



U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF INSPECTOR GENERAL

Catalyst for Improving the Environment

Public Liaison Report

EPA Has Improved Its Response to Freedom of Information Act Requests But Further Improvement Is Needed

Report No. 09-P-0127

March 25, 2009

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Abbreviations

DECA	Division of Enforcement and Compliance Assistance
DOJ	Department of Justice
EPA	U.S. Environmental Protection Agency
ERRD	Emergency and Remedial Response Division
FACTS	FOIA Administrative Cost Tracking System
FOIA	Freedom of Information Act
GAO	Government Accountability Office
ILPG	Information Law Practice Group
OEI	Office of Environmental Information
OGC	Office of General Counsel
OIC	Office of Information Collection
OIG	Office of Inspector General
RIN	Request Identification Number
SOPs	Standard Operating Procedures



At a Glance

Catalyst for Improving the Environment

Why We Did This Review

We sought to determine if the U.S. Environmental Protection Agency's (EPA's) Freedom of Information Act (FOIA) processing and reporting procedures were meeting current FOIA requirements and if any improvements could be made.

Background

On December 14, 2005, President Bush signed Executive Order 13392, *Improving Agency Disclosure of Information*. In 2006, Congress introduced FOIA amendment legislation to improve agencies' responses to FOIA requests. Similar amendment legislation was introduced in Congress in 2007: HR1326, S849, S2427, and S2488. Public Law 110-175 was signed by President Bush on December 31, 2007, as the *Openness Promotes Effectiveness in our National Government Act of 2007*.

For further information, contact our Office of Congressional, Public Affairs and Management at (202) 566-2391.

To view the full report, click on the following link:
www.epa.gov/oig/reports/2009/20090325-09-P-0127.pdf

EPA Has Improved Its Response to Freedom of Information Act Requests But Further Improvement Is Needed

What We Found

We found the following conditions during our evaluation:

1. EPA has reduced its backlog of FOIA initial requests and appeals.
2. EPA's procedures did not always ensure that FOIA responses were timely in all EPA program offices and regions, or that appeals were processed timely.
3. Optional training provided by the National FOIA Officer was only attended by some EPA employees from each region.

Some of the annual personnel and cost statistics gathered and provided to the National FOIA Officer for inclusion in the annual report to the Department of Justice (DOJ) were not accurate. The effect of these conditions is that EPA as a whole (and not individually by region or program office) is not giving timely responses to FOIA requests or appeals. The lack of complete and correct cost information supplied to the DOJ in the annual report means that EPA may not know how much of its budget it is spending on FOIA-related costs, and also that it is not meeting the specific statutory reporting requirement in Title 5 United States Code § 552(e)(1)(G).

What We Recommend

We recommend that EPA issue a policy mandating training for its FOIA officers, coordinators, and individuals who have FOIA responsibilities. The policy should be supplemented by written standard operating procedures created for each regional and program office that issues FOIA responses. EPA should conduct a review of the regional and program FOIA offices in order to make recommendations for any improvements.

EPA concurred with our recommendations.




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
INSPECTOR GENERAL

March 25, 2009

MEMORANDUM

SUBJECT: EPA Has Improved Its Response to Freedom of Information Act Requests
But Further Improvement Is Needed
Report No. 09-P-0127

FROM: Eileen McMahon 
Assistant Inspector General for Congressional, Public Affairs and
Management

TO: Linda A. Travers
Acting Assistant Administrator for Environmental Information and
Chief Information Officer

Patricia K. Hirsch
Acting General Counsel

This is our final report on the subject review conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and the findings contained in this report do not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established resolution procedures.

The estimated cost of this report – calculated by multiplying the project staff days by the applicable daily full cost billing rates in effect at the time – is \$505,369.

Action Required

In accordance with EPA Manual 2750, you are required to provide this office with a written response within 90 days of the date of this report. You should include a corrective action plan for agreed-upon actions, including milestone dates. We have no objections to the further release of this report to the public. This report will be available at <http://www.epa.gov/oig>.

If you or your staff have any questions, please contact me at 202-566-2391, or Eric Lewis at 202-566-2664 or lewis.eric@epa.gov.

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Chapter 1

Introduction

Purpose

Our purpose was to establish whether the U.S. Environmental Protection Agency (EPA) complies with Executive Order 13392, and current Freedom of Information Act (FOIA) provisions and implementing regulations. Our objectives included reviewing some of EPA's program offices and regional FOIA offices to determine:

- whether EPA has procedures in place to assure that FOIA responses are adequate and timely,
- whether the optional training provided by the National FOIA Officer met EPA's training needs, and
- whether the annual statistics the regional FOIA officers gathered and provided to the National FOIA Officer for inclusion in the annual report were accurate.

Background

On December 14, 2005, President Bush signed Executive Order 13392, *Improving Agency Disclosure of Information*. With this Order, President Bush made clear his intent to strengthen executive agencies' responses to FOIA requesters, requiring FOIA request responses to be courteous, appropriate, citizen-centered, and results-oriented to improve service and performance. The Order created Agency chief FOIA officers with responsibility and authority for:

- complying efficiently and appropriately with the FOIA;
- monitoring FOIA implementation throughout an Agency;
- recommending any necessary adjustments to agency practices, policies, personnel, or funding to an Agency head;
- reviewing and reporting (to the Attorney General) on an Agency's performance in implementing the FOIA;
- facilitating understanding of the FOIA's statutory exemptions;
- designating one or more FOIA public liaisons;
- considering other FOIA-related assistance an Agency can give to the public;
- ensuring that an Agency has method(s) to receive and respond promptly and appropriately to FOIA requesters about the status of their requests; and
- reviewing an Agency's FOIA operations.

EPA's FOIA Requestor Service Center, which is required by Executive Order 13392, was placed in the Office of Environmental Information, Office of Information Collection (OEI/OIC), and the FOIA Public Liaison is located in that office with the National FOIA Officer. EPA's Chief FOIA Officer has oversight responsibility for EPA's overall compliance with Executive Order 13392.

In fiscal year ending September 30, 2006, EPA reported receiving 11,667 FOIA requests (which included all requests to the Agency). FOIA requests and fee waiver requests are processed by Headquarters or the regions in which they are received. The statutory and regulatory time limit for EPA to respond is 20 working days. EPA aims to make a determination and provide records to the requester within this 20-working-day period. For a complex request, the requester is contacted to see if he or she is able or willing to limit or narrow the scope of the request to allow the Agency to process it within the 20-working-day statutory time limit or come to an agreement with the requester on a target date. If the requester does not modify the request, EPA attempts to respond to the request and provide records to the requestor within 20 working days or the negotiated time period. Fee waivers are approved or denied, using six criteria found in EPA's FOIA regulations at 40 Code of Federal Regulations (CFR) 2.107, and FOIA Manual.

On February 14, 2007, the Government Accountability Office (GAO) testified to Congress about its review of 25 agencies' (including EPA's) FOIA processing trends and agency improvement plans that are required by the Executive Order. The GAO conducted interviews with staff from EPA Headquarters to assess the status of the annual reports and look at the four criteria named in Executive Order 13392 that EPA had to implement. GAO did not conduct interviews in the regional FOIA offices. The GAO's final report, *Freedom of Information Act, Processing Trends Show Importance of Improvement Plans*, GAO-07-441, was issued on March 30, 2007.

On December 31, 2007, President Bush signed the *Openness Promotes Effectiveness in our National Government Act of 2007* [Public Law (PL) 110-175]. The law amends the Freedom of Information Act to, among other things, prohibit an agency from assessing search or duplication fees if it fails to comply with time limits, provided that no unusual or exceptional circumstances apply to processing the request, and to require each agency to make its FOIA Public Liaison available to assist in resolving any disputes between the requester and the Agency.

Noteworthy Achievements

The Agency significantly reduced the backlog of FOIA requests. According to the Annual FOIA Reports, EPA had 12,790 initial FOIA requests pending as of September 30, 2001. (The Fiscal Year 2001 Annual FOIA Report did not have any data on overdue requests.) As of September 30, 2007, the pending requests

were reduced to 1,727 requests. Then, as of September 30, 2007, the number of overdue initial FOIA requests was 783.

Best Practices in the Regions Reviewed

The National FOIA Office conducts monthly meetings and conference calls with all Headquarters FOIA Coordinators and Regional FOIA Officers to keep them abreast of new developments, changes in procedures, and processes.

Region 2 generates a summary report each month, along with reports that are specific to each division telling them specifically which FOIAs are overdue. These reports are shared with senior management, including the Regional Administrator and Deputy Regional Administrator.

Region 4 has written standard operating procedures for its FOIA processing which include training sessions for new FOIA specialists. During training, the specialists become certified on EPA records systems, such as Superfund, that have centralized record-keeping capability. That way, the FOIA specialists retrieve records directly and more quickly, and Region 4 can be more responsive to the requester. Region 4 also has a stand-alone system called FACTS (FOIA Administrative Cost Tracking System) that calculates and tracks all costs associated with FOIA requests, including costs for processing, actual salary, printing, and copying, which helps to assure the accuracy of their annual reported FOIA costs.

The FOIA officers in Regions 2, 4, 5, and 10 each stated that they reserve the final closeout function in FOIAXpress to themselves or to the contractors that work under their direction. As a result, the FOIA officers can give a final review to a FOIA request to ensure that all responses are complete before the request is closed in the FOIAXpress system.

Scope and Methodology

Our review consisted of two phases: preliminary research and field work. The scope of our preliminary research was reviewing the FOIA request responses and fee waiver determinations of Regions 2, 10, and the Office of Water, and an interview about the appeals backlog with the Office of General Counsel's Information Law Practice Group (ILPG) for calendar year 2006. For field work, we expanded our scope to include Regions 4, 5, and 7. Our scope also included reviewing the FOIA cost statistics that were provided by the regional FOIA officers (in the regional offices we reviewed) to the National FOIA Officer to include in the 2006 annual report to the Department of Justice (DOJ). Our review was conducted from January 9, 2007, to March 6, 2008, and was conducted in accordance with Generally Accepted Government Auditing Standards.

Our methodology included interviewing EPA Headquarters and regional FOIA personnel, and reviewing FOIA requests, fee waiver requests, and FOIA appeals that were open in calendar year 2006. We interviewed the National FOIA Officer in the Office of Environmental Information, Office of Information Collection (OEI/OIC), two Acting Assistant General Counsels for the Information Law Practice Group from the ILPG, and the FOIA officers and a random selection of the FOIA coordinators in Regions 2, 4, 5, 7, 10, and the Office of Water. Our review of the FOIA requests and fee waiver requests included reviewing any emails, phone logs, regular mail, or other documentation which would have shown evidence of the date, time, and subject of contact with the requester (and in particular in relation to evidence that an initial determination of a FOIA request was made within 20 working days of receiving that request). We also looked for evidence of a specific written notice (email or letter) of an extension of time on making an initial determination where the EPA did not make this determination within 20 working days of receiving the request.

Our methodology also included (for FOIA requests and fee waivers reviewed) completing a sample checklist, composed of a set of questions we developed using the DOJ's FOIA processing guidelines.

We did not perform a statistical analysis. We did use statistical software, EZQuant, for large populations to help us determine the size and to randomly select our judgment samples. Specifically:

- In Regions 2, 4, 5, 7, 10, and the Office of Water we reviewed all fee waiver requests, granted or denied.
- In Region 10 and the Office of Water we reviewed all open FOIA requests.
- In Region 2 we reviewed all open FOIA requests more than 365 days past the 20-working-day statutory time limit for making an initial determination.
- In Regions 4, 5, and 7 we used the statistical software to randomly select FOIA requests received.
- In the ILPG, we stratified all open appeal cases and took a judgmental sample from each stratum. Then we used the statistical software to randomly select the appeals to review.

Statement on Internal Controls

We limited our review of internal controls during this review to those specifically related to the areas we reviewed. However, some of the conditions we presented in Chapters 2 and 3 occurred because the attention given to internal controls needed improving. This topic is further discussed in Chapters 2 and 3.

Chapter 2

EPA's Procedures Did Not Always Ensure that FOIA Responses Were Timely

Findings

Our review of FOIA requests and appeals obtained from program and regional FOIA officers and the ILPG revealed that EPA did not always ensure that FOIA responses were timely. We found the following:

- The regions did not consistently make an initial determination within 20 working days of receiving a request.
- The regions did not always give the requester a written notice for an extension of time for making an initial determination.
- The ILPG did not have procedures in place to ensure that the oldest appeals were processed first.

Details of Findings in Region 2

During our review of Region 2's FOIA request files, we noted that Region 2 did not have any formal monitoring procedures to determine the status of FOIA requests. Region 2 typically receives more than 2,000 FOIA requests annually. Because of the quantity of requests received, formal monitoring procedures are needed to ensure timely completion. Region 2's FOIA staffing may need to be reviewed to determine if it can adequately administer the FOIA function.

After we reviewed the 57 FOIA requests that were sampled, we determined that no evidence existed that an initial determination was made within 20 working days of receipt for 28 of those 57 FOIA requests, and no sufficient evidence existed in the files to determine that any contact was made with the requestors notifying them of any delays in providing the requested information.

There were multiple causes of the Region 2 conditions. When a FOIA request is logged into the system, the Region 2 FOIA officer often assigns the work to multiple divisions, typically the Division of Enforcement and Compliance Assistance (DECA), the Division of Environmental Planning and Protection, and the Emergency and Remedial Response Division (ERRD).

The Region 2 FOIA officer discussed a monthly backlog report with the Region 2 division directors listing all of the outstanding FOIA requests, but we noted no follow-up between a FOIA request being received and its appearing on the monthly backlog report, and we did not note any subsequent follow-up to determine the progress of the FOIA requests after they appeared on the backlog

report. No documents existed indicating the dates and times of contact to and from the requesters, because the FOIA coordinators did not follow any formal record-keeping procedures.

Finally, not enough staff is assigned to respond to FOIA requests in certain Region 2 program offices. The ERRD coordinator stated that he had been overwhelmed with casework. He also stated that FOIA requests had been initially assigned to his division and subsequently transferred to the Special Projects Branch, and that the cases have either not been addressed or assigned, some for more than 1 year. Based on discussions with the ERRD coordinator, we found the following information:

Table 1-1: Number of Requests Assigned to ERRD Coordinator

FY Requests Were Assigned to the Coordinator	No. of Requests
FY 2004	1,918
FY 2005	2,036
FY 2006	1,303
FY 2007 (as of June)	1,399

Source: OIG analysis based on discussions with ERRD coordinator

Details of Findings in Region 4

When we reviewed Region 4's FOIA request files, we determined that the dates and times of contact to and from the requesters were not always documented, because FOIA coordinators had no formal record-keeping procedures. Though Region 4 has very extensive written standard operating procedures, it did not include instructions for documenting all contact with the requesters. After we completed our review, Region 4 added the instructions to the procedures.

After our review of 55 FOIA requests sampled, we determined that no evidence existed that an initial determination was made within 20 working days of receiving the request for 2 of those 55 FOIA requests. We also determined that the Region did not have the underlying information in seven cases to support its assertion that the Region had called the requester about the extension of time.

Details of Findings in Region 5

When we reviewed Region 5's FOIA request files, we determined that the dates and times of contact to and from the requesters were not always documented. This was because the FOIA coordinators did not follow any formal record-keeping procedures. Though Region 5 has written standard operating procedures, those procedures do not include instructions for documenting all contact with the requesters.

After reviewing 58 FOIA requests, we determined that no evidence existed that an initial determination was made within 20 working days of receiving the request

for 5 of the 58 FOIA requests that we sampled, and no evidence existed that a written notification of extending time on making an initial determination was given to the requester for 4 of those 5 FOIA requests.

Details of Findings in Region 7

When we reviewed Region 7's FOIA request files, we determined that the dates and times of contact to and from the requesters were not always documented. From our review of 55 FOIA requests, we determined that no evidence existed that an initial determination was made within 20 working days of receiving the request for 12 requests, and that these same 12 requests lacked a written notification for an extension of time.

The Region 7 FOIA officer identified the cause as a staffing problem, stating that the exceptions occurred because she was sick and out for an extended amount of time, and her office was understaffed.

Details of Findings in Region 10

When we reviewed Region 10's FOIA request files, we determined that the dates and times of contact to and from the requesters were not always documented.

Our analysis showed that no evidence existed in Region 10 that an initial determination was made within 20 working days for 7 of the 68 FOIA requests that we sampled. No evidence existed that a written notification for an extension of time on making an initial determination was given to the requester for six of those seven FOIA requests.

Region 10 did not have formal record-keeping procedures. This contributed to the conditions noted during our analysis.

Details of Findings in Office of General Counsel

When we reviewed ILPG's appeal cases, we found that appeal cases had been delayed due to system and staffing inefficiencies.¹ We also noted that the cases were not processed systematically. As of January 2007, ILPG had 220 overdue appeal cases. Of this universe, we sampled 38 cases—of those 38, 29 were still pending action by ILPG, with the oldest dating back to January 1997, and the average age equaling 31 months. ILPG is not giving timely responses to appeals, and is not meeting the statutory requirement of 5 United States Code (USC) § 552(a)(6)(A)(ii), that a decision be made on an appeal within 20 working days after receipt.

¹ The OIG has the authority to review and process its own FOIA appeals and this review did not include the OIG's processing of its appeals.

We identified three factors that contributed to the appeals backlog: regional and program office delays, staff shortages, and inefficient case assignment control.

Regional and Program Office Delays

ILPG staff often experienced significant delays in receiving pertinent data from regional or program offices, which prevent ILPG from processing appeal cases timely. Before the launch of FOIAXpress, when ILPG received an appeal, it issued a standard memorandum to the regional or program offices specifying what documents were needed. Currently, the FOIAXpress system notifies regional or program offices that an appeal has been filed by e-mailing a copy of the appeal. FOIAXpress does not show a list of the documents required to be furnished to ILPG by regional and program offices or provide any additional instructions.

However, the National FOIA Officer has started providing general guidance for appeal cases to regional and program office personnel in the same email in which the appeal is transmitted. In general, ILPG does not follow up with regional or program offices to obtain the necessary documents to support appeal cases until the case has been assigned to a specific attorney. ILPG is developing a more effective mechanism to work with the regional and program offices to expedite providing documents.

Staff Shortages

Of the 38 appeals we sampled, 16 appeals had not been assigned as of May 2007. Of the pending appeals sampled, 1 was from 1997, 3 were from 2001, 2 were from 2002, 3 were from 2003, 4 were from 2004, 6 were from 2005, and 10 were from 2006. ILPG staff stated that sometimes a lack of available staff prevents appeals from being addressed timely. For example, litigation issues with respect to certain FOIA requests and appeals may cause other appeals to be delayed. Also, during Fiscal Year 2007, the group experienced several absences, such as the Assistant General Counsel out on an extended detail, a staff member out on extended leave, and another staff member left the team for another position.

Ineffective Case Assignment Control

Appeals are not assigned to ILPG staff in a timely manner. In reviewing the 38 sampled appeals and other unassigned appeals, we noted that the appeals are not assigned in the order received. Staff attorneys are at liberty to retrieve appeal cases from a case cabinet maintained in ILPG without considering the chronological order in which an appeal was received at ILPG. We confirmed this situation when we found that 25 appeals (from the cabinet where unassigned appeals are stored) were dated from 2001 through 2006. Of these 25 appeals, 18 were from 2006, 2 each were from 2004 and 2005, and 1 each was from 2001, 2002, and 2003. In analyzing these two case groups, we concluded that the appeals were not being processed in the order of receipt, which the Acting

Assistant General Counsel agreed should be the normal priority order, barring special circumstances mandating otherwise for certain cases.

We confirmed this observation during a June 7, 2007, meeting with the Acting Assistant General Counsel for the Information Law Practice Group. ILPG did not have written instructions for its staff to retrieve appeals from the cabinet, or written instructions for assigning new appeal cases to ILPG staff. The staff was verbally instructed to retrieve files in order but as explained above this system did not work. However, after our initial site visit, the attorneys began writing their name and the date of retrieval in a log next to the file cabinet, and the Acting Assistant General Counsel for ILPG was keeping track of which attorney retrieved which case. He also said he would reassign a different appeal to the attorneys if older appeals were present that should be worked on first.

Conclusion

These conditions reflect on EPA as a whole, and indicate that EPA has not consistently met all statutory requirements of the Freedom of Information Act 5 USC § 552 (a)(6)(A)(i) and (ii). This statute provides that an initial determination for a FOIA request (or an initial determination with respect to any appeal) shall be made within 20 working days of receiving such a request or appeal, absent unusual circumstances as defined in the Act. It also provides that a written notice for a time extension must be given to the requester if EPA cannot make a determination on a request within 20 working days of receiving such a request.

Internal Controls and Compliance

EPA's FOIA implementation is decentralized; no single person has authority over regional and program office FOIA response procedures. Without standardized FOIA guidance, EPA is vulnerable to a lack of quality control on a national level. In addition, FOIA training is not mandatory, which could further reduce quality control options for the EPA.

Recommendations

We recommend that the Assistant Administrator for Environmental Information:

- 2-1 Conduct periodic reviews of the FOIA processes and procedures at each of the regional and program FOIA offices.
- 2-2 Create written standard operating procedures for all regional and program offices responsible for FOIA responses. FOIA procedures should be standardized at the national level, so that all regions and program offices are meeting the same basic FOIA processing requirements identified by the OEI. Some of the elements we identified which could be included in a written standard operating procedure include:

- A requirement that all contacts with the requesters be documented.
- A FOIA request discussion form template that all FOIA coordinators can use to document their contact with the requesters.
- A timeframe within which regional or program personnel gather and submit documents for ILPG appeal cases.

We recommend that General Counsel:

- 2-3 Review the FOIA appeal process and implement a case control system for assigning and tracking appeal cases so that appeals can be completed more quickly.

Agency Comments and OIG Response

EPA agreed to implement our recommendations and provided planned completion dates for the recommendations.

EPA's comments on our draft report, and our response to those comments, are included as Appendix A. They also provided a list of actions they have implemented after we completed our field work. We are providing the highlights below in a Subsequent Events section, and the complete list of Subsequent Events is included with the Agency's response in Appendix A.

Subsequent Events

Since our review, the Agency told us that some changes have been initiated in the EPA's Headquarters and regions and the OGC.

EPA says it reduced overdue initial FOIA requests from 23,514 in July 2001 to 783 on October 1, 2007. EPA continued to reduce its initial requests backlog. On October 1, 2008, EPA further reduced the backlog to 717 overdue initial FOIA requests.

Region 2 says it has greatly reduced its backlog and met the 10 percent goal set out in EPA's FOIA Improvement Plan in response to Executive Order 13392, despite receiving by far the most FOIA requests of any single Agency office or region (214 backlog cases out of 2,291 requests received). For Fiscal Year 2008, Region 2 has only 4 backlog requests out of more than 300 new requests and continues to strive to improve these numbers even further. Region 2 has already eliminated all of the Fiscal Year 2004, 2005, and 2006 backlog requests. The Region is close to eliminating the 2007 backlog.

Region 4 says it has had no overdue requests or backlog since June 2006 and included a public status inquiry on its FOIA page Website.

The OGC says the ILPG has changed its practice of assigning appeals. Currently, the Assistant General Counsel, ILPG, assigns the appeals to the team members for processing. The office currently is evaluating a two-track system for processing appeals. The ILPG has lowered the number of overdue appeals from approximately 272 pending, September 2006, to 151 pending, October 2008.

Chapter 3

Optional Training Provided by the National FOIA Officer Only Benefited Some Employees in Each Region

Findings

We found the following conditions during our review which support the observation that all employees working on FOIA request responses did not benefit from the optional training provided by the National FOIA Officer.

- Regional employees who work on FOIA requests do not always document contact with requesters.
- Regional FOIA officers do not always supply correct information for annual reporting requirements.
- Regional fee waiver response form letters are not always up-to-date.
- Regional FOIA officers do not send the information requested for appeals as quickly as they should.

The National FOIA Officer currently conducts optional annual FOIA training in Washington, DC, to which EPA regions and program offices may send staff, depending on what their budgets allow. The last training class held by the National FOIA Officer was attended by 151 people, 46 of whom traveled to this training from multiple regions. However, evidence existed that the regional program employees who worked on FOIAs did not attend the national training. Typically, the regions send only FOIA officers and coordinators. The program personnel who collect the information and often speak directly with the requesters do not attend the FOIA training.

The National FOIA Officer stated that he believed mandatory training for all EPA personnel responsible for responding to FOIA requests would help improve the FOIA process. The ILPG stated that more education and outreach was needed in the regions and program offices to ensure an understanding of the legal requirements for FOIA appeals responses and the need to provide all withheld documents during OGC's processing FOIA appeals. The lack of mandatory FOIA training for all staff assigned FOIA responsibilities contributed to inefficient responses to FOIA requests and appeals, and thus to a lack of compliance with some provisions of Executive Order 13392.

Contact with requesters is not always documented

In all of the regions we reviewed few, if any, documents indicated the dates and times of contact to and from the requesters. The National FOIA Officer stated that he has and would again instruct the regional FOIA officers that all contacts with the requesters have to be documented.

Regional FOIA officers do not always supply correct information for annual reporting requirements

The FOIA officers of Regions 2, 4, and 5 correctly reported all full- and part-time FOIA personnel, and all other costs, to the National FOIA Officer, who reported these costs in the annual report to the DOJ, as required by the Freedom of Information Act, 5 USC § 552(e)(1)(G). However, the FOIA officers of Regions 7 and 10 incorrectly reported the number of full- and part-time FOIA personnel to the National FOIA Officer. The Region 10 FOIA officer incorrectly identified herself as full-time FOIA personnel, and reported only 5 of the 16 part-time FOIA personnel that she identified to us. When asked if the National FOIA Officer verified this type of information reported to him by the regions, the National FOIA Officer said that he did not. He said that he relies on the input of the Regional FOIA Officers and National Headquarters FOIA Coordinators and compares the report against previous years to ensure it is accurate. This control does not work if the same mistake was made in the previous year. EPA stated the error was not material but it has taken steps to improve the control to ensure DOJ gets accurate data.

Regional fee waiver response form letters are not always up-to-date

Language used in fee waiver response letters was inconsistent with current DOJ guidance. For example, some offices in Region 10 were using an outdated phrase in form letters sent to fee waiver requesters. Some of these form letters referenced the *US DOJ FOIA Guide & Policy Act Overview* (May 2002 Edition), and stated that one of the six factors used in considering eligibility of a fee waiver was "...You must demonstrate with reasonable specificity the ability to understand and analyze the requested information..." DOJ's FOIA Guide dated May 2006 does not contain this language. Region 10 agreed with us that this outdated phrase could be misconstrued by recipients, and also agreed to update its fee waiver request form letters with the current guidance.

We believe that the outdated language contained in fee waiver response form letters could be avoided by providing uniform direction and updated training to all EPA FOIA officers and coordinators. We also note that fee waiver decisions are made at the regional level, and it is possible for fee waiver requesters to submit fee waiver requests to multiple regions simultaneously. This may present a problem in the future if one region approves the fee waiver request while another region simultaneously denies the same fee waiver request. EPA should consider

centralizing the fee waiver determination function or establishing a cross-reference mechanism in FOIAXpress.

FOIA officers and coordinators in regional and program offices do not support the appeal process as quickly as they should

The regions and program offices have not provided documents to ILPG in a timely manner. ILPG representatives stated that they have been trying to develop a more effective mechanism to work with the regional and program offices to expedite collecting and submitting documents for ILPG's appeal cases. They also stated that more ILPG education and outreach efforts about the FOIA appeal process to the FOIA coordinators were needed.

Recommendation

We recommend that the Assistant Administrator for Environmental Information:

3-1 Mandate training for all FOIA officers, coordinators, and individuals who have FOIA responsibilities. Specifically, we recommend that this training include or be supplemented by:

- Specific instructions to document all contacts with the requester;
- Direction to regional and program personnel to provide files in a timely manner when there is an appeal; and
- Instructions to all FOIA officers for completing the annual report, so that all of the EPA's FOIA officers can consistently and correctly report costs and personnel information.

Agency Comments and OIG Response

EPA agreed to implement our recommendation. It provided planned completion dates for the recommendation.

EPA's comments on our draft report, and our response to those comments, are included as Appendix A. EPA also provided a list of actions it has implemented after we completed our field work. We are providing the highlights below in a Subsequent Events section, and the complete list of Subsequent Events is included with the Agency's response in Appendix A.

Subsequent Events

Since our review, the Agency told us that some changes have been initiated in the EPA's headquarters and regions and the OGC.

The National FOIA Officer provided training to the Regional FOIA Officers and the National Coordinators on preparing the FOIA Annual Report.

The National FOIA Office, in conjunction with the OGC, has provided FOIA training in Regions 1, 9, and 10.

Region 4 says it conducted quarterly FOIA training.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Claimed Amount	Agreed To Amount
2-1	9	Conduct periodic reviews of the FOIA processes and procedures at each of the regional and program FOIA offices.	O	Assistant Administrator for Environmental Information	October 2011		
2-2	9	Create written standard operating procedures for all regional and program offices responsible for FOIA responses. FOIA procedures should be standardized at the national level, so that all regions and program offices are meeting the same basic FOIA processing requirements identified by the OEI. Some of the elements we identified which could be included in a written standard operating procedure include: <ul style="list-style-type: none"> - A requirement that all contacts with the requesters be documented. - A FOIA request discussion form template that all FOIA coordinators can use to document their contact with the requesters. - A timeframe within which regional or program personnel gather and submit documents for ILPG appeal cases. 	O	Assistant Administrator for Environmental Information	October 2011		
2-3	10	Review the FOIA appeal process and implement a case control system for assigning and tracking appeal cases so that appeals can be completed more quickly.	O	General Counsel	October 2009		
3-1	14	Mandate training for all FOIA officers, coordinators, and individuals who have FOIA responsibilities. Specifically, we recommend that this training include or be supplemented by: <ul style="list-style-type: none"> - Specific instructions to document all contacts with the requester; - Direction to regional and program personnel to provide files in a timely manner when there is an appeal; and - Instructions to all FOIA officers for completing the annual report, so that all of the EPA's FOIA officers can consistently and correctly report costs and personnel information. 	O	Assistant Administrator for Environmental Information	October 2011		

O = recommendation is open with agreed-to corrective actions pending

C = recommendation is closed with all agreed-to actions completed

U = recommendation is undecided with resolution efforts in progress

Appendix A

Agency Comments and OIG Response

MEMORANDUM

SUBJECT: Public Liaison Report: EPA has Improved Its Response to Freedom of Information Act Requests but Further Improvement is Needed

FROM: Molly A. O'Neill
Assistant Administrator for Environmental Information and
Chief Information Officer

Patricia K. Hirsch
Acting General Counsel

TO: Eric Lewis
Director, Special Reviews and Inspections
Office of the Inspector General

We appreciate the opportunity to respond to the Office of the Inspector General's (OIG) findings as reported in, "Public Liaison Report: EPA has Improved its Responses to the Freedom of Information Act Requests but Further Improvement is Needed," Assignment No. 2007-000399. We would like to thank you and your staff for your willingness to meet to resolve comments and discuss your findings. We believe this collaborative approach was beneficial to all parties. The Agency is committed to meeting its statutory obligations under FOIA and will continue to improve the delivery of services to its customers.

While the OIG questioned the accuracy of data reported by the Agency in its 2007 FOIA Annual Report with respect to how one region reported its personnel information, the Government Accountability Office (GAO), in its latest review of EPA's FY 2006 FOIA Annual Report stated that "EPA displayed appropriate internal controls and/or reviews for ensuring completeness and accuracy of the data contained in their FY 2006 Annual Report." With respect to your finding, corrective actions have already been taken to ensure that FOIA personnel fully understand how to accurately calculate personnel costs associated with processing FOIA requests.

OIG Response: The Agency said we questioned the accuracy of data with one region but we questioned the accuracy of data with Regions 7 and 10. Even though the GAO said EPA displayed appropriate internal controls, those controls did not detect the inaccurate personnel data.

The Report referenced that GAO determined several agencies, including EPA, reported relatively long median days to process complex requests in its various components. GAO calculated the median days for EPA by looking at regional and headquarters offices as *separate*

entities and calculated a range of 4 days – 166 days. However, we believe it is worthwhile to mention that when calculated from an Agency-wide perspective, the median days to process complex requests across the Agency during the same time period was 40 working days.

OIG Response: We deleted the quote from the report.

Finally, the Agency's response to the specific recommendations is provided below:

REC. #	PAGE NO.	SUBJECT	RESPONSE	PLANNED COMPLETION DATE
2-1	9	Conduct periodic reviews of the FOIA processes and procedures at each of the regional and program FOIA offices.	Accepted	Ongoing beginning 2 nd qtr. FY 09.
2-2	9	Create written standard operating procedures for all regional and program offices responsible for FOIA responses. FOIA procedures should be standardized at the national level, so that all regions and program offices are meeting the same basic FOIA processing requirements identified by the OEI. Some of the elements we identified which could be included in a written standard operating procedure include: <ul style="list-style-type: none"> - A requirement that all contacts with the requesters be documented. - A FOIA request discussion form template that can be used by all FOIA coordinators to document their contact with the requesters. - A time frame within which regional or program personnel gather and submit documents for ILPG appeal cases. 	Accepted	1 st qtr. FY10.
2-3	10	Review the FOIA appeal process and implement a case control system for assigning and tracking appeal cases so that appeals can be completed more quickly.	Accepted	Ongoing end 2 nd qtr. FY 09.
3-1	13	Mandate training for all FOIA officers, coordinators, and individuals who have FOIA responsibilities. Specifically, we recommend that this training include or be supplemented by: <ul style="list-style-type: none"> - Specific instructions to document all contacts with the requester; - Direct regional and program personnel to provide files in a timely manner when there is an appeal; and - Provide instructions to all FOIA officers for completing the annual report, so that all of the EPA's FOIA officers can consistently and correctly report costs and personnel information. 	Accepted. OEI and OGC conducted training in 4 th qtr '08 in Regions 1, 9 and 10. Additional training is being scheduled. OEI will develop and implement a training plan to allow all FOIA Officers, coordinators and individuals who have FOIA responsibility the opportunity to participate in FOIA training provided by the Agency.	Beginning the 1st qtr of FY 09.
			OEI already provided such guidance but will include this section in the written standard operating procedures.	1 st qtr. FY10.
			OEI had provided guidance at monthly meeting and conference calls, but will also include a section in the written standard operating procedures.	1 st qtr. FY10.

If you have any questions, please contact Larry F. Gottesman, National Freedom of Information Act Officer at (202) 566-2162.

Subsequent Events

National FOIA Program

- EPA reduced its overdue initial FOIA requests from 23,514 in July 2001 to 783 on October 1, 2007. EPA continued to reduce its initial requests backlog. On October 1, 2008 EPA further reduced the backlog to 717 overdue initial FOIA requests.
- The National FOIA Officer provided training to the Regional FOIA Officers and the National Coordinators on preparing the FOIA Annual Report.
- The National FOIA Office in conjunction with the Office of General Counsel has provided FOIA training in Regions 1, 9 and 10.

Region 2

- Region 2 FOIA Officer also performs the final closeout function. The region greatly reduced its backlog and met the 10% goal set out in EPA's FOIA Improvement Plan in response to EO 13,392, despite receiving by far the most FOIA requests of any single Agency office or region (214 backlog cases out of 2291 requests received). For FY 08, Region 2 has only 4 backlog requests out of more than 300 new requests and continues to strive to improve these numbers even further.
- Region 2 has also implemented changes to the FOIA processing due to the workload on Emergency and Remedial Response Division (ERRD) and on Division of Enforcement and Compliance Assistance (DECA,) Public Affairs Division (PAD), the office that houses the Regional FOIA Officer has now taken on many of the routine searches, including CERCLIS, WASTLAN and UST. This minimizes the need to consult between divisions and reduces turn around time. In the past year alone, PAD has taken on more than 400 of these cases and the backlog is a small fraction of what it used to be. Region 2 is aware of heavy workload issues and has taken steps to address them. The FOIA coordinator and PAD management have held numerous meetings w/ERRD staff and management to develop a plan to alleviate workload issues. With PAD's cooperation and senior management awareness, Region 2 has already eliminated all of the FY 04, 05 and 06 backlog requests and are close to eliminating the '07 backlog, with a deadline of January 31, 2008 to complete this task. The region has only four overdues for FY '08 (out of about 350 requests that have been received to date).
- Region 2 does not have formal written SOPs, though they are currently drafting some based on SOPs from other regions. However, Region 2 does have formal procedures, which include monthly summary and Division-by-Division detailed reports for all overdue FOIAs, which are shared and discussed with senior management on a monthly basis in their regular senior management meeting with the RA and DRA. Furthermore,

Region 2 has set internal processing deadlines, communicated by the Public Affairs Director to her Division Director colleagues.

- Region 2 utilizes the electronic FOIA database to determine the status on all FOIA request. Additionally, the correspondence log section of the application contains detailed progress reports involving internal emails as well as communications with requestor. Auditor was provided copies of progress communications contained in correspondence log.

Region 4

- Region 4 has achieved: (1) no overdue or backlog since June 2006; (2) a public status inquiry on Region 4's FOIA page website; and (3) FOIA training conducted quarterly for Region.
- Region 4 FOIA Officer reviews each response letter before final signature to ensure response meets the statutory due date and procedural requirements.

Region 5

- Region 5 has guidance that staff document changes in writing to the requester and a copy if provided to the Regional FOIA Officer. We feel that our Regional Office needs better enforcement of this documentation in our files as opposed to not having this guidance. We will take steps to remedy this and will work with program to make sure documentation is provided to the Regional FOIA Office. Additionally, our EPA FOPIA regulations does state the need to confirm any changes in due dates and program offices refer to our regulations for guidance.

Office of General Counsel

- The Office of General Counsel, General Law Office, Information Law Practice Group has changed its practice of assigning appeals. Currently, the Assistant General Counsel, General Law Office, Information Law Practice Group assigns the appeals to the team members for processing. The office currently is evaluating a two-track system for processing appeals.
- The Office of General Counsel, General Law Office, has lowered the number of overdue appeals from approximately 272 pending, September, 2006 to 151 pending, October, 2008.

Appendix B

Distribution

Office of the Administrator
Acting Assistant Administrator for Environmental Information and Chief Information Officer
Acting General Counsel
Acting Regional Administrator, Region 2
Acting Regional Administrator, Region 4
Acting Regional Administrator, Region 5
Acting Regional Administrator, Region 7
Acting Regional Administrator, Region 10
Agency Follow-up Official (the CFO)
Agency Follow-up Coordinator
Acting Associate Administrator for Congressional and Intergovernmental Relations
Acting Associate Administrator for Public Affairs
Director, Office of Regional Operations
Audit Follow-up Coordinator, Office of Environmental Information
Acting Inspector General