

January 28, 2000

Mrs. Pamela Maida
Office of Information and Privacy
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Flag Building, Room 570
Washington, D.C. 20530-0001

Dear Mrs. Maida:

Under the Freedom of Information Act, 5 U.S.C. 552(e), enclosed is the Department of the Interior's annual report of activities for fiscal year 1999. The report also may be found at the following Internet address: <http://www/doi.gov/foia/99anrep.htm>.

If you have any questions regarding the enclosed report, please contact me at (202) 208-5342.

Sincerely,

/s/

Alexandra Mallus
Departmental Freedom of
Information Act Officer

Enclosure

cc: Richard Huff, DOJ (w/o enclosure)
Daniel Metcalfe, DOJ (w/o enclosure)

DEPARTMENT OF THE INTERIOR

Freedom of Information Act 1999 Annual Report (October 1, 1998 - September 30, 1999)

I. Basic Information Regarding Report

A. Questions about the report should be directed to:

Alexandra Mallus
Departmental FOIA Officer
Office of Information Resources Management (OIRM)
Department of the Interior (DOI)
1849 C Street, NW
MS-5312-MIB
Washington, DC 20240
Telephone No.: (202) 208-5342

B. The electronic address for this report on DOI's World Wide Web site is:

<http://www.doi.gov/foia/99anrep.htm>.

C. A copy of this report in paper form may be obtained by contacting the Departmental FOIA Officer (see A, above).

II. How to Make a FOIA Request (see DOI's **Guide for Obtaining Information** which is located at the following Internet address: <http://www.doi.gov/foia/foia-guide.htm>).

A. FOIA requests should be submitted to the FOIA contact at the bureau/office where the records are maintained. If it is unclear where to send the request, contact the Departmental FOIA Officer. A list of DOI's FOIA contacts may be found at the following Internet address:
<http://www.doi.gov/foia/contacts.html>.

B. While 19 may reflect the median number of days to process a request in DOI (see Line VII.A.1.b.), the timeframes in a large, highly decentralized organization, such as DOI, are often longer than they would be in a small, centralized agency. In DOI, the response time varies considerably depending on the existing workload, the complexity of the request, the volume of responsive records, and the need to consult and coordinate with other bureaus/offices and agencies.

C. DOI makes records available to the public unless the information is protected by one or more of the nine specific FOIA exemptions and disclosure is either prohibited by statute or Executive order, or disclosure could potentially result in harm to an individual, a commercial entity, or the Government (see 43 CFR § 2.16(c)(2) and § 2.21).

III. Definitions of Terms and Acronyms Used in the Report

A. Agency-specific acronyms or other terms. N/A

B. Basic terms, expressed in common terminology.

1. FOIA/PA request -- Freedom of Information Act/Privacy Act request. A FOIA request is generally a request for access to records concerning a third party, an organization, or a particular topic of interest. A Privacy Act request is a request for records concerning oneself; such requests are also treated as FOIA requests. (All requests for access to records, regardless of which law is cited by the requester, are included in this report).
2. Initial Request -- a request to a Federal agency for access to records under the Freedom of Information

Act.

3. Appeal -- a request to a Federal agency asking that it review at a higher administrative level a full denial or partial denial of access to records under the Freedom of Information Act, or any other FOIA determination such as a matter pertaining to fees.
4. Processed Request or Appeal -- a request or appeal for which an agency has taken a final action on the request or the appeal in all respects.
5. Multi-track processing -- a system in which simple requests requiring relatively minimal review are placed in one processing track and more voluminous and complex requests are placed in one or more other tracks. Requests in each track are processed on a first-in/first-out basis. A requester who has an urgent need for records may request expedited processing (see below).
6. Expedited processing -- an agency will process a FOIA request on an expedited basis when a requester has shown an exceptional need or urgency for the records which warrants prioritization of his or her request over other requests that were made earlier.
7. Simple request -- a FOIA request that an agency using multi-track processing places in its fastest (nonexpedited) track based on the volume and/or simplicity of records requested.
8. Complex request -- a FOIA request that an agency using multi-track processing places in a slower track based on the volume and/or complexity of records requested.
9. Grant -- an agency decision to disclose all records in full in response to a FOIA request.
10. Partial grant -- an agency decision to disclose a record in part in response to a FOIA request, deleting information determined to be exempt under one or more of the FOIA's exemptions; or a decision to disclose some records in their entirety, but to withhold others in whole or in part.
11. Denial -- an agency decision not to release any part of a record or records in response to a FOIA request because all the information in the requested records is determined by the agency to be exempt under one or more of the FOIA's exemptions, or for some procedural reason (such as because no record is located in response to a FOIA request).
12. Time limits -- the time period in the Freedom of Information Act for an agency to respond to a FOIA request (ordinarily 20 working days from proper receipt of a "perfected" FOIA request).
13. "Perfected" request -- a FOIA request for records which adequately describes the records sought, which has been received by the FOIA office of the agency or agency component in possession of the records, and for which there is no remaining question about the payment of applicable fees.
14. Exemption 3 statute -- a separate Federal statute prohibiting the disclosure of a certain type of information and authorizing its withholding under FOIA subsection (b)(3).
15. Median number -- the middle, not average number. For example, of 3, 7, and 14, the median number is 7.
16. Average number -- the number obtained by dividing the sum of a group of numbers by the quantity of numbers in the group. For example, of 3, 7, and 14, the average number is 8.

IV. Exemption 3 Statutes

A 1. and 2. List of Exemption 3 statutes relied on by DOI during current fiscal year with a brief description of the type of information withheld under each statute, and a statement of whether a court has upheld the use of each statute.

a. Rule 6(e) of the Federal Rules of Criminal Procedure.

1) Used to withhold grand jury material.

2) The D.C. Circuit has concluded that Rule 6(e) of the Federal Rules of Criminal Procedure, regulating disclosure of matters occurring before a grand jury, satisfies exemption (3)'s "statute" requirement because it was specially amended by Congress in 1977. Fund for Constitutional Gov't v. National Archives & Records Serv., 656 F.2d 856, 867 (D.C. Cir. 1981).

b. Archaeological Resources Protection Act of 1979, 16 U.S.C. § 470hh(a).

1) Used to withhold the location of Native American religious sites, shipwrecks, and archaeological sites; and the location and condition of Native American pipes at Pipestone National Monument.

2) DOI is not aware of any court cases upholding the use of this statute.

c. National Historic Preservation Act Amendments of 1980, 16 U.S.C. § 470w-3.

1) Used to withhold the location of shipwrecks, artifact sites, and Native American religious sites; and the location and condition of Native American pipes at Pipestone National Monument.

2) DOI is not aware of any court cases upholding the use of this statute.

d. Federal Cave Resources Protection Act of 1988, 16 U.S.C. § 4301.

1) Used to withhold information concerning the location of species found in caves.

2) DOI is not aware of any court cases upholding the use of this statute.

e. National Defense Authorization Act For Fiscal Year 1997 (contains a provision which amends the Federal Property and Administrative Services Act of 1949 (41 U.S.C. § 253b)).

1) Used to withhold certain contract proposals.

2) DOI is not aware of any court cases upholding the use of this statute.

f. National Parks Service Omnibus Management Act of 1998, Public Law 105-391.

1) Used to withhold radio collar frequencies and other information concerning the location of wolves in Denali National Park and the location and condition of Native American pipes at Pipestone National Monument.

2) The District Court for the District of Vermont held that section 207 of the National Park Service Omnibus Management Act of 1998, which allows the Secretary of the Interior to withhold information concerning park system resources, is a valid exemption (3) statute. Craig Pease v. U.S. Department of the Interior, Civil No. 1:99CV113 (D. Vermont, September 17, 1999).

g. Juvenile Justice and Delinquency Prevention Act, 18 U.S.C. 5038.

1) Used to withhold the names of juveniles in case incident reports.

2) DOI is not aware of any court cases upholding the use of this statute.

V. Initial FOIA/PA Access Requests

A. Numbers of initial requests.

1. Number of requests pending as of end of preceding fiscal year 513
2. Number of requests received during current fiscal year 5,687
3. Number of requests processed during current fiscal year 5,609
4. Number of requests pending as of end of current fiscal year 591

B. Disposition of initial requests.

1. Number of total grants 3,626
2. Number of partial grants 629
3. Number of denials 240

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

- (1) Exemption 1 0
- (2) Exemption 2 16
- (3) Exemption 3 20
- (4) Exemption 4 108
- (5) Exemption 5 199
- (6) Exemption 6 381
- (7) Exemption 7 (A) 52
- (8) Exemption 7 (B) 3
- (9) Exemption 7 (C) 60
- (10) Exemption 7 (D) 6
- (11) Exemption 7 (E) 3
- (12) Exemption 7 (F) 2
- (13) Exemption 8 0
- (14) Exemption 9 3

4. Other reasons for nondisclosure (total) 1,296

a. no records	<u>569</u>
b. referrals	<u>291</u>
c. request withdrawn	<u>156</u>
d. fee-related reason	<u>134</u>
e. records not reasonably described	<u>49</u>
f. not a proper FOIA request for some other reason	<u>34</u>
g. not an agency record	<u>18</u>
h. duplicate request	<u>40</u>
i. other (specify)	<u>5</u>
- Processing terminated due to litigation	<u>3</u>
- Denied under the Privacy Act (5 U.S.C. 552a(d)(5))	<u>2</u>

VI. Appeals of Initial Denials of FOIA/PA Requests.

A. Numbers of appeals.

1. Number of appeals received during fiscal year 261
2. Number of appeals processed during fiscal year 289

B. Disposition of appeals.

1. Number completely upheld 93
2. Number partially reversed 45
3. Number completely reversed 12

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

(1) Exemption 1	<u>0</u>
(2) Exemption 2	<u>2</u>
(3) Exemption 3	<u>3</u>
(4) Exemption 4	<u>12</u>

(5) Exemption 5	<u>43</u>
(6) Exemption 6	<u>30</u>
(7) Exemption 7(A)	<u>9</u>
(8) Exemption 7(B)	<u>0</u>
(9) Exemption 7(C)	<u>6</u>
(10) Exemption 7(D)	<u>1</u>
(11) Exemption 7(E)	<u>0</u>
(12) Exemption 7(F)	<u>1</u>
(13) Exemption 8	<u>0</u>
(14) Exemption 9	<u>0</u>

4. Other reasons for nondisclosure (total) 129

a. no records	<u>45</u>
b. referrals	<u>0</u>
c. request withdrawn	<u>24</u>
d. fee-related reason	<u>20</u>
e. records not reasonably described	<u>0</u>
f. not a proper FOIA request for some other reason	<u>2</u>
g. not an agency record	<u>0</u>
h. duplicate request	<u>0</u>
i. other(specify)	<u>38</u>
-Appeal closed because appellant sued & issues in appeal addressed in litigation	<u>12</u>
-Remanded to bureau for further action	<u>24</u>
-Due to various technical issues	<u>2</u>

VII. Compliance with Time Limits/Status of Pending Requests

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

1. Regular requests

a. number of requests processed	<u>5,609</u>
b. median number of days to process	<u>19</u>

2. Requests accorded expedited processing

a. number of requests processed	<u>10</u>
b. median number of days to process	<u>7</u>

B. Status of pending requests.

1. Number of requests pending as of end of current fiscal year 591
2. Median number of days that such requests were pending as of that date 30

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

A. Comparison of numbers of requests received - 9% increase over FY 1998

B. Comparison of numbers of requests processed - 12% increase over FY 1998

C. Comparison of median numbers of days requests were pending as of end of fiscal year - 58% increase over FY 1998

D. Other statistics significant to agency - Optional

E. Other narrative statements describing agency efforts to improve timeliness of FOIA performance and to make records available to the public (e.g., backlog - reduction efforts, specification of average number of hours per processed request; training activities; public availability of new categories of records):

- The Department and the bureaus continue to enhance their FOIA home pages making more information available on-line.

- Most bureaus/offices now accept and respond to FOIA requests electronically--several bureaus have developed an on-line form which the public can use to submit their requests to the bureaus electronically.

- The Department provided FOIA training to its employees in the field in November, March, and August. The Department's FOIA Appeals Officer spoke at an American Society of Access Professionals meeting in March.

- During FY 1999, the Bureau of Land Management (BLM), the National Park Service, and the Fish

and Wildlife Service (FWS) conducted FOIA and Privacy Act training for their employees in the field.

- The Office of the Solicitor now holds Brown Bag Lunches periodically for its attorneys, both in headquarters and the field, and Departmental personnel working in the area of information access law. Current FOIA/Privacy Act issues are discussed, as well as topics of interest to the participants.

- To help reduce the existing backlog of FOIA requests in BLM, FOIA Coordinators from the field offices were detailed to the BLM Headquarters Office, and contract labor was brought in to help process requests and improve the workflow.

- To facilitate requests received by multiple states/offices in BLM and ensure consistency, the Washington Office assigns one State Office to take the lead on behalf of the bureau.

- BLM developed a section on FOIA basics which is included in the bureau's "new employee handbook". Periodically, BLM distributes "Information Management Tips" to bureau employees electronically--this includes information on FOIA/Privacy Act policies and procedures.

- The Bureau of Indian Affairs, Central Office, has developed a database which should improve tracking of FOIA requests and consistency in reporting.

- The Office of Surface Mining (OSM) has improved the timeliness of its FOIA responses which has helped to reduce the backlog. Increased use of the OSM's Correspondence Tracking System in FY 1999 has improved the efficiency of the FOIA program and reduced FOIA response time.

- The OSM has placed frequently requested FOIA documents on its 24-hour fax-on-demand program. One of OSM's field offices publishes a monthly newsletter to members of the coal industry, regulatory agencies, and citizen and environmental groups. The newsletter announces the availability of oversight reports, annual reports, and other types of information which are considered public information. Both of these factors have reduced the number of FOIA requests OSM receives.

- The FWS has developed a series of form letters which are being used to respond to FOIA requests and a FOIA Tip Sheet which it has distributed to its regional and program offices; these along with the bureau's FOIA home page and improved communications have helped to reduce costs in FY 1999.

- The Royalty Management Program (RMP), Minerals Management Service (MMS), implemented a FOIA tracking system which is in the process of being refined. Considerable time was expended developing and testing the system to ensure compliance with E-FOIA. Also, as part of a reengineering effort, the RMP has been working with oil companies to ensure that proprietary data is identified and designated as such before it is submitted to MMS. This should improve the timeliness of FOIA responses in the future.

IX. Costs/FOIA Staffing.

A. Staffing Levels.

1. Number of full-time FOIA personnel 24
2. Number of personnel with part-time or occasional FOIA duties (in total work years) 104
3. Total number of personnel (in work years) 128

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

1. FOIA processing (including appeals) \$4,630,260
2. Litigation-related activities (estimated) \$148,428
3. Other administrative costs \$567,473
4. Total costs \$5,346,161
5. Comparison with previous year(s) -
24% increase over FY 1998

C. Statement of additional resources needed for FOIA compliance -
Optional

X. Fees

A. Total amount of fees collected by agency for processing \$105,666
requests

B. Percentage of total costs 2%

XI. FOIA Regulations (Including the Fee Schedule)

A copy of DOI's FOIA regulations, including the fee schedule (43 CFR Part 2, Subparts A & B) may be found at the following Internet address: <http://www.doi.gov/foia/foiaregs.html>. A copy of the regulations in paper form may be obtained by contacting the Departmental FOIA Officer (see I. A., above). Please note that DOI's FOIA regulations are in the process of being revised.



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