

**U.S. DEPARTMENT OF STATE  
FREEDOM OF INFORMATION ACT  
ANNUAL REPORT  
FISCAL YEAR 2003**

**I. Basic Information**

In compliance with the Electronic Freedom of Information Act Amendments of 1996, the Department of State (hereinafter the "Department") submits the attached report on the Freedom of Information Act program. This report addresses the time period for the 2003 fiscal year (October 1, 2002 to September 30, 2003). Questions pertaining to this report may be addressed to:

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This report is available on our web site at <http://foia.state.gov/refer.asp>. Paper copies may be requested by contacting A/RPS/IPS at the above address.

**II. How to Make A FOIA Request**

Freedom of Information Act (hereinafter "FOIA") requests must be made in writing and submitted by mail or fax (not e-mail) to the Office of Information Programs and Services (hereinafter "IPS") at the address indicated. Requesters should clearly mark their request "Freedom of Information Act Request" on the envelope or on the subject line of their fax, and include a daytime telephone number at which they may be reached. Requesters must describe the records sought as clearly and precisely as possible, and state their willingness to pay applicable fees or provide justification to support a fee waiver.

In order for a request to be processed, it must be "perfected." A request is deemed not perfected when unresolved issues exist, such as when the records sought have not been reasonably described or there are unresolved fee issues. IPS staff will notify the requester of any deficiencies of the request, and advise the requester how to perfect the request.

The Department will respond to requests within 20 working days of receipt, advising the requester of the date of receipt, the case number assigned to the request, and whether or not the records sought are under the Department's control. Whenever possible, the request will be processed within 20 working days. The Department's policy is to release information to the maximum extent possible. However, if some information must be withheld, the requester will be notified of the amount of information withheld, the basis for the withholding and the procedures for appealing the withholding. For more information on making a FOIA request, you may visit our web site at <http://foia.state.gov> or contact IPS at the address indicated.

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

## A. Agency-Specific Terms

1. A/RPS/IPS -- Deputy Assistant Secretary for Records and Publishing Services, Office of Information Programs and Services.

## B. Basic Terms from the U.S. Department of Justice ("FOIA Update," Summer 1997).

1. FOIA/PA request -- Freedom of Information Act/Privacy Act request. A FOIA request is generally a request for access to records concerning a third party, an organization, or a particular topic of interest. A Privacy Act request is a request for records concerning oneself; such requests are also treated as FOIA requests. (All requests for access to records, regardless of which law is cited by the requester, are included in this report.)

2. Initial Request -- a request to a federal agency for access to records under the Freedom of Information Act.

3. Appeal -- a request to a federal agency asking that it review at a higher administrative level a full denial or partial denial of access to records under the Freedom of Information Act, or any other FOIA determination such as a matter pertaining to fees.

4. Processed Request or Appeal -- a request or appeal for which an agency has taken a final action on the request or the appeal in all respects.

5. Multi-track processing -- a system in which simple requests requiring relatively minimal review are placed in one processing track, and more voluminous and complex requests are placed in one or more other tracks. Requests in each track are processed on a first-in/first-out basis. A requester who has an urgent need for records may request expedited processing (see below).

6. Expedited Processing -- an agency will process a FOIA request on an expedited basis when a requester has shown an exceptional need or urgency for the records which warrants prioritization of his or her request over other requests that were made earlier.

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

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

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

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

11. Denial -- an agency decision not to release any part of a record or records in response to a FOIA request because all the information in the requested records is determined by the agency to be exempt under one or more of the FOIA's exemptions, or for some procedural reason (such as - 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**

##### **(Statute Cited; Description of type of information withheld; Has use of statute been upheld in court?)**

Statute: 5 U.S.C. App., § 7(b)

Description: Protects the identity of employees who provide a complaint or information to the Inspector General

Upheld in court?: No

Statute: 8 U.S.C. § 1202(f)

Description: Protects records pertaining to the issuance or refusal of visas to enter the United States

Upheld in court?: Medina-Hincapie v. U.S. Department of State, 700 F.2d 737 (D.C. Cir. 1983)

Statute: 10 U.S.C. § 424

Description: Protects organizational and personnel information for Defense Intelligence Agency, National Reconnaissance Office, and National Imagery and Mapping Agency

Upheld in court?: No

Statute: 22 U.S.C. § 2778

Description: Protects information concerning arms export licensing cases

Upheld in court?: Council for a Livable World Education Fund v. U.S. Department of State, Docket #96-1807 (D.D.C. November 23, 1998)

Statute: 22 U.S.C. § 4004

Description: Protects Foreign Service employee records

Upheld in court?: No

Statute: 42 U.S.C. § 2011

Description: Protects records defining policy for the development, use and control of atomic and nuclear energy in private, peaceful and military matters

Upheld in court?: No

Statute: 50 U.S.C. § 403-g

Description: Protects the nature of the CIA's functions and personnel under the Central Intelligence Agency Act

Upheld in court?: *Minier v. CIA*, 88 F. 3d 796 (9th Cir. 1996)

Statute: 50 U.S.C. § 403-3(c)(7)

Description: Protects intelligence sources and methods under the National Security Act

Upheld in court?: *Sims v. CIA*, 471 U.S. 159 (1985)

Statute: 50 U.S.C. App. 2411 (c)(1)

Description: Protects confidential information concerning the licensing procedure under the Export Administration Act

Upheld in court?: *Africa Fund v. Mosbacher*, Docket #92-289 (S.D.N.Y. 5/26/93)

Statute: 50 U.S.C. § 1701--note

Description: Protects records on arbitration of claims before the Iran-U.S. Claims Tribunal

Upheld in court?: No

## V. Initial FOIA/PA Access Requests

**N.B.** Statistics reported herein are based on data currently available and are accurate to the extent possible. However, not all data required to prepare this report are currently being collected in the Department's requests tracking system. For example, statistics for the medians (section VII) are based on the dates that acknowledgement letters were sent to requesters, and in some cases the dates that requests were received, not on the dates when the requests were perfected (and thus processable) or when expeditious processing was granted. An asterisk (as in section B. 4) indicates additional information concerning the data provided. Lastly, the Department processes requests incrementally, i.e. segments of a case are processed as they become available. Requests in which there have been incremental releases, but which have not been processed to completion are not reflected in this report. Time is reported in calendar days.

### A. Numbers of Initial Requests

1. Number of requests pending as of end of preceding fiscal year: **5,343**
2. Number of requests received and re-opened during current fiscal year: **received 3,352, re-opened 86**
3. Number of requests processed during current fiscal year: **5,773**
4. Number of requests pending as of end of current fiscal year: **3,008**

### B. Disposition of Initial Requests

1. Number of total grants: **1,086**
2. Number of partial grants: **1,581**
3. Number of denials: **220**

#### a. Number of times each FOIA exemption used

Exemption 1: 736  
Exemption 2: 125  
Exemption 3: 260  
Exemption 4: 104  
Exemption 5: 409  
Exemption 6: 544  
Exemption 7 (A): 59  
Exemption 7 (B): 3  
Exemption 7 (C): 108

Exemption 7 (D): 35  
Exemption 7 (E): 30  
Exemption 7 (F): 12  
Exemption 8: 0  
Exemption 9: 0

4. Other reasons for nondisclosure (total): **2,886**

a. no records: 1,088  
b. referrals: 588

(This statistic reflects cases in which all documents were referred to another agency for response and cases in which the request itself should be directed to another agency)

c. request withdrawn: 62  
d. fee-related reason\*: 0

e. records not reasonably described\*: 0

f. not a proper FOIA request for some other reason: 32

g. not an agency record\*: 0

h. duplicate request: 36

i. other (specify): 1,080

(This statistic reflects requests which were not perfected or administratively closed.)

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

A. Number of appeals

1. Number of appeals received during fiscal year: **273**

2. Number of appeals processed during fiscal year: **160**

B. Disposition of Appeals

1. Number completely upheld: **61**

2. Number partially reversed: **70**

3. Number completely reversed: **6**

a. Number of times each FOIA exemption used

Exemption 1: 105

Exemption 2: 10

Exemption 3: 14

Exemption 4: 0

Exemption 5: 32

Exemption 6: 31

Exemption 7 (A): 4

Exemption 7 (B): 0

Exemption 7 (C): 4

Exemption 7 (D): 2

Exemption 7 (E): 3

Exemption 7 (F): 0

Exemption 8: 0

Exemption 9: 0

4. Other reasons for nondisclosure (total): **23**

a. no records: 12

b. referrals: 0

c. request withdrawn: 0

d. fee-related reason: 0

e. records not reasonably described: 0

f. not a proper FOIA request for some other reason: 0

- g. not an agency record: 0
- h. duplicate request: 0
- i. other (specify): 11
- 1. documents under appeal were duplicates of documents requested by appellant in another request: 1
- 2. appellant moved-no forwarding address: 1
- 3. appellant organization defunct-no forwarding address: 1
- 4. appeal overtaken by litigation: 2
- 5. not a valid appeal: 1
- 6. appeal of other agency documents: 4
- 7. appellant advised to appeal to other agency: 1

## **VII. Compliance with Time Limits/Status of Pending Requests**

A. A. In accordance with the amended FOIA, the Department has established multiple-tracks for processing FOIA requests for the public so as to distinguish simple requests from complex requests. At this time, requests can be assigned to one of two tracks, the simple/fast track or the routine/complex track. Requests are assigned to a particular tracking queue contingent upon the level of effort required to complete the request, the number and location of searches/record sources, and the estimated volume of responsive records. Assigning a case to an appropriate track is often difficult during the initial processing stage of a request. Since the Department's search function is decentralized, the number and complexity of responsive documents and the amount of other agency concurrences are unknown until all searches are returned and the review of the documents has been completed. As a result, movement between tracks can become very fluid. A seemingly routine case can quickly become complex as searches are returned with voluminous documents. This type of case activity blurs the line between routine and complex cases, thus, making it impossible to create a complex track under our current system.

As reported last year, in order to improve response times to new and pending requests and reduce the existing FOIA backlog, additional resources were allocated to the Department's FOIA program for a two-year period. IPS continues to target the following initiatives: 1) significantly reduce the current FOIA backlog over a two-year period by hiring additional temporary staff; 2) prevent future backlogs of information requests by constructing a permanent FOIA workforce infrastructure to keep up with the incoming workload; 3) reduce the diversion of FOIA staff by constructing a permanent special project workforce infrastructure; and 4) identify and implement process improvements.

The Department has effectively completed steps to accomplish the four-targeted initiatives. After year one, students have been recruited from the metropolitan area colleges and universities to provide additional support in response to FOIA and other document production demands. Due Diligence, IPS' task force of civil service and contract employees dedicated to the two-year backlog project, has been implemented and has accomplished its first goal by reducing the backlog in excess of 40%. A total of twenty-three employees have been hired and managers have been selected from the current IPS staff to build the permanent FOIA infrastructure. The Department's special project workforce is now in place to prevent the diversion of resources exclusively dedicated to the FOIA. With the institution of these first three initiatives, the Department is confident it will meet the second year goal to reduce the backlog by an additional 40%. Finally, the focus of the three initiatives at all levels in IPS has identified areas in which procedural improvements for implementing the FOIA is necessary. Corrective action is being taken to resolve these issues which will ultimately streamline the FOIA process and better facilitate our ability to keep up with the incoming workload and prevent future backlogs of FOIA requests.

Median processing time for FOIA/PA requests processed during the year:

1. Simple Requests - "Fast Track"

a. number of requests processed: 1,268

valid: 188

invalid: 1,080

b. median number of days to process: 8

2. Routine/Complex Requests

a. number of requests processed: 4,493

b. median number of days to process: 671

3. Requests Accorded Expedited Processing

a. number of requests processed: 12

b. median number of days to process: 196\*

\*Cases involving ongoing criminal investigations where processing was suspended and those that were completed during a previous reporting period are not reflected.

B. Status of Pending Requests

1. Number of FOIA/PA requests pending as of end of current fiscal year: 3,008

2. Median number of days that such requests were pending: 312

**VIII. Comparisons with previous year(s) (Optional)**

A. Comparison of numbers of requests received\*

FY 2002 3,134

FY 2003 3,438

Percentage of Change: 9.7% increase

B. Comparison of numbers of requests processed

FY 2002 4,636

FY 2003 5,773

Percentage of Change: 24.5% increase

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

FY 2002 546

FY 2003 312

Percentage of Change: 42.9% decrease

\*This figure also includes cases re-opened in FY 2003.

D. Other statistics significant to Agency:

1. Number of requests for expedited processing: 177

2. Number of requests granted expedited processing: 13

E. Other Narrative Statements:

1. Training

In addition to ongoing FOIA training for both new employees and IPS staff, training was conducted for FOIA reviewers to inform them of the FOIA amendment (P.L. 107-306) exempting intelligence communities from releasing information to foreign governments.

The training was conducted in several sessions and included instruction for new procedures and a model letter to possible representatives of a foreign government seeking Department information. Reviewers were also trained in procedural changes regarding declassification markings for documents under FOIA review consistent with the amendment to E.O. 12958 on classified national security information.

## 2. Public Availability of New Categories of Records

As mandated by the 1996 amendments to the Freedom of Information Act (E-FOIA), IPS has established a web site on the Internet located at <http://www.foia.state.gov> in part to make new categories of records publicly available. Since its inception in March 1998, the site has developed into an information-rich direct source of Department documents and information. The site encompasses a continuously growing collection of unique records of international significance, which have been made available to the public under the FOIA or as special collections. The site averages 17 million visitors per month, and typically experiences a huge increase in the number of visits immediately following a release of special document collections of a large global interest, such as the 750,000 hits received on the first day that the Argentina collection was made available. By proactively making declassified record collections available to the requesting public in our electronic reading room, we believe we have reduced the amount of direct FOIA cases received per year. However, this effect is not verifiable.

Special interest collections currently total over 100,000 pages in addition to a continually expanding FOIA library of previously released documents. The collections encompass documents relating to human rights abuses in countries such as Guatemala from 1984 to 1995, Chile during the Pinochet era and Argentina from 1975 to 1984. Other topics include the murders of four U.S. churchwomen in El Salvador; the disappearance and investigation of Amelia Earhart; and the disappearance in Hungary of Swedish diplomat Raoul Wallenberg during World War II. A collection about the creation of the OSS and subsequent establishment of the modern-day CIA has also been added.

The site also provides a number of aids to help users understand the content of our records and how to access that information; how records are reviewed and processed for release; why some information may continue to be withheld; and what users' appeal rights are. The search engine offers both standard and advanced search capabilities that include full text retrieval of the documents on the site. In addition, the site provides extensive links to other sources of Department records or information. In general, IPS has applied technology to enhance performance and increase the level of satisfaction for our many customers, who include the general public, the White House, the Congress, other Federal agencies, the courts, academia, historians, journalists, attorneys, private interest groups, and the Department's offices and overseas posts.

## IX. Costs/FOIA Staffing

As previously reported, the Department has committed resources to establish a dedicated staff exclusively for processing Department of Justice, General Accounting Office, Congressional Committee and other special document requests. We no longer need to divert staffing resources from the central FOIA processing office for these high visibility cases. With these better-defined staffing roles, we are able to estimate the resources dedicated to FOIA cases more effectively. We have, therefore, refined both our staffing and total costs resources for this reporting period and will continue to do so in future years. The staffing levels reported below also reflect an estimate of those resources in the decentralized FOIA processing bureaus.



**Staffing levels**

1. Number of full-time FOIA/PA personnel: **104**
2. Number of personnel with part-time or occasional FOIA/PA duties (in work-years):  
**43.8**
3. Total number of personnel (in work-years): **147.8**

**A. Totals Costs (including staff and all resources- estimates)**

1. FOIA/PA processing (including appeals): **\$12,107,000**
2. Litigation-related activities: **\$ 123,156**
3. Total costs: **\$12,230,156**

**X. Fees**

- A. Total amount of fees collected for processing requests: \$ **16,442.67**
- B. Percentage of total costs: **0.13%**

**XI. FOIA Regulations**

The Department's FOIA regulations are located at 22 CFR 171. These can be found directly at the Government Printing Office's (GPO) website at <http://www.gpoaccess.gov/cfr/index.html> or from links at our website at <http://foia.state.gov>.

The Department's search and review fees are assessed at the following rates:

Administrative/Clerical (GS-1 through GS-8; or FS-9 through FS-6): \$8.00/hour

Professional (GS-9 through GS-13; or FS-5 through FS-3): \$17.00/hour

Executive (GS-14 and above; or FS-2 and above): \$30.00/hour