

## DEPARTMENT OF THE INTERIOR

### Freedom of Information Act 2002 Annual Report (October 1, 2001 - September 30, 2002)

#### 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/02anrep.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 10 - 58 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.
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 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 information describing historical, archaeological, and cultural resources and their locations, archaeological inventory surveys, and an archaeological and historic site map.

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 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 describing several threatened and endangered species located at a specific park and maps indicating the locations of populations of the referenced threatened and endangered species.

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 regarding the specific location of historic property, and an archaeological and historic site map.

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	879*
2. Number of requests received during current fiscal year	4,396 <sup>-</sup>
3. Number of requests processed during current fiscal year	4,378 <sup>-</sup>
4. Number of requests pending as of end of current fiscal year	902* <sup>-</sup>

(\*NOTE: Although DOI indicated in the Annual Report for FY 2001 that there were 931 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 in the process of transitioning to a new centralized electronic FOIA tracking system (EFTS). The porting of data from the old system to the EFTS resulted in a few discrepancies in the figures reported this year, e.g., the figure reported under item VA4. The EFTS ultimately will provide for greater accuracy and accountability.)

B. Disposition of initial requests.

1. Number of total grants	2,212
2. Number of partial grants	764 <sup>-</sup>
3. Number of denials	193 <sup>-</sup>

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

(1) Exemption 1	0
(2) Exemption 2	25 <sup>-</sup>
(3) Exemption 3	18 <sup>-</sup>
(4) Exemption 4	91 <sup>-</sup>
(5) Exemption 5	349 <sup>-</sup>
(6) Exemption 6	367 <sup>-</sup>
(7) Exemption 7(A)	63 <sup>-</sup>
(8) Exemption 7(B)	12 <sup>-</sup>
(9) Exemption 7(C)	92 <sup>-</sup>

(10) Exemption 7(D)	14 <sup>-</sup>
(11) Exemption 7(E)	21 <sup>-</sup>
(12) Exemption 7(F)	<u>9</u> <sup>-</sup>
(13) Exemption 8	<u>0</u> <sup>-</sup>
(14) Exemption 9	<u>4</u> <sup>-</sup>

4. Other reasons for nondisclosure (total) 1,209

a. no records	462
b. referrals	179 <sup>-</sup>
c. request withdrawn	144 <sup>-</sup>
d. fee-related reason	132 <sup>-</sup>
e. records not reasonably described	93 <sup>-</sup>
f. not a proper FOIA request for some other reason	68 <sup>-</sup>
g. not an agency record	85 <sup>-</sup>
h. duplicate request	32 <sup>-</sup>
i. other (specify)	14 <sup>-</sup>
- Third party requester asked for information covered by the Privacy Act--failed to provide consent of subject individual	<u>2</u> <sup>-</sup>
- Requester failed to provide additional clarification requested	12 <sup>-</sup>

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

A. Numbers of appeals.

1. Number of appeals received during fiscal year	236*
	165 <sup>-</sup>

2. Number of appeals processed during fiscal year  
 2002 due to delays in processing mail through the Brentwood mail facility as a result of the anthrax issue.)

(\*NOTE: DOI received fewer appeals in FY

B. Disposition of appeals.

1. Number completely upheld	82
2. Number partially reverse	<u>17</u>
3. Number completely reversed	<u>66</u>

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>2</u>
(5) Exemption 5	<u>5</u>
(6) Exemption 6	<u>8</u>
(7) Exemption 7(A)	<u>4</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>1</u>

4. Other reasons for nondisclosure (total) 74

a. no records	41
b. referrals	<u>0</u>
c. request withdrawn	<u>2</u>
d. fee-related reason	12
e. records not reasonably described	<u>1</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>1</u>
i. other(specify)	17
- Appeals moot due to litigation	10
- New FOIA request	<u>4</u>

- Denial of expedited processing	<u>1</u>
- Not an appeal	<u>2</u>

VII. Compliance with Time Limits/Status of Pending Request

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

1. Regular requests	-
a. number of requests processed	4,332
b. median number of days to process (by bureau/office)	-
OS (includes OHA)	28
OAS	10
OIG	58
SOL	13
SOL	18
OSM	12
MMS	19
BLM	33
FWS	19
NPS	15
BOR	18
USGS	24
BIA	
2. Requests accorded expedited processing	
a. number of requests processed	46
b. median number of days to process (by bureau/office)	-
OS (includes OHA)	<u>0</u>
OAS	<u>0</u>
OIG	10
SOL	<u>0</u>
OSM	<u>0</u>
MMS	<u>0</u>
BLM	<u>5</u>
FWS	<u>6</u>
NPS	20
BOR	<u>9</u>
USGS	<u>0</u>
BIA	33

\*(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	902
2. Median number of days that such requests were pending as of that date (by bureau/office)	-
	-
	-
	420
OS (includes OHA)	<u>0</u>
OAS	1,407
OIG	10
SOL	35
OSM	27
MMS	17
BLM	25
FWS	25
NPS	15
BOR	<u>5</u>
USGS	51
BIA	

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

##### A. Comparison of numbers of requests received

- 14% decrease from FY 2001

##### B. Comparison of numbers of requests processed

- 12% decrease from FY 2001

##### 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 was developed in FY 2002 by a contractor and is the first centralized system to manage FOIA requests electronically Departmentwide. The EFTS is a web-based system that is 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 2002, the Department finalized the rule implementing DOI's revised FOIA regulations (43 CFR Part 2, Subparts A thru E). The revised regulations were effective November 20, 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 2002, the Department provided assistance to the Bureau of Indian Affairs (BIA), Fish and Wildlife Service (FWS), and the Bureau of Land Management (BLM) in conducting FOIA/Privacy Act training for their employees in the field. The Department also provided two FOIA/Privacy Act training to employees through the DOI University.

- 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 2002, the following bureaus conducted FOIA/Privacy Act training for their employees:

BIA - 3 sessions  
FWS - 1 session  
BLM - 1 session

- In FY 2002, BLM completed development of a web-based FOIA training module which will be made available to its employees in FY 2003. BLM also hired a contractor to work full-time in headquarters to assist in reducing its FOIA backlog.

- In FY 2002, NPS focused on reducing the bureau's FOIA backlog. As part of this effort, the Bureau FOIA Officer provided one-on-one training and assistance to the Washington program offices.

F. Number of requests for expedited processing received 53  
Number of requests for expedited processing granted 46

## IX. Costs/FOIA Staffing.

### A. Staffing Levels.

1. Number of full-time FOIA personnel	31
2. Number of personnel with part-time or occasional FOIA duties (in total work years)	96 <sup>-</sup>
	-
3. Total number of personnel (in work years)	127 <sup>-</sup>

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

1. FOIA processing (including appeals)	\$6,233,400
	\$255,589 <sup>-</sup>
2. Litigation-related activities (estimated)	\$6,488,989 <sup>-</sup>
3. Total costs	
4. Comparison with previous year(s)	

- 14% increase from FY 2001

### 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." Although the number of FOIA requests received by the Department has slightly decreased over the past few years, 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-this adds to the Department's FOIA backlog. 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. In some bureaus, there has been a significant turnover in FOIA personnel. 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, as well as for any future upgrades, including the appeals, litigation and document management modules.

#### X. Fees

A. Total amount of fees collected by agency for processing requests	\$70,474
	-
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).

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