

DEPARTMENT OF THE INTERIOR

**Freedom of Information Act 2003 Annual Report
(October 1, 2002 - September 30, 2003)**

I. Basic Information Regarding Report

A. Questions about the report should be directed to:

Alexandra Mallus
Departmental FOIA Officer
Office of the Chief Information
Officer (OCIO)
Department of the Interior (DOI)
1849 C Street, NW
MS-5312-MIB
Washington, D.C. 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/03anrep.pdf>

C. A copy of the 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)	Minerals Management Service (MMS)
Office of Hearings & Appeals (OHA)	Bureau of Land Management (BLM)
Office of Aircraft Services (OAS)	Fish & Wildlife Service (FWS)
Office of Inspector General (OIG)	National Park Service (NPS)
Office of the Solicitor (SOL)	Bureau of Reclamation (BOR)
Office of Surface Mining (OSM)	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 - 177 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 (see 43 CFR § 2.21(b)(2)). Some requests are not granted due to one of the reasons cited in V.B.4., below (see DOI's FOIA regulations, 43 CFR § 2.21(e)).

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.

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.

8. Grant - an agency decision to disclose all records in full in response to a FOIA request.
9. 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.
10. 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).
11. 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).
12. "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.
13. 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).
14. Median number - the middle, not average number. For example, of 3, 7, and 14, the median number is 7.
15. 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

- A1. 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 information describing historical and archaeological resources and their specific locations and archaeological site maps.
- 2) Pertinent litigation:
- Starkey v. United States Department of the Interior, et al., Civil No. 01CV1458 (S.D. Calif. Dec. 15, 2002) (finding that the agency properly withheld, pursuant to exemption (3), narrative descriptions of archaeological resources, descriptions of objects, and commentary on their condition).
- b. 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 the proposals of unsuccessful bidders and certain information in contractor proposals.
- 2) DOI is not aware of any court cases upholding the use of this statute.
- c. National Parks Service Omnibus Management Act of 1998 (16 U.S.C. § 5937).
- 1) Used to withhold information specifying the location of threatened and endangered species located in a National Park—specifically maps indicating site specific locations of threatened and endangered species and narrative descriptions of specific locations of protected plants and/or animals.
- 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 Department of the 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).

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

1) Used to withhold information describing historical and archaeological resources and their specific locations, and archaeological and historic site maps.

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

e. Federal Acquisition Regulation (section 24.202(a)) incorrectly cited to withhold proposal submitted in response to a competitive solicitation (not an exemption 3 statute).

f. Endangered Species Act (16 U.S.C. §1533 (a)(3) and (b)(2)) incorrectly cited to protect the specific location of pygmy-owls within Organ Pipe National Monument (not an exemption 3 statute).

V. Initial FOIA/PA Access Requests

A. Numbers of initial requests

- | | |
|--|--------------|
| 1. Number of requests pending as of end of preceding fiscal year | <u>907*</u> |
| 2. Number of requests received during current fiscal year | <u>5,243</u> |
| 3. Number of requests processed during current fiscal year | <u>4,679</u> |
| 4. Number of requests pending as of end of current fiscal year | <u>1,471</u> |

(*NOTE: Although DOI indicated in the Annual Report for FY 2002 that there were 902 requests pending at the end of the fiscal year, the figure denoted in VA1 is correct. The difference is due to errors in accounting and the fact that DOI is still in the process of transitioning to a new centralized electronic FOIA tracking system (EFTS). The EFTS

ultimately will provide for greater accuracy and accountability.)

B. Disposition of initial requests

1. Number of total grants 2,117
2. Number of partial grants 995
3. Number of denials 191
 - a. Number of times each FOIA exemption used (counting each exemption once per request)
 - (1) Exemption 1 1
 - (2) Exemption 2 43
 - (3) Exemption 3 38
 - (4) Exemption 4 188
 - (5) Exemption 5 366
 - (6) Exemption 6 576
 - (7) Exemption 7 (A) 83
 - (8) Exemption 7 (B) 21
 - (9) Exemption 7 (C) 154
 - (10) Exemption 7 (D) 43
 - (11) Exemption 7 (E) 14
 - (12) Exemption 7 (F) 16
 - (13) Exemption 8 0
 - (14) Exemption 9 2
4. Other reasons for nondisclosure (total) 1,376
 - a. no records 454

b. referrals	<u>200</u>
c. request withdrawn	<u>227</u>
d. fee-related reason	<u>170</u>
e. records not reasonably described	<u>124</u>
f. not a proper FOIA request for some other reason	<u>77</u>
g. not an agency record	<u>73</u>
h. duplicate request	<u>26</u>
i. other (specify)	<u>25</u>
- Requests administratively closed	<u>18</u>
- Requester failed to provide additional clarification requested	<u>3</u>
- Requester failed to provide written consent of subject individual when requested (Privacy Act, 5 U.S.C. § 552(a)(b))	<u>4</u>

VI. Appeals of Initial Denials of FOIA/PA Requests

A. Numbers of appeals.

1. Number of appeals received during fiscal year 251
2. Number of appeals processed during fiscal year 152

B. Disposition of appeals.

1. Number completely upheld 10
2. Number partially reversed 12
3. Number completely reversed 62
 - 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>0</u>	
(5) Exemption 5	<u>7</u>	
(6) Exemption 6	<u>8</u>	
(7) Exemption 7(A)	<u>3</u>	
(8) Exemption 7(B)	<u>0</u>	
(9) Exemption 7(C)	<u>3</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)		<u>68</u>
a. no records	<u>32</u>	
b. referrals	<u>1</u>	
c. request withdrawn	<u>4</u>	
d. fee-related reason	<u>7</u>	
e. records not reasonably described	<u>2</u>	
f. not a proper FOIA request for some other reason	<u>6</u>	
g. not an agency record	<u>0</u>	
h. duplicate request	<u>1</u>	

i. other (specify) 15

- Appeals moot due to 15
litigation & other reasons

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 4,655

b. median number of days to process (by bureau/office)

OS	<u>40</u> (includes OHA/OAS))
OIG	<u>106</u>
SOL	<u>16</u>
OSM	<u>13</u>
MMS	<u>16</u>
BLM	<u>18</u>
FWS	<u>177</u>
NPS	<u>21</u>
BOR	<u>13</u>
USGS	<u>15</u>
BIA	<u>29</u>

2. Requests accorded expedited processing

a. number of requests processed 24

b. median number of days to process (by bureau/office)

OS	<u>1</u> (includes OHA/OAS)
OIG	<u>0</u>
SOL	<u>1</u>
OSM	<u>0</u>
MMS	<u>0</u>
BLM	<u>42</u>
FWS	<u>64</u>
NPS	<u>1</u>
BOR	<u>4</u>
USGS	<u>0</u>
BIA	<u>0</u>

(NOTE: DOI did not use multitrack processing in FY 2003)

B. Status of pending requests.

1. Number of requests pending as of end of current fiscal year 1,471
2. Median number of days that such requests were pending as of that date (by bureau/office)

OS	<u>54</u> (includes OHA/OAS)
OIG	<u>1,539</u>
SOL	<u>25</u>
OSM	<u>45</u>
MMS	<u>22</u>
BLM	<u>23</u>
FWS	<u>530</u>
NPS	<u>16</u>
BOR	<u>9</u>
USGS	<u>14</u>
BIA	<u>63</u>

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

- A. Comparison of numbers of requests received
 - 19% increase from FY 2002
- B. Comparison of numbers of requests processed
 - 7% increase from FY 2002
- 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):

- On October 2, 2002, the Department implemented a new electronic Freedom of Information Act Tracking System (EFTS). This Departmental application is the first centralized system to manage FOIA requests electronically Departmentwide. The EFTS is a web-based system that is currently being used by all bureaus/offices with Internet access, both in headquarters and the field, to track and manage their requests. The system will improve the overall efficiency of the FOIA process in DOI by reducing the time in processing requests, ensuring consistency in document releasability, facilitating reporting and reviews, reducing appeals and litigation, and improving customer service.

- In FY 2003, the Department completed the revision to the Departmental FOIA Handbook (383 DM 15). It is in the process of being finalized for publication. The Handbook establishes Departmentwide policies and procedures for administering and implementing the FOIA and supplements the requirements

prescribed by DOI's FOIA regulations (43 CFR Part 2, Subparts A through E).

- DOI continues to be concerned about the decrease in the number of FTEs allocated to the FOIA program. This has exacerbated DOI's FOIA backlog.
- Policy changes impacting the handling of certain law enforcement records in the BIA have significantly increased the backlog of FOIA requests along with the number of appeals.
- In FY 2003, the backlog of FOIA requests in FWS increased significantly due to an increase in the complexity and controversial nature of requests received, e.g., drilling in the Arctic National Wildlife Refuge, and an increase in statutory fee waiver requests.
- The Office of the Secretary FOIA Office increased its contractor support in an effort to reduce the existing FOIA backlog.
- In March, the Department conducted specialized FOIA/Privacy Act training for employees attending the American Society of Access Professionals Western Symposium.
- During FY 2003, the Department provided assistance to the Bureau of Indian Affairs (BIA) in conducting FOIA/Privacy Act training for their employees in the field. The Department also provided three FOIA/Privacy Act training sessions to employees through the DOI University.
- In FY 2003, the Bureau of Indian Affairs conducted FOIA/Privacy Act training for their employees in Phoenix and Portland.
- In FY 2003, BLM developed Standard Operating Procedures for the FOIA administrative process and implemented them agency-wide. The Bureau also modified its on-line FOIA training course to comply with DOI's revised FOIA regulations. The BLM Washington Office continued with contractor support in an effort to reduce its FOIA backlog. The BLM FOIA Officer provided assistance to the BLM Idaho State Office in responding to voluminous requests that were the subject of litigation.
- 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, e.g., the Office of Surface Mining (OSM). In addition, requesters are accessing DOI's reading rooms more frequently and conducting their own research, rather than submitting formal FOIA requests.
- 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.

Number of requests for expedited processing granted 24

IX. Costs/FOIA Staffing

A. Staffing levels

1. Number of full-time FOIA personnel 29
2. Number of personnel with part-time or 93
occasional FOIA duties (in total work-years)
3. Total number of personnel (in work-years) 122

B. Total Costs (including staff and all resources)

1. FOIA processing (including appeals) \$7,406,231
2. Litigation-related activities (estimated) \$266,799
3. Total costs \$7,673,030

4. Comparison with previous year(s)
· 18% increase from FY 2002

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 and offices where FOIA is handled as a “collateral duty” and in offices where the FOIA Officers are tasked with other duties outside their primary function, e.g., the OIG. This year, there was a 19 percent increase in the number of FOIA requests received, many of which were complex and voluminous. Many of these requests require coordination with other components in DOI and other Federal agencies. Such requests take longer to process—this adds to the Department’s FOIA backlog which has significantly increased this year. In addition, the number of appeals received and the increased focus on E-FOIA and Privacy Act requirements have added to the existing workload burden. Additional staffing is needed for the FOIA program both at the Department level and the bureau level. Resources are needed to train FOIA Coordinators in order to bring them up to the appropriate level of expertise. Finally, additional funding is required for operation and maintenance of the new electronic FOIA tracking system, training on the system, and for any future upgrades, including the appeals, litigation, and document management modules.

X. Fees

A. Total amount of fees collected by \$109,749
agency for processing requests

B. Percentage of total costs 1%

XI. FOIA Regulations (Including the Fee Schedule)

A copy of DOI's FOIA regulations, including the fee schedule (43 CFR Part 2, Subparts A thru E) may be found at the following Internet address: <http://www.doi.gov/foia/FOIARegulations.pdf>. A copy of the regulations in paper form may be obtained by contacting the Departmental FOIA Officer (see I. A., above).