

**ANNUAL REPORT  
OF THE U.S. OFFICE OF SPECIAL COUNSEL (OSC)  
ON  
FREEDOM OF INFORMATION ACT (FOIA) ACTIVITIES  
FOR FISCAL YEAR (FY) 2006**

I. BASIC INFORMATION ABOUT THIS REPORT

- A. OSC contact person for questions about this report: FOIA Officer, Legal Counsel and Policy Division, U.S. Office of Special Counsel, 1730 M Street, N.W., Suite 218, Washington, DC 20036-4505, telephone (202) 254-3716.
- B. Electronic address for report on the Intranet: <http://www.osc.gov/library.htm#congress>.
- C. Requesting a paper copy of this report: download or print from the OSC website (see I.B. above) or request it from the OSC's FOIA Office (see I.A. 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: FOIA Officer, U.S. Office of Special Counsel, Legal Counsel and Policy Division, 1730 M Street, N.W., Suite 218, Washington, DC 20036-4505; telephone: (202) 254-3716; fax: (202) 653-5161.
- B. Brief description of agency's response-time ranges: Median processing time is 38 working days.
- C. Brief description of why some requests are not granted: The OSC is an investigative and prosecutorial agency. Most requests are for records in agency case files, generally involving: (a) allegations from current or former Federal employees, or applicants for Federal employment, of prohibited personnel practices (including reprisal for whistleblowing); (b) whistleblower disclosures to the OSC from current or former Federal employees, or applicants for Federal employment; and (c) allegations of prohibited political activity (*i.e.*, Hatch Act violations) involving covered Federal, state, or local government employees. Most of these records consist of investigatory material, compiled for law enforcement purposes by or under the supervision of attorneys, and kept in a system of records subject to the Privacy Act (5 U.S.C. § 552a). The OSC has exempted the system of records from access under the Privacy Act pursuant to § 552a(k) of the act. For that reason, covered records in the system are exempt from disclosure under the Privacy Act to first parties (that is, complainants or others in whose name a record is kept and retrieved), although limited information may be releasable to them under FOIA. Records requested by third parties (typically, persons other complainants and/or subjects) for case file information are frequently withheld under FOIA exemptions (b)(5) and/or (b)(7), because the information: (a) is privileged (either as attorney work product, or as pre-decisional material generated as

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part of a deliberative process); and/or (b) was compiled for a law enforcement purpose, and disclosure could reasonably be expected to interfere with enforcement proceedings [(b)(7)(A)], or result in an unwarranted invasion of the personal privacy [(b)(7)(C)] of the individuals identified in the record sought. Some records are also withheld based on exemption (b)(2), which authorizes withholding of records related to internal agency personnel rules and practices (including such administrative records as correspondence control information, routing slips, data forms, case tracking information, and computer or other administrative codes). OSC also withholds the name of parties whose names appear in its records by invoking exemption (b)(6), because the information is contained in personnel, medical, or similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy

### III. DEFINITION OF TERMS AND ACRONYMS USED IN THIS REPORT

#### A. Agency-specific acronyms and other terms

1. OSC - Office of Special Counsel
2. FOIA - Freedom of Information Act
3. PA - Privacy Act
4. FY - Fiscal Year (October 1 - September 30)

#### B. Basic terms

1. *FOIA/PA request.* Freedom of Information Act/Privacy Act request. A FOIA request is generally a request for disclosure of records about a third party, an organization, or a particular topic of interest. A Privacy Act request is a request for records covered by that act about oneself; such requests are also treated as FOIA requests. (All requests for records, regardless of which access statute is cited by a requester, are covered by this report.)
2. *Initial request.* A request to the OSC for records under FOIA.
3. *Appeal.* A request to the OSC asking for review at a higher administrative level of a full denial or partial denial of a FOIA request, or any other FOIA determination, such as a decision about fees.
4. *Processed request or appeal.* A request or appeal for which the OSC has taken a full and final action on a request or appeal.

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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 III.B.6 below). The OSC is currently using multi-track processing.
6. *Expedited processing.* OSC will process a FOIA request on an expedited basis when a requester has shown an exceptional need or urgency for the records that warrant giving his or her request priority over other requests that were received earlier.
7. *Simple request.* A FOIA request that a federal agency using multi-track processing places in its fastest track (though not on an expedited processing basis), based on the volume and/or simplicity of records requested.
8. *Complex request.* A FOIA request that a federal agency using multi-track processing places in a slower track based on the volume and/or complexity of records requested.
9. *Grant.* An OSC decision to disclose all records in full in response to a FOIA request or FOIA appeal.
10. *Partial grant.* An OSC decision to disclose a record in part in response to a FOIA request or FOIA appeal, redacting 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 OSC decision not to release any part of a record in response to a FOIA request or FOIA appeal because all information in the record is exempt from disclosure under one or more FOIA exemptions, or for another authorized reason (e.g., because no record is located in response to a FOIA request, or because the requester sought answers to questions instead of actual records).
12. *Time limits.* The time period in the FOIA 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 that adequately describes the records sought, which has been received by the OSC's FOIA office, and for which there is no remaining question about the payment of applicable fees.

14. Exemption 3 statute. A separate federal statute [A federal law independent of the FOIA that prohibits] prohibiting the disclosure of a certain type of information and authorizing its withholding under FOIA exemption (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.
17. Working days. Days excepting Saturdays, Sundays, and legal public holidays.

IV. EXEMPTION 3 STATUTES RELIED ON BY THE OSC DURING FISCAL YEAR 2006.....0

V. INITIAL FOIA/PA ACCESS REQUESTS

A. Number of initial requests

1. Number of requests pending at the end of preceding fiscal year .....31<sup>1</sup>
2. Number of requests received during current fiscal year .....127
3. Number of requests processed during current fiscal year .....150
4. Number of requests pending at the end of current fiscal year .....8

B. Disposition of initial requests

1. Number of total grants .....15
2. Number of partial grants .....23
3. Number of denials.....50
  - a. Number of times each FOIA exemption used (counting each exemption once per request):
    - (1) Exemption 1 .....0

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<sup>1</sup>Two others pending at the end of FY05 had been erroneously entered into the system as FOIA requests and were thus deleted from the system in FY06.

(2) Exemption 2.....	36
(3) Exemption 3.....	0
(4) Exemption 4.....	0
(5) Exemption 5.....	42
(6) Exemption 6.....	5
(7) Exemption 7(A).....	4
(8) Exemption 7(B).....	3
(9) Exemption 7(C).....	47
(10) Exemption 7(D).....	1
(11) Exemption 7(E).....	0
(12) Exemption 7(F).....	0
(13) Exemption 8.....	0
(14) Exemption 9.....	0
4. Other reasons for nondisclosure in whole or in part (total).....	62
a. No records.....	28
b. Referrals.....	1
c. Request withdrawn.....	5
d. Fee-related reason.....	0
e. Records not reasonably described.....	0
f. Not a proper FOIA request for some other reason.....	2
g. Not an agency record.....	1

h. Duplicate request .....	0
i. Other (specify):	
1) Alternate reasons.....	0
2) Appeal filed.....	1
3) File destroyed prior to FOIA request in accordance with National Archives Records Administration guidelines .....	4
4) File lost or unable to be located .....	0
5) Request(s) misdirected.....	11
6) Questions posed as FOIA request(s) (not request for actual records)/no requirement to create records.....	2
7) Request discontinued after OSC contact .....	6
8) Unable to reach requester.....	1

**VI. APPEALS OF INITIAL DENIALS OF FOIA/PA REQUESTS**

**A. Number of appeals**

1. Number of appeals received during current fiscal year .....	16
2. Number of appeals processed during current fiscal year .....	10 <sup>2</sup>

**B. Disposition of appeals**

1. Number completely upheld.....	3
2. Number partially reversed.....	4
3. Number completely reversed .....	2
a. Number of times each FOIA exemption used (counting each exemption once per appeal):	

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<sup>2</sup> One appeal was closed for a fee-related reason.

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(1) Exemption 1 .....	0
(2) Exemption 2 .....	2
(3) Exemption 3 .....	0
(4) Exemption 4 .....	0
(5) Exemption 5 .....	3
(6) Exemption 6 .....	0
(7) Exemption 7(A) .....	0
(8) Exemption 7(B) .....	0
(9) Exemption 7(C) .....	2
(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 in whole or in part (total):	
a. No records .....	0
b. Referrals .....	0
c. Request withdrawn .....	0
d. Fee-related reason .....	1
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 FY 2006**

**1. Simple requests:**

a. Number of requests processed .....	64
b. Median number of working days to process .....	12

**2. Complex requests:**

a. Number of requests processed .....	71
b. Median number of working days to process .....	88

**3. Requests accorded expedited processing:**

a. Number of requests processed .....	15
b. Median number of working days to process .....	14

**B. Status of pending requests**

1. Number of requests pending at the end of FY 2006 .....	8
2. Median number of working days such requests were pending at the end of FY 2006 .....	133

**VIII. COMPARISONS WITH PREVIOUS YEAR**

**A. Comparison of numbers of requests received**

1. Requests received in FY 2005 .....	122
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- 2. Requests received in FY 2006 ..... 127
- 3. Difference (increase) between FY 2005 and 2006..... 5 (4.1%)

**B. Comparison of numbers of requests processed**

- 1. Requests processed in FY 2005 ..... 172
- 2. Requests processed in FY 2006 ..... 150
- 3. Difference (decrease) between FY 2005 and 2006.....22 (-13%)

**C. Comparison of median number of days requests were pending at end of fiscal year**

- 1. Median number of days requests were pending end of FY 2005..... 53
- 2. Median number of days requests were pending end of FY 2006..... 133
- 3. Difference (increase) between FY 2005 and 2006..... 70 (123%)

**D. Expedited requests**

- 1. Number of requests received in FY 2006 ..... 18
- 2. Number of such requests granted in FY 2006 ..... 15

**IX. COSTS/FOIA STAFFING**

**A. Staffing levels**

- 1. Number of full-time FOIA personnel ..... 1
- 2. Number of personnel with part-time or occasional FOIA duties  
(in total work-years)..... 0.94
- 3. Total number of personnel (in work-years) ..... 1.94

B. Total costs (including staff and other resources)

1. FOIA processing (including requests and appeals)..... \$ 172,540
2. Litigation-related activities ..... \$ 18,500
3. Total costs ..... \$ 191,040

X. FEES

- A. Total amount of fees collected by the OSC for processing requests..... \$ 113.50
- B. Percentage of total costs.....0.06%

XI. REGULATIONS (INCLUDING FEE SCHEDULE)

The OSC's FOIA regulation, including a fee schedule, is codified at 5 C.F.R. Part 1820. The OSC also provides information about making and processing of FOIA requests to the OSC at its Web site (<http://www.osc.gov/foia.htm>), pursuant to the Electronic FOIA Amendments of 1996.

XII. REPORT ON FOIA EXECUTIVE ORDER IMPLEMENTATION

- A. Description of supplementation/modification of agency improvement plan (if applicable): Thus far, no changes have been made to the OSC FOIA Improvement Plan after its issuance in June 2006.
- B. Implementation of the OSC's improvement plan, including its performance in meeting plan milestones to date, with respect to each improvement area:
  1. Automated tracking/reporting. The FOIA Officer and other staff engaged in FOIA program responsibilities worked with the agency's Management and Budget Division, including the Information Technology Branch (ITB), throughout FY 2006 to obtain further refinements to/corrections of data elements in the newly automated FOIA request tracking system. The most significant refinements needed were identified and implemented by the September 30, 2006 target date. ITB generated automated reports with data needed to produce the annual FOIA report by the December 31, 2006 target date.
  2. Backlog reduction. OSC met its goal of developing criteria for complex requests (the majority of requests received), and for dividing such requests into two tracks for processing – distinguishing between those seeking entire case file records, or

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voluminous non-case information (requiring more extensive searches and/or reviews of case file or other records), and those seeking only specified documents (requiring less time and more focused searches and/or analyses) – so that complex requests requiring less work would not stagnate at the end of the queue until older, more work-intensive requests were completed. Criteria for categorizing requests into one of two tracks were developed, and designations were integrated into the automated request tracking system, by the September 30, 2006 target date.<sup>3</sup>

3. FOIA regulations. OSC met the goal for drafting by the Legal Counsel and Policy Division of updated agency FOIA regulations by December 31, 2006.
  4. FOIA web site enhancement. OSC substantially met its FY 2006 goal for drafting updated and expanded FOIA guidance on the agency web site by the end of the fiscal year.<sup>4</sup> The enhanced FOIA web page provides detailed recommendations for filing an effective request, a description of the FOIA process, criteria for expedited processing of requests, and steps requesters could take to determine the status of their requests
  5. Affirmative/proactive disclosures. OSC met the goal of consultation between the Legal Counsel and Policy Division and other OSC components by October 31, 2006, on identification of reading room and other documents or forms suitable and available for posting on the agency web site.
  6. Communication with requesters. OSC met its goal of modifying the standard acknowledgement letter sent to requesters upon receipt of a FOIA request by the July 15, 2006 target date. The letter was modified to indicate the ranking of each new request in the queue of pending requests, and contact information for status inquiries.
- C. Deficiencies in meeting plan milestones: The target date for posting OSC's revamped FOIA web page guidance was October 31, 2006; actual posting was completed four days later, on November 4<sup>th</sup>. The short delay resulted from a confluence of events at the end of October, including the press of other official business and the unanticipated unavailability of the official responsible for approving posting of the final guidance.

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<sup>3</sup> In furtherance of the overall goal of backlog reduction, LC&P staff (including the FOIA Officer) worked as part of a Special Projects Unit team (including a field office investigator, intern, and records management staff) from August-September of 2006, to reduce the backlog of pending FOIA requests. That effort resulted in a substantial reduction in the number of pending requests – from 55 at the start of the project, to eight requests pending at the end of FY 2006.

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- D. Concise description of FOIA exemptions: (2) internal agency rules and practices; (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.
- E. Time range of requests pending: The newest request is 7 working days old; the oldest request is 454 days (as of January 31, 2007).

Attachment: OSC Improvement Plan