



Fish & Wildlife Service

Department of the Interior

Chief FOIA Officer Report to the Attorney General

I. Steps Taken to Apply the Presumption of Openness

1. The U.S. Fish and Wildlife Service (FWS) provided guidance to all Washington Headquarters and Regional FOIA Coordinators on the President's memoranda on FOIA and on Transparency and Open Government, both dated January 21, 2009. We posted the memoranda on our website at the following URL address: <http://www.fws.gov/irm/bpim/foia.html>.

The FWS promptly forwarded the Departmental guidance regarding the Administration's policy guidance to all Regional FOIA and Washington Headquarters personnel. Regions posted guidance on intranet websites and sent all employee bulletins instructing them to visit their regional website to view changes brought about by the Administration's FOIA policy guidance. Copies were sent to their regional Solicitor's Office. The regional FOIA Coordinators forwarded the guidance to field station FOIA contacts.

The FWS is continuously providing guidance and training to employees involved in FOIA processing. Beyond the normal training provided to all employees, the Atlanta Region collaterally provided additional training on the Administration's policy guidance to personnel with the support of the regional Solicitor's Office.

Program office supervisors also provide guidance on a recurring basis to their field stations regarding their FOIA responsibilities, which is helping make FOIA more visible throughout the Bureau.

In order to eliminate confusion and provide a more consistent pro-disclosure approach to FOIA processing, the Bureau FOIA Officer provided additional guidance on the preparation of foreseeable harm statements. The guidance elaborates on the thinking and justification process necessary to determine whether a withholding is appropriate under exemption 5 under the Administration's FOIA policy.

Though FWS has consistently emphasized the underlying pro-disclosure purpose of the FOIA, we have more closely scrutinized our withholdings for greater release opportunities in accordance with the President's and the Attorney General's memoranda. Discretionary disclosures that FWS has made in applying the Administration's FOIA policy primarily involve information protected under FOIA exemption 5. Examples of the types of records in which additional material was released on a discretionary basis include:

- a. Refuges Law Enforcement information
- b. E-mails containing information on Genetically Modified Crops (GMC)



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- c. Draft conservation plans
- d. Draft compatibility determinations
- e. Draft Environmental Impact Statements
- f. Directorate briefing statements
- g. Draft correspondence to the public
- h. Eligibility questionnaires
- i. Draft Director's Orders
- j. Draft Directorate memoranda
- k. Draft versions of candidate assessment forms

2. The Department's FOIA Annual Report reflects an increase in the number of full grants made by FWS from FY08 to FY09. In FY08, the FWS made 548 full grants; in FY09, the FWS made 804 full grants – a net increase of 256 full grants over FY08. Similarly, the FWS's number of partial grants also increased. The FWS made 89 partial grants in FY08 FWS and 122 partial grants in FY09 – a net increase of 33 grants.

II. Steps Taken to Ensure an Effective System for Responding to Requests

FWS is a decentralized bureau that is widely dispersed. It has eight major programs, e.g., Wildlife Refuges, Law Enforcement, Endangered Species, Migratory Birds, etc., and four office locations at headquarters and eight regional offices:

- a. Headquarters Directorate in Washington, DC
- b. Headquarters Program Offices at three office locations in Arlington, VA
- c. Regional Offices:
 - i. Region 1- Portland, OR
 - ii. Region 2 – Albuquerque, NM
 - iii. Region 3 – Twin Cities, MN
 - iv. Region 4 – Atlanta, GA



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- v. Region 5 – Hadley, MA
- vi. Region 6 – Denver, CO
- vii. Region 7 – Anchorage, AK
- viii. Region 8 – Sacramento, CA

The FWS FOIA Program is also decentralized. The FWS FOIA Officer and Alternate FOIA Officer are located at headquarters in Washington, DC. Each FWS region has a regional FOIA Coordinator. Together, these officials lead FWS's FOIA Program. They review all responses before they are sent to the requesters (the Bureau FOIA Office reviews all responses prepared by headquarters offices as well as those involving any sensitive requests; the regional FOIA Coordinators review all responses prepared by offices in their respective regions). They also provide guidance, technical assistance, oversight, training and coordination services to the various program offices that process and respond to FOIA requests. The Bureau FOIA Office at headquarters establishes Bureau-wide policies and procedures. The Bureau FOIA Staff and the regional FOIA Coordinators ensure that the FWS complies with applicable laws, regulations and policies. From time to time, they also get involved in processing FOIA requests, particularly those that require national coordination; involve FWS headquarters or Departmental offices; are onerous, complex or involve highly sensitive topics; or are in litigation.

All FOIA requests sent to any FWS office are logged and tracked in the electronic FOIA tracking system (EFTS) by either the Bureau FOIA staff at headquarters or by one of the regional FOIA Coordinators. In most instances, the office that maintains the requested records will be the office that will process and respond to the request. FOIA and program offices scan incoming requests and forward both the hard copy and scanned copies of requests via e-mail to the appropriate headquarters or regional office for logging into the EFTS. Depending on the circumstances, the office that will process and respond to a request may be a FOIA office at headquarters or a program office, field station, or regional FOIA Coordinator. In any event, all offices that maintain responsive records will conduct the searches and forward any records they find to the lead office on that request. When appropriate, these offices will also provide recommendations on the release of the records to the lead office.

The FWS encourages frequent contact with requesters by all of the offices involved with a particular FOIA request in order to ensure the requester is aware of the request's current status.



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When full disclosure is not possible, material is routed for another level of review by the appropriate FOIA attorney, consistent with Departmental FOIA policy. Within headquarters, documents are reviewed by the Bureau FOIA Staff and the Office of the Solicitor before the lead offices process them for response to the requesters. In the field, documents are reviewed by the regional FOIA Coordinator and the regional Solicitor's Office before the lead offices process them for response to the requesters.

In cases involving a large volume of highly sensitive material, program and regional offices are strongly encouraged to provide interim responses rather than waiting to make a single large response. This process ensures that the requester receives at least some of the requested material within the statutory deadlines.

The regional FOIA Coordinator in one of the regions has been able to employ a more centralized approach to FOIA processing due to presently having a manageable workload. For this particular region, this approach has effectively streamlined its responses to FOIA requests.

One program office has developed subject matter experts who maintain all of the records related to high profile areas. This allows them to direct FOIA requests involving specific topics of interest directly to one Coordinator or their alternate, resulting in a quicker response.

In accordance with a Secretarial Order (S.O. 3244 dated November 12, 2002), the Bureau FOIA Office at headquarters is located within the Bureau's Office of the Chief Information Officer (CIO). This has allowed the FOIA function to capitalize on technology innovations and be included in the capital planning process. The Bureau FOIA Office works closely with the headquarters IT specialists to ensure that information is publicly available and that it is 508 compliant. The offices in the regions also work closely with their IT contacts. This arrangement has helped ensure that FOIA personnel receive the IT support they need.

III. Steps Taken to Increase Proactive Disclosures

The Bureau's Electronic Reading Room provides public access to bureau organization, history, policies, guidance, substantive rules, final opinions, frequently requested documents, and other pertinent and helpful program information. It is located at:

<http://www.fws.gov/irm/bpim/foiaread.html>

The program offices at headquarters and in the regions as well as field stations have increased postings on Bureau websites. The following is a sampling of some of the websites where notable proactive disclosures have been made:



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FWS PROACTIVE DISCLOSURE WEBSITES	
Environmental Contaminant Issues	http://www.fws.gov/contaminants/
Fisheries and National Fish Hatcheries	http://www.fws.gov/fisheries/
International Development of Species Programs and CITES	http://www.fws.gov/international/
Impacts of Invasive Species	http://www.fws.gov/invasives/
Migratory Birds Hunting and Recreational Bird Watching Enhancement	http://www.fws.gov/migratorybirds/dmbmdbhc.html
Wetland Restoration and Protection	http://www.fws.gov/wetlands/
Nationwide National Wildlife Refuge System	http://www.fws.gov/refuges/

The Headquarters and Regional Ecological Services programs have proactively posted numerous documents on high-visibility species listings. For examples, see species listings related to the Gray Wolf and the Desert Tortoise at the following sites:

- o <http://www.fws.gov/angered/>
- o <http://ecos.fws.gov/ecos/indexpublic.do>

There are also examples of proactive disclosure of certain final documents related to species listing and assessment and comprehensive conservation planning at these sites:

- o http://ecos.fws.gov/docs/candforms_pdf/r2/D02T_V01.pdf
- o <http://www.fws.gov/southwest/refuges/Plan/plansinprogress.html>

In the future, the Bureau will continue to add more material on the Web regarding topics that are of interest to the public.



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IV. Steps Taken to Greater Utilize Technology

1. Yes. The FWS has an electronic FOIA mailbox at R9FOIA@fws.gov. The mailbox is checked daily. Requests may also be sent electronically to the Bureau FOIA Officer and regional FOIA Coordinators or by fax.

2. Not Applicable

3. Yes. The Department's EFTS tracks and stores all requests for the Bureau.

4. Not Applicable

5. Yes. Offices/regions use redaction software and scanning equipment. Responses are provided electronically and on CD to requesters.

6. Not Applicable.

7. Yes. The EFTS is used to prepare the Bureau's annual FOIA report.

8. Not Applicable.

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

1. The FWS continues to make progress in reducing its backlog. At the end of FY08, the FWS reported a backlog of 84 requests. At the end of FY09, FWS reported a backlog of 71 requests – a net reduction of 13 requests. This is significant in light of the fact that requests have become more complex in recent years.

2. Not Applicable

3. The FWS's two oldest requests as reported in the FY09 DOI FOIA Annual Report were received in FY06. Although the requesters have not yet received the final responses, they have received some of the responsive material. The delays are the result of a loss of staff in a significant field station and also litigation. At present, the requests are pending with the regional Solicitor for review. To facilitate completion of these requests, the Bureau FOIA Staff asked the regional FOIA Coordinators involved to meet on a monthly or bi-weekly basis to assess the status of the requests and take whatever action they can to move them toward completion.

The FWS has hired two additional full-time personnel for two of the regions with the heaviest workloads (Region 1, Portland, OR and Region 6, Denver, CO). These personnel support FOIA



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request processing, which is expected to experience a reduction in the backlog and improved timeliness in responses to all requests.

In response to appeals remanded by the Appeals Office, the Bureau FOIA Office forwards the requests related to administrative appeals to the appropriate program/region for action upon receipt. The program and regional offices are aware of the importance of providing timely responses to the Office of Solicitor. They often send their responses electronically to hasten the process.