



## U.S. TRADE AND DEVELOPMENT AGENCY

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### **Freedom of Information Act (FOIA) Report for Fiscal Year 2007 (October 1, 2006 through September 30, 2007)**

#### I. Basic Information Regarding Report.

A. Questions concerning this report may be addressed to:

Ms. Kendra D. Link  
Assistant General Counsel and FOIA Public Liaison  
U.S. Trade and Development Agency  
1000 Wilson Boulevard, Suite 1600  
Arlington, VA 22209-3901  
Tel. No. (703) 875-4357  
Fax No. (703) 875-4009

B. The World Wide Web address for the U.S. Trade and Development Agency (USTDA) is:  
[www.ustda.gov](http://www.ustda.gov). This site provides general information about USTDA. The FOIA Report for Fiscal Year 2007 is posted at:  
[http://www.ustda.gov/pubs/foia/USTDA\\_FOIAReport\\_FY2007.pdf](http://www.ustda.gov/pubs/foia/USTDA_FOIAReport_FY2007.pdf)

C. Paper copies of this FOIA report may be obtained by contacting Kendra Link at the address in A above.

#### II. How to Make a FOIA Request.

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

Ms. Kendra D. Link  
Assistant General Counsel and FOIA Public Liaison  
U.S. Trade and Development Agency  
1000 Wilson Boulevard, Suite 1600  
Arlington, VA 22209-3901  
Tel. No. (703) 875-4357  
Fax No. (703) 875-4009

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

During FY2007, the median processing time for initial requests was 80 days. Not all requests took 80 days to process. Requests for readily available documents that involved little or no review were processed faster. Other requests took longer to process for a variety of reasons. For example, some requesters asked for a large volume of documents that had to be located, photocopied and reviewed, while other requesters asked for procurement-related documentation such as contracts entered into between grantees and contractors. Such requests were often time-consuming and labor-intensive because they involved extensive discussions with contractors, grantees and the requesters, concerning the competitive ramifications of releasing the requested information.

C. Brief description of why some requests may not be granted:

USTDA is a commercially-oriented agency. Some requests may not be granted because the records contain proprietary information or trade secrets generated by third party individuals or companies (5 U.S.C. 552(b)(4)). Other reasons for not releasing records may include the protection of individual privacy (5 U.S.C. 552(b)(6)), or predecisional deliberations (5 U.S.C. 552(b)(5)).

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

A. Agency-specific acronyms or other terms.

The U.S. Trade and Development Agency is referred to as "USTDA."

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 (nonexpedited) 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 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.

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

21 U.S.C. 253b(m) (2000).

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

21 U.S.C. 253b(m) specifically prohibits agencies from releasing under the FOIA any proposal “submitted by a contractor in response to the requirements of a solicitation for a competitive proposal,” unless that proposal “is set forth or incorporated by reference in a contract entered into between the agency and the contractor that submitted the proposal.”

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

The United States District Court for the District of Columbia upheld the statute in *Hornbostle v. U.S. Dep’t of Interior*, 305 F. Supp. 2d 21 (D.D.C. 2003).

V. Initial FOIA/PA Access Requests [approx. nos.].

A. Number of initial requests:

1. Number of requests pending at the end of the preceding fiscal year (FY 2006): 6

2. Number of requests received during current fiscal year (FY 2007): 23

3. Number of requests processed during current fiscal year (FY 2007): 21

4. Number of requests pending as of end of current fiscal year (FY 2007): 8

B. Disposition of initial requests.

1. Number of total grants: 11

2. Number of partial grants: 2

3. Number of denials: 0

a. number of times each FOIA exemption used

(counting each exemption once per request)

(1) Exemption 1           0

(2) Exemption 2           0

- (3) Exemption 3 1
- (4) Exemption 4 1
- (5) Exemption 5 0
- (6) Exemption 6 1
- (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): 8

- a. no records 7
- b. referrals 0
- c. request withdrawn 1
- 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) 0

VI. Appeals of Initial Denials of FOIA/PA Requests

A. Numbers of appeals.

1. Number of appeals received during fiscal year \_\_\_\_\_ 0 \_\_\_\_\_

2. Number of appeals processed during fiscal year \_\_\_\_\_ 0 \_\_\_\_\_

B. Disposition of appeals.

1. Number completely upheld \_\_\_\_\_ 0 \_\_\_\_\_

2. Number partially reversed \_\_\_\_\_ 0 \_\_\_\_\_

3. Number completely reversed \_\_\_\_\_ 0 \_\_\_\_\_

a. number of times each FOIA exemption used

(counting each exemption once per appeal)

(1) Exemption 1 \_\_\_\_\_ 0 \_\_\_\_\_

(2) Exemption 2 \_\_\_\_\_ 0 \_\_\_\_\_

(3) Exemption 3 \_\_\_\_\_ 0 \_\_\_\_\_

(4) Exemption 4 \_\_\_\_\_ 0 \_\_\_\_\_

(5) Exemption 5 \_\_\_\_\_ 0 \_\_\_\_\_

(6) Exemption 6 \_\_\_\_\_ 0 \_\_\_\_\_

(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) 0

a. no records 0

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) 0

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

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

1. Simple requests (if multiple tracks used).

a. number of requests processed N/A

b. median number of days to process N/A

2. Complex requests (specify for any and all tracks used).

a. number of requests processed 21

b. median number of days to process 80

3. Requests accorded expedited processing.

a. number of requests processed 0

b. median number of days to process 0

B. Status of pending requests.

1. Number of requests pending as of end of current fiscal year (FY2007): 8
2. Median number of days that such requests were pending as of that date: 90.5

VIII. Comparisons with Previous Year(s) (Optional).

1. Number of requests for expedited processing: 2
2. Number of requests for expedited processing granted: 0

IX. Costs/FOIA Staffing.

A. Staffing levels.

1. Number of full-time FOIA personnel: None.
2. Number of personnel with part-time or occasional duties (in total work years): 35%
3. Total number of personnel (in work years): 35%

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

1. FOIA processing (including appeals): Approx. \$ 25,500
2. Litigation-related activities (estimated): \$ 0
3. Total costs: Approx. \$ 25,500

X. Fees

A. Total amount of fees collected by agency for processing requests:

The agency does not have a fee schedule, and has made records available without charging any fees. However, in the event that USTDA has knowledge that requesters owe fees to other agencies, USTDA maintains the policy that requesters be current with payment of all their FOIA fees before their requests can be processed.

B. Percentage of total costs: None.

XI. FOIA Regulations (Including Fee Schedule).

The agency processes FOIA requests under the Freedom of Information Act statute at 5 U.S.C. 552, as amended, with no separate fee schedule.



## XII. Report on FOIA Executive Order Implementation.

On December 14, 2005, the President issued Executive Order 13,392, entitled "Improving Agency Disclosure of Information," which required each agency to conduct a review of its FOIA operations, to develop an agency-specific plan to improve its administration of the FOIA, and to include in its annual FOIA report a description of its progress in meeting the milestones and goals established in its improvement plan. The reporting period for Section XII is different from that used for the rest of this report, which is based on data compiled for Fiscal Year 2007. The reporting period for this section concerning Executive Order implementation activities includes progress made by USTDA through December 31, 2007.

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

N/A

- B. Report on agency implementation of its plan, including its performance in meeting milestones, with respect to each improvement area.

USTDA successfully met all of the goals and milestones established in the FOIA Improvement Plan.

In the agency FOIA Improvement Plan, USTDA examined the following Potential Improvement Areas: (i) affirmative disclosures under subsection (a)(2); (ii) proactive disclosure of information; (iii) overall FOIA web site improvement; (iv) improvement of agency's FOIA reference guide; (v) electronic FOIA – receiving/responding to requests electronically; (vi) backlog reduction/elimination; (vii) forms of communication with requesters; and (viii) process by which necessary cooperation is obtained from agency "program personnel." The Potential Improvement Areas, including a discussion USTDA's performance in meeting the time milestones, are discussed below.

- (i) Affirmative disclosures under subsection (a)(2)

For this reporting period, USTDA compiled a list of agency policy statements not required to be published in the Federal Register, administrative staff manuals, and instructions to staff that affect a member of the public. Agency personnel reviewed the documents, which are currently available for public inspection and copying in person at USTDA's physical address listed in I.A. above. USTDA determined that because this information is not often the subject of FOIA requests to the agency, USTDA would not post this information on the USTDA web site. However, this information can be obtained by contacting the USTDA FOIA Requester Service Center to obtain copies via mail, fax, or electronic mail. USTDA met its milestone of reviewing its agency affirmative disclosure of information procedures under section 552(a)(2) by December 31, 2007.

(ii) Proactive disclosure of information

In its effort to improve the proactive disclosure of information, USTDA made information that does not fall into any subsection (a)(2) category more readily available with the intention of potentially reducing the number of FOIA requests made to the agency. In order to improve its proactive disclosure of information, USTDA included links from the improved USTDA FOIA web site to existing USTDA web pages of information. These links include connections to USTDA “Publications and Resources,” “Library Holdings,” “Annual Report,” “USTDA Update,” and “USTDA eNewsletter” web pages. USTDA met its milestone to have created a link on the USTDA FOIA web page to other USTDA web pages of information by December 31, 2007.

(iii) Overall FOIA web site improvement

USTDA made extensive improvements towards overall FOIA web site improvement. In its effort to significantly improve this area, USTDA added a “FOIA FAQs” section, which explains the basic tenants of the FOIA and lists the USTDA FOIA contacts, including USTDA FOIA Requester Service Center information. It further explains what types of materials are available from USTDA without making a FOIA request, how to make a FOIA request, how to submit your request, and how to formulate your request. Furthermore, USTDA has changed the name of the home page item that identifies the FOIA web page so that the FOIA web page is more easily accessible to the public.

USTDA updated the FOIA Reference Guide and posted the FOIA Reference Guide on the USTDA FOIA web site. In an effort to make accessible to potential FOIA requesters basic information about the FOIA process at USTDA, the agency posted the FOIA Reference Guide as one of the basic elements included on the FOIA home page. USTDA checked the existing web links to ensure that all information and links are still accurate and current. In order to ensure that the FOIA web page remains up-to-date and functioning, USTDA created a plan by which USTDA staff will regularly check the text content for accuracy and the FOIA links for current viability.

As indicated in USTDA’s FY2006 FOIA Report, USTDA met its milestone to have improved USTDA’s main FOIA home page and incorporate FOIA Requester Service Center information onto the USTDA FOIA website by December 31, 2006. Furthermore, USTDA met its milestone to have updated the USTDA FOIA Reference Guide and posted the FOIA Reference Guide on the USTDA FOIA web site by December 31, 2007. USTDA also met its milestone to have checked exiting web links and created a means by which USTDA personnel can routinely check the links for accuracy and viability by December 31, 2007.

(iv) Improvement of agency’s FOIA reference guide

USTDA reviewed the current FOIA Reference Guide to ensure it was current and comprehensive. After review, the agency determined the optimal way to improve the

FOIA Reference Guide, increase the public awareness of FOIA processing, and facilitate public understanding of the purposes of the FOIA's statutory exemptions was to start anew. Accordingly, USTDA composed a new FOIA Reference Guide, which was subsequently posted on the USTDA FOIA web site. USTDA met its milestone to have reviewed and updated the USTDA FOIA Reference Guide and posted the guide on the USTDA FOIA web site by December 31, 2007.

(v) Backlog reduction/elimination

USTDA successfully reached its goal of significantly reducing and eventually eliminating its backlog. As indicated in USTDA's FY2006 FOIA Report, as of January 26, 2007, USTDA had reduced its backlog of pending initial requests by 50%. USTDA successfully reached its goal of eliminating its backlog of initial requests by December 31, 2007. All pending FOIA requests with USTDA as of December 31, 2007 are within the 20-day statutory response time.

- C. Identification and discussion of any deficiency in meeting plan milestones. N/A
- D. Additional narrative statement regarding other executive order-related activities. N/A
- E. Concise descriptions of FOIA exemptions.

The nine exemptions to the FOIA authorize federal agencies to withhold information covering: (1) classified national defense and foreign relations information; (2) internal agency rules and practices; (3) information that is prohibited from disclosure by another federal law; (4) trade secrets and other confidential business information; (5) inter-agency or intra-agency communications that are protected by legal privileges; (6) information involving matters of personal privacy; (7) records or information compiled for law enforcement purposes, to the extent that the production of those records (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or (F) could reasonably be expected to endanger the life or physical safety of any individual; (8) information relating to the supervision of financial institutions; and (9) geological information on wells.

F. Additional statistics.

1. Ten oldest pending FOIA requests.

Calendar Year	1999	2000	2001	2002	2003	2004	2005	2006	2007
Requests	0	0	0	0	0	0	0	0	Dec 26

USTDA had only one pending requests as of January 1, 2008. The request was received by USTDA on December 26, 2007.

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)
0	0	0

b. Ten oldest pending consultations received from other agencies.

Calendar Year	1999	2000	2001	2002	2003	2004	2005	2006	2007
Consults received	0	0	0	0	0	0	0	0	Dec 26

USTDA had only one pending consult as of January 1, 2008. The consult was received by USTDA on December 26, 2007.

G. Attachment: Agency improvement plan (in current form).-