

Director of National Intelligence

FREEDOM OF INFORMATION ACT ANNUAL REPORT

FISCAL YEAR 2008

[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) 275-2215*

- 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) 275-1217. FOIA requests may also be submitted electronically to DNI-FOIA@ugov.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 10/01/2007 – 09/30/2008, 75% were closed within 120 days; median response time was 43 days; average response time was 107 days.

- 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. 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.
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.

C. 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 information such as trade secrets and commercial or financial information obtained from a person on a privileged or confidential basis;
- (b)(5) exempts from disclosure inter-and intra-agency predecisional and deliberative memoranda or letters. The same section exempts attorney work-product or attorney-client information;
- (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.

D. Concise Descriptions of Privacy Act Exemptions:

- (d)(5) exempts from disclosure information compiled in reasonable anticipation of a civil action or proceeding;
- (j)(1) exempts from disclosure certain information maintained by the CIA;
- (j)(2) exempts from disclosure certain records of agencies whose primary mission is enforcing criminal laws (e.g. the Federal Bureau of Investigation, the Drug Enforcement Agency, or the Bureau of Alcohol, Tobacco, and Firearms);
- (k)(1) exempts from disclosure information properly classified pursuant to an Executive Order in the interest of national defense or foreign policy;
- (k)(2) exempts from disclosure investigatory material compiled for law enforcement purposes;
- (k)(3) exempts from disclosure information pertaining to the protective services afforded the President of the United States;
- (k)(4) exempts from disclosure information that statutes require to be maintained and used solely as statistical records;
- (k)(5) exempts from disclosure information or investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, or access to classified information, the release of which would disclose a confidential source;
- (k)(6) exempts from disclosure testing or examination material the federal government uses to determine individual qualifications for appointment or promotion, the release of which would compromise the testing or examination process;
- (k)(7) exempts from disclosure evaluation material the armed forces use to determine an individual's potential for promotion, but only if disclosure would reveal the identity of a source who furnished information after the government's express promise to keep that source's identity confidential.

IV. Exemption 3 Statutes

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

Statute	Type of Information Withheld	Case Citation	Number of Times Relied Upon	Total Number of Times Relied upon by Agency
<i>Section 102A(i) of the National Security Act of 1947, as amended, codified at 50 U.S.C.A. § 403-1(i).</i>	Information that would reveal intelligence sources and methods was withheld pursuant to the National Security Act of 1947.	<u><i>CIA v. Sims</i></u> , <i>471 U.S. 159 (1985)</i> , <i>National Security Act of 1947.</i>	15	15

V. Initial FOIA/PA Access Requests

A. Numbers of initial requests.

	Number of Requests Pending as of Start of Fiscal Year	Number of Requests Received in Fiscal Year	Number of Requests Processed in Fiscal Year	Number of Requests Pending as of End of Fiscal Year
Agency Overall	50	89	76	63

B. Disposition of FOIA Requests

1. All Processed Requests

	Number of Full Grants	Number of Partial Grants/Partial Denials	Number of Full Denials Based on Exemptions	Number of Full Denials Based on Reasons Other Than Exemptions									Total
				No Records	All Records Referred to Another Agency	Request Withdrawn	Fee-Related Reason	Records Not Reasonably Described	Improper FOIA Request for Other Reason	Not Agency Record	Duplicate Request	Other	
Agency Overall	5	5	12	13	12	3	0	0	8	0	5	13	76

2. “Other” Reasons for “Full Denials Based on Reasons Other than Exemptions”

	Description of “Other” Reasons for Denials from Chart B (1) and Number of Times those Reasons Were Relied Upon	Total
Agency Overall	Cases opened in error during adjustment to new system and transfer of responsibilities OR cases closed because all information already available in the public domain.	13

3. Number of Times Exemptions Applied

	Ex. 1	Ex. 2	Ex. 3	Ex. 4	Ex. 5	Ex. 6	Ex. 7(A)	Ex. 7(B)	Ex. 7(C)	Ex. 7(D)	Ex. 7(E)	Ex. 7(F)	Ex. 8	Ex. 9
Agency Overall	15	5	15	0	3	3	0	0	0	0	0	0	0	0

VI. Appeals of Initial Denials of FOIA/PA Requests

A. Received, Processed, and Pending Administrative Appeals

Number of Appeals Pending as of Start of Fiscal Year	Number of Appeals Received in Fiscal Year	Number of Appeals Processed in Fiscal Year	Number of Appeals Pending as of End of Fiscal Year
3	3	6	0

B. Disposition of Administrative Appeals – All Processed Appeals

Number of Affirmed Appeals	Number Partially Affirmed & Partially Reversed/Remanded on Appeal	Number Completely Reversed/Remanded on Appeal	Number of Appeals Closed for Other Reasons	Total
3	0	0	3	6

C. Reasons for Denial on Appeal

1. Number of Times Exemptions Applied

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

2. Reasons Other than Exemptions

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

3. "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
Appeal was for perceived "no records" response. Per ODNI FOIA Regulations, appeals may not be submitted until a search is complete and decision regarding release is made. Requester was notified of this and asked for patience while initial request was processed.	1

4. Response Time for Administrative Appeals

Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
45	40.83	8	57

5. Ten Oldest Pending Administrative Appeals

ODNI did not have any pending administrative appeals at the end of the fiscal year.

VII. FOIA REQUESTS: RESPONSE TIME FOR PROCESSED AND PENDING REQUESTS

C. Processed Requests – Response Time for All Processed Perfected Requests

	SIMPLE				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
AGENCY OVERALL	43	106.52	2	833	97	103.66	97	117

D. Processed Requests – Response Time for Perfected Requests in Which Information Was Granted

	SIMPLE				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
AGENCY OVERALL	60	169.57	2	800	97	103.66	97	117

E. Processed Requests – Response Time in Day Increments

Simple Requests

Days	1-20	21-40	41-60	61-80	81-100	101-120	121-140	141-160	161-180	181-200	201-300	301-400	400+	Total
AGENCY OVERALL	23	12	6	7	5	3	2	1	3	2	3	2	4	73

Expedited Requests

Days	1-20	21-40	41-60	61-80	81-100	101-120	121-140	141-160	161-180	181-200	201-300	301-400	400+	Total
AGENCY OVERALL	0	0	0	0	2	1	0	0	0	0	0	0	0	3

F. Pending Requests – All Pending Perfected Requests

	SIMPLE				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
AGENCY OVERALL	270	309.68	40	728	159	159	159	159

G. Pending Requests – Ten Oldest Pending Perfected Requests

	10 th Oldest Request and Number of Days Pending	9 th	8 th	7 th	6 th	5 th	4 th	3 rd	2 nd	Oldest Request and Number of Days Pending
Agency Overall										
Date	3/8/07	3/1/07	2/15/07	2/7/07	1/26/07	1/3/07	11/13/06	11/11/06	10/2/06	10/2/06
# of Days	570	578	592	600	612	635	686	688	728	728

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
Agency Overall	3	0	12	13.33	1

B. Requests for Fee Waiver

N/A

IX. FOIA PERSONNEL AND COSTS

	PERSONNEL			COSTS		
	Number of “Full-Time” FOIA Employees”	Number of “Equivalent Full-Time FOIA Employees”	Number of “Full-Time FOIA Staff”	Processing Costs	Litigation-Related Costs	Total Costs
Agency Overall	1	.46	1.46	149878.82	91015.60	240894.42

X. FEES COLLECTED FOR PROCESSING REQUESTS

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 and can be found at www.dni.gov/foia

XII. BACKLOGS, CONSULTATIONS, AND COMPARISONS

A. Backlogs of FOIA Requests and Administrative Appeals

	Number of Backlogged Requests at End of Fiscal Year	Number of Backlogged Appeals at End of Fiscal Year
Agency Overall	63	0

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

	Number of Consultations Received from Other Agencies that Were Pending at Your Agency as of the Start of the Fiscal Year	Number of Consultations Received from Other Agencies During the Fiscal Year	Number of Consultations Received from Other Agencies that Were Processed by Your Agency During the Fiscal Year	Number of Consultations Received from Other Agencies that Were Pending as of the End of the Fiscal Year
Agency Overall	1	7	5	3

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

	10 th Oldest Request and Number of Days Pending	9 th	8 th	7 th	6 th	5 th	4 th	3 rd	2 nd	Oldest Request and Number of Days Pending
Agency Overall	Date N/A Number of Days	N/A	N/A	N/A	N/A	N/A		7/18/08 74	5/28/08 124	5/29/07 490

D. Comparison of Numbers of Requests from Previous and Current Annual Reports – Requests Received, Processed, and Backlogged

	Number of Requests Received		Number of Requests Processed	
	Number Received During Fiscal Year from Last Year's Annual Report	Number Received During Fiscal Year from Current Annual Report	Number Processed During Fiscal Year from Last Year's Annual Report	Number Processed During Fiscal Year from Current Annual Report
Agency Overall	103	89	77	76

	Number of Backlogged Requests as of End of the Fiscal Year from Previous Annual Report	Number of Backlogged Requests as of End of the Fiscal Year from Current Annual Report
Agency Overall	50	63

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

	Number of Appeals Received		Number of Appeals Processed	
	Number Received During Fiscal Year from Last Year's Annual Report	Number Received During Fiscal Year from Current Annual Report	Number Processed During Fiscal Year from Last Year's Annual Report	Number Processed During Fiscal Year from Current Annual Report
Agency Overall	4	3	1	6

	Number of Backlogged Appeals as of End of the Fiscal Year from Previous Annual Report	Number of Backlogged Appeals as of End of the Fiscal Year from Current Annual Report
Agency Overall	3	0

F. Discussion of Other FOIA Activities (OPTIONAL)