requester or cancelled because the information sought had been posted to the ODNI public web site; six requests were for information under the auspices of other government agencies; three requests resulted in no records being located; one request was granted in part with only non-substantive administrative information being removed; one request was cancelled because the requester failed to provide the necessary follow-up data; three requests were cancelled and consolidated into a single request.*

### **III. Definitions of Terms and Acronyms Used in the Report**

A. Agency-specific acronyms or other terms.

*ODNI: Office of the Director of National Intelligence*

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 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

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

*(1) Section 6 of the Central Intelligence Agency Act of 1949, as amended, codified at 50 U.S.C. § 403g.*

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

*Among other things, the Central Intelligence Agency Act of 1949 authorizes the Agency to protect from disclosure information relating to the organization, functions, names, official titles, salaries, or numbers of personnel employed by the CIA, including information relating to intelligence sources and methods. CIA information on one document was withheld pursuant to this statute.*

2. Statement of whether a court has upheld the use of each statute. If so, cite example.

*Courts have upheld the use of the following statutes:*

*CIA v. Sims, 471 U.S. 159 (1985), National Security Act of 1947*

*Halperin v. CIA, 629 F.2d 144 (D.C. Cir. 1980) (section 6, CIA Act of 1949)*

*Minier v. CIA, 88 F.3d 796 (9<sup>th</sup> Cir. 1996) (section 6, CIA Act of 1949)*

*See “U.S. Department of Justice Freedom of Information Act Guide and Privacy Act Overview” for additional examples.*

#### V. Initial FOIA/PA Access Requests

- A. Numbers of initial requests.

1. Requests pending as of end of preceding year: 0
2. Requests received during current fiscal year: 44
3. Requests processed during current fiscal year: 20
4. Requests pending as of end of current fiscal year: 24

- B. Disposition of initial requests.

1. Number of total grants: *0*
2. Number of partial grants: *1*
3. Number of denials: *0*

Number of times each FOIA exemption used (counting each exemption once per request):

- (1) Exemption 1: *0*
- (2) Exemption 2: *0*
- (3) Exemption 3: *1*
- (4) Exemption 4: *0*
- (5) Exemption 5: *0*
- (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):
  - a. no records: *3*
  - b. referrals: *6*
  - c. request withdrawn: *3*
  - d. fee-related reason: *N/A*

- 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: *Cancellations: 7 (Four similar requests from the same requester were consolidated into one request and four requests were cancelled because the information sought was on the ODNI public web site.)*

## **VI. Appeals of Initial Denials of FOIA/PA Requests**

### A. Numbers of appeals. 0

- 1. Number of appeals received during fiscal year: *N/A*
- 2. Number of appeals processed during fiscal year: *N/A*

### B. Disposition of appeals. *N/A*.

- 1. Number completely upheld: *N/A*
- 2. Number partially reversed: *N/A*
- 3. Number completely reversed: *N/A*

Number of times each FOIA exemption used (counting each exemption once per appeal):

- (1) Exemption 1: *N/A*
- (2) Exemption 2: *N/A*
- (3) Exemption 3: *N/A*
- (4) Exemption 4: *N/A*
- (5) Exemption 5: *N/A*
- (6) Exemption 6: *N/A*
- (7) Exemption 7(a): *N/A*

(8) Exemption 7(b): *N/A*

(9) Exemption 7(c): *N/A*

(10) Exemption 7(d): *N/A*

(11) Exemption 7(e): *N/A*

(12) Exemption 7(f): *N/A*

(13) Exemption 8: *N/A*

(14) Exemption 9: *N/A*

4. Other reasons for nondisclosure (total):

a. no records: *N/A*

b. referrals: *N/A*

c. request withdrawn: *N/A*

d. fee-related reason: *N/A*

e. records not reasonably described: *N/A*

f. not a proper FOIA request for some other reason: *N/A*

g. not an agency record: *N/A*

h. duplicate request: *N/A*

i. other: *N/A*

**VII. Compliance With Time Limits/Status of Pending Requests**

A. Median processing time for requests processed during the year.

1. Simple requests.

a. number of requests processed: *20*

b. median number of days to process: *43*

2. Complex requests. *0*

- a. number of requests processed: 0
- b. median number of days to process: N/A

3. Requests accorded expedited processing. 0

- a. number of requests processed: 0
- b. median number of days to process: N/A

B. Status of pending requests.

- 1. Requests pending as of end of current fiscal year: 24
- 2. Median number of days that such requests were pending as of that date: 80

**VIII. Comparisons With Previous Year(s)**

- A. Comparison of number of requests received: *44 in FY 06 vs. 7 in FY 05*
- B. Comparison of number of requests processed: *20 in FY 06 vs. 7 in FY 05*
- C. Comparison of median numbers of days requests were pending as of end of fiscal year: *No requests were pending from FY 05*
- D. Other statistics significant to agency: *There were 0 requests for expedited processing received in FY06, 0 requests granted.*

**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 (estimated FTE): .93
- 3. Total estimated number of personnel (FTE): .93

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

- 1. FOIA processing (including appeals): \$84,763
- 2. Litigation-related activities: \$1,781
- 3. Total estimated costs: \$86,544



C. Statement of additional resources needed for FOIA compliance (optional)

**X. Fees**

A. Total amount of fees collected by agency for processing requests: *\$0.00*

B. Percentage of total costs: *N/A*

**XI. FOIA Regulations (Including Fee Schedule)**

*The ODNI was established on April 21, 2005, and is preparing its FOIA Regulations to be published in the Federal Register.*

## **XII. Report on Executive Order 13392 Implementation**

The Office of the Director of National Intelligence made progress in improving its FOIA processes and procedures as required by EO 13392, *Improving Agency Disclosure of Information*. During the reporting period of 14 June 2006, through 31 January 2007, the ODNI received a surge of FOIA and Privacy Act requests. Despite this increase, the FOIA Office, with a small staff, was able to make progress on implementing the planned improvements that were submitted in June.

### **A. Description of Supplementation/Modification of Agency Improvement Plan (if applicable)**

Not applicable

### **B. Report on the ODNI's Implementation of its FOIA Improvement Plan**

The ODNI's FOIA Improvement Plan focused on three areas of improvement, *Affirmative and Proactive Disclosures; Overall FOIA Web Site Improvements; and the Centralization of the FOIA Process*. During the reporting period, the ODNI was able to make progress in most of the plan's improvement areas and was able to meet many of its milestones.

1. *Affirmative and Proactive Disclosures* – The ODNI met and completed all milestones in this improvement area including preliminary review of current materials to be posted on its public web site. During the reporting period, the office increased content to its public web site and to the web sites of its components. The content consisted of many documents of interest including its unclassified policy documents, and other documents including the *Declassified Key Judgments for the National Intelligence Estimate*, "*Trends in Global Terrorism: Implications for the United States*," dated April 2006; *US Intelligence Community Estimate Products on Yugoslavia, 1948-1990*; and the *ODNI Progress Report relating to the WMD Commission Recommendations* to name a few. In addition, the National Counterterrorism Center (NCTC), the National Counterintelligence Executive (NCIX), the National Intelligence Council (NIC), and the Program Manager for the Information Sharing Environment (PM ISE) all posted documents of interest to their respective public web sites.

2. *Overall Web Site Improvements* – The ODNI reviewed all FOIA-related content on its public web sites, and established FOIA links on all public web sites where FOIA information and FOIA points of contact information may be found. In addition, all of the ODNI web sites now either have FOIA reading rooms or have areas where frequently requested documents are posted. Most of the web sites post current or recent disclosures on their front web site pages. Since there are links between all of the ODNI web sites, a "virtual" catalog of all ODNI released materials has been created. The office continues to work on internal policies regarding technology standards for the creation, formatting, and maintenance of new ODNI web sites.

3. *Centralization of the FOIA Process* – During the reporting period, progress was made in the ODNI in centralizing FOIA processes and procedures. The FOIA staff made

contact with various directorate and component chiefs of staff to informally establish the authority of the Chief FOIA Officer and Director of Information Management as the primary responsible officers for FOIA. Other contacts were made within various offices to try to establish a FOIA network of points of contact to assist with the handling of FOIA requests. In addition, the mail handling and faxing policies and procedures were reviewed to ensure the proper distribution of all mail addressed to the Chief FOIA Officer and Director of Information Management.

### **C. Identification and Discussion of any Deficiency in Meeting Plan Milestones**

Despite the improvement efforts, ODNI did not meet all of its milestones in the *Centralization of the FOIA Process* improvement area. The departures of key staff during this period prevented additional improvements in this area. During this period, the new attorney in the Office of General Counsel, who was responsible for the drafting of the FOIA regulations, departed in August after just three months on the job. In addition, the candidate chosen to be the Deputy Information Release Officer to handle day-to-day FOIA and PA requests withdrew her application just prior to her arrival in November. As a result of these staffing issues, the ODNI has not yet published its FOIA regulations, developed its own written internal FOIA instructions, or produced a FOIA handbook.

However, the ODNI has taken significant action to correct these deficiencies. A new FOIA attorney was hired November 2006, went through security processing, and arrived in the Office of General Counsel on 8 January 2007. This attorney is currently reviewing the draft FOIA regulations, which are near completion. We hope to have the regulations sent to the Office of Management and Budget by mid- February. The Information Management Office reposted its job announcement for Deputy Information Release Officer. The vacancy closed 5 January and the office received several strong applications from people who have not only managed FOIA operations but have written policies and procedures and provided training for FOIA and PA processing. We will be scheduling candidate interviews within the next two weeks. Once the regulations are finalized, the ODNI will draft and promulgate the FOIA handbook and its own internal instructions on FOIA and PA procedures.

### **D. Other Executive Order Activities**

During the reporting period, the office witnessed a surge in FOIA requests due to the public's interest in the ODNI's work. To respond to requests as quickly as possible, the office acknowledged, clarified, and responded to requests by telephone, e-mail, and fax in addition to US mail. The office also posted items of high interest, such as DNI statements and speeches, as quickly as possible directly to its unclassified web site. The ODNI also continues to work with the CIA, the ODNI's FOIA support provider to streamline processes and procedures to provide better service to the public.

### **E. Concise Descriptions of FOIA Exemptions**

- (b)(1) exempts from disclosure material properly classified, pursuant to an Executive Order, because it is related to matters of national defense or foreign policy.
- (b)(2) exempts from disclosure information, which pertains solely to the internal personnel rules and practices of the Agency.
- (b)(3) exempts from disclosure materials that another federal statute protects, provided that the other federal statute either requires that the matters be withheld, or establishes particular criteria for withholding or refers to particular types of matters to be withheld.
- (b)(4) exempts from disclosure information such as trade secrets and commercial or financial information obtained from a person on a privileged or confidential basis.
- (b)(5) exempts from disclosure inter- and intra-agency communications protected by legal privileges.
- (b)(6) exempts from disclosure material that would be an unwarranted invasion of the personal privacy of other individuals.
- (b)(7) exempts from disclosure law enforcement investigatory records that, if released, would either (A) interfere with enforcement proceedings, (B) deprive a person of the right to a fair trial; (C) be an unwarranted invasion of personal privacy; (D) identify a confidential source; (E) reveal investigative techniques and procedures; or (F) endanger someone's life or physical safety.
- (b)(8) exempts from disclosure information contained in reports or examinations of an agency responsible for regulating or supervising banks, savings and loans, or other financial institutions.
- (b)(9) exempts from disclosure information about wells.

## **F. Additional Statistics**

1. Time range of requests pending, by date of request (or, where applicable, date of referral from another agency)

23 January 2006 to 3 January 2007

2. Time range of consultations pending with other agencies, by date of initial interagency communication.

Not applicable