

# NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA)

## FISCAL YEAR 2009

### Annual Freedom of Information Act (FOIA) Report

#### I. Basic Information Regarding Report

- A. Questions about this report can be addressed to Ramona Oliver, NARA FOIA Officer, Office of General Counsel, Room 3110, 8601 Adelphi Road, College Park, MD 20740-6001. The telephone number is 301-837-2024. The e-mail address is [foia@nara.gov](mailto:foia@nara.gov).
- B. Gary M. Stern, NARA's General Counsel, also serves as the Chief FOIA Officer. Questions may be addressed to his attention at Office of General Counsel, Room 3110, 8601 Adelphi Road, College Park, MD 20740-6001. The telephone number is 301-837-1750. The e-mail address is [foia@nara.gov](mailto:foia@nara.gov).
- C. An electronic version of the report is available from the NARA website: [www.archives.gov/foia/reports/2009.pdf](http://www.archives.gov/foia/reports/2009.pdf).
- D. To request a paper copy of this report write to the FOIA Officer at the address above.

#### II. Making a FOIA Request

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

NARA accepts FOIA requests for the executive branch agency records in its legal custody. That includes the operational records that NARA creates while conducting government business and the accessioned archival records that NARA receives and maintains from all executive branch agencies as the National Archives of the United States. NARA also accepts FOIA requests for Presidential and Vice Presidential records subject to the provisions of the Presidential Records Act. For general questions on the FOIA or on a specific request, you may call NARA's FOIA hotline at 301-837-3642.

Information listing the telephone numbers for NARA's FOIA Customer Service Centers and the names of our Public Liaisons is available at: <http://www.archives.gov/foia/contacts.html>.

**FOR OPERATIONAL RECORDS (all NARA units, except the Inspector General)**

NARA FOIA Officer  
Office of General Counsel, Room 3110  
8601 Adelphi Road  
College Park, MD 20740-6001  
301-837-3642 (phone)  
301-837-0293 (fax)  
[foia@nara.gov](mailto:foia@nara.gov) (e-mail)

**FOR RECORDS OF NARA'S INSPECTOR GENERAL**

Office of Inspector General  
Attn: FOIA Request  
8601 Adelphi Road, Room 1300  
College Park, MD 20740-6001  
301-837-3000 (phone)  
301-837-3197 (fax)

**FOR ARCHIVAL RECORDS (Washington, Metropolitan Area)**

Special Access and FOIA Staff  
8601 Adelphi Road, Room 6350  
College Park, MD 20740-6001  
301-837-3190 (phone)  
301-837-1864 (fax)  
[specialaccess\\_FOIA@nara.gov](mailto:specialaccess_FOIA@nara.gov) (e-mail)

**FOR ARCHIVAL RECORDS (in the Regional Archives System)**

FOIA requests should be addressed to the Director of the Regional Archives where the records are located. A listing of Regional Archives facility addresses can be found at <http://www.archives.gov/locations/>.

**FOR PRESIDENTIAL RECORDS SUBJECT TO FOIA**

Pursuant to the Presidential Records Act of 1978 (PRA), the records of former presidents, beginning with President Reagan, become subject to the provisions of the FOIA five years after the presidents leave office. The incumbent or former president may continue to invoke specific restrictions for up to twelve years, after which only statutory FOIA restrictions may be applied (except that FOIA exemption (b)(5) does not apply to PRA records; however, the former and incumbent Presidents may assert executive privilege). FOIA requests for Presidential records should be

mailed to the attention of the Director of the Presidential library in which the records are located.

The Presidential materials at pre-PRA Presidential libraries (Hoover through Carter) are donated collections (except that the Nixon materials are subject to a special statute) and are not subject to FOIA, but each of them have small collections of executive branch agency records that are subject to the FOIA. Addresses of the Presidential Libraries are posted on our website at <http://www.archives.gov/presidential-libraries/>.

### **FOR OFFICIAL MILITARY or CIVILIAN PERSONNEL FILES**

National Personnel Records Center  
Military Personnel Records  
9700 Page Avenue  
St. Louis, MO 63132-5100  
[npr.center@nara.gov](mailto:npr.center@nara.gov) (e-mail)

National Personnel Records Center  
Civilian Personnel Records  
111 Winnebago Street  
St. Louis, Missouri 63118-4126  
[cpr.center@nara.gov](mailto:cpr.center@nara.gov) (e-mail)

### **FOR ALL OTHER RECORDS**

Judicial records, records of the Congress and legislative branch agencies, donated historical materials, and Nixon Presidential Historical Materials are not subject to the FOIA.

In addition, NARA cannot respond to FOIA requests for records that are in our physical but not legal custody, such as the records of executive branch agencies stored at a NARA administered Federal Records Center. FOIA requests for record center holdings remain the responsibility of the originating agency.

We have published a FOIA Reference Guide that describes the procedures for making FOIA requests to NARA. The Guide can be viewed at [www.archives.gov/foia/foia-guide.html](http://www.archives.gov/foia/foia-guide.html). Additional procedural information can be found in our implementing regulations at 36 CFR Part 1250 and 1254 through 1260.

- B. Brief description of why some requests are not granted and an overview of certain general categories of the agency's records to which the FOIA exemptions apply.**

NARA accepts FOIA requests for all executive branch records in its legal custody, including our own operational records and the historical records NARA maintains as the archives of the U.S. government. NARA asserts the privacy exemption more than the rest of the exemption to protect the privacy of individuals referenced in records among our holdings. NARA also uses Exemption (b)(1), as directed by equity holding agencies, to withhold information the release of which would harm the national security of the United States. Other reasons for not granting requests are outlined in Section V, B of this report.

### III. Acronyms, Definitions, and Exemptions

#### A. Agency specific acronyms or other terms

**NARA** - National Archives and Records Administration.

**Operational records** – records that NARA creates or receives in carrying out its mission and responsibility as an executive branch agency.

**Archival records** – permanent records of the United States government that have been transferred to the legal and physical custody of the National Archives of the United States and the Presidential Libraries.

**Performance Measurement and Reporting System (PMRS)** – the PMRS is the official source for statistical management information at NARA. PMRS is a “data warehouse” application that collects and publishes data regarding NARA’s performance relative to the numeric goals outlined in the most current version of NARA’s Strategic Plan.

#### B. Basic terms, expressed in common terminology

- a. **Administrative 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.
- 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 separate federal statute prohibiting the disclosure of a certain type of information and authorizing its withholding under FOIA subsection (b)(3).
- g. **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 under these two statutes are included in this report. This report does not account for requests for archival records that do not cite the FOIA or Privacy Act.)
- 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 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).
- 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 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).
  - i. **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.
  - 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** – 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 entireties, but to withhold others in whole or in part.
- m. **Pending Request or Pending Administrative Appeal** – a request or administrative appeal for which an agency has not taken final action in all requests.
- n. **"Perfectured" 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.
- o. **Processed Request or Processed Administrative Appeal** – a request or appeal for which an agency has taken a final action on the request or the appeal 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 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).

### C. **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 (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. This section lists the exemption 3 statutes invoked by NARA in responding to FOIA requests; the types of information withheld most often and court decisions supporting these withholdings.

Statute	Type of Information Withheld	Case Citation	Total Number of Times Relied upon by Agency
10 U.S.C. § 424	Organization or any function of, and certain information pertaining to, employees of the Defense Intelligence Agency, the National Reconnaissance Office, and the National Geospatial-Intelligence Agency	<u>Miller v. DOJ</u> , 562 F. Supp. 2d 82, 112 (D.D.C. 2008); <u>Wickwire Gavin, P.C. v. Def. Intelligence Agency</u> , 330 F. Supp. 2d 592, 602 (E.D. Va. 2004).	2
18 U.S.C. §§ 2510-20 (Title III of the Omnibus Crime Control and Safe Streets Act)	Wiretap requests and the contents of any wire, oral, or electronic communication obtained through wiretaps	<u>Mendoza v. DEA</u> , No. 07-5006, 2007 U.S. App. LEXIS 22175 (D.C. Cir. Sept. 14, 2007) (per curiam); <u>Lam Lek Chong v. DEA</u> , 929 F.2d 729, 733 (D.C. Cir. 1991); <u>Payne v. DOJ</u> , No. 96-30840, slip op. at 5-6 (5th Cir. July 11, 1997).	2
26 U.S.C. §§ 6103 (Internal Revenue Code)	Certain tax return information	<u>Church of Scientology v. IRS</u> 484 U.S. 9 (1987)	3
50 U.S.C. § 403g (Central Intelligence Agency Act of 1949)	Intelligence sources and methods; certain information pertaining to Agency employees, specifically: "the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency"	<u>Larson v. Dep't of State</u> , 565 F.3d 857, 865 n.2 (D.C. Cir. 2009); <u>Berman v. CIA</u> , 501 F.3d 1136, 1137-38, 1140 (9th Cir. 2007); <u>Makky v. Chertoff</u> , 489 F. Supp. 2d 421, 442 (D.N.J. 2007), <u>aff'd on other grounds</u> , 541 F. 3d 205 (3d Cir. 2008).	3
50 U.S.C. §421 (Intelligence Identities Protection Act of 1982)	Identities of US Undercover Intelligence Officers, Agents, Informants and Sources	None	2
50 U.S.C. § 435 Note Sec. 1082, P.L. 102-190	Information concerning US Personnel Classified as POW/MIA during the Vietnam and Korean Conflicts	None	2
F.R.Cr.P. 6(e)	Grand Jury Information	<u>Sussman v. USMS</u> , 494 F.3d 1106, 1113 (D.C. Cir. 2007); <u>Fund for Constitutional Gov't v. Nat'l Archives &amp; Records Serv.</u> , 656 F.2d 856, 867-68 (D.C. Cir. 1981); <u>Durham v. U.S. Atty. Gen.</u> , No. 06-843, 2008 WL 620744, at *2 (E.D. Tex. Mar. 3, 2008); <u>Cozen O'Connor v. U.S. Dep't of Treasury</u> , 570 F. Supp. 2d 749, 776 (E.D. Pa. 2008).	11



**V. FOIA Requests**

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

	<b>Number of Requests Pending as of Start of Fiscal Year</b>	<b>Number of Requests Received in Fiscal Year</b>	<b>Number of Requests Processed in Fiscal Year</b>	<b>Number of Requests Pending as of End of Fiscal Year</b>
<b>Agency Overall</b>	<b>5,781</b>	<b>18,581</b>	<b>17,508</b>	<b>6,854</b>

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

	<b>Number of Full Grants</b>	<b>Number of Partial Grants/ Partial Denials</b>	<b>Number of Full Denials Based on Exemptions</b>	<b>Number of Full Denials Based on Reasons Other than Exemptions</b>									<b>Total</b>
				<b>No Records</b>	<b>All Records Referred to Another Component or Agency</b>	<b>Request Withdrawn</b>	<b>Fee-Related Reason</b>	<b>Records not Reasonably Described</b>	<b>Improper FOIA Request for Other Reasons</b>	<b>Not Agency Record</b>	<b>Duplicate Request</b>	<b>Other Explain in chart below</b>	
<b>AGENCY OVERALL</b>	<b>430</b>	<b>135</b>	<b>7</b>	<b>16,596</b>	<b>44</b>	<b>19</b>	<b>6</b>	<b>97</b>	<b>39</b>	<b>6</b>	<b>27</b>	<b>102</b>	<b>17,508</b>

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

<b>Component</b>	<b>Description of “Other” Reasons for Denials from Chart B (1) &amp; Number of Times Those Reasons Were Relied upon</b>	<b>TOTAL</b>
<b>Agency Overall</b>	<b>Presidential Records Act 2 Requests illegible, or other instances not properly covered by procedural denials a - h 100</b>	<b>102</b>

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

	<b>Ex. 1</b>	<b>Ex. 2</b>	<b>Ex. 3</b>	<b>Ex. 4</b>	<b>Ex. 5</b>	<b>Ex. 6</b>	<b>Ex. 7(A)</b>	<b>Ex. 7(B)</b>	<b>Ex. 7(C)</b>	<b>Ex. 7(D)</b>	<b>Ex. 7(E)</b>	<b>Ex. 7(F)</b>	<b>Ex. 8</b>	<b>Ex. 9</b>
<b>AGENCY OVERALL</b>	81	17	55*	9	19	107	1	0	34	19	5	1	0	0

\* According to our data there are thirty instances where (b)(3) was cited as the reason for withholding information, however no qualifying statute was identified.

**VI. Administrative Appeals of Initial Determinations of FOIA Requests**

**A. Received, Processed and Pending Administrative Appeals**

<b>Number of Appeals Pending as of Start of Fiscal Year</b>	<b>Number of Appeals Received in Fiscal Year</b>	<b>Number of Appeals Processed in Fiscal Year</b>	<b>Number of Appeals Pending as of End of Fiscal Year</b>
<b>29</b>	<b>43</b>	<b>66</b>	<b>6</b>

**B. Disposition of Administrative Appeals – All Processed Appeals**

<b>Number Affirmed on Appeal</b>	<b>Number Partially Affirmed &amp; Partially Reversed/Remanded on Appeal</b>	<b>Number Completely Reversed/Remanded on Appeal</b>	<b>Number of Appeals Closed for Other Reasons</b>	<b>TOTAL</b>
<b>49</b>	<b>5</b>	<b>7</b>	<b>5</b>	<b>66</b>

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

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

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

<b>No Records</b>	<b>Records Referred at Initial Request Level</b>	<b>Request Withdrawn</b>	<b>Fee-Related Reason</b>	<b>Records not Reasonably Described</b>	<b>Improper Request for Other Reasons</b>	<b>Not Agency Record</b>	<b>Duplicate Request or Appeal</b>	<b>Request in Litigation</b>	<b>Appeal Based Solely on Denial of Request for Expedited Processing</b>	<b>Other</b>
<b>14</b>	<b>1</b>	<b>3</b>	<b>7</b>	<b>3</b>	<b>1</b>	<b>11</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>3</b>

**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
<ol style="list-style-type: none"> <li>1. Multi-faceted appeal concerning expedited processing, fees, and declassification of records.</li> <li>2. Appeal withdrawn after requester accepted NARA’s explanation that no documents were withheld after reviewing the files in the Archives II Research Room.</li> <li>3. Appeal withdrawn because the subject of the request was no longer being considered for a presidential appointment.</li> </ol>	3

**C. (4) Response Time for Administrative Appeals**

Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
586	18	3	1404

**C. (5) Ten Oldest Pending Administrative Appeals**

	<b>10th Oldest Appeal</b>	<b>9th</b>	<b>8th</b>	<b>7th</b>	<b>6th</b>	<b>5th</b>	<b>4th</b>	<b>3rd</b>	<b>2nd</b>	<b>Oldest Appeal</b>
<b>Date of Receipt of Ten Oldest Appeals</b>	N/A	N/A	N/A	N/A	<b>July 23, 2009*</b>	<b>May 1, 2009*</b>	<b>October 1, 2008*</b>	<b>September 29, 2008*</b>	<b>August 4, 2008</b>	<b>June 6, 2008*</b>
<b>Number of Days Pending</b>					<b>49</b>	<b>106</b>	<b>251</b>	<b>256</b>	<b>292</b>	<b>332</b>

*\* indicates FOIA appeals that have been completed at the time of this report.*

**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
<b>AGENCY OVERALL</b>	5	10.91	1	1,409	41	264.16	2	2,978	N/A*	N/A*	N/A*	N/A*

**\*Note: At this time NARA’s data system, Performance Measurement and Reporting System, is not programmed to calculate the processing times of requests seeking expedited processing. We track and respond to expedited requests but cannot follow them through the life cycle to completion. We expect to have the issue resolved in time for the FY 2010 report.**

**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
<b>AGENCY OVERALL</b>	15	72.23	1	1,182	75	353.07	1	2,978	N/A*	N/A*	N/A*	N/A*

**\*Note: At this time NARA’s data system, Performance Measurement and Reporting System, is not programmed to calculate the processing times of requests seeking expedited processing. We track and respond to expedited requests but cannot follow them through the life cycle to completion. We expect to have the issue resolved in time for the FY 2010 report.**

**C. Processed Requests – Response Time in Day Increments**

**Simple Requests**

	<b>1-20 Days</b>	<b>21-40 Days</b>	<b>41-60 Days</b>	<b>61-80 Days</b>	<b>81- 100 Days</b>	<b>101- 120 Days</b>	<b>121- 140 Days</b>	<b>141- 160 Days</b>	<b>161- 180 Days</b>	<b>181-200 Days</b>	<b>201-300 Days</b>	<b>301-400 Days</b>	<b>401+ Days</b>	<b>TOTAL</b>
<b>AGENCY OVERALL</b>	15,595	741	321	174	67	41	27	38	11	9	2	8	44	17,078

**Complex Requests**

	<b>1-20 Days</b>	<b>21-40 Days</b>	<b>41-60 Days</b>	<b>61-80 Days</b>	<b>81-100 Days</b>	<b>101-120 Days</b>	<b>121-140 Days</b>	<b>141-160 Days</b>	<b>161-180 Days</b>	<b>181-200 Days</b>	<b>201-300 Days</b>	<b>301-400 Days</b>	<b>401+ Days</b>	<b>TOTAL</b>
<b>AGENCY OVERALL</b>	181	34	13	18	21	4	3	9	7	11	21	15	93	430

**Requests Granted Expedited Processing**

	<b>1-20 Days</b>	<b>21-40 Days</b>	<b>41-60 Days</b>	<b>61-80 Days</b>	<b>81-100 Days</b>	<b>101-120 Days</b>	<b>121-140 Days</b>	<b>141-160 Days</b>	<b>161-180 Days</b>	<b>181-200 Days</b>	<b>201-300 Days</b>	<b>301-400 Days</b>	<b>401+ Days</b>	<b>TOTAL</b>
<b>AGENCY OVERALL</b>	N/A*	N/A*	N/A*	N/A*	N/A*	N/A*	N/A*	N/A*	N/A*	N/A*	N/A*	N/A*	N/A*	N/A*

**\*Note: At this time NARA's data system, Performance Measurement and Reporting System, is not programmed to calculate the processing times of requests seeking expedited processing. We track and respond to expedited requests but cannot follow them through the life cycle to completion. We expect to have the issue resolved in time for the FY 2010 report.**



**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	Median Number of Days	Average Number of Days
<b>AGENCY OVERALL</b>	1,308	832	948.30	4,411	986	1,224.31	N/A*	N/A*	N/A*

**\*Note:** At this time NARA’s data system, Performance Measurement and Reporting System, is not programmed to calculate the processing times of requests seeking expedited processing. We track and respond to expedited requests but cannot follow them through the life cycle to completion. We expect to have the issue resolved in time for the FY 2010 report.

**E. Pending Requests – Ten Oldest Pending Perfected Requests**

(Note that all of the oldest requests are “consultations” pending with other agencies for declassification review.)

	10 <sup>th</sup> Oldest Request and Number of Days Pending	9 <sup>th</sup>	8 <sup>th</sup>	7 <sup>th</sup>	6 <sup>th</sup>	5 <sup>th</sup>	4 <sup>th</sup>	3 <sup>rd</sup>	2 <sup>nd</sup>	Oldest Request and Number of Days Pending
<b>AGENCY OVERALL</b>	3/14/1994 5,721 days	3/5/94 5,760	2/22/94 5,771	1/4/94 5,820	11/09/93 5,876	10/10/93 5,906	9/9/93 5,937	8/31/93 5,974	10/22/92 6,259	9/21/92 6,209

**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
<b>AGENCY OVERALL</b>	13	39	5	5	52

**B. Requests for Fee Waiver**

	<b>Number Granted</b>	<b>Number Denied</b>	<b>Median Number of Days to Adjudicate</b>	<b>Average Number of Days to Adjudicate</b>
<b>AGENCY OVERALL</b>	<b>3</b>	<b>171</b>	<b>5</b>	<b>174</b>

**IX. FOIA PERSONNEL AND COSTS**

	<b>PERSONNEL</b>			<b>COSTS</b>		
	<b>Number of “Full-Time FOIA Employees”</b>	<b>Number of “Equivalent Full-Time FOIA Employees”</b>	<b>Total Number of “Full-Time FOIA Staff”</b>	<b>Processing Costs</b>	<b>Litigation- Related Costs</b>	<b>Total Costs</b>
<b>AGENCY OVERALL</b>	<b>0</b>	<b>25</b>	<b>0</b>	<b>2,758,186</b>	<b>N/A</b>	<b>2,758,186</b>

**X. Fees Collected for Processing Requests**

	<b>Total Amount of Fees Collected</b>	<b>Percentage of Total Costs</b>
<b>AGENCY OVERALL</b>	<b>\$433.00</b>	<b>&lt;1%</b>

The fees above represent fees collected in response to FOIA requests for NARA’s operational records. NARA does not charge fees for document search or review of accessioned (archival) records. However, in accordance with 44 USC § 2116 (c), NARA charges standard fees to recover the costs of making reproductions in response to requests received by NARA. In our current system there is no way to distinguish reproductions made in response to FOIA requests from reproductions made in response to other types of requests (e.g., regular reference requests for open records and reproductions made on self-service copiers at NARA facilities).

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

NARA’s FOIA regulations are found in 36 CFR Part 1250, which includes the fee schedule for NARA’s operational records. The fee schedule for archival records is found in 36 CFR Part 1258. These regulations are also available on our website at [www.archives.gov/about/regulations/part-1250.html](http://www.archives.gov/about/regulations/part-1250.html).

**XII. BACKLOGS, CONSULTATIONS, AND COMPARISONS**

**A. Backlogs of FOIA Requests and Administrative Appeals**

	<b>Number of Backlogged Requests as of End of Fiscal Year</b>	<b>Number of Backlogged Appeals as of End of Fiscal Year</b>
<b>AGENCY OVERALL</b>	<b>6,856</b>	<b>6</b>

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

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

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

	<b>10<sup>th</sup> Oldest Consultation and Number of Days Pending</b>	<b>9<sup>th</sup></b>	<b>8<sup>th</sup></b>	<b>7<sup>th</sup></b>	<b>6<sup>th</sup></b>	<b>5<sup>th</sup></b>	<b>4<sup>th</sup></b>	<b>3<sup>rd</sup></b>	<b>2<sup>nd</sup></b>	<b>Oldest Consultation and Number of Days Pending</b>
<b>AGENCY OVERALL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

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

	<b>NUMBER OF REQUESTS <u>RECEIVED</u></b>		<b>NUMBER OF REQUESTS <u>PROCESSED</u></b>	
	<b>Number Received During Fiscal Year from Last Year's Annual Report</b>	<b>Number Received During Fiscal Year from Current Annual Report</b>	<b>Number Processed During Fiscal Year from Last Year's Annual Report</b>	<b>Number Processed During Fiscal Year from Current Annual Report</b>
<b>AGENCY OVERALL</b>	<b>14,075</b>	<b>18,581</b>	<b>13,472</b>	<b>17,508</b>

	<b>Number of Backlogged Requests as of End of Fiscal Year from Previous Annual Report</b>	<b>Number of Backlogged Requests as of End of Fiscal Year from Current Annual Report</b>
<b>AGENCY OVERALL</b>	<b>5,781</b>	<b>6,856</b>

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

	<b>NUMBER OF APPEALS <u>RECEIVED</u></b>		<b>NUMBER OF APPEALS <u>PROCESSED</u></b>	
	<b>Number Received During Fiscal Year from Last Year's Annual Report</b>	<b>Number Received During Fiscal Year from Current Annual Report</b>	<b>Number Processed During Fiscal Year from Last Year's Annual Report</b>	<b>Number Processed During Fiscal Year from Current Annual Report</b>
<b>AGENCY OVERALL</b>	<b>42</b>	<b>43</b>	<b>21</b>	<b>66</b>

	<b>Number of Backlogged Appeals as of End of the Fiscal Year from Previous Annual Report</b>	<b>Number of Backlogged Appeals as of End of the Fiscal Year from Current Annual Report</b>
<b>AGENCY OVERALL</b>	<b>29</b>	<b>6</b>

## **F. Discussion of Other FOIA Activities**

### **1. Brief description of the agency's response times**

In FY09 NARA noticed a significant increase in our overall FOIA performance. In this fiscal year, NARA received 4,506 more requests than in FY08, but we also managed to process 4,036 more requests than in FY08. Thus, even with a substantial increase in the number of requests received and processed, NARA managed to increase its overall performance by 2%. Moreover, as a percentage of total number of FOIA requests received in FY09, the backlog is 20% lower than the prior year.

In FY09 NARA answered 1,392,890 written reference requests for access to records among NARA's holdings. These requests seek records that are publicly available and have no restrictions to access. Of the over 1.3 million requests processed, NARA answered 694,723 requests within 10 working days.

The number of requests for open archival records does not include the 552,872 items furnished to researchers in NARA's reading rooms across the country; the 3,627,870 visitors to NARA research rooms, museums, and public programs, including 128,898 persons who requested access to original records or microfilm for research purposes; the 37,470,245 online visits, including to archival holdings made available through the Access to Archival Databases (AAD), the Archival Research Catalogue (ARC), the *Federal Register*, or other online resources; or the 11,089 reproduction orders NARA received. These numbers also do not take into account the voluminous number of telephone calls and onsite consultations NARA receives. We

provide these numbers to show that FOIA requests make up only a very small portion of the way in which NARA provides access to its records every year.

While NARA has made strides to enhance performance on the processing of FOIA requests, we are still faced with significant challenges. Like many government agencies, NARA faces budgetary and staffing limitations that impede our ability to meet FOIA goals. There are also factors unique to NARA that contributes to NARA's inability to fully comply with the FOIA's statutory time limits:

- a.** FOIA's for Official Military Personnel files take considerably longer than twenty working days to process if the request is for a record that was lost in the 1973 fire at the National Personnel Records Center and the data must be reconstructed from other sources, or if the record has been borrowed by another agency.
- b.** NARA has very limited authority to declassify information. The length of time to respond to a FOIA can be prolonged if the records must be sent to another agency for declassification review. Indeed, all ten of NARA's oldest pending requests and approximately 2,000 more are awaiting declassification review by other agencies, i.e., as "consultations," and thus processing delays are outside of NARA's control.
- c.** When FOIA requests are submitted to Presidential Libraries that are subject to the Presidential Records Act and the FOIA, NARA must notify both the current and former President of the records we propose to open and then allow them an opportunity to review the records for executive privilege prior to release. This process takes additional time in responding to such requests.
- d.** NARA is still working to staff and implement the National Declassification Center (NDC). This initiative will, over time, improve our ability to facilitate the review of classified records among our archival holdings that have been requested under the provisions of the FOIA, thereby, reducing our processing times for such requests.