

Director of National Intelligence

FREEDOM OF INFORMATION ACT ANNUAL REPORT

FISCAL YEAR 2007

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

I. Basic Information Regarding Report

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

*Mr. John F. Hackett
Director, Information Management Office
Office of the Director of National Intelligence
Washington D.C. 20511
(703) 482-3610*

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

An electronic copy of this report will be posted to www.dni.gov

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

Write to the above address.

II. How to Make a FOIA Request

Submit a written request to the mail address above. Transmission via facsimile also is acceptable - (703) 482-2144. FOIA requests may also be submitted electronically to FOIA@dni.gov.

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

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

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

For those FOIA cases closed between 10/01/2006 – 09/30/2007, 80% were closed within 0.31 years; median response time was 0.11 years; average response time was 0.23 years.

For those Privacy Act cases between 10/01/2006 – 09/30/2007, 80 % were closed within 0.43 years; median response time was 0.27 years; average response time was 0.31 years.

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

ODNI consistently protects, among other things, classified national security information and information relating to intelligence sources and methods, from release under the FOIA. In addition, ODNI frequently receives requests for records which can not be accepted and processed because they predate the creation of the ODNI in April, 2005. When possible, ODNI advises the requester regarding where a request for such records should be directed.

III. Definitions of Terms and Acronyms Used in the Report

A. Agency-specific acronyms or other terms.

ODNI: Office of the Director of National Intelligence.

B. Basic terms, expressed in common terminology.

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

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

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

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

5. Multi-track Processing – a system in which simple requests requiring relatively minimal review are placed in one processing track and more voluminous and

complex requests are placed in one or more other tracks. Requests in each track are processed on a first-in/first-out basis. A requester who has an urgent need for records may request expedited processing (see below).

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

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

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

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

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

11. Denial – an agency decision not to release any part of a record or records in response to a FOIA request because all the information in the requested records is determined by the agency to be exempt under one or more of the FOIA's exemptions, or for some procedural reason (such as because no record is located in response to a FOIA request).

12. Time Limits – the time period in the Freedom of Information Act for an agency to respond to a FOIA request (ordinarily 20 working days from proper receipt of a “perfected” FOIA request).

13. “Perfected” Request – a FOIA request for records which adequately describes the records sought, which has been received by the FOIA office of the agency or agency component in possession of the records, and for which there is no remaining question about the payment of applicable fees.

14. Exemption 3 Statute – a separate federal statute prohibiting the disclosure of a certain type of information and authorizing its withholding under FOIA subsection (b)(3).

15. Median Number – the middle, not average, number. For example, of 3, 7, and 14, the median number is 7.

16. Average Number – the number obtained by dividing the sum of a group of numbers by the quantity of numbers in the group. For example, of 3, 7, and 14, the average number is 8.

IV. Exemption 3 Statutes

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

(1) *Section 102A(i) of the National Security Act of 1947, as amended, codified at 50 U.S.C.A. § 403-1(i).*

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

Information that would reveal intelligence sources and methods was withheld pursuant to the National Security Act of 1947.

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

Courts have upheld the use of the following statute:

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

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

V. Initial FOIA/PA Access Requests

A. Numbers of initial requests.

1. Requests pending as of end of preceding year: 24
2. Requests received during current fiscal year: 103
3. Requests processed during current fiscal year: 77
4. Requests pending as of end of current fiscal year: 50

B. Disposition of initial requests.

1. Number of total grants: 7
2. Number of partial grants: 3

3. Number of denials: 10

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

- (1) Exemption 1: 3
- (2) Exemption 2: 2
- (3) Exemption 3: 1
- (4) Exemption 4: 1
- (5) Exemption 5: 3
- (6) Exemption 6: 4
- (7) Exemption 7(a): 0
- (8) Exemption 7(b): 0
- (9) Exemption 7(c): 0
- (10) Exemption 7(d): 0
- (11) Exemption 7(e): 0
- (12) Exemption 7(f): 0
- (13) Exemption 8: 0
- (14) Exemption 9: 0

4. Other reasons for nondisclosure (total):

- a. no records: 17
- b. referrals: 18
- c. request withdrawn: 0
- d. fee-related reason: *N/A*
- e. records not reasonably described: 0

- f. not a proper FOIA request for some other reason: 0
- g. not an agency record: 0
- h. duplicate request: 0
- i. other: *Cancellations: 22*

VI. Appeals of Initial Denials of FOIA/PA Requests

A. Numbers of appeals.

- 1. Number of appeals received during fiscal year: 4
- 2. Number of appeals processed during fiscal year: 1

B. Disposition of appeals.

- 1. Number completely upheld: 0
- 2. Number partially reversed: 0
- 3. Number completely reversed: 0

Number of times each FOIA exemption used (counting each exemption once per appeal): 0

- (1) Exemption 1: *N/A*
- (2) Exemption 2: *N/A*
- (3) Exemption 3: *N/A*
- (4) Exemption 4: *N/A*
- (5) Exemption 5: *N/A*
- (6) Exemption 6: *N/A*
- (7) Exemption 7(A): *N/A*
- (8) Exemption 7(B): *N/A*
- (9) Exemption 7(C): *N/A*
- (10) Exemption 7(D): *N/A*

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

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

(13) Exemption 8: *N/A*

(14) Exemption 9: *N/A*

4. Other reasons for nondisclosure (total): 1

a. no records: *1*

b. referrals: *N/A*

c. request withdrawn: *N/A*

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

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

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

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

h. duplicate request: *N/A*

i. other: *N/A*

VII. Compliance With Time Limits/Status of Pending Requests

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

1. Simple requests.

a. number of requests processed: *20*

b. median number of days to process: *8*

2. Complex request.

a. number of requests processed: *55*

b. median number of days to process: *81*

3. Requests accorded expedited processing. *2*

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

B. Status of pending requests.

- 1. Requests pending as of end of current fiscal year: 50
- 2. Median number of days that such requests were pending as of that date: 81

VIII. Comparisons With Previous Year(s)

- A. Comparison of number of requests received: *103 in FY'07 vs. 44 in FY'06*
- B. Comparison of number of requests processed: *77 in FY'07 vs. 20 in FY'06*
- C. Comparison of median numbers of days requests were pending as of end of fiscal year: *FOIA – 75; PA - 82*
- D. Other statistics significant to agency: *N/A*

IX. Costs/FOIA Staffing

A. Staffing levels.

- 1. Number of full-time FOIA personnel: .33
- 2. Number of personnel with part-time or occasional FOIA duties (estimated FTE): .46
- 3. Total estimated number of personnel (FTE): .79

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

- 1. FOIA processing (including appeals): \$81,922
- 2. Litigation-related activities: \$0
- 3. Total estimated costs: \$81,922

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

- 1. ODNI published its final FOIA Regulations to the Federal Register in

August 2007 and currently has a draft of its Privacy Act Regulations available for comment in the Federal Register. Total estimated costs for the development of these publications was \$7,505.

X. Fees

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

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

XI. FOIA Regulations (Including Fee Schedule)

The ODNI began operations when Ambassador John D. Negroponte was confirmed as the first Director of National Intelligence and sworn in on 21 April 2005. Final FOIA Regulations were published in the Federal Register, 32 CFR, Chapter XVII, in August 2007.

XII. Report on FOIA Executive Order Implementation

The Office of the Director of National Intelligence made significant progress improving its FOIA processes and procedures as required by EO 13392, *Improving Agency Disclosure of Information*. During FY07, the ODNI received a surge of FOIA and Privacy Act requests. Despite this increase, the FOIA office, with a small staff, was able to implement the planned improvements that were submitted in June 2006.

A. Description of supplementation/modification of agency improvement plan (if applicable)

Not applicable

B. Report on the ODNI's implementation of its FOIA Improvement Plan

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

Affirmative and Proactive Disclosure

The ODNI met and completed all milestones in this improvement area including preliminary review of current materials to be posted on its public website and began routine posting of materials of interest to the public. Just as it did previously, during this reporting period, the Office increased content to its public website and to the websites of its components.

Overall web site Improvements

During this reporting period, standards for producing public website content were promulgated through the Office by the ODNI's Public Affairs staff. The Office continues to work on internal final policies regarding technology standards for the creation, formatting, and maintenance of new ODNI websites. We consistently review our FOIA website for formatting, fonts and navigation and have made changes as necessary to make the web page more customer-friendly. In addition, we have ensured that each of our component offices have a clear link to our FOIA web page for easy navigation.

Centralization of the FOIA Process

The ODNI has now met its milestones in the *Centralization of the FOIA Process* improvement area. Final FOIA regulations were published in the Federal Register on August 16, 2007. A FOIA Handbook was completed and posted to the ODNI website and an internal instruction on the FOIA and PA was finalized.

C. Identification and discussion of any deficiency in meeting plan milestones

At this time, ODNI has met its milestones as outlined in its FOIA Improvement Plan as required by EO 13392, *Improving Agency Disclosure of Information*.

D. Other Executive Order Activities

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

E. Concise Descriptions of FOIA Exemptions

- (b)(1) exempts from disclosure material properly classified, pursuant to an Executive Order, because it is related to matters of national defense or foreign policy;
- (b)(2) exempts from disclosure information which pertains solely to the internal personnel rules and practices of the Agency;
- (b)(3) exempts from disclosure materials that another federal statute protects, provided that the other federal statute either requires that the matters be withheld, or establishes particular criteria for withholding or refers to particular types of matters to be withheld
- (b)(4) exempts from disclosure trade secrets and commercial or financial information obtained from a person that is privileged or confidential ;

- (b)(5) exempts from disclosure inter-and intra-agency communications that are protected by certain legal privileges;
- (b)(6) exempts from disclosure material that would be an unwarranted invasion of the personal privacy of other individuals;
- (b)(7) exempts from disclosure law enforcement investigatory records that, if released, would either (A) interfere with enforcement proceedings, (B) deprive a person of the right to a fair trial; (C) be an unwarranted invasion of personal privacy; (D) identify a confidential source; (E) reveal investigative techniques and procedures; or (F) endanger someone's life or physical safety.
- (b)(8) exempts from disclosure information contained in reports or examinations of an agency responsible for regulating or supervising banks, savings and loans, or other financial institutions.
- (b)(9) exempts from disclosure information about wells.

F. Additional Statistics:

1. Ten Oldest Pending FOIA Requests

Calendar Year	2000	2001	2002	2003	2004	2005	2006	2007
Requests	0	0	0	0	0	0	Feb 21 Apr 21 Jul 13 Aug 10 Oct 2 Oct 2 Nov 11 Dec 13	Jan 3 Jan 26

2. Consultations

a. Number of Consultations Received, Processed, and Pending

Consultations Received From Other Agencies During FY07	Consultations Received From Other Agencies That Were Processed by Your Agency During FY07 (includes those received prior to FY07)	Consultations Received From Other Agencies That Were Pending At Your Agency as of October 1, 2007 (includes those received prior to FY07)
7	7	0

b. Ten Oldest Pending Consultations Received From Other Agencies

Calendar Year	1999	2000	2001	2002	2003	2004	2005	2006	2007
Consults Recieved	0	0	0	0	0	0	0	0	0

G. Agency Improvement Plan

A copy of the ODNI's FOIA Improvement Plan can be found at www.DNI.gov/FOIA_Review.pdf.