

DEPARTMENT OF THE INTERIOR

Freedom of Information Act 2001 Annual Report (October 1, 2000 - September 30, 2001)

I. Basic Information Regarding Report

A. Questions about the report should be directed to:

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Office of the Chief Information Officer (OCIO)
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/01anrep.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/foitabl.htm>).

A. FOIA requests should be submitted to the FOIA contact at the bureau/office where the records are maintained. A list of the Department's bureaus/offices is provided below. 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>.

Bureaus/Offices

Office of the Secretary (OS)
Office of Hearings and Appeals (OHA)
Office of Aircraft Services (OAS)
Office of Inspector General (OIG)
Office of the Solicitor (SOL)
Office of Surface Mining (OSM)

Minerals Management Service (MMS)
Bureau of Land Management (BLM)
Fish & Wildlife Service (FWS)
National Park Service (NPS)
Bureau of Reclamation (BOR)
U.S. Geological Survey (USGS)
Bureau of Indian Affairs (BIA)

B. While the median number of days for DOI's bureaus and offices to process requests ranges from 13 - 157 days (see 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. In accordance with its FOIA regulations, DOI makes records available to the public unless the information is protected from disclosure by one or more of the nine specific FOIA exemptions and sound grounds exist for invoking the exemption(s) (see 43 CFR § 2.13). Some requests are not granted due to one of the reasons cited in V.B.4., below (see DOI's FOIA regulations, 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 (see II.A., above).

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

1) Used to withhold artifact and archaeological site data; site location information, site data forms, a five-year disturbance area data recovery plan, and an ethnographic study.

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

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

1) Used to withhold the location list of significant caves on Federal land in Missouri, and information concerning the general location of caves on all Federal land.

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

c. 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.

d. National Parks Service Omnibus Management Act of 1998 (16 U.S.C. § 5937).

1) Used to withhold information pertaining to site specific nest locations.

2) Pertinent litigation:

(i) Southwest Center for Biological Diversity v. Department of Agriculture, No. Civ. 98-1022-PHX-SMM (D. Ariz. Sept. 28, 2000) (determining that section 207 of the National Parks Omnibus Management Act of 1998 is an exemption (3) statute that protects all information in Forest Service records that identifies the location of goshawk nest sites located within one square mile of a National Park boundary); and

(ii) Pease v. United States Dep't of Interior, No. 1:99CV113, slip op. at 2, 4 (D. Vt. Sept. 17, 1999) (finding that the agency properly withheld, pursuant to exemption (3) (section 207 of the National Parks Omnibus Management Act of 1998), "certain information pertaining to the location, tracking and/or radio frequencies of

grizzly bears" in the Yellowstone National Park ecosystem).

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

1) Used to withhold information regarding the location of historic sites, and artifact and archaeological site data.

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

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

1) Used to withhold information concerning grand jury proceedings.

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).

V. Initial FOIA/PA Access Requests

A. Numbers of initial requests.

1. Number of requests pending as of end of preceding fiscal year 788*

(*NOTE: Although DOI indicated in the Annual Report for FY 2000 that there were 791 requests pending at the end of the fiscal year, the figure denoted is correct. The [-3] difference is due to errors in accounting.)

2. Number of requests received during current fiscal year

3. Number of requests processed during current fiscal year 5,104

4. Number of requests pending as of end of current fiscal year 4,961

931

B. Disposition of initial requests.

1. Number of total grants 2,578

2. Number of partial grants 798

3. Number of denials 185

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

(1) Exemption 1	<u>0</u>
(2) Exemption 2	24 ⁻
(3) Exemption 3	13 ⁻
(4) Exemption 4	145 ⁻
(5) Exemption 5	331 ⁻
(6) Exemption 6	427 ⁻
(7) Exemption 7(A)	34 ⁻
(8) Exemption 7(B)	<u>9</u> ⁻
(9) Exemption 7(C)	52 ⁻
(10) Exemption 7(D)	<u>4</u> ⁻
(11) Exemption 7(E)	<u>8</u> ⁻
(12) Exemption 7(F)	<u>4</u> ⁻
(13) Exemption 8	<u>0</u> ⁻
(14) Exemption 9	<u>2</u> ⁻

4. Other reasons for nondisclosure (total) 1,400

a. no records	556
b. referrals	234 ⁻
c. request withdrawn	176 ⁻
d. fee-related reason	121 ⁻
e. records not reasonably described	143 ⁻
f. not a proper FOIA request for some other reason	45 ⁻

g. not an agency record	83
h. duplicate request	18
i. other (specify)	24
- Request closed as a result of litigation settlement	10
- Denied under the Privacy Act (5 U.S.C. 552a(d)(5) and (j)(2))	<u>2</u>
- Information requested was publicly available	2
- Requester failed to provide additional justification regarding privacy issue	<u>5</u>
- Requester failed to provide the additional clarification requested	4
- No forwarding address/ telephone number provided	<u>1</u>

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

A. Numbers of appeals.

1. Number of appeals received during fiscal year 282
2. Number of appeals processed during fiscal year 236

B. Disposition of appeals.

1. Number completely upheld 29
2. Number partially reversed 20
3. Number completely reversed 125

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

(1) Exemption 1	<u>0</u>
(2) Exemption 2	<u>1</u>
(3) Exemption 3	<u>1</u>
(4) Exemption 4	<u>5</u>
(5) Exemption 5	22
(6) Exemption 6	26
(7) Exemption 7(A)	<u>4</u>
(8) Exemption 7(B)	0
(9) Exemption 7(C)	<u>8</u>
(10) Exemption 7(D)	<u>0</u>
(11) Exemption 7(E)	<u>0</u>
(12) Exemption 7(F)	<u>0</u>
(13) Exemption 8	<u>0</u>
(14) Exemption 9	<u>0</u>

4. Other reasons for nondisclosure (total) 62

a. no records	43
b. referrals	<u>0</u>
c. request withdrawn	<u>5</u>
d. fee-related reason	<u>5</u>
e. records not reasonably described	<u>1</u>
f. not a proper FOIA request for some other reason	-
g. not an agency record	<u>2</u>
h. duplicate request	<u>0</u>

i. other(specify)	5*
	-
*Appeals moot due to litigation	-

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	4,940
b. median number of days to Process (by bureau/office)	-
	-
	18
OS	22
OHA	13
OAS	157
OIG	17.5
SOL	27
OSM	17
MMS	18.5
BLM	20
FWS	19
NPS	17
BOR	18
USGS	24
BIA	-

2. Requests accorded expedited processing

a. number of requests processed	21
b. median number of days to process (by bureau/office)	-
	-
	<u>0</u>
OS	<u>0</u>
OHA	<u>0</u>
OAS	<u>0</u>
OIG	<u>0</u>
SOL	<u>0</u>

OSM	7
MMS	1
BLM	0
FWS	10
NPS	0
BOR	5
USGS	
BIA	

(NOTE: DOI does not use multitrack processing at this time.)

B. Status of pending requests.

1. Number of requests pending as of end of current fiscal year	- 931
2. Median number of days that such requests were pending as of that date (by bureau/office)	-
	-
	- 241
OS	22
OHA	0
OAS	1059
OIG	30
SOL	47
OSM	10
MMS	13
BLM	25
FWS	22
NPS	18
BOR	7
USGS	171
BIA	

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

A. Comparison of numbers of requests received

- 1% decrease from FY 2000

B. Comparison of numbers of requests processed

- .1% decrease from FY 2000

C. Comparison of median numbers of days requests were pending as of end of fiscal year

- N/A

D. Other statistics significant to agency - Not Available

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):

-In FY 2001, bureaus/offices continued to participate in the FOIA tracking system pilot project.

- On September 28, 2001, the Department made an award to an outside contractor for the development of a Departmentwide FOIA tracking system. The tracking system will provide Departmental and bureau FOIA Officers with key information for both query and reporting activities in support of FOIA requirements. The first phase of the project, the requirements analysis for the new system, has been completed and design and development of the system is currently underway. The projected implementation date is July 2002.

- The Department and the bureaus continue to enhance their FOIA home pages making more information available on-line. This has contributed to a decrease in the number of FOIA requests received by some bureaus.

- 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.

- In March, the Department conducted specialized training for employees attending the American Society of Access Professionals Western Symposium.

- During FY 2001, the Department provided assistance to the National Park Service (NPS) and the Bureau of Land Management (BLM) in conducting FOIA/Privacy Act training for their employees in the field. The Department also provided FOIA/Privacy Act training to employees through the DOI University in Washington DC. ■

- SOL continues to hold brown bag lunches periodically for its attorneys, both in headquarters and the field, and Departmental personnel working in the area of information access law-pertinent FOIA/Privacy Act issues are discussed.

- In FY 2001, NPS, Northeast Regional Office, conducted two FOIA training sessions for its employees in the Philadelphia and Boston offices. NPS also conducted training at the Canyonlands National Park.

- In FY 2001, BLM conducted FOIA/Privacy Act training for its employees in Phoenix. The bureau also is in the process of developing a web-based FOIA training module for its employees.

- BLM used short-term details of field coordinators and a contract employee to help reduce its FOIA backlog.

- In FWS, a number of regional and program offices are using program staff now to handle FOIA requests that are becoming increasingly more technical in nature.

IX. Costs/FOIA Staffing.

A. Staffing Levels.

1. Number of full-time FOIA personnel	28
2. Number of personnel with part-time or occasional FOIA duties (in total work years)	139 ⁻
	-
3. Total number of personnel (in work years)	167 ⁻

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

1. FOIA processing (including appeals)	\$5,475,634
2. Litigation-related activities (estimated)	\$209,513 ⁻
3. Total costs	\$5,685,147 ⁻
4. Comparison with previous year(s)	

- 10% increase from FY 2000

C. Statement of additional resources needed for FOIA compliance -

- Additional resources are needed throughout the Department to ensure total compliance with the FOIA. This is especially true in the bureaus where FOIA is handled as a "collateral duty." Although the number of FOIA requests received by the Department has remained relatively the same, bureaus/offices are receiving increasingly complex and voluminous requests. Many of these requests require coordination with other components in DOI and other Federal agencies. Such requests take longer to process--as a result, the Department's FOIA backlog has increased. In addition, the increase in appeals and the increased focus on E-FOIA and Privacy Act requirements have added to the existing workload burden. Given existing staff, it is difficult to ensure appropriate oversight of the FOIA program. Additional FTEs should be provided for the FOIA program both at the Department level and the bureau level. In some bureaus, there has been a significant turnover in FOIA personnel. Many of the new FOIA Coordinators have received little if any FOIA training. Time and money are needed to train coordinators in order to bring them up to the appropriate level of expertise.

Finally, additional funding is required for operation and maintenance of the electronic FOIA tracking system currently being developed for the Department, as well as for any future upgrades. Funding also is needed to ensure that bureaus/offices have the technology and training they need to manage the FOIA program effectively.

X. Fees

A. Total amount of fees collected by agency for processing requests	\$102,726	-
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.

- [Click here to view previous DOI FOIA Annual Reports](#)