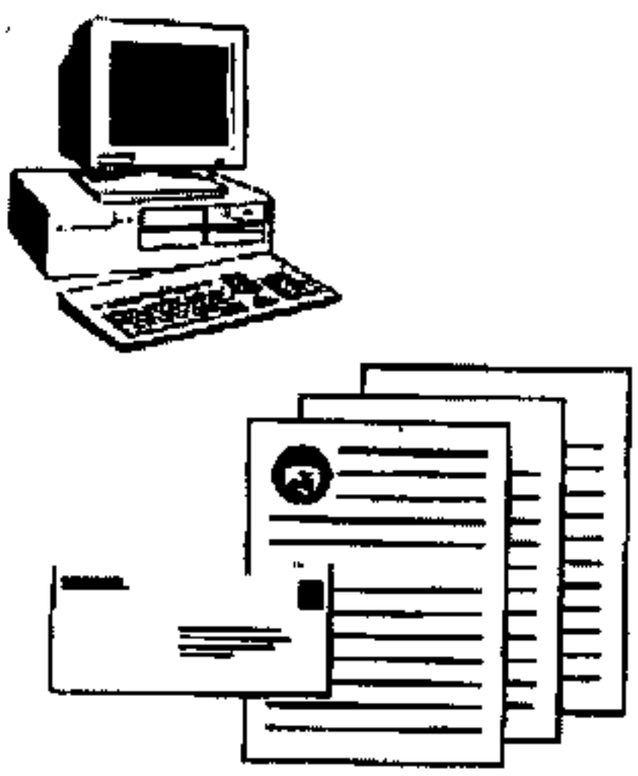
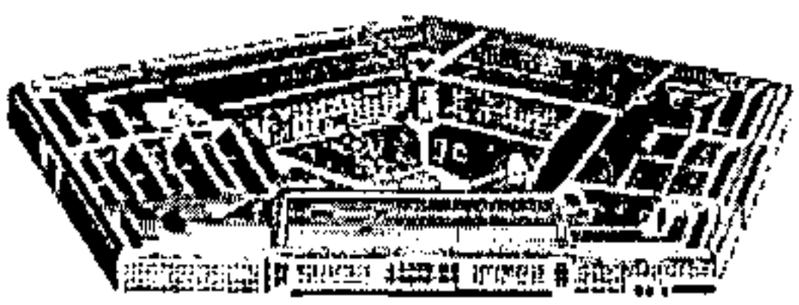
Department of Defense (DoD)

Freedom of Information Act Program Report for Fiscal Year (FY) 2004





Prepared By:

The Office of Freedom of Information and Security Review (OFOISR)

FREEDOM OF INFORMATION ACT
ANNUAL REPORT
FISCAL YEAR 2004
(Report Period: October 1, 2003 through September 30, 2004)

EXECUTIVE SUMMARY

During fiscal year (FY) 2004, a total of 77,256 public requests for records under the Freedom of Information Act (FOIA) were completed by the Department of Defense (DoD). In the processing of these cases, the Department of Defense fully denied 2,340 and partially denied 11,779 on the basis of FOIA exemptions. Of those exemptions, 6% were for classified information; 9% for internal rules and practices; 7% for statutory exemptions; 6% for proprietary data; 6% for deliberative material; 41% for privacy information; 24% for law enforcement investigations; and 1% for information concerning wells. Twenty five thousand, two hundred and twenty three (25,223) requests could not be filled in whole or in part for other reasons, such as lack of records, referral to another agency, or lack of specificity sufficient to identify the requested records. There were 933 actions taken on appeals of denied requests (30 granted, 162 partially denied, 433 fully denied, and 308 not filled for other reasons, as mentioned earlier).

The total DoD operating cost associated with the processing of requests during this report period was $47,211,794. The average cost of processing a single case during this period was approximately $611.11. Fee collections for records provided to the public amounted to $537,741.00 (1.1% of total program cost).

Table of Contents

Item I.

Basic Information Regarding the Report

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

Write to: Chief, FOIA Appeals/Policy Branch
Office of Freedom of Information & Security Review
1155 Defense Pentagon
Washington, DC 20301-1155

Telephone: (703) 697-1160

Name of Incumbent Chief, FOIA Appeals/Policy Branch: Mr. William T. Kammer

Name of Person who prepared this Report: Mr. David W. Maier

B. The electronic address (Universal Resource Line, URL) for this report is:

http://www.defenselink.mil/pubs/foi/

C. You may obtain a paper copy of DoD's Annual FOIA Report for Fiscal Year 2004 by writing to the above address and asking for a copy. A FOIA request is not necessary. Please include a mailing address.

Item II.

How to Make a FOIA Request

The Department of Defense (DoD) Freedom of Information Act Handbook provides basic information about how to make a Freedom of Information Act (FOIA) request and general information about the Freedom of Information Act Program within the Department of Defense (DoD). This document also contains DoD component addresses, a brief description of response times, and the reason why some requests are not granted. The DoD Freedom of Information Act Handbook can be found at:

http://www.defenselink.mil/pubs/foi/foiapam3.pdf

Item III.

Definitions of Terms and Acronyms Used in the Report

A. Agency-specific acronyms.

1. Defense Intelligence Agency: DIA.

2. National Geospatial-Intelligence Agency (formerly National Imagery and Mapping Agency or NIMA): NGIA.

3. National Security Agency: NSA.

4. National Reconnaissance Office: NRO.

5. Prisoner of War/Missing in Action: POW/MIA.

B. Other agency acronyms.

1. Central Intelligence Ageny: CIA.

C. "Other Reasons" Cited on Initial and Appeal Determinations.

1. No Records. A reasonable search of files failed to identify records responsive to the request.

2. Referrals. The request was referred to another DoD Component or Federal Agency for action.

3. Withdrawn. The request was withdrawn by the requester.

4. Fee-Related Reason. The requester is unwilling to pay fees associated with the request; the requester is past due in the payment of fees associated with a previous FOIA request; or the requester disagrees with a fee estimate.

5. Records not Reasonably Described. The request could not be acted upon since the record had not been described with sufficient particularity to enable the DoD Component to locate it by conducting a reasonable search.

6. Not a Proper FOIA Request for Some Other Reason. The requester has failed unreasonably to comply with legitimate procedural requirements which are not not fee-related.

7. Not an Agency Record. The requested information was not a record within the meaning of the FOIA.

8. Duplicate Request. A request for the same information by the same requester. This includes identical requests received via different means (e.g., electronic mail, facsimile, mail, courier) at the same or different times.

9. Other. Any other reason a requester does not comply with published rules, other than those mentioned above.

D. Basic terms, expressed in common terminology.

1. Freedom of Information Act/Privacy Act (FOIA/PA) 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.

2. Initial Request: A request to a federal agency for access to records under the Freedom of Information Act (FOIA).

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 adverse FOIA determination.

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 a compelling 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 a compelling 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 denial: 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 entireties, 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 with holding 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.

Item IV.
Exemption 3 Statutes Invoked

Court Upheld?	Statute	Types of Material Withheld Under Statute
No	5 USC §552 Note	Protection of Certain Open Skies Treaty Information
No	10 USC §128	Authority to Withhold Unclassified Special Nuclear Weapons Information
Yes[1]	10 USC §130	Authority to Withhold Unclassified Technical Data with Military or Space Application
No	10 USC §130(b)	Personnel in Overseas, Sensitive or Routinely Deployable Units
No	10 USC §130(c)	Nondisclosure of Information: Certain Sensitive Information on Foreign Governments and International Organizations
No	10 USC §424	Protection of Organizational and Personnel Information for DIA, NRO, and NGIA
No	10 USC §457	NGIA Operational Files
No	10 USC §618(f)	Action on Reports of Selection, Generally for Promotion, Boards
No	10 USC §1102	Confidentiality of Medical Records
No	10 USC §2305(g)	Protection of Contractor Proposals
No	10 USC §2371(i)	Research Projects: Transactions Other Than Contracts and Grants
No	12 USC §3403	Confidentiality of Financial Records
No	16 USC §470w-3	National Historic Preservation
Yes[2]	18 USC §798(a)	Communications Intelligence
No	41 USC §423	Procurement Integrity
Yes[3]	42 USC §2162(a)	Restricted Data (Atomic Energy), Atomic Energy Act of 1954
No	42 USC §2168(a)(1)(C)	Formerly Restricted Data (Atomic Energy), Atomic Energy Act of 1954
Yes[4]	50 USC §402 Note Sec 6	NSA Functions and Information

Court Upheld?	Statute	Types of Material Withheld Under Statute
Yes[5]	50 USC §403-3(c)(7) National Security Act of 1947, Subsection 102(d)(3), as amended	Intelligence Sources and Methods
Yes[6]	50 USC §403(g), Section 6 of the CIA Act of 1949	CIA Functions and Information
No	50 USC §435 Note Sec 1082	Disclosure of Information Concerning US Personnel Classified as POW/MIA During Vietnam Conflict (McCain "Truth Bill")

Item IV. Endnotes

[1] Chenkin v. Department of the Army, No. 93-494, 1994 U.S. Dist. LEXIS 20907, at *8 (E.D. Pa. Jan. 14, 1994), aff'd, 61 F.3d 894 (3d Cir. 1995) (unpublished table decision); Colonial Trading Corp. v. Department of the Navy, 735 F. Supp. 429, 431 (D.D.C. 1990); see also American Friends Serv. Comm. v. DOD, No. 83-4916, 1986 WL 10659, at *4(E.D. Pa. Sept. 25, 1986), rev'd on other grounds, 831 F.2d 441 (3d Cir. 1987).

[2] Winter v. NSA, 569 F. Supp. 545, 548 (S.D. Cal. 1983); see also Gilmore v. NSA, No. C 92-3646, 1993 U.S. Dist. LEXIS 7694, at **26-27 (N.D. Cal. May 3, 1993) (finding that information on cryptography currently used by NSA "integrally related" to function and activity of intelligence gathering and thus protected).

[3] Meeropol v. Smith, No. 75-1121, slip op. at 53-55 (D.D.C. Feb. 29, 1984), aff'd in relevant part & remanded in part sub nom. Meeropol v. Meese, 790 F.2d 942 (D.C. Cir. 1986). But see General Elec. Co. v. NRC, 750 F.2d 1394, 1401 (7th Cir. 1984) (concluding that provision concerning technical information furnished by license applicants lacked sufficient specificity to qualify as Exemption 3 statute).

[4] Founding Church of Scientology v. NSA, 610 F.2d 824, 828 (D.C. Cir. 1979); Hayden v. NSA, 452 F. Supp. 247,252 (D.D.C. 1978), aff'd, 608 F.2d 1381 (D.C. Cir. 1979).

[5] CIA v. Sims, 471 U.S. 159, 167 (1985); see also Minier v. CIA, 88 F.3d 796, 801 (9th Cir. 1996) (finding that agency properly refused to confirm or deny existence of records concerning deceased person's alleged employment relationship with CIA); Maynard v. CIA, 986 F.2d 547, 554 (1st Cir. 1993) (stating that under § 403(d)(3) it is responsibility of Director of CIA to determine whether sources or methods should be disclosed); Krikorian v. Department of State, 984 F.2d 461, 465 (D.C. Cir. 1993) (same); Fitzgibbon v. CIA, 911 F.2d 755, 761 (D.C. Cir. 1990) (same); Hunt v. CIA, 981 F.2d 1116, 1118 (9th Cir. 1992) (upholding agency's "Glomar" response to request on foreign national, because acknowledgement of any records would reveal sources and methods); Knight v. CIA, 872 F.2d 660, 663 (8th Cir. 1989) (same); Levy v. CIA, No. 95-1276, slip op. at 14-17 (D.D.C. Nov. 16, 1995) (same), aff'd, No. 96-5004 (D.C. Cir. Jan. 15, 1997); Roman v. Dailey, No. 97-1164, 1998 U.S. Dist. LEXIS 6708, at **10-11 (D.D.C. May 11, 1998) (concluding that agency properly refused to confirm or deny existence of records pertaining to agency personnel and spy satellite programs); Blazy v. Tenet, 979 F. Supp. 10, 23-24 (D.D.C. 1997) (protecting intelligence sources and methods located in requester's personnel file), summary affirmance granted, No. 97-5330 (D.C. Cir. May 12, 1998); Andrade v. CIA, No. 95-1215, 1997 WL 527347, at **3-5 (D.D.C. Aug. 18, 1997) (holding intelligence methods used in assessing employee fitness protectible); Earth Pledge Found. v. CIA, 988 F. Supp. 623, 627 (S.D.N.Y. 1996) (finding agency's "Glomar" response proper because acknowledgement of records would generate "danger of revealing sources"), aff'd per curiam, 128 F.3d 788 (2d Cir. 1997) (unpublished table decision); Campbell v. United States Dep't of Justice, No. 89-CV-3016, 1996 WL 554511, at *6 (D.D.C. Sept. 19, 1996) ("CIA director is to be afforded 'great deference' by courts determining the propriety of nondisclosure of intelligence sources"); cf. Linder v. DOD, 133 F.3d 17, 25 (D.C. Cir. 1998) ("[C]ourts must give 'great deference' to the Director of Central Intelligence's determination that a classified document could reveal intelligence sources and methods and endanger national security.") (non-FOIA case).

[6] Minier, 88 F.3d at 801; Roman, 1998 U.S. Dist. LEXIS 6708, at **10-11; Blazy, 979 F. Supp. at 23-24; Earth Pledge Found., 988 F. Supp. at 627-28; Campbell, 1996 WL 554511, at *6; Kronisch v. United States, No. 83-2458, 1995 WL 303625, at **4-6 (S.D.N.Y. May 18, 1995); Hunsberger v. CIA, No. 92-2186, slip op. at 3 (D.D.C. Apr. 5, 1995); Rothschild v. CIA, No. 91-1314, 1992 WL 71393, at *2 (D.D.C. Mar. 25, 1992); Lawyers Comm. for Human Rights v. INS, 721 F. Supp. 552, 567 (S.D.N.Y. 1989); Pfeiffer v. CIA, 721 F. Supp. 337, 341-42 (D.D.C. 1989).

Item V.

Initial FOIA/PA Access Requests

A. Numbers of initial requests.

1. Number of requests pending as of end of preceding fiscal year (1 Oct 03): 12,941[1]

2. Number of requests received during current fiscal year (FY 2004): 77,141

3. Number of requests processed during current fiscal year (FY 2004): 77,256

4. Number of requests pending as of end of current fiscal year (30 Sep 03): 12,826

B. Disposition of initial requests.

1. Number of grants: 37,914

2. Number of partial denials: 11,779

3. Number of total denials: 2,340

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

      (1) Exemption 1: 1,132

      (2) Exemption 2: 1,944

      (3) Exemption 3: 1,627

      (4) Exemption 4: 1,268

      (5) Exemption 5: 1,411

      (6) Exemption 6: 8,990

      (7) Exemption 7(A): 458

      (8) Exemption 7(B): 14

      (9) Exemption 7(C): 4,738

      (10) Exemption 7(D): 245

[1] This number differs from the number reported at the end of the 2003 report due to more sophisticated counting methods. This figure is believed to be more accurate than that reported last year.

(11) Exemption 7(E): 107

(12) Exemption 7(F): 22

(13) Exemption 8: 3

(14) Exemption 9: 180

4. Other reasons for nondisclosure (total): 25,223

a. No records: 6,709

b. Referrals: 9,084

c. Request withdrawn: 2,806

d. Fee-related reason: 792

e. Records not reasonably described: 1,071

f. Not a proper FOIA request for some other reason: 763

g. Not an agency record: 616

h. Duplicate request: 1,073

i. Other [2](specify): 2,309

Item VI.

Appeals of Initial Denials of FOIA/PA Requests

A. Numbers of appeals.

1. Number of appeals received during fiscal year (FY 2004): 624

2. Number of appeals processed during fiscal year (FY 2004): 933

B. Disposition of appeals.

1. Number denied in full: 433

[2] Other reasons are: electronic referral, insufficient address/info, lacked 3rd party waiver, and publicly sold documents.

2. Number denied in part: 162

3. Number completely reversed (granted): 30

   a. Number of times each FOIA exemption used (counting each exemption once per appeal).

      (1) Exemption 1: 76

      (2) Exemption 2: 47

      (3) Exemption 3: 41

      (4) Exemption 4: 33

      (5) Exemption 5: 155

      (6) Exemption 6: 216

      (7) Exemption 7(A): 12

      (8) Exemption 7(B): 0

      (9) Exemption 7(C): 106

      (10) Exemption 7(D): 9

      (11) Exemption 7(E): 4

      (12) Exemption 7(F): 1

      (13) Exemption 8: 1

      (14) Exemption 9: 0

4. Other reasons for nondisclosure (total): 308

   a. No records: 106

   b. Referrals: 55

   c. Appeal withdrawn: 77

   d. Fee-related reason: 4

   e. Records not reasonably described: 0

   f. Not a proper FOIA request for some other reason: 19

g. Not an agency record:	4
h. Duplicate request:	2
i. Other[3] (specify):	41

Item VII.

Compliance With Time Limits/Status of Pending Requests

A. Median processing time for requests processed during the year (FY 2004).

1. Simple requests.

a. Number of requests processed:	63,443
b. Median number of days to process:	17.0

2. Complex requests.

a. Number of requests processed:	12,972
b. Median number of days to process:	59.0

3. Requests accorded expedited processing.

a. Number of requests processed:	841
b. Median number of days to process:	1

B. Status of pending requests (as of: 30 Sep 04).

1. Number of requests pending:	12,826
2. Median age of above cases in days:	93

[3] Other reasons were appeals not submitted within required time frame and improper address.

Item VIII.

Comparison With Previous Year

Number of initial expedited requests received (FY 03)	1358
Number of initial expedited requests received (FY 04)	1057
Number of initial expedited requests granted (FY 03)	817
Number of initial expedited requests granted (FY 04)	841

Item IX.

Costs/FOIA Staffing

A. Staffing levels (expressed in work-years).

1. Number of full-time FOIA personnel:	333.71
2. Number of personnel with part-time or occasional FOIA duties:	387.25
3. Total number of personnel:	720.96

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

1. FOIA processing (including appeals):	$46,783,592
2. Litigation-related activities (estimated):	$428,202
3. Total costs:	$47,211,794

Item X.

Fees

A. Total amount of fees collected by the agency for processing requests: $537,741.00

B. Percentage of total costs: 1.1%

Item XI.

FOIA Regulations (Including Fee Schedule)

A. The Department of Defense (DoD) Freedom of Information Act Program Regulation, DoD 5400.7-R, September 4, 1998, which provides guidance regarding administration of the Freedom of Information Act (FOIA) Program within the Department of Defense (DoD), can be found at:

http://www.dtic.mil/whs/directives/corres/html/54007r.htm

B. The Fee Schedule is Chapter 6 of the above regulation and as modified at http://www.defenselink.mil/pubs/foi/foiafees.pdf

C. Additional Department of Defense FOIA documents and hyperlinks can be found by accessing the following Universal Resource Locator (URL):

http://www.defenselink.mil/pubs/foi/