

NATIONAL SCIENCE FOUNDATION
FREEDOM OF INFORMATION ACT REPORT
FOR OCTOBER 1, 2005 THROUGH SEPTEMBER 30, 2006

I. BASIC INFORMATION:

A. Point of Contact:

Leslie A. Jensen, NSF FOIA Officer
Office of the General Counsel
4201 Wilson Blvd, Room 1265
Arlington, VA 22230
(703) 292-5065

B. Electronic Address for report: The FY 2006 FOIA Report for the National Science Foundation (NSF) will be available as one of the choices under the References section of the FOIA page on the NSF web site: <http://www.nsf.gov/policies/foia.jsp>.

C. Paper Copies of report: Paper copies can be requested from the Point of Contact listed above.

II. HOW TO MAKE A FOIA REQUEST:

NSF policy is to make the fullest possible disclosure of information and records to any requester, without unnecessary expenses or delay. NSF's "Public Information Handbook" is available electronically as one of the choices under the References section of the FOIA page on the Foundation's web site:
http://www.nsf.gov/publications/pub_summ.jsp?ods_key=nsf9963.

There are four basic agency requirements for making a FOIA request:

- (1) request must be in writing (mailed correspondence, fax, or email) and include the requester's mailing address;
- (2) the envelope and letter content must identify the request as a FOIA request;
- (3) the request must provide enough detail to allow identification of the requested records; and
- (4) the request must include agreement to pay fees chargeable under NSF's fee schedule.

A. Agency Components:

Requests for records of the agency should be sent to the NSF FOIA Officer, Office of the General Counsel, Room 1265, 4201 Wilson Blvd, Arlington, VA 22230.
Phone: 703-292-5065, Fax: 703-292-9041. Email: foia@nsf.gov.

Requests for documents maintained by the Office of the Inspector General should be addressed directly to the OIG, FOIA, Room 1135, 4201 Wilson Blvd, Arlington, VA 22230. Phone: 703-292-7100. Email: oig@nsf.gov

B. NSF response-time ranges:

The agency generally manages to respond to FOIA requests within three to four weeks for records that can be found at the agency (allowing for time to contact submitters of potentially proprietary information). Response times over 20 working days are generally the result of difficulty in contacting the submitter for clearance, need to track and retrieve documents from off-site storage at the Federal Records Center, voluminous number of potentially responsive records, or need to consult among agency components.

C. Why some requests are not granted:

Requests for records may not be granted if the records do not exist; if records have been transferred to the ownership of the National Archives and Records Administration; if records contain predecisional information that if released would cause harm to NSF's decision-making processes; if records contain personal and/or proprietary information; if records contain information compiled for law enforcement purposes; or if the requester asked for information specifically prohibited from disclosure by other statutes.

III. DEFINITIONS OF TERMS AND ACRONYMS USED IN THE REPORT:

A. Agency-specific terms and acronyms:

1. NSF - National Science Foundation – The National Science Foundation was established by Congress to promote progress in science and engineering. The agency does so primarily through grants and cooperative agreements with colleges, universities, K-12 school systems, businesses, information science organizations and other research institutions throughout the U.S.

B. Basic terms:

1. FOIA/PA request – Freedom of Information Act/Privacy Act request. A FOIA request is generally a request for access to records concerning a third party, an organization, or a particular topic of interest. A Privacy Act request is a request for records about oneself; such requests are also treated as FOIA requests. (All requests for access to records, regardless of which law cited by the requester, are included in this report).
2. Initial request – a request to a federal agency for access to records under the Freedom of Information Act.
3. Appeal – a request to a federal agency asking that it review at a higher administrative level a full denial or partial denial of access to records under the Freedom of Information Act, or another FOIA determination such as a determination on applicable fees.

4. Processed Request or Appeal – a request or appeal for which an agency has taken a final action on the request or the appeal.
5. Multi-track processing – a system in which simple requests requiring relatively minimal review are placed in one processing track and more voluminous and complex requests are placed in one or more other tracks. Requests in each track are processed on a first-in/first out basis. A requester who has an urgent need for records may request expedited processing (see below).
6. Expedited processing – an agency will process a FOIA request on an expedited basis when a requester has shown an exceptional need or urgency for the records which warrants prioritization of his or her request over other requests that were made earlier.
7. Simple request – a FOIA request that an agency using multi-track processing places in its fastest (non-expedited) track based on the volume and or/simplicity of records requested.
8. Complex request -- a FOIA request that an agency using multi-track processing places in a slower track based on the volume and/or complexity of records requested.
9. Grant -- an agency decision to disclose all records in full in response to a FOIA request.
10. Partial grant -- an agency decision to disclose a record in part in response to a FOIA request, deleting information determined to be exempt under one or more of the FOIA'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 need not be in any particular format, but it must be in writing, include the requester's name and mailing address, and be clearly identified both on the envelope and in the letter, or in a facsimile or electronic mail message as a Freedom of Information Act or "FOIA" request. It must describe the records sought with sufficient specificity to permit identification, and include agreement to pay applicable fees.

14. Exemption 3 statute -- a separate federal statute prohibiting the disclosure of a certain type of information and authorizing its withholding under FOIA subsection (b)(3).
15. Median number -- the middle, not average, number. For example, of 3, 7, and 14, the median number is 7.
16. Average number -- the number obtained by dividing the sum of a group of numbers by the quantity of numbers in the group. For example, of 3, 7, and 14, the average number is 8.

IV. EXEMPTION 3 STATUTES:

A. Exemption 3 statutes relied on by NSF during current fiscal year:
 During Fiscal Year 2006 NSF used Exemption (b)(3) in 16 instances to withhold contractor proposal information not set forth or incorporated by reference into the final contract, in accordance with the changes made to 41 U.S.C. 253b, section 303B, by the National Defense Authorization Act of 1997 (Public Law 104-201).

Statute Rule

41 U.S.C. § 253b

Type of Information Withheld

Business Proposal Documents not incorporated in Contracts

Case Citation

Hornbostle v. US Dept. of Interior, 305 F. Supp. 2d 21 (DDC 2003)

V. INITIAL FOIA/PA ACCESS REQUESTS:

A. Numbers of initial requests:

1. Number of requests pending as of end of preceding fiscal year: 17
2. Number of requests received during current fiscal year: 328
3. Number of requests processed during current fiscal year: 340
4. Number of requests pending as of end of current fiscal year: 5

B. Disposition of initial requests:

1. Number of total grants (records released in full): 29
2. Number of partial grants (records released in part): 245
3. Number of denials (total withholding of records): 8
 - a. Number of times each FOIA exemption was used:

Exemption 1	<u>0</u>
Exemption 2	<u>0</u>
Exemption 3	<u>9</u>
Exemption 4	<u>77</u>
Exemption 5	<u>20</u>
Exemption 6	<u>236</u>

Exemption 7 (A)	<u>0</u>
Exemption 7 (B)	<u>0</u>
Exemption 7 (C)	<u>22</u>
Exemption 7 (D)	<u>0</u>
Exemption 7 (E)	<u>0</u>
Exemption 7 (F)	<u>0</u>
4. Other reasons for nondisclosure (total):	<u>58</u>
a. No records	<u>29</u>
b. Referrals	<u>3</u>
c. Request withdrawn	<u>16</u>
d. Fee-related reason	<u>3</u>
e. Records not reasonably described	<u>5</u>
f. Not a proper FOIA request for some other reason	<u>0</u>
g. Not an agency record	<u>0</u>
h. Duplicate request	<u>0</u>
i. other (Unable to locate records)	<u>2</u>

VI. APPEALS OF INITIAL DENIALS OF FOIA/PA REQUESTS

A. Numbers of appeals	
1. Number of appeals received during fiscal year	<u>7</u>
2. Number of appeals processed during fiscal year	<u>7</u>
B. Disposition of appeals	
1. Number completely upheld	<u>4</u>
2. Number partially reversed	<u>0</u>
3. Number completely reversed	<u>1</u>
a. Number of times each FOIA exemption used:	
Exemption 1	<u>0</u>
Exemption 2	<u>1</u>
Exemption 3	<u>1</u>
Exemption 4	<u>1</u>
Exemption 5	<u>4</u>
Exemption 6	<u>2</u>
Exemption 7 (A)	<u>0</u>
Exemption 7 (B)	<u>0</u>
Exemption 7 (C)	<u>3</u>
Exemption 7 (D)	<u>0</u>
Exemption 7 (E)	<u>0</u>
Exemption 7 (F)	<u>0</u>
4. Other reasons for nondisclosure (total):	<u>2</u>
a. No records	<u>0</u>

b. Referrals	<u>0</u>
c. Request and Appeal Withdrawn	<u>0</u>
d. Fee-related reason	<u>0</u>
e. Records not reasonably described	<u>0</u>
f. Not a proper FOIA request for some other reason	<u>0</u>
g. Not an agency record	<u>1</u>
h. Duplicate Request	<u>0</u>
i. Other: (Adequacy of Search)	<u>1</u>

VII. COMPLIANCE WITH TIME LIMITS/STATUS OF PENDING REQUESTS

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

NOTE: NSF uses a single first-in, first-out method for processing requests.

1. Number of requests processed	<u>340</u>
2. Median number of days to process	<u>17.9</u>

B. Status of pending requests:

1. Number of requests pending as of end of current fiscal year (see V.A.4)	<u>5</u>
2. Median number of days that such requests were pending as of that date	<u>54</u>

VIII. Comparisons with Previous Year

Expedited Process: NSF received no requests for expedited access during FY 2006.

Most of NSF’s FOIA requests are for copies of funded grant proposals. These grant proposals contain personal information on individual principal investigators such as individual salaries, home addresses, marital status, and the like which is routinely withheld under Exemption (b)(6). Thus, even though the requester(s) normally receive the full substantive proposal (which is what they seek), these FOIA requests must be recorded as “partial grants” rather than “total grants.” This distorts the NSF’s figures on “total grants” FOIA requests.

The Foundation received 328 new requests in FY 2006, compared to 273 during FY 2005, an increase of almost 20%. More significantly, the total number of funded grant proposals requested jumped from 495 in FY 2005 to 732 in FY 2006, an increase of nearly 44%. The median number of days to process requests increased from 14.26 to 17.90, but the number of requests processed increased from 266 during FY 2005 to 340 in FY 2006, an increase of nearly 28%, and the number of pending requests dropped from 17 at the end of FY 2005 to 5 at the end of FY 2006.

IX. COSTS/FOIA STAFFING

A. Staffing levels:

1. Number of full-time FOIA personnel	-	<u>0</u>
---------------------------------------	---	----------

- 2. Number of personnel with part-time or occasional FOIA duties – 1.50
- 3. Total number of personnel (in work years) = 1.50
- B. Total costs (including staff and all resources)
 - 1. FOIA processing (including appeals) \$ 241,816.00
 - 2. Litigation-related activities (estimated) No litigation in FY06
 - 3. Total costs \$ 241,816.00

X. FEES

- A. Total amount of fees collected by agency for processing requests \$ 1681.46
- B. Percentage of total costs .695%

XI. FOIA REGULATIONS (INCLUDING FEE SCHEDULE)

NSF FOIA regulations are published at 45 C.F.R. 612, available electronically at http://www.access.gpo.gov/nara/cfr/waisidx_05/45cfr612_05.html.

XII. REPORT ON FOIA EXECUTIVE ORDER IMPLEMENTATION

On December 14, 2005, the President issued Executive Order 13,392, entitled "Improving Agency Disclosure of Information." The Executive Order required each agency to conduct a review of its FOIA operations, to develop an agency-specific plan to improve its administration of the Act, and to include in its annual FOIA report a description of its progress in meeting the milestones and goals established in its improvement plan.

This section of the annual FOIA report contains the Foundation's description of its progress in implementing the milestones and goals of the Department's FOIA Improvement Plan, including highlights of each component's achievements.

The reporting period for Section XII is different from that used for the rest of this report, which is based on data compiled for Fiscal Year 2006. The reporting period for this section concerning Executive Order implementation activities includes progress made through January 2007.

A. Description of supplementation/modification of agency improvement plan:

NSF amended the improvement plan submitted in June 2006 to add a means of measuring improvement of processing time in FY07 over FY06. The change is included in the NSF's FOIA Management Plan cited in subsection G. below.

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

The NSF has met all of the goals and milestones established in the report it submitted in June 2006, in response to Executive Order 13,392, that were to be completed for this reporting period. In particular, the Foundation has purchased and received a scanner to create electronic copies of paper records and enhance the agency's electronic processing capability, and has identified and reviewed FOIA electronic logging and tracking systems. We have visited and received product demonstrations for two FOIA logging/tracking and management systems. Funding possibilities are being explored.

The Foundation has additionally reviewed and improved the NSF FOIA web page; reviewed and revised NSF's form letters and email correspondence; and reviewed and updated the NSF FOIA Information Handbook (a milestone scheduled for completion in December 2007, but completed in January 2007).

NSF also reviewed and analyzed any backlog of requests for possible systematic changes. NSF identified some instances where the time for searching and identifying responsive documents, and providing copies to the FOIA Officer could be improved. In response, the Chief FOIA Officer issued an agency-wide announcement on the FOIA, Executive Order 13,392, and the importance of employee cooperation and assistance for timely records responses to FOIA requests. The Chief FOIA Officer also met with responsible records holders to discuss the procedures for processing FOIA requests, and to reiterate the requirements for accurate and timely replies.

The program review and analysis also vividly details the major obstacle to further reducing processing time -- the number and nature of the most requested documents. Most of NSF's FOIA requests are for copies of funded grant proposals. The Foundation received 328 new requests in FY 2006, compared to 273 during FY 2005, an increase of almost 20%. More significantly, the total number of funded grant proposals requested jumped from 495 in FY 2005 to 732 in FY 2006, an increase of nearly 44%. Because proposals contain potentially confidential, proprietary commercial information, E.O. 12,600 requires NSF to contact the submitter of the proposal and solicit the submitter's views. NSF's procedures for doing so are contained in section 612.8 of its regulation. We know of no other agency with such a high percentage of requests that requires such complex and time-consuming processing. Academic submitters can be hard to locate, and frequently possess little or no knowledge of the FOIA, making it difficult to communicate with and to receive meaningful responses. Yet, we have no control over the increasing number of funded proposals requested, and we are required to contact submitters prior to making a determination. This will continue to be an ongoing challenge to timely processing of these requests.

- C. Identification and discussion of any deficiency in meeting plan milestones. Not applicable.
- D. Additional narrative statement regarding other executive order-related activities (optional).

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

F. Additional Statistics:

1. Time range of requests pending, by date of request: 1/13/06 to 11/9/06.
2. Time range of consultations pending with other agencies, by date of initial interagency communication: None.

G. Attachment: Agency improvement plan:

The National Science Foundation's FOIA Management Plan is attached:
<http://www.nsf.gov/pubs/2007/foiamp07/foiamp07.pdf>.