

Department of Homeland Security

Privacy Office

2012 Chief Freedom of Information Act Officer Report
to the Attorney General of the United States

March 2012



Homeland
Security

Message from the Chief FOIA Officer

I am delighted to provide this third Chief FOIA Officer Report to demonstrate the importance of the Freedom of Information Act (FOIA) for the Department of Homeland Security (DHS) during this reporting period. First, the Department filled the position of the Deputy Chief FOIA Officer (DCFOIAO) at the Senior Executive Service Level, one of few Senior Executive Service career FOIA positions in the Federal government. Further, DHS increased proactive disclosures by 43% from the previous fiscal year as the Department fully embraced the concept of transparency.



This reporting period has also had challenges for DHS. For FY 2011, DHS received more FOIA requests than any other federal agency, with a total of 175,656 FOIA requests, up 45,558 or 35% from Fiscal Year 2010's total of 130,098. Even though we processed 145,631 requests—an increase from 138,651 in the previous year—our backlog of FOIA requests increased. Here at DHS we have experienced a 64% increase in the number of FOIA requests received since President Obama took Office and called for greater transparency and openness.

The increased volume of incoming requests did not preclude a timely response. Almost across the Department, DHS Components shortened the interval between the receipt of a simple perfected request and its final disposition. The Office for Civil Rights and Civil Liberties (CRCL) decreased its median turnaround from 22 days to 7 or 68%, while the Office of Inspector General's (OIG) average response time dropped from 11.05 days to 8.57, or 22%. In some cases, the response time for complex requests also fell significantly. The Federal Emergency Management Agency's (FEMA) response time dropped from 390 days in Fiscal Year 2010 to 102 in Fiscal Year 2011 or 74%. The United States Coast Guard (USCG) cut its response time from 56 days to 45 (20%), and the Office of General Counsel (OGC) reduced its average response time of 474.57 days in FY 2010 to 296.69 in FY 2011— 37%.

In order to address the increased demand for DHS information through FOIA responses and through proactive disclosure, the new DCFOIAO undertook a comprehensive review of Departmental FOIA operations. She met with each Component-level FOIA Officer to discuss the challenges they faced, including a two-day onsite in Lee's Summit, Missouri, with USCIS FOIA operations staff.

The DCFOIAO made two key findings. First, the FOIA program is sound overall, because senior Department leadership's efforts to align with the Administration's goals of openness and transparency are working well. Second, there are opportunities to improve the delivery of FOIA services, particularly in the areas of technology, training, and backlogged FOIA requests. The DHS FOIA Office used these findings to establish several intra-departmental action teams to identify how best to streamline and standardize processing and achieve a higher level of customer service.

The DHS FOIA Office also surveyed Component-level FOIA officers to seek input and priorities on major administrative issues including organization, administration, and FOIA request coordination. The DHS FOIA Office then followed up with several meetings with FOIA Officials from peer agencies, including the Department of Defense, the Department of Health and Human Services, the Department of State, and the Department of Veterans Affairs to identify best practices to meet the needs and concerns of the DHS FOIA Officers.

This multi-pronged approach to identify best practices helped set short- and long-term priorities. At the end of this reporting period, the DHS FOIA Office began piloting an electronic FOIA solution for possible implementation across the Department, implementing a training schedule for the calendar year, including a daylong conference open to the Federal FOIA community, and completing a study and associated recommendations to reduce and eventually eliminate the DHS backlog.

The discussion that follows describes these and other initiatives in greater detail.

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TABLE OF CONTENTS

| | |
|---|-----------|
| Part 1. Overview of the DHS FOIA Program | 1 |
| I. Operational Overview of the DHS FOIA Program | 1 |
| II. About the FOIA Operations of the DHS Privacy Office | 1 |
| Part 2. Promoting Openness and Efficiency—Addressing Key Areas of Interest to the Department of Justice..... | 3 |
| I. Steps Taken to Apply the Presumption of Openness | 3 |
| II. Steps Taken to Ensure that Your Agency has an Effective System In Place for Responding to Requests..... | 8 |
| III. Steps Taken To Increase Proactive Disclosures | 9 |
| IV. Steps Taken To Greater Utilize Technology | 10 |
| V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests .. | 12 |
| Part 3: DHS Spotlight on Success: Assessing the DHS Backlog..... | 20 |
| APPENDIX A: Composition of the Department of Homeland Security | 23 |
| APPENDIX B: Organization of the Department of Homeland Security Chart | 26 |
| APPENDIX C: Names, Addresses, and Contact Information for DHS FOIA Officers..... | 27 |
| APPENDIX D. Acronyms, Definitions, and Exemptions | 29 |

Part 1. Overview of the DHS FOIA Program

I. Operational Overview of the DHS FOIA Program

The Department of Homeland Security's Freedom of Information Act (FOIA) Program began with the establishment of the Department in 2003. Many of the agencies that were merged into DHS had pre-existing, well-established FOIA operations. Elements of those decentralized operations continue today. Subject to Department-wide FOIA regulations and the policy leadership of the DHS FOIA Office, DHS's Components are responsible for establishing and maintaining their own FOIA programs and operationally deciding whether to establish a centralized or decentralized FOIA program at the Component or directorate level. The DHS Organizational Chart is provided in Appendix B. Names and contact information for DHS FOIA Officers are provided in Appendix C. A list of DHS Component acronyms is provided in Appendix D.

II. About the FOIA Operations of the DHS Privacy Office

In accordance with Executive Order 13392, *Improving Agency Disclosure of Information*,¹ the Secretary of Homeland Security (Secretary) designated the DHS Chief Privacy Officer to serve concurrently as the Chief FOIA Officer to promote efficiency, effectiveness, and statutory compliance throughout the Department. The Chief Privacy Officer, who leads the DHS Privacy Office (Privacy Office), reports directly to the Secretary for both FOIA and privacy-related purposes. On August 29, 2011, the Secretary of Homeland Security delegated to the Chief Privacy Officer the authority to develop and oversee the implementation of policies within the Department and except as otherwise provided by law, carry out the functions of the agency regarding compliance with 5 U.S.C. § 552, "The Freedom of Information Act," as amended; 5 U.S.C. § 552a, "The Privacy Act of 1974," as amended; and Public Law 107-347, § 208, "E-Government Act of 2002."

The Privacy Office coordinates Department-level compliance with FOIA by developing Departmental policy needed to implement important FOIA initiatives, such as the sweeping changes set forth in the President's FOIA Memorandum and the Attorney General's FOIA Guidelines of 2009.² Additionally, the Privacy Office performs coordination and oversight of

¹ Executive Order Number 13392, Fed. Reg. 75373 (Dec. 14, 2005). The Executive Order's requirement for the establishment of the Chief FOIA Officer position was enacted into law as provisions of the FOIA (5 U.S.C. §§ 552(j),(k)) by the OPEN Government Act of 2007, Pub. L. 110-175, 121 Stat. 2524 (Dec. 31, 2007)). The Chief Privacy Officer position was established by Section 222 of the Homeland Security Act of 2002 (Homeland Security Act), 6 U.S.C. § 142 (2002). Section 222 assigns the Chief Privacy Officer responsibilities to ensure that privacy and transparency in government are implemented throughout the Department. Congress expanded the authorities and responsibilities of the Chief Privacy Officer in 2007 in the *Implementing the Recommendations of the 9/11 Commission Act of 2007* (9/11 Commission Act), Pub. L. 110-53, 6 U.S.C. §101 note. Section 802 of the 9/11 Commission Act added investigatory authority, the power to issue subpoenas, and the ability to administer oaths, affirmations, or affidavits necessary to investigate or report on matters relating to responsibilities under section 222 of the Homeland Security Act. These responsibilities are further described on the DHS Privacy Office website: http://www.dhs.gov/xabout/structure/editorial_0510.shtm.

² The President's FOIA Memorandum of January 21, 2009 is available at: http://www.justice.gov/oip/foia_guide09/presidential-foia.pdf. The Attorney General's Memorandum of March 19, 2009 is available at <http://www.usdoj.gov/ag/foia-memo-march2009.pdf>.

Component FOIA operations, provides FOIA training, and prepares required annual reports of the Department's FOIA performance. The Privacy Office, through its FOIA unit (hereinafter referred to as the DHS FOIA Office), also processes initial FOIA and Privacy Act requests to the Office of the Secretary (including the Military Advisor's Office and the Office of Intergovernmental Affairs), and eight DHS headquarters Components (DHS FOIA Office Components).³

This year the Department filled the position of Deputy Chief FOIA Officer at the Senior Executive Service level. The Deputy Chief FOIA Officer (DCFOIAO) supervises the operations of the DHS FOIA Office. She advises the Chief FOIA Officer and other executive-level leaders throughout DHS on compliance with FOIA, the Privacy Act,⁴ the OPEN Government Act,⁵ the requirements of Section 222 of the Homeland Security Act as amended,⁶ and DHS policies, programs, and agreements that promote adherence to information disclosure principles. The DCFOIAO oversees the development and implementation of Department-wide FOIA/Privacy Act policies and procedures such as internal headquarters procedures and guidelines based upon new or revised legislation or recommendations. She is also responsible for the development and delivery of effective training in these areas.

Two directors assist the DCFOIAO. The Director for Disclosure and FOIA Operations, provides leadership and oversight of the DHS FOIA Office's activities, including managing the processing of FOIA and Privacy Act requests for records maintained by DHS FOIA Office Components, coordinating the processing of FOIA requests to ensure that requests are handled consistently throughout the Department, and managing the HQ FOIA web presence. The Director for Policy and Program Development is responsible for Department-wide disclosure training, identifying and remedying policy and program deficiencies, and serving as the DHS HQ FOIA Public Liaison⁷ to address customer service issues. Together, they are subject matter experts for DHS senior leadership regarding information disclosure policy, advisors to employees on their FOIA and the Privacy Act responsibilities, and guarantors that the disclosure staff is well versed in the Department's mission and key programs and thus can readily disseminate relevant information to the public.

DHS FOIA Office staff is comprised of ten FOIA specialists who process initial requests to DHS FOIA Office Components and prepare the Department's required FOIA reports. The Department's programs are wide-ranging, and the processing of requests requires close coordination with many internal and external customers, including other Federal agencies, state and local governments, foreign entities, and private companies. DHS FOIA Office specialists also provide expert FOIA guidance to DHS FOIA Office Components and communicate regularly with DHS's other stakeholders.

³ In this report, a reference to the "Department" or "DHS" means the entire Department of Homeland Security, including its components, directorates, and the Office of the Secretary. The DHS FOIA Office processes the Privacy Office's initial requests and those for the following components: Office of the Secretary, CISOMB, CNE, DNDO, ESEC, IGA, OHA, OLA, and OPA. Appendix A lists the DHS Components and their customary abbreviations.

⁴ Privacy Act of 1974, 5 U.S.C. § 552a(8).

⁵ OPEN Government Act of 2007, Pub. L. 110-175, 121 Stat. 2524 (Dec. 31, 2007).

⁶ Homeland Security Act of 2002, 6 U.S.C. § 142.

⁷ This position was established in law by 5 U.S.C. § 552(l).

Part 2. Promoting Openness and Efficiency—Addressing Key Areas of Interest to the Department of Justice

I. Steps Taken to Apply the Presumption of Openness

Describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. To do so, you should answer the questions listed below and then include any additional information you would like to describe you're your agency is working to apply the presumption of openness.

- 1. Did your agency hold a FOIA conference or otherwise conduct training during this reporting period?*

This year, the DHS FOIA Office broadened training opportunities throughout the Department by bringing specialized topical training to the DHS campus. For example, in April 2011 DOJ OIP held a workshop for departmental FOIA staff to discuss the implications of the Supreme Court's ruling on FOIA Exemption (b)(2) in *Milner v. Department of the Navy*, (131 S. Ct. 1259 (2011)) by discussing how the new ruling would directly affect DHS. Another training tailored to DHS needs, which addressed FOIA Exemptions (b)(5), (b)(6), and (b)(7) took place in November 2011, while a session on DOJ's newly-issued guidance on consultations, referrals, and coordination held in February 2012 kicked off the new training year. The Office of Government Information Services (OGIS) will bring a specially tailored version of its popular mediation workshop to DHS in April; furthermore, plans for a FOIA conference open to the Federal FOIA community are in development.

- 2. Did your FOIA professionals attend any FOIA training such as that provided by the Department of Justice?*

Openness and transparency are central to the President's and the Attorney General's vision of the Freedom of Information Act.⁸ These principles guide the Department of Homeland Security's FOIA Program. One way these principles are instilled across the Department is through DHS FOIA professionals. The Department places a high priority on training and education. All DHS personnel receive FOIA training as part of new-employee orientation. The initial FOIA training is reinforced through mandatory annual instruction in records management that also addresses staff FOIA responsibilities. Components provide full-time and collateral FOIA staff training specific to each Component, and many FOIA professionals throughout the Department also attend classes offered by the Department of Justice, Office of Information Policy, the American Society of Access Professionals, and/or the USDA Graduate School.

In his 2009 FOIA Guidelines, the Attorney General strongly encouraged agencies to make discretionary releases of information, even when the information might be technically exempt from disclosure under the FOIA.⁹ OIP encourages agencies to make such discretionary releases whenever there is no foreseeable harm from release.

⁸ See Footnote 2.

⁹ *Ibid.*

3. Did your agency make any discretionary releases or otherwise exempt information?

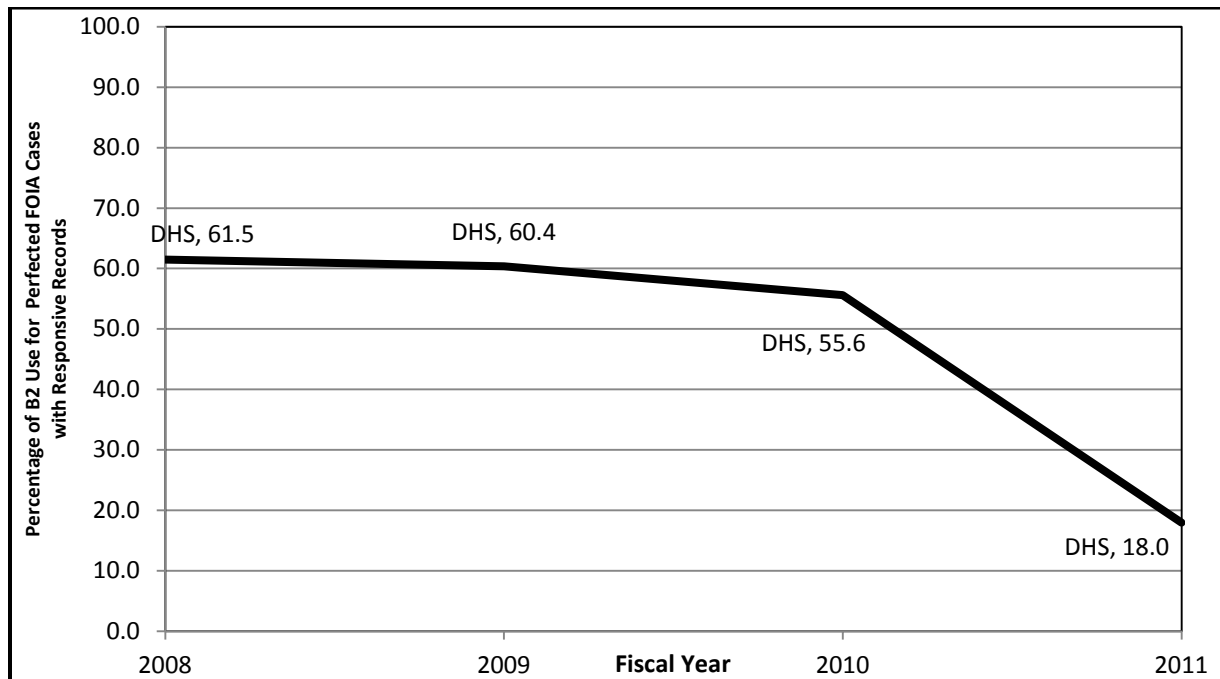
Yes. DHS Components made discretionary releases during the reporting period.

4. What exemptions would have covered the information that was released as a matter of discretion?

Well-trained professionals are critical to the Department’s ability to advance openness through discretionary releases, particularly when identifying suitable records and applying the standard of foreseeable harm. With the narrowing of Exemption (b)(2), which protects internal personnel rules and practices, DHS as a whole has begun to discretionarily release information that (b)(2) previously could have denied. U.S. Customs and Border Protection (CBP) and the United States Secret Service (USSS) released material that could have been withheld pursuant to Exemption (b)(7)(E), and the Federal Law Enforcement Training Center (FLETC), U.S. Immigration and Customs Enforcement (ICE), and the Directorate for Management (MGMT), among others, released records eligible for exemption under (b)(5).

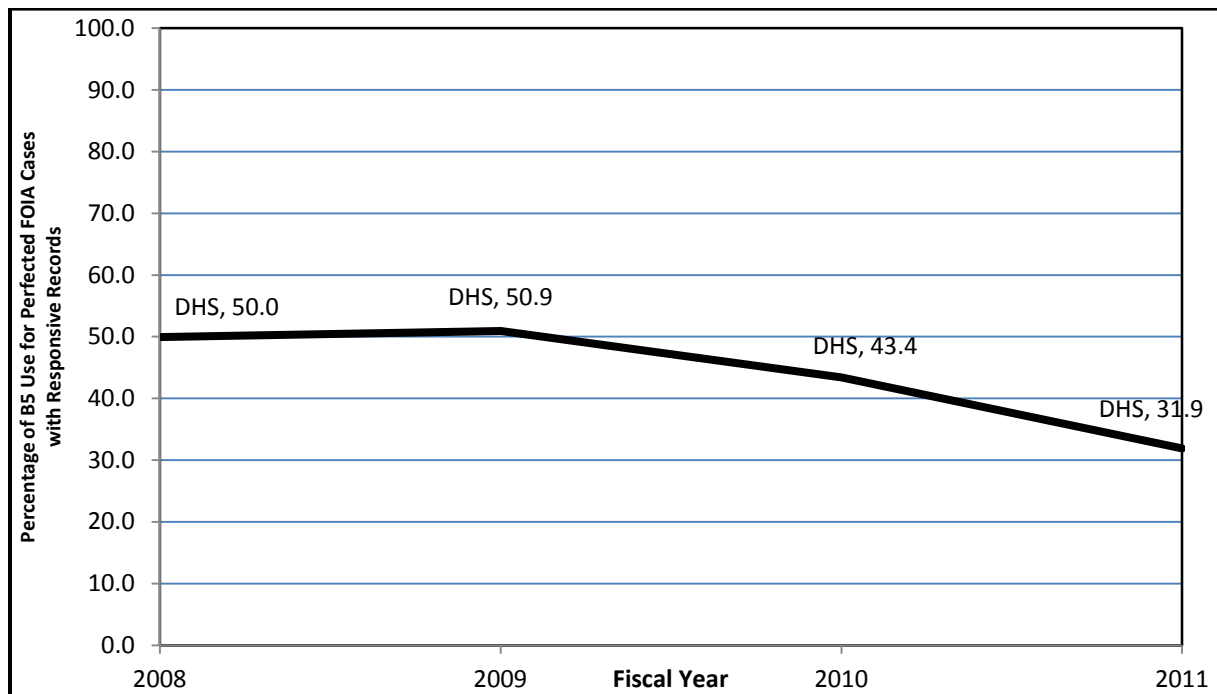
The overall DHS Exemption 5 usage (by percentage) went down in 2011 to 32 percent of all cases where records were reviewed.

Figure 1. Exemption 2 Use by Component FY 2008 - 2011¹⁰



¹⁰ DHS numbers include those reported from CBP, CRCL, FEMA, FLETC, I&A, ICE, MGMT, NPPD, OGC, OIG, OPS, PLCY, PRIV, S&T, TSA, USCG, USCIS, USSS and US-VISIT.

Figure 2. Exemption 5 Use by Component FY 2008 - 2011¹¹



5. Describe your agency’s review process to review records to determine whether discretionary releases are possible.

DHS has several examples of how DHS Components review records to ensure discretionary releases are made. When a case reaches the level of supervisory review at ICE, the supervisor examines the information to determine if any exempted information can be released. To make the decision, the supervisor may consult with the FOIA Officer, employees within the originating program office, and/or other Federal agencies. If the supervisor determines that the exempt information qualifies for a discretionary waiver, the supervisor releases the information. In addition, CBP relies on an ongoing dialogue between its FOIA professionals and subject matter experts to determine on a case-by-case basis what information can be released without compromising its mission or harming CBP personnel.

Not all Components have records suitable for discretionary release. At USCIS, the vast majority of FOIA requests are for Alien files (A-files). A-files contain information that normally is not permissible for discretionary release because of privacy concerns, law enforcement sensitivity, or attorney work product information in the files. A-files are still vetted, however, for information that might be subject to discretionary release during the initial processing and case review of the responsive records. For requests that are not associated with A-file materials, USCIS staff has been trained to closely review all documents for potential discretionary release.

¹¹ DHS numbers include those reported from CBP, CRCL, FEMA, FLETC, I&A, ICE, MGMT, NPPD, OGC, OIG, OPS, PLCY, PRIV, S&T, TSA, USCG, USCIS, USSS and US-VISIT. See Appendix D.

6. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied.

Immediately upon her arrival, the new DCFOIAO undertook a comprehensive review of DHS FOIA operations, meeting onsite with each and every Component-level FOIA Officer. This initiative was followed up by a seven-page multi-part questionnaire distributed to all Departmental FOIA offices, designed to elicit additional information, including Component-specific review processes, the availability of dedicated FOIA resources, and existing intra-inter-agency coordination with regard to FOIA. Information collected via this questionnaire is included in the reporting for this report.

In Section V.B.(1) of your agency’s Annual FOIA Report, entitled “Disposition of FOIA Requests—All Processed Requests,” the first two columns list the “Number of Full Grants” and the Number of Partial Grants/Partial Denials.” Compare your agency’s 2011 Annual FOIA Report with last year’s Annual FOIA Report, and answer the following questions:

7. Did your agency have an increase in the number of responses where records were released in full?

As reflected in Table 1 below, DHS as a whole did not have an increase in the number of responses where records were released in full; however, CBP, Civil Rights and Civil Liberties (CRCL), Federal Emergency Management Agency (FEMA), ICE, the Office of General Counsel (OGC), the Office of Inspector General (OIG), the United States Coast Guard (USCG), and the United States Secret Service (USSS) increased the number of responses where records were released in full.

Table 1. Number of Full Grants as Reported in the FY 2011 FOIA Annual Report¹²

| Component | No. of Full Grants FY 2010 | No. of Full Grants FY 2011 |
|-----------|----------------------------|----------------------------|
| CBP | 1,997 | 2,158 |
| CRCL | 3 | 18 |
| FEMA | 146 | 276 |
| FLETC | 29 | 28 |
| I&A | 7 | 6 |
| ICE | 431 | 556 |
| MGMT | 42 | 21 |
| NPPD | 16 | 13 |
| OGC | 2 | 9 |
| OIG | 11 | 14 |
| OPS | 10 | 9 |
| PLCY | 36 | 4 |
| PRIV | 26 | 22 |
| S&T | 4 | 4 |
| TSA | 78 | 62 |

¹² DHS 2011 FOIA Annual Report at <http://www.dhs.gov/xfoia/foia-library-frequently-requested-records.shtm#3>.

| Component | No. of Full Grants FY 2010 | No. of Full Grants FY 2011 |
|-----------------------|----------------------------|----------------------------|
| USCG | 1,909 | 2,238 |
| USCIS | 11,943 | 9,783 |
| USSS | 25 | 36 |
| US-VISIT | 6 | 6 |
| AGENCY OVERALL | 16,721 | 15,203 |

8. *Did your agency have an increase in the number of responses where records were released in part?*

As reflected in Table 2 below, DHS as a whole increased the number of responses where records were released in part.

Table 2. Number of Partial Grants/Partial Denials as Reported in the FY 2011 FOIA Annual Report¹³

| Component | No. of Partial Grants/ Partial Denials FY 2010 | No. of Partial Grants/ Partial Denials FY 2011 |
|-----------------------|--|--|
| CBP | 8,824 | 18,955 |
| CRCL | 5 | 21 |
| FEMA | 225 | 327 |
| FLETC | 45 | 37 |
| I&A | 11 | 3 |
| ICE | 5,288 | 11,576 |
| MGMT | 81 | 56 |
| NPPD | 58 | 165 |
| OGC | 2 | 8 |
| OIG | 98 | 67 |
| OPS | 17 | 10 |
| PLCY | 5 | 4 |
| PRIV | 107 | 96 |
| S&T | 9 | 12 |
| TSA | 161 | 160 |
| USCG | 704 | 558 |
| USCIS | 61,119 | 48,285 |
| USSS | 235 | 190 |
| US-VISIT | 1,623 | 2,668 |
| AGENCY OVERALL | 78,626 | 83,198 |

¹³ See DHS 2011 Annual FOIA Report at <http://www.dhs.gov/xfoia/foia-library-frequently-requested-records.shtm#3>.

II. Steps Taken to Ensure that Your Agency has an Effective System In Place for Responding to Requests

Describe here the steps your agency has taken to ensure that your system for responding to requests is effective and efficient. This section should include a discussion of how your agency has addressed the key roles played by the broad spectrum of agency personnel who work with FOIA professionals in responding to requests, including, in particular, steps taken to ensure that FOIA professionals have sufficient IT support. To do so, answer the questions below and then include any additional information that you would like to describe how your agency ensures that your FOIA system is efficient and effective.

1. *Do FOIA professionals within your agency have sufficient IT support?*

Components are generally satisfied with their day-to-day IT support; nevertheless, those responding to the DHS FOIA survey indicated that better technology to track and report FOIA requests would be helpful.

2. *Is there regular interaction between agency FOIA professionals and the Chief FOIA Officer?*

FOIA Officers meet as a group bi-weekly with the CFOIAO to share information and discuss items of interest to all; meetings to address Component-specific concerns are scheduled as needed. Components also interact with the CFOIAO through a variety of internal reports.

3. *Do your FOIA professionals interact with your agency's Open Government Team?*

The CFOIAO and DHS FOIA meet regularly with the DHS Open Government Team.¹⁴

4. *Describe the steps your agency has taken to assess whether adequate staffing is being devoted to FOIA administration.*

In the Deputy Chief FOIA Officer's interviews with DHS Components and the follow-up survey on the state of FOIA operations, DHS Components indicated while additional staff would be welcome, prospects to augment their FOIA teams were not promising given the current economic climate. ICE was able to add staff this year; in contrast, USCG lost five staff, including its FOIA Officer. USCIS senior leadership focused on staffing levels during this reporting period and authorized a staff increase. This decision was based on the average production totals of processed requests and the average processing times per FOIA professional, combined with projections for the ever-increasing number of incoming requests being received. The CPB FOIA Division is also assessing its staffing levels, using measurements in place for the productivity of each processor to determine their need.

¹⁴ Office of Mgmt. & Budget, Executive Office of the President, OMB Memorandum No. M-10-06, *Open Government Directive* (2009), available at http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_2010/m-10-06.pdf. See also DHS Open Government Plan June 10, 2010 – Version 1.1 at http://www.dhs.gov/library/assets/dhs_open_government_plan.pdf.

III. Steps Taken To Increase Proactive Disclosures

Describe here the steps your agency has taken to increase the amount of material that is available on your agency website and the usability of such information, including providing examples of proactive disclosures that have been made during the past reporting period (March 2011 through March 2012). In doing so, answer the questions listed below and describe any additional steps taken by your agency to make proactive disclosures of information.

1. Has your agency added new material to your agency website since last year?

The DHS FOIA Office and DHS Components enhanced transparency by proactively posting documents released in response to FOIA requests and other documents of public interest. In total in FY 2011, DHS proactively released 8,903 pages of material, a 43% increase from FY 2010. In FY 2012, the Department anticipates additional growth in proactive disclosure, likely implementing new recommendations of the above-referenced working group.

2. Provide examples of the records, data sets, videos, etc., that have been posted this year.

Much information resides on DHS websites, including material previously only available through a formal FOIA request (e.g., historical documents, daily schedules of senior leaders, management directives, contracts, memoranda related to FOIA operations, and procurement records that include awards, orders, solicitations, and purchase cardholder lists). All Components post their FOIA logs. This year, ICE added detention facility inspections and statistics related to immigration to the list; USCG posted safety investigations and mishap reports; TSA disseminated videos of incidents having high public interest. The list of CBP information below illustrates the depth and breadth information currently available online:

- Office of Air and Marine in the News (http://www.cbp.gov/xp/cgov/border_security/air_marine/oam_news.ll.xml);
- U.S. Border Patrol in the News (http://www.cbp.gov/xp/cgov/border_security/border_patrol/press_announce_lp.xml);
- U.S. Border Patrol Statistics (http://www.cbp.gov/xp/cgov/cgov/border_security/border_patrol/usbp_statistics); and
- Essential forms (http://www.cbp.gov/xp/cgov/travel/id_visa/indamiss_can_info.xml).

3. Describe the system your agency uses to routinely identify records that are appropriate for posting?

Components identify documents suitable for proactive posting in various ways. ICE, for example, identifies and tags information suitable for posting in its FOIA Library as part of processing and supervisor review. Program offices facilitate the population of the ICE FOIA Library, routinely contacting the FOIA Office when they locate documents that are of potential interest to the public. CBP uses an office-wide effort to find appropriate records, while TSA relies on a regular search of its FOIA database to identify material.

4. *Beyond posting new material, is your agency taking steps to make the information more useful to the public, especially to the community of individuals who regularly access your agency's website, such as soliciting feedback on the content and presentation of the posted material, improving search capabilities, providing explanatory material, etc.?*

DHS demonstrates its conviction to openness and transparency by making a massive amount of information available to the public through numerous social media sites across its Components. CBP provides the most robust example for this reporting period, using YouTube videos, Twitter, and Flickr to connect with the public. CBP also provides an opportunity for individuals to subscribe to "CBP Updates" via e-mail or SMS/Text Message to receive notices, updates, and subscriptions to CBP content. A collaborative initiative called "Our Border" is underway to establish a social networking partnership to enable Federal, State, local, and tribal agencies to engage and educate southwestern border community stakeholders. Moreover, CBP employs traditional media outlets to disseminate information, cooperating with *The National Geographic Channel* in the production of "Border Wars" and working with *Investigation Discovery* in their production of "Cops & Coyotes."

To a certain degree, posting this information display eliminates the need for potential FOIA requesters to submit requests. On the other hand, requesters can use that same information to make additional and more complex requests. Proactive posting facilitates the exploration of a given topic in depth, as requesters use FOIA as the means to seek more detailed information about DHS activities.

5. *Describe and other steps taken to increase proactive disclosures at your agency.*

In January 2012, the Chief FOIA Officer issued a memorandum directing the Department to continue to actively implement the Administration's sweeping policy changes.¹⁵ The memorandum reiterated the importance of the presumption of disclosure, proactive disclosure requirements, and also noted specific progress in Components' proactive disclosure activity. To help further this goal, the Deputy Chief FOIA Officer established an intra-Departmental action team to investigate possibilities for adding additional content to the FOIA Library and improving customer access to DHS documents in the Library.

IV. Steps Taken To Greater Utilize Technology

A key component of the President's FOIA Memorandum was the direction to "use modern technology to inform citizens about what is known and done by their Government." In addition to using the Internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests. For 2012, the questions have been further refined and now also address different, more innovative aspects of technology use.

¹⁵ Chief FOIA Officer Memorandum, "Government Openness: The Department of Homeland Security (DHS) applies both the letter and spirit of the Freedom of Information Act," January 31, 2012, at <http://www.dhs.gov/xlibrary/assets/foia/foia-government-openness-memo-january-2012.pdf>.

1. *Can FOIA requests be made electronically to your agency?*

Yes. FOIA requests can be made electronically to DHS.

2. *If your agency processes requests on a decentralized basis, do all components of your agency receive requests electronically?*

All DHS headquarters offices and Components can receive FOIA requests electronically. The majority of headquarters offices and Components also have the capacity for electronic redaction, although a limited number of regional or field offices with collateral FOIA duties redact materials manually. The limited scope of the field offices' responsibilities makes an investment in electronic redaction software unfeasible. Offices and Components use a variety of redaction software.

3. *Can a FOIA requester track the status of his/her request electronically?*

A requester's ability to track his/her requests online varies from Component to Component.

4. *If not, is your agency taking steps to establish this capability?*

Yes. See #6 below.

5. *Beyond using technology to redact documents, is your agency taking steps to utilize more advanced technology to facilitate overall FOIA efficiency, such as improving records search capabilities, utilizing document sharing platforms for consultations and referrals, or employing software that can sort and de-duplicate documents?*

Respondents to the DHS FOIA Office questionnaire reported limited use of electronic tools to track and process FOIA requests and even more limited use of electronic records management or e-discovery systems to manage the actual records. USCIS relies on FIPS, an imaging workflow, and case-tracking system developed for USCIS in 1997. FIPS will soon interact with the program USCIS now uses to digitize A-files, which will increase efficiency in processing.

Records management software, especially when integrated with software used to process FOIA requests, could help streamline the review process. Only two headquarters offices and one field office, however, have access to an electronic records management system; eight headquarters offices and five field offices have none at all. Theoretically, software not specifically developed for FOIA could be used to streamline FOIA processing through cataloging and archiving records in a searchable platform, de-duplicating and sorting email strings, and facilitating more efficient searches for records, among others. OGC and Office of the Chief Information Officer (CIO) are currently exploring long-term solutions for enterprise management of electronic records and e-discovery.

6. *If so, describe the technological improvements being made.*

A successful FOIA program hinges in part on its supporting technology, particularly when most agency records are now electronic. This is particularly true at DHS, where reports from 19 discrete FOIA programs produced by different commercial off-the-shelf (COTS) or purpose-built software must be consolidated into a single DHS Annual FOIA report. As it currently stands, tracking and reporting data resides throughout the Department in several distinct databases with limited interoperability. Entering data into multiple systems is laborious and time-consuming. It can also compromise data integrity through inaccuracies and omissions.

To address these issues and in anticipation of a steady flow or potential increase in FOIA requests, the DCFOIAO appointed a technology action team to investigate options for an electronic FOIA solution for Department-wide deployment. The team reviewed several programs before selecting a comprehensive application that enables requests and appeals to be entered into the system from written or electronic requests. Options for printing and/or emailing acknowledgements and standard responses, along with other authorized correspondence are included and any fee can be calculated structures based on agency policy. The software program also includes a complete advanced electronic redaction toolset for search, retrieval, and redaction.

The first phase of this project involves installing the software in pilot production in the DHS FOIA Office for 15 users, then promulgating existing licenses already purchased to other Headquarters Components, before making it available to other Components within the DHS FOIA enterprise.

V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests

Section VII.A of your Annual FOIA Report entitled “FOIA Requests—Response Time for All Processed Requests” includes figures that show your agency’s average response times for processed requests. For agencies utilizing a multi-track system to process requests, there is a category for “simple” requests, which are those requests that are placed in the agency’s fastest (non-expedited) track based on the low volume and/or simplicity of the records requested. If your agency does not utilize a separate track for processing simple requests, answer the question below using the figure provided in your report for your non-expedited requests.

1. *Does your agency utilize a separate track for simple requests?*

In FY 2011, the Department received an unprecedented number of FOIA requests, 175,656 in total, up 45,558 or 35 percent from FY 2010’s total of 130,098. DHS processed 145,631 requests, an increase from 138,651 in 2010. These requests were almost equally divided between simple requests (requests anticipated to involve a small volume of material or which will be able to be processed relatively quickly) and complex requests (requests that are anticipated to involve a voluminous amount of material to review or will be time-consuming to process). The Department received 64,895 simple requests and 64,792 complex requests, respectively. For 98,401 of these cases (57%), DHS released responsive information. The

percentage of FOIA requests with information released is even higher — 81% — when the 17,731 requests that are duplicative or withdrawn altogether and/or seek records that do not exist or fall under the purview of another agency are eliminated.

2. *If so, for your agency overall for Fiscal Year 2011, was the average number of days to process simple requests 20 working days or fewer?*

The increased volume of incoming requests did not preclude a timely response. Most DHS Components shortened the interval between the receipt of a simple perfected request and its final disposition. CBP, for example, reduced its median response time for simple perfected requests from 24 days in FY 2010 to four in FY 2011, an 83% reduction. CRCL decreased its median turnaround from 22 days to 7 (68%), while OIG's average response time dropped from 11.05 days to 8.57 (22%). In some cases, the response time for complex requests also fell significantly. The Federal Emergency Management Agency's (FEMA) response time dropped from 390 days in Fiscal Year 2010 to 102 in Fiscal Year 2011 (74%). The United States Coast Guard (USCG) cut its response time from 56 days to 45 (20%), and the Office of General Counsel reduced its average response time of 474.57 days in FY 2010 to 296.69 in FY 2011 (37%).

Sections XII.D.(2) and XII.E.(2) of your agency's Annual FOIA Report, entitled "Comparison of Numbers of Requests/Appeals from Previous and Current Annual Report—Backlogged Requests/Appeals," show the numbers of any backlog of pending requests or pending appeals from Fiscal Year 2011 as compared to Fiscal Year 2010. Refer to those numbers when completing this section of your Chief FOIA Officer Report. In addition, Section VII.E., entitled "Pending Requests—Ten Oldest Pending Requests," and Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," from both Fiscal Year 2010 and Fiscal Year 2011 should be used for this section.

1. *If your agency had a backlog of requests at the close of Fiscal year 2011, did that backlog decrease as compared with Fiscal year 2010?*

As indicated in Table 3, in spite of its best efforts, DHS was unable to continue the downward momentum with regard to its backlog. While the overall backlog decreased 40 percent over the course of FY 2010 to 11,383 in FY 2011, the number of backlogged FOIA requests increased to 42,417. FEMA, FLETC, ICE, OGC, OIG, the DHS FOIA Office, the Science and Technology Directorate (S&T) the U.S. Visitor and Immigrant Status Indicator Technology Program (US-VISIT), and USSS decreased their backlogs.

Table 3. Number of Backlogged Requests as Reported in the FY 2011 FOIA Annual Report¹⁶

| Component | 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 FY 2011 | Number of Backlogged Requests Decreased | Number of Backlogged Requests Increased |
|-----------------------|---|--|--|--|
| CBP | 601 | 4,356 | N/A | 3,755 |
| CRCL | 6 | 6 | N/A | N/A |
| FEMA | 810 | 485 | 325 | N/A |
| FLETC | 12 | 5 | 7 | N/A |
| I&A | 5 ¹⁷ | 21 | N/A | 16 |
| ICE | 27 | 18 | 9 | N/A |
| MGMT | 1 | 3 | N/A | 2 |
| NPPD | 33 | 63 | N/A | 30 |
| OGC | 25 ¹⁸ | 5 | 20 | N/A |
| OIG | 1 | 0 | 1 | N/A |
| OPS | 0 | 0 | N/A | N/A |
| PLCY | 0 | 0 | N/A | N/A |
| PRIV | 15 | 4 | 11 | N/A |
| S&T | 1 | 0 | 1 | N/A |
| TSA | 378 | 580 | N/A | 202 |
| USCG | 407 | 527 | N/A | 120 |
| USCIS | 8,209 | 35,780 | N/A | 27,571 |
| USSS | 573 | 562 | 11 | N/A |
| US-VISIT | 278 ¹⁹ | 2 | 276 | N/A |
| AGENCY OVERALL | 11,217²⁰ | 42,417 | N/A | 31,200 |

2. *If your agency had a backlog of administrative appeals in Fiscal Year 2011, did that backlog decrease as compared with Fiscal Year 2010?*

As indicated in Table 4, the number of backlogged appeals increased during this reporting period.

¹⁶ See DHS 2011 Annual FOIA Report at <http://www.dhs.gov/xfoia/foia-library-frequently-requested-records.shtm#3>.

¹⁷ Corrected Number due to reporting error in the DHS FOIA FY 2010 Annual Report.

¹⁸ Corrected Number due to reporting error in the DHS FOIA FY 2010 Annual Report.

¹⁹ Corrected Number due to reporting error in the DHS FOIA FY 2010 Annual Report.

²⁰ Corrected Number due to reporting error in the DHS FOIA FY 2010 Annual Report.

Table 4. Number of Backlogged Appeals as Reported in the FY 2011 FOIA Annual Report²¹

| Component | 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 FY 2011 | Number of Backlogged Appeals Decreased | Number of Appeals Increased |
|-----------------------|---|--|--|-----------------------------|
| CBP | 0 | 0 | N/A | N/A |
| FLETC | 0 | 0 | N/A | N/A |
| ICE | 19 | 18 | 1 | N/A |
| OGC | 176 ²² | 141 | 35 | N/A |
| OIG ²³ | N/A | 12 | N/A | 12 |
| TSA | 7 | 2 | 5 | N/A |
| USCG | 48 | 49 | N/A | 1 |
| USCIS | 3 | 105 | N/A | 102 |
| USSS | 2 | 0 | 2 | N/A |
| AGENCY OVERALL | 255²⁴ | 327 | N/A | 72 |

3. *In Fiscal Year 2011, did your agency close the ten oldest requests that were pending at the end of Fiscal Year 2010?*

See Table 5. For DHS as a whole, three of the ten oldest pending cases at the end of FY 2011 remained open.²⁵

Table 5. Ten Oldest Pending Requests as Reported in the FY 2011 FOIA Annual Report²⁶

| Component | Sub-Row Heading | 10th | 9th | 8th | 7th | 6th | 5th | 4th | 3rd | 2nd | Oldest Request |
|-----------|------------------------|----------------------|------------|------------|------------|------------|------------|------------|------------|------------|----------------|
| CBP | Date of Receipt | 2011-01-13 | 2011-01-13 | 2011-01-08 | 2011-01-07 | 2011-01-07 | 2011-01-07 | 2011-01-07 | 2011-01-07 | 2011-01-07 | 2010-11-26 |
| | Number of Days Pending | CLOSED ²⁷ | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED |
| CRCL | Date of Receipt | Not Applicable | | | | 2011-09-28 | 2011-09-02 | 2011-08-08 | 2011-08-08 | 2011-08-02 | 2011-08-01 |
| | Number of Days Pending | Not Applicable | | | | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED |
| FEMA | Date of Receipt | 2008-12-18 | 2008-12-03 | 2008-12-01 | 2008-10-28 | 2008-10-03 | 2008-09-10 | 2008-08-08 | 2008-07-16 | 2008-06-11 | 2007-09-07 |

²¹ See DHS 2011 Annual FOIA Report at <http://www.dhs.gov/xfoia/foia-library-frequently-requested-records.shtm#3>.

²² Corrected Number due to reporting error in the DHS FOIA FY 2010 Annual Report.

²³ OIG started processing its own appeals starting in FY 2011.

²⁴ Corrected Number due to reporting error in the DHS FOIA FY 2010 Annual Report.

²⁵ Data current as of December 31, 2011.

²⁶ See DHS 2011 Annual FOIA Report at <http://www.dhs.gov/xfoia/foia-library-frequently-requested-records.shtm#3>.

²⁷ The requests and appeals Reported in the FY 2011 FOIA Annual Report that were still pending as are highlighted in red in both the Ten Oldest Pending Requests and the Ten Oldest Pending Appeals tables. The FY 2011 FOIA Annual Report is available at <http://www.dhs.gov/xfoia/foia-library-frequently-requested-records.shtm#3>.

DHS 2012 Chief FOIA Officer Report

| Component | Sub-Row Heading | 10th | 9th | 8th | 7th | 6th | 5th | 4th | 3rd | 2nd | Oldest Request |
|--------------------|------------------------|----------------|------------|------------|------------|------------|------------|------------|------------|------------|----------------|
| | Number of Days Pending | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | 1,484 |
| FLETC | Date of Receipt | Not Applicable | | | | | 2011-08-04 | 2011-07-07 | 2011-05-10 | 2011-03-31 | 2011-03-31 |
| | Number of Days Pending | Not Applicable | | | | | CLOSED | CLOSED | 103 | CLOSED | CLOSED |
| I&A | Date of Receipt | 2011-05-10 | 2011-05-02 | 2011-04-18 | 2011-03-29 | 2011-03-02 | 2011-01-26 | 2011-01-26 | 2010-12-13 | 2010-12-07 | 2010-10-01 |
| | Number of Days Pending | 103 | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED |
| ICE | Date of Receipt | 2011-05-11 | 2011-04-27 | 2011-04-26 | 2011-04-26 | 2011-04-07 | 2011-02-24 | 2011-01-31 | 2011-01-28 | 2010-11-22 | 2010-05-17 |
| | Number of Days Pending | CLOSED | 110 | 111 | CLOSED | CLOSED | CLOSED | CLOSED | 172 | 217 | CLOSED |
| MGMT | Date of Receipt | 2011-09-23 | 2011-09-23 | 2011-09-23 | 2011-09-19 | 2011-09-17 | 2011-09-12 | 2011-09-12 | 2011-08-31 | 2011-08-30 | 2011-04-15 |
| | Number of Days Pending | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | 15 | CLOSED | CLOSED | CLOSED | CLOSED |
| NPPD | Date of Receipt | 2011-02-23 | 2011-01-25 | 2011-01-19 | 2011-01-19 | 2010-11-18 | 2010-11-17 | 2010-11-15 | 2010-11-01 | 2010-10-04 | 2010-06-21 |
| | Number of Days Pending | 157 | CLOSED | 181 | CLOSED | 221 | 222 | CLOSED | 233 | CLOSED | CLOSED |
| OGC | Date of Receipt | Not Applicable | | | | | 2011-09-16 | 2010-12-18 | 2010-08-12 | 2010-08-06 | 2010-05-05 |
| | Number of Days Pending | Not Applicable | | | | | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED |
| OIG | Date of Receipt | N/A | 2011-09-29 | 2011-09-29 | 2011-09-22 | 2011-09-22 | 2011-09-19 | 2011-09-19 | 2011-09-13 | 2011-09-12 | 2011-09-07 |
| | Number of Days Pending | 0 | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED |
| OPS | Date of Receipt | Not Applicable | | | | | | | | | |
| | Number of Days Pending | Not Applicable | | | | | | | | | |
| PLCY | Date of Receipt | Not Applicable | | | | | | | | 2011-09-21 | 2011-09-20 |
| | Number of Days Pending | Not Applicable | | | | | | | | CLOSED | CLOSED |
| PRIV | Date of Receipt | 2011-09-14 | 2011-09-14 | 2011-09-14 | 2011-09-14 | 2011-09-13 | 2011-09-02 | 2011-08-11 | 2011-05-16 | 2011-04-19 | 2010-05-07 |
| | Number of Days Pending | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED |
| S&T | Date of Receipt | Not Applicable | | | | | | | | | 2011-08-25 |
| | Number of Days Pending | Not Applicable | | | | | | | | | 27 |
| TSA | Date of Receipt | 2008-10-02 | 2008-08-20 | 2008-08-13 | 2008-06-23 | 2008-06-19 | 2008-06-19 | 2008-06-17 | 2006-08-02 | 2004-11-01 | 2004-10-27 |
| | Number of Days Pending | 749 | CLOSED | CLOSED | 820 | CLOSED | 822 | CLOSED | CLOSED | 1,735 | 1,738 |
| USCG ²⁸ | Date of Receipt | 2009-07-08 | 2009-06-29 | 2009-06-19 | 2009-06-10 | 2009-06-03 | 2009-06-02 | 2009-05-27 | 2009-05-26 | 2009-05-26 | 2009-01-12 |
| | Number of Days Pending | 568 | 575 | 581 | 588 | 593 | 594 | 598 | 599 | 599 | 695 |
| USCIS | Date of Receipt | 2010-06-24 | 2010-06-23 | 2010-06-11 | 2010-06-03 | 2010-05-20 | 2010-05-18 | 2010-04-30 | 2010-04-09 | 2010-04-02 | 2010-03-30 |
| | Number of Days Pending | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED |
| USSS | Date of Receipt | 2006-02-02 | 2006-02-02 | 2006-01-19 | 2006-01-19 | 2006-01-19 | 2006-01-19 | 2006-01-19 | 2005-12-02 | 2005-12-02 | 2005-11-30 |
| | Number of Days Pending | 1,420 | 1,420 | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | 1,461 | CLOSED | CLOSED |
| US-VISIT | Date of Receipt | Not Applicable | | | 2011-09-21 | 2011-09-20 | 2011-09-14 | 2011-09-12 | 2011-09-07 | 2011-06-15 | 2011-03-09 |
| | Number of Days Pending | Not Applicable | | | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | 77 | CLOSED |
| AGENCY OVERALL | Date of Receipt | 2006-01-19 | 2006-01-19 | 2006-01-19 | 2006-01-19 | 2006-01-19 | 2005-12-02 | 2005-12-02 | 2005-11-30 | 2004-11-01 | 2004-10-27 |
| | Number of Days Pending | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | 1,461 | CLOSED | CLOSED | 1,735 | 1,738 |

DHS 2012 Chief FOIA Officer Report

4. In Fiscal Year 2011, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2010?

As Table 6 indicates, DHS did not close the ten oldest administrative appeals pending at the end of Fiscal Year 2010.

Table 6. Ten Oldest Pending Appeals as Reported in the FY 2011 FOIA Annual Report²⁹

| Component | Sub-Row Heading | 10th | 9th | 8th | 7th | 6th | 5th | 4th | 3rd | 2 nd | Oldest Appeal |
|----------------|------------------------|----------------|------------|------------|------------|------------|------------|------------|------------|-----------------|---------------|
| CBP | Date of Receipt | 2011-09-20 | 2011-09-20 | 2011-09-20 | 2011-09-14 | 2011-09-14 | 2011-09-14 | 2011-09-13 | 2011-09-13 | 2011-09-13 | 2011-09-07 |
| | Number of Days Pending | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED |
| FLETC | Date of Receipt | Not Applicable | | | | | | | | | |
| | Number of Days Pending | Not Applicable | | | | | | | | | |
| ICE | Date of Receipt | 2011-08-29 | 2011-08-24 | 2011-08-23 | 2011-08-17 | 2011-08-11 | 2011-08-03 | 2011-08-01 | 2011-07-29 | 2011-07-08 | 2011-07-06 |
| | Number of Days Pending | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED |
| OGC | Date of Receipt | 2007-09-30 | 2007-09-27 | 2007-09-14 | 2007-08-20 | 2007-08-10 | 2007-07-25 | 2007-05-21 | 2007-05-01 | 2006-12-26 | 2006-09-20 |
| | Number of Days Pending | 1,001 | CLOSED | CLOSED | 1,016 | 1,036 | CLOSED | 1,093 | 1,107 | 1,194 | 1,259 |
| OIG | Date of Receipt | 2011-03-09 | 2011-01-26 | 2010-11-15 | 2010-11-10 | 2010-10-27 | 2010-09-15 | 2010-09-15 | 2009-01-14 | 2008-11-25 | 2008-11-14 |
| | Number of Days Pending | 145 | 174 | 222 | 224 | 234 | 263 | 263 | 698 | 734 | 741 |
| TSA | Date of Receipt | Not Applicable | | | | | | 2011-09-28 | 2011-09-21 | 2011-08-15 | 2011-06-02 |
| | Number of Days Pending | Not Applicable | | | | | | CLOSED | CLOSED | CLOSED | CLOSED |
| USCG | Date of Receipt | 2010-06-09 | 2010-06-09 | 2010-06-09 | 2010-05-12 | 2010-05-10 | 2010-05-01 | 2010-04-30 | 2009-12-01 | 2009-11-19 | 2009-03-10 |
| | Number of Days Pending | 333 | 333 | 333 | 352 | 354 | 359 | 360 | 460 | 467 | 644 |
| USCIS | Date of Receipt | 2011-07-06 | 2011-07-06 | 2011-07-06 | 2011-07-06 | 2011-07-06 | 2011-07-06 | 2011-07-06 | 2011-07-06 | 2011-07-06 | 2011-07-06 |
| | Number of Days Pending | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED | CLOSED |
| USSS | Date of Receipt | Not Applicable | | | | | | | | | |
| | Number of Days Pending | Not Applicable | | | | | | | | | |
| AGENCY OVERALL | Date of Receipt | 2007-09-30 | 2007-09-27 | 2007-09-14 | 2007-08-20 | 2007-08-10 | 2007-07-25 | 2007-05-21 | 2007-05-01 | 2006-12-26 | 2006-09-20 |
| | Number of Days Pending | 1,001 | CLOSED | CLOSED | 1,016 | 1,036 | CLOSED | 1,093 | 1,107 | 1,194 | 1,259 |

²⁹ See DHS 2011 Annual FOIA Report at <http://www.dhs.gov/xfoia/foia-library-frequently-requested-records.shtm#3>.

Request Backlog:

1. *Was the lack of reduction in the request backlog a result of an increase in the number of incoming requests?*

The DHS backlog increase can be attributed in large part to increased number of requests received during the reporting period. As reported above, in FY 2011, the Department received an unprecedented number of FOIA requests, 175,656 in total, up 45,558 or 35% from FY 2010's total of 130,098.

2. *Was the lack of a reduction in the request backlog caused by a loss of staff?*

The turnover of experienced staff contributed to the lack of reduction in the request backlog.

3. *Was the lack of reduction in the request backlog caused by an increase in the complexity of the requests received?*

The increased complexity of requests involving issues such as classification, and the need to coordinate records review within and outside the Department, played a part in the lack of reduction in the request backlog.

4. *What other causes, if any, contributed to the lack of a decrease in the request backlog?*

The reinterpretation of the appropriate application of FOIA Exemption (b)(2) and the need to find alternative means to protect information that otherwise would have been withheld pursuant to "high" (b)(2) also contributed to the increased backlog.

Administrative Appeal Backlog

1. *Was the lack of a reduction in the backlog of administrative appeals a result of an increase in the number of incoming appeals?*

With regard to the DHS Components that process appeals and had appeals pending at the end of Fiscal Year 2011,³⁰ ICE, OGC,³¹ TSA, and USSS experienced a reduction in their backlog. USCG and USCIS experienced an increase.³² The lack of a reduction in the DHS appeal backlog of administrative appeals can be tied directly to the significant increase in the number of new FOIA requests.

³⁰ CBP, FLETC, ICE, OGC, OIG, TSA, USCG, USCIS, USSS process appeals.

³¹ OGC processes FOIA appeals for CRCL, FEMA, I&A, MGMT, NPPD, OHA, OPS, PLCY, NPPD, S&T, and US-VISIT.

³² See DHS 2011 Annual FOIA Report at <http://www.dhs.gov/xfoia/foia-library-frequently-requested-records.shtm#3>.

2. *Was the lack of a reduction in the appeal backlog caused by a loss of staff?*

USCG's failure to reduce its appeals backlog reflects the loss of five staff, including the USCG FOIA Officer.

3. *Was the lack of a reduction in the appeal backlog caused by an increase in the complexity of the appeals received?*

The complexity of appeals received varies from component to component.

4. *What other causes, if any contributed to the lack of a decrease in the appeal backlog?*

In response to the continued challenges faced by some DHS Components in resolving FOIA appeals in FY 2010 — the number of appeals pending, the response time, and the number of business days the oldest appeals went unresolved — on July 8, 2011, the Chief FOIA Officer and the General Counsel formally adopted a policy to reassign certain complex appeals to United States Coast Guard Administrative Law Judges (ALJ) for processing.³³

Under this mechanism, the ALJ prepares final appeals decisions on a reimbursable basis. This approach was piloted when OGC FOIA appeals that had been pending at TSA were referred to the Coast Guard ALJs for action. During the pilot, the reassigned appeals were handled expeditiously and effectively. This success prompted the decision to make the service available to all Components carrying a significant appeals backlog, with the exception of Headquarters Components that provide their own FOIA services. At the time of this reporting, the Department as a whole had eight appeals cases still open out of the ten oldest pending appeals at the close of FY 2011.³⁴

All agencies should strive to both reduce any existing backlogs or requests and appeals and to improve their timeliness in responding to requests and appeals. Describe the steps your agency is taking to make improvements in those areas. In so doing, please answer the following questions and include any other steps being taken to reduce backlogs and improve timeliness:

1. *Does your agency routinely set goals and monitor the progress of your FOIA caseload?*

The DHS FOIA caseload is monitored at both the Component and the Headquarters levels.

2. *Has your agency increased its FOIA staffing?*

As noted in Section II above, ICE added staff in FY 2011 and USCIS received authorization for a staff increase. Overall, DHS did not increase its FOIA staff during this reporting period.

³³ Chief FOIA Officer and General Counsel Memorandum, "Reassignment of Certain Freedom of Information Act (FOIA) Appeals to United States Coast Guard Administrative Law Judges," July 8, 2011.

³⁴ Data current as of January 25, 2012.

3. *Has your agency made IT improvements to increase timeliness?*

IT improvements designed to improve timeliness are underway as discussed in Section IV above.

4. *If your agency receives consultations from other agencies, has your agency taken steps to improve the efficiency of the handling of such consultations, such as utilizing IT to share the documents, or establishing guidelines or agreements with other agencies on the handling of particular information to speed up or eliminate the need for consultations?*

To address processing consultations from other agencies the DHS Chief FOIA Officer issued in February 2012 a memorandum to implement new Department of Justice recommendations on how to handle referrals, consultations, and coordination.³⁵ The memorandum encourages Components to leverage opportunities to more efficiently handle consultations by sharing documents electronically or by establishing guidelines or agreements with other agencies to handle particular information more quickly and/or eliminate the need for consultation altogether.

Use of FOIA's Law Enforcement "Exclusions"

In order to increase transparency regarding the use of FOIA's statutory law enforcement exclusions, which authorize agencies under certain exceptions circumstances to "treat the records as not subject to the requirements of [the FOIA]," please answer the following questions:

1. *Did your agency invoke a statutory exclusion during Fiscal Year 2011?*

ICE and USCIS were the only two DHS Components to use FOIA law enforcement exclusions.

2. *If so, what is the total number of times exclusions were invoked?*

ICE estimates that it applied the exclusion fewer than ten times during this reporting period; USCIS used the exclusion 18 times.

Part 3: DHS Spotlight on Success: Assessing the DHS Backlog

Background

Since its inception, the Department of Homeland Security (DHS) has managed a backlog of FOIA requests. The majority of the 22 agencies that merged into DHS pursuant to the Homeland Security Act of 2002 had their own FOIA programs and, when they were brought under the aegis of DHS, brought their pending FOIA requests with them. For some entities, the carryover was unremarkable. For others, such as the former Immigration and Naturalization Service (INS), reorganized and brought under DHS as the United States Customs and Immigration Service (USCIS), this was not the case. The 25,515 cases USCIS had pending at the end of Fiscal Year

³⁵ See "OIP Guidance: Referrals, Consultations, and Coordination: Procedures for Processing Records When Another Agency or Entity Has an Interest in Them," (December 5, 2011) at <http://www.justice.gov/oip/foiapost/2011foiapost42.html>.
Chief FOIA Officer Memorandum regarding DHS procedures to implement new OIP guidance issued February 2012.

2002³⁶ laid the foundation for what then Deputy Secretary of Homeland Security Michael P. Jackson called in 2006 a “wholly unacceptable backlog of FOIA requests.”³⁷

Strong leadership throughout the Department and single-minded commitment on the part of Departmental FOIA staff has focused on the DHS backlog. Guidance has been developed and implemented; training provided; creative solutions brought to bear on complicated situations. In spite of vigorous remedial activity, however, the FOIA backlog persists. Although DHS reduced its backlog an astonishing 84 percent from the end of Fiscal Year 2008 through the end of Fiscal Year 2010,³⁸ at the end of Fiscal Year 2011 the number of backlogged cases was unacceptably high.³⁹ For the majority of Components, these backlog fluctuations need to be addressed. For the handful of offices and components that regularly close out the year with a backlog of zero at the end of every fiscal year, this does not signify.

The Call to Action

To demonstrate that the significant reduction and/or complete elimination of the Department’s backlog was a high priority of the DHS FOIA Office, the DCFOIAO established an intra-departmental team to investigate the underlying causes of the backlog and develop strategies to address them. Team members included the FOIA Officer or his or her representative from USCIS, USCG, CBP, ICE, USSS, and TSA, in addition to eight DHS FOIA Office staff.

Over the spring and summer, the team convened to identify systemic or other causes of the growth and persistence of the DHS backlog. In large and small groups, they explored IT solutions; developed, distributed and analyzed responses to a seven-page multi-part questionnaire; and reviewed DHS-specific policies and procedures. Laws, regulations, directives, historical documents, and other materials aimed at improving FOIA operations across the government were also examined,⁴⁰ particularly material prepared for the General Accountability Office (GAO) engagement that culminated with GAO’s March 2009 report entitled *Freedom of Information Act: DHS Has Taken Steps to Enhance Its Program, but Opportunities Exist to Improve Efficiency and Cost-Effectiveness*.⁴¹

³⁶ For the number of USCIS requests pending at the end of Fiscal Year 2002, see DHS 2003 Annual FOIA Report to the Attorney General at http://www.dhs.gov/xlibrary/assets/foia/privacy_rpt_foia_2003.pdf, page 6.

³⁷ Secretary Jackson’s comment is contained within the foreword to “Department of Homeland Security Freedom of Information Act Program: Revised Operational Improvement Plan, 2006,” (issued January 2007), which was prepared pursuant to Executive Order 13392, *Improving Agency Disclosure of Information* (Dec. 14, 2005) at http://www.dhs.gov/xlibrary/assets/foia/privacy_rpt_foia_2007.pdf. The DHS 2007 Annual FOIA Report, which incorporates the Revised Operational Plan, discusses the evolution of the DHS FOIA backlog. See http://www.dhs.gov/xlibrary/assets/foia/privacy_rpt_foia_2007.pdf.

³⁸ DHS 2010 Chief FOIA Officer Report, page 2 at <http://www.dhs.gov/xlibrary/assets/foia/priv-chief-foia-officer-report-cy11.pdf>.

³⁹ The number of backlogged requests in Fiscal Year 2011 totaled 42,417, compared to 11,217 in Fiscal Year 2010. See DHS 2011 Annual FOIA Report at <http://www.dhs.gov/xfoia/foia-library-frequently-requested-records.shtm#3>

⁴⁰ Executive Order 13392, *Improving Agency Disclosure of Information* (Dec. 14, 2005) at http://www.dhs.gov/xlibrary/assets/foia/privacy_rpt_foia_2007.pdf Department of Justice, Executive Order 13392 Implementation Guidance posted April 27, 2006; Department of Justice, “Modified Templates to Use When Submitting Backlog Reduction Goals for Fiscal Years 2008, 2009, and 2010.” OPEN Government Act of 2007, Pub. L. 110-175, 121 Stat. 2524 (Dec. 31, 2007)) The President’s FOIA Memorandum of January 21, 2009 is available at: http://www.justice.gov/oip/foia_guide09/presidential-foia.pdf. The Attorney General’s Memorandum of March 19, 2009 is available at <http://www.usdoj.gov/ag/foia-memo-march2009.pdf>.

⁴¹ GAO-09-260 Freedom of Information Act: DHS Has Taken Steps to Enhance Its Program, but Opportunities

The team extended its outreach to other Federal agencies, seeking to learn how they managed their own FOIA backlogs. FOIA Officers and staff at the Department of Energy, the Department of Housing and Urban Development, the Nuclear Regulatory Commission, and the United States Air Force explained how electronic FOIA solutions enabled them to process requests more efficiently and thereby keep their numbers down. The Department of Defense, the Department of Health and Human Services, and the Department of State shared how teams tasked to process backlogged requests exclusively helped them gain purchase on their ever-growing caseload, and the Department of Veterans Affairs shared their hands on experience in dealing with numerous requests for a specific type of information.

This research will be used to inform the team's forthcoming recommendations as to how DHS can marshal its current resources — both human and economic — to minimize its backlog through better case management on a day-to-day basis. Drawing on historical, anecdotal, and empirical data related to DHS and supplemented by conversations with eight Federal agencies, these recommendations hold the potential to make a lasting contribution to the FOIA community as a whole.

APPENDIX A: Composition of the Department of Homeland Security

The Office of the Secretary oversees Department of Homeland Security (DHS) efforts to counter terrorism and enhance security, secure and manage our borders while facilitating trade and travel, enforce and administer our immigration laws, safeguard and secure cyberspace, build resilience to disasters, and provide essential support for national and economic security - in coordination with Federal, state, local, international, tribal and private sector partners.

Offices:

The Privacy Office (PRIV) works to preserve and enhance privacy protections for all individuals, to promote transparency of Department operations, and to serve as a leader in the Federal privacy community.

The Office for Civil Rights and Civil Liberties (CRCL) provides legal and policy advice to Department leadership on civil rights and civil liberties issues, investigates and resolves complaints, and provides leadership to Equal Employment Opportunity Programs.

The Office of Inspector General (OIG) is responsible for conducting and supervising audits, investigations, and inspections relating to the programs and operations of the Department, recommending ways for the Department to carry out its responsibilities in the most effective, efficient, and economical manner possible.

The Citizenship and Immigration Services Ombudsman (CISOMB) provides recommendations for resolving individual and employer problems with the United States Citizenship and Immigration Services in order to ensure national security and the integrity of the legal immigration system, increase efficiencies in administering citizenship and immigration services, and improve customer service.

The Office of Legislative Affairs (OLA) serves as primary liaison to members of Congress and their staffs, the White House and Executive Branch, and to other Federal agencies and governmental entities that have roles in assuring national security.

The Office of the General Counsel (OGC) integrates approximately 1700 lawyers from throughout the Department into an effective, client-oriented, full-service legal team and comprises a headquarters office with subsidiary divisions and the legal programs for eight Department components. The Office of the General Counsel includes the ethics division for the Department.

The Office of Public Affairs (OPA) coordinates the public affairs activities of all of the Department's Components and offices, and serves as the Federal government's lead public information office during a national emergency or disaster. Led by the Assistant Secretary for Public Affairs, it comprises the press office, incident and strategic communications, speechwriting, Web content management, and employee communications.

The Office of Counternarcotics Enforcement (CNE) coordinates policy and operations to stop the entry of illegal drugs into the United States, and to track and sever the connections between illegal drug trafficking and terrorism.

The Office of the Executive Secretariat (ESEC) provides all manner of direct support to the Secretary and Deputy Secretary, as well as related support to leadership and management across the Department. This support takes many forms, the most well known being accurate and timely dissemination of information and written communications from throughout the Department and our homeland security partners to the Secretary and Deputy Secretary.

The Military Advisor's Office advises on facilitating, coordinating, and executing policy, procedures, preparedness activities, and operations between the Department and the Department of Defense.

Office of Intergovernmental Affairs (IGA) IGA has the mission of promoting an integrated national approach to homeland security by ensuring, coordinating, and advancing Federal interaction with state, local, tribal, and territorial governments.

Department Components and Directorates:

The Directorate for National Protection and Programs (NPPD) leads the national effort to protect and enhance the resilience of the Nation's physical and cyber infrastructure.

The Directorate for Science and Technology (S&T) is the primary research and development arm of the Department. It provides Federal, state, and local officials with the technology and capabilities to protect the homeland.

The Directorate for Management (MGMT) is responsible for Department budgets and appropriations, expenditure of funds, accounting and finance, procurement; human resources, information technology systems, facilities and equipment, and the identification and tracking of performance measurements.

The Office of Policy (PLCY) is the primary policy formulation and coordination Component for the Department of Homeland Security. It provides a centralized, coordinated focus to the development of Department-wide, long-range planning to protect the United States.

The Office of Health Affairs (OHA) coordinates all medical activities of the Department of Homeland Security to ensure appropriate preparation for and response to incidents having medical significance.

The Office of Intelligence and Analysis (I&A) is responsible for using information and intelligence from multiple sources to identify and assess current and future threats to the United States.

The Office of Operations Coordination and Planning (OPS) provides decision support and enables the Secretary's execution of responsibilities across the homeland security enterprise by promoting situational awareness and information sharing, integrating and synchronizing strategic operations and planning, and administering the DHS continuity program.

The Federal Law Enforcement Training Center (FLETC) provides career-long training to law enforcement professionals to help them fulfill their responsibilities safely and proficiently.

The Domestic Nuclear Detection Office (DNDO) works to enhance the nuclear detection efforts of Federal, state, territorial, tribal, and local governments, and the private sector and to ensure a coordinated response to such threats.

The Transportation Security Administration (TSA) protects the nation's transportation systems to ensure freedom of movement for people and commerce.

United States Customs and Border Protection (CBP) is one of the Department of Homeland Security's largest and most complex Components, with a priority mission of keeping terrorists and their weapons out of the U.S. It also has a responsibility for securing and facilitating trade and travel while enforcing hundreds of U.S. regulations, including immigration and drug laws.

United States Citizenship and Immigration Services (USCIS) secures America's promise as a nation of immigrants by providing accurate and useful information to our customers, granting immigration and citizenship benefits, promoting an awareness and understanding of citizenship, and ensuring the integrity of our immigration system.

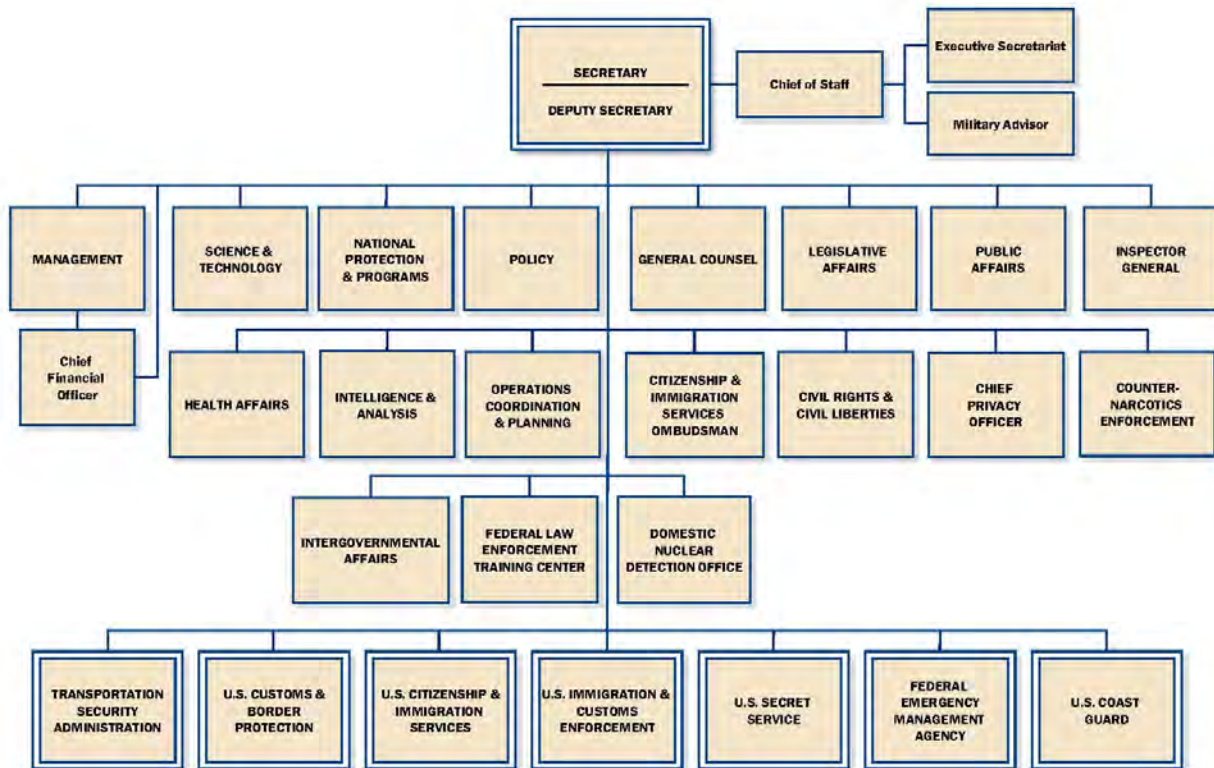
United States Immigration and Customs Enforcement (ICE) promotes homeland security and public safety through the criminal and civil enforcement of Federal laws governing border control, customs, trade, and immigration.

The United States Coast Guard (USCG) is one of the five armed forces of the United States and the only military organization within the Department of Homeland Security. The Coast Guard protects the maritime economy and the environment, defends our maritime borders, and saves those in peril.

The Federal Emergency Management Agency (FEMA) supports our citizens and first responders to ensure that as a nation we work together to build, sustain, and improve our capability to prepare for, protect against, respond to, recover from, and mitigate all hazards.

The United States Secret Service (USSS) safeguards the nation's financial infrastructure and payment systems to preserve the integrity of the economy, and protects national leaders, visiting heads of state and government, designated sites, and National Special Security Events.

APPENDIX B: Organization of the Department of Homeland Security Chart



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APPENDIX C: Names, Addresses, and Contact Information for DHS FOIA Officers

Department of Homeland Security Chief FOIA Officer

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DHS 2012 Chief FOIA Officer Report

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APPENDIX D. Acronyms, Definitions, and Exemptions

1. Agency-specific acronyms or other terms

| | | |
|-----|----------|---|
| a. | CBP | United States Customs and Border Protection |
| b. | CFO | Chief Financial Officer |
| c. | CISOMB | Citizenship and Immigration Services Ombudsman |
| d. | CRCL | Office for Civil Rights & Civil Liberties |
| e. | DNDO | Domestic Nuclear Detection Office |
| f. | ESEC | Office of the Executive Secretary |
| g. | FEMA | Federal Emergency Management Agency |
| h. | FLETC | Federal Law Enforcement Training Center |
| i. | I&A | Office of Intelligence and Analysis |
| j. | IGA | Office of Intergovernmental Affairs |
| k. | ICE | United States Immigration and Customs Enforcement |
| l. | MGMT | Management Directorate |
| m. | NCSC | National Cyber Security Center |
| n. | NPPD | National Protection and Programs Directorate |
| o. | OGC | Office of the General Counsel |
| p. | OHA | Office of Health Affairs |
| q. | OIG | Office of the Inspector General |
| r. | OLA | Office of Legislative Affairs |
| s. | OPA | Office of Public Affairs |
| t. | OPS | Office of Operations Coordination and Planning |
| u. | PLCY | Office of Policy |
| v. | PRIV | Privacy Office |
| w. | S&T | Science and Technology Directorate |
| x. | TSA | Transportation Security Administration |
| y. | USCG | United States Coast Guard |
| z. | USCIS | United States Citizenship and Immigration Services |
| aa. | USSS | United States Secret Service |
| bb. | US-VISIT | United States Visitor and Immigrant Status Indicator Technology |

2. Definition of terms, expressed in common terminology

- a. **Administrative Appeal** – A request to a federal agency asking that it review at a higher administrative level a FOIA determination made by the agency at the initial request level.
- b. **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, determined by dividing 24 by 3.
- c. **Backlog** – The number of requests or administrative appeals that are pending at an agency at the end of the fiscal year that are beyond the statutory time period for a response.

- d. **Component** – For agencies that process requests on a decentralized basis, a “Component” is an entity, also sometimes referred to as an Office, Division, Bureau, Center, or Directorate, within the agency that processes FOIA requests. The FOIA now requires that agencies include in the Annual FOIA Report data for both the agency overall and for each principal Component of the agency.
- e. **Consultation** – The procedure whereby the agency responding to a FOIA requests first forwards a record to another agency for its review because that other agency has an interest in the document. Once the agency in receipt of the consultation finishes its review of the record, it provided its views on the record to the agency that forwarded it. That agency, in turn, will then respond to the FOIA requester.
- f. **Exemption 3 Statute** – A federal statute other than FOIA that exempts information from disclosure and which the agency relies on to withhold information under subsection (b)(3) of the FOIA.
- g. **FOIA Request** – A FOIA request is generally a request to a federal agency for access to records concerning another person (i.e., a “third-party” request), an organization, or a particular topic of interest. Moreover, because requesters covered by the Privacy Act who seek records concerning themselves (i.e., “first-party” requesters) are afforded the benefit of the access provisions of both FOIA and the Privacy Act, the term “FOIA request” also includes any such “first-party” requests where an agency determines that it must search beyond its Privacy Act “systems of records” or where the agency applies a Privacy Act exemption and therefore looks to FOIA to afford the greatest possible access. DHS applies this same interpretation of the term “FOIA request” even to “first-party” requests from persons not covered by the Privacy Act, e.g., non-U.S. citizens, because DHS by policy provides such persons the ability to access their own records in DHS’s Privacy Act “mixed systems of records” as if they are subject to the Privacy Act’s access provisions, and DHS processes the requests under FOIA as well. Thus, all requests that require DHS to utilize FOIA in responding to the requester are included in this Report.

Additionally, a FOIA request includes records referred to the agency for processing and direct response to the requester. It does not, however, include records for which the agency has received a consultation from another agency. (Consultations are reported separately in Section XII of this Report.

- h. **Full Grant** – An agency decision to disclose all records in full in response to a FOIA request.
- i. **Full Denial** – An agency decision not to release any records in response to a FOIA request because the records are exempt in their entirety under one or more

of the FOIA exemptions, or because of a procedural reason, such as when no records could be located.

- j. **Median Number** – The middle, not average, number. For example, of 3, 7, and 14, the median number is 7.
 - k. **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 granted expedited processing are placed in yet another track. Requests in each track are processed on a first in/first out basis.
 - i. **Expedited Processing** – An agency will process a FOIA request on an expedited basis when a requester satisfies the requirements for expedited processing as set forth in the statute and in agency regulations.
 - ii. **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.
 - iii. **Complex Request** – A FOIA request that an agency using multi-track processing places in a slower track based on the high volume and/or complexity of the records requested.
 - l. **Partial Grant/Partial Denial** – An agency decision to disclose portions of the records and to withhold other portions that are exempt under the FOIA, or to otherwise deny a portion of the request for a procedural reason.
 - m. **Pending Request or Pending Administrative Appeal** – A request or administrative appeal for which an agency has not taken final action in all respects.
 - n. **Perfected Request** – A request for records which reasonably describes such records and is made in accordance with published rules stating the time, place, fees (if any) and procedures to be followed.
 - o. **Processed Request or Processed Administrative Appeal** – A request or administrative appeal for which an agency has taken final action in all respects.
 - p. **Range in Number of Days** – The lowest and highest number of days to process requests or administrative appeals
 - q. **Time limits** – The time period in the statute for an agency to respond to a FOIA request (ordinarily 20 working days from receipt of a perfected FOIA request).
3. Concise descriptions of FOIA exemptions:
- a. **Exemption 1:** classified national defense and foreign relations information

- b. **Exemption 2:** internal agency rules and practices (personnel)
- c. **Exemption 3:** information that is prohibited from disclosure by another federal law
- d. **Exemption 4:** trade secrets and other confidential business information
- e. **Exemption 5:** inter-agency or intra-agency communications that are protected by legal privileges.
- f. **Exemption 6:** information involving matters of personal privacy
- g. **Exemption 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 procedures, or F) could reasonably be expected to endanger the life or physical safety of any individual.
- h. **Exemption 8:** information relating to the supervision of financial institutions
- i. **Exemption 9:** geological information on wells