

ANNUAL FOIA REPORT FY 2006

I. Basic Information Regarding Report

A. Person(s) to be contacted with questions about the report.

Name: Brenda Dolan
Title: Departmental FOIA/PA Officer
Address: U.S. Department of Commerce
Office of Management and Organization
Mail Stop 5327
1401 Constitution Avenue, N.W.
Washington, D.C. 20230
Telephone: 202-482-3707

B. Electronic Address for report on the World Wide Web.

www.osec.doc.gov/omo/FOIA/FOIAWEBSITE.htm

C. How to obtain a copy of the report in paper form.

Write to address or contact person listed in item I. A.

II. How to Make a FOIA Request

Instructions are shown on DOC FOIA Home Page at:
www.osec.doc.gov/omo/FOIA/FOIAWEBSITE.htm

FOIA requests must be in writing. Send requests to the address in item I. A. or via e-mail to EFOIA@doc.gov

A. Names, addresses, and telephone numbers of all individual agency components and offices that receive FOIA requests.

- Brenda Dolan
Departmental FOIA/PA Officer
Office of Management and Organization
Mail Stop 5327
1401 Constitution Avenue, N.W.
Washington, D.C. 20230
202-482-3707
- Bobbie Parsons
FOIA Officer
Office of the Secretary
Office of Management and Organization

Mail Stop 5327
1401 Constitution Avenue, N.W.
Washington, D.C. 20230
202-482-3707

- Burton H. Reist
FOIA Officer
Bureau of the Census
Policy Office
Federal Building 3, Room 2430
Suitland, Maryland 20233
301-763-3949
- Pamela Moulder
FOIA Officer
Bureau of Economic Analysis/Economic and
Statistics Administration
Office of the Under Secretary for Economic Affairs
Mail Stop 4836
1401 Constitution Avenue, N.W.
Washington, D.C. 20230
202-482-5997
- O. Barry Bird
FOIA Officer
Economic Development Administration
Office of the Chief Counsel
Mail Stop 7001
1401 Constitution Avenue, N.W.
Washington, D.C. 20230
202-482-4687
- Elaine Farrow
FOIA Officer
Bureau of Export Administration
Office of Administration
Mail Stop 6883
1401 Constitution Avenue, N.W.
Washington, D.C. 20230
202-482-2165
- Linda Bell
FOIA Officer
International Trade Administration
Office of Organization and Management Support
Mail Stop 4001
1401 Constitution Avenue, N.W.
Washington, D.C. 20230
202-482-5436
- Dan Webster
FOIA Officer

Minority Business Development Agency
Data Resources Division
Mail Stop 5063
1401 Constitution Avenue, N.W.
Washington, D.C. 20230
202-482-2025

- Sharon Bisco
FOIA Officer
National Institute of Standards and Technology
Office of the Director for Administration
Room A-525
100 Bureau Drive, Mail Stop 3200
Gaithersburg, Maryland 20899-3200
301-975-4054
- Steve Needle
FOIA Officer
National Technical Information Service
Office of Administrative Management
Room 209, Forbes Building
Springfield, Virginia 22161
703-605-6404
- Denise Marshall
FOIA Officer
National Telecommunications & Information Administration
Office of the Chief Counsel
Mail Stop 4713
1401 Constitution Avenue, N.W.
Washington, D.C. 20230
202-482-1816
- Jean Carter-Johnson
FOIA Officer
National Oceanic & Atmospheric Administration
NOAA Central FOIA Facility
1315 East-West Highway
SSMC3/10730
Silver Spring, Maryland
301-713-3540
- Robert Fawcett
FOIA Officer
United States Patent and Trademark Office
Box OGC
Washington, D.C. 20231
703-308-2000
- Philip Greene
FOIA Officer
Technology Administration

Office of the Chief Counsel
Mail Stop 4835
1401 Constitution Avenue, N.W.
Washington, D.C. 20230
202-482-1984

- Carolyn Croak
FOIA Officer
Office of Inspector General
Counsel to the Inspector General
Mail Stop 7892
1401 Constitution Avenue, N.W.
Washington, D.C. 20230
202-482-5992

The FOIA Officers are also listed at: www.osec.doc.gov/omo/FOIA/FOIAWEBSITE.htm

B. Brief description of the agency's response-time ranges.

The Department of Commerce strives to answer all FOIA requests within the 20 day response time mandated by the Electronic FOIA Amendments. The response time for simple requests is approximately 12 days. The response for complex requests varied from 17 days to a maximum of 120 days.

C. Brief description of why some requests are not granted.

A request for records may be denied if the requested record contains information which falls into one or more of the nine categories listed below. If the requested record contains both exempt and nonexempt information, the nonexempt portions which may reasonably be segregated from the exempt portions will be released to the requester.

Categories of Exempt Information

Exemption One: Records which are specifically authorized under criteria established by an Executive Order to be kept secret in interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order.

Exemption Two: Records related solely to the internal personnel rules and practices of the Department of Commerce.

Exemption Three: Records specifically exempted from disclosure by statute, provided that such statute:

Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issues: or establishes particular criteria for withholding or refers to particular types of matter to be withheld.

Exemption Four: Trade secrets and commercial of financial information obtained from a person that is privileged or confidential.

Exemption Five: Interagency or intra-agency memoranda or letters which would not be available by law to a private party in litigation with the Department of Commerce.

Exemption Six: Personnel, medical, and similar files (including financial files) the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Exemption Seven: Records compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records could reasonably be expected to interfere with enforcement proceedings; would deprive a person of a right to a fair trial or an impartial adjudication; could reasonably be expected to constitute an unwarranted invasion of personal privacy; could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished records on a confidential basis; would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or could reasonably be expected to endanger the life or physical safety of any individual.

Exemption Eight: Records that are contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for use of an agency responsible for the regulation or supervision of financial institutions.

Exemption Nine: Geological and geophysical information and data, including maps, concerning wells.

III. Definitions of Terms and Acronyms Used in the Report

A. Agency-specific acronyms or other terms.

OS - Office of the Secretary

ESA - Economic and Statistics Administration

EDA - Economic Development Administration

BIS - Bureau of Industry and Security

ITA - International Trade Administration

MBDA - Minority Business Development Agency

NIST - National Institute of Standards and Technology

NTIS - National Technical Information Service

NTIA - National Telecommunications & Information Administration

NOAA - National Oceanic & Atmospheric Administration

PTO - Patent and Trademark Office

TA - Technology Administration

OIG - Office of Inspector General

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 complexity 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 in the group. For example, of 3, 7, and 14, the average number is 8.

IV. Exemption 3 Statutes

A. List of Exemption 3 statutes relied on by agency during current fiscal year.

1. Brief description of type(s) of information withheld under each statute.

13 U.S.C. § 9 - prohibits the use, publication, or examination of any information collected by the Census Bureau, other than for the statistical purposes for which the information was supplied.

13 U.S.C. app. § 301(g) - prohibits the disclosure of Shippers' Export Declarations, submitted by shippers to the Census Bureau, unless the Secretary of Commerce determines that nondisclosure would be contrary to the national interest.

50 U.S.C. app. § 2411(c), Export Administration Act of 1979 § 12(c) - protects information obtained for the purpose of consideration of, or concerning, exporting license applications, unless the Secretary of Commerce determines that release of such information is in the national interest. This includes not only the applications themselves and the information contained therein, but also any information relating to an application, to include information on enforcement or export administration laws and regulations.

16 U.S.C. § 1881(a), Magnuson-Stevens Fishery Conservation and Management Act - pertains to statistical information contained in fishery management plans which has been submitted by fisheries under section 1853(a)(5). Information which may not be disclosed includes, but is not limited to, the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing took place, number of hauls, and the estimated and actual processing capacities of U.S. fish processors. The Secretary of Commerce may, however, promulgate regulations that provide for the release of such information in aggregate or summary form which does not disclose the identity or business of any person that submits statistics.

35 U.S.C. § 122 - provides that applications for patents shall be kept in confidence by the Patent and Trademark Office unless disclosure is necessary to carry out the provisions of any Act of Congress, or in special circumstances, to be determined by the Commissioner for Patents and Trademarks. This also includes materials in patent interference files.

41 U.S.C. §§ 253 - protects proprietary or source selection information in the possession of the Government during the conduct of any Federal procurement of property or services.

15 U.S.C. § 278n(d)(5) - provides that the FOIA does not apply to information submitted on a confidential basis, by joint ventures and members of joint ventures that receive funding under the Department's Advanced Technology Program. The Department must withhold information concerning the business operation or trade secrets possessed by any business or member of a joint venture that is receiving funding under the program.

2. Statement of whether a court has upheld the use of each statute. If so, then cite example.

13 U.S.C. § 9 - Baldrige v Shapiro, 455 U.S. 355 (1982)

13 U.S.C. § 301(g) - Young Conservative Found v Department of Commerce, No. 85-3982 (D.D.C. March 25, 1987)

50 U.S.C. § 2411(c) - Export Information Twin Coast Newspapers, Inc. v Department of Commerce, NO. 78-0978 (D.D.C. November 6, 1979)

16 U.S.C. § 1881(a) - no case

35 U.S.C. § 122 - Irons & Sears v Dann, 606 F.2d 1215 (1979); Leeds v Quigg, 720 F. Supp. 193 (D.D.C. 1989)

41 U.S.C. §§ 253B - Hornbostel v Department of the Interior, 305 F. Supp. 2d 21 (D.D.C. 2003)

15 U.S.C. § 278n(d)(5) - no case

V. Initial FOIA/PA Access Requests

A. Numbers of initial requests

1. Number of requests pending as of end of preceding fiscal year. 278
2. Number of requests received during current fiscal year. 2018
3. Number of requests processed during current fiscal year. 1987
4. Number of requests pending as of end of current fiscal year. 309

B. Disposition of initial requests.

1. Number of total grants. 672
2. Number of partial grants. 382
3. Number of denials. 136

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

(1) Exemption 1 6

(2) Exemption 2 60

(3) Exemption 3 148

(4) Exemption 4 125

- (5) Exemption 5 133
- (6) Exemption 6 137
- (7) Exemption 7(A) 17
- (8) Exemption 7(B) 2
- (9) Exemption 7(C) 31
- (10) Exemption 7(D) 1
- (11) Exemption 7(E) 5
- (12) Exemption 7(F) 1
- (13) Exemption 8 0
- (14) Exemption 9 1
- 4. Other reasons for nondisclosure (total) 797
 - a. no records 285
 - b. referrals 63
 - c. request withdrawn 77
 - d. fee-related reason 195
 - e. records not reasonably described 64
 - f. not a proper FOIA request for some other reason 16
 - g. not an agency record 25
 - h. duplicate request 11
 - i. other (publicly available information) 61

VI. Appeals of Initial Denials of FOIA/PA Requests

A. Number of appeals.

1. Number of appeals received during fiscal year 71
2. Number of appeals processed during fiscal year 84

B. Disposition of appeals.

1. Number completely upheld 28
2. Number partially reversed 12
3. Number completely reversed 6

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

(1) Exemption 1 0

(2) Exemption 2 2

(3) Exemption 3 4

(4) Exemption 4 2

(5) Exemption 5 8

(6) Exemption 6 9

(7) Exemption 7(A) 1

(8) Exemption 7(B) 0

(9) Exemption 7(C) 3

(10) Exemption 7(D) 0

(11) Exemption 7(E) 1

(12) Exemption 7(F) 0

(13) Exemption 8 0

(14) Exemption 9 0

4. Other reasons for nondisclosure (total) 38

a. no records 1

b. referrals 0

c. request withdrawn 4

d. fee-related reason 4

e. records not reasonably described 0

f. not a proper FOIA request 0

g. not an agency record 0

h. duplicate request 10

i. other (specify)

untimely 19

adequacy of search 0

no response 0

publicly available 0

went to litigation 0

VII. Compliance with Time Limits/Status of Pending Requests

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

1. Simple requests (if multiple tracks used).

a. number of requests processed 1508

b. median number of days to process 12

2. Complex requests (specify for any and all tracks used).

a. number of requests processed 471

b. median number of days to process 45

3. Requests accorded expedited processing.

a. number of requests processed 8

b. median number of days to process 44

B. Status of pending requests.

1. Number of requests pending as of end of current fiscal year 309

2. Median number of days that such requests were pending as of that date 26

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

A. Comparison of numbers of requests received:

FY01-2183 FY02-2142 FY03-1975 FY04-2051 FY05-1804 FY06-2018

B. Comparison of numbers of requests processed:

FY01-2232 FY02-2063 FY03-1981 FY04-2035 FY05-1834 FY06-1987

C. Comparison of median numbers of days requests were pending as of end of Fiscal Year:

FY01-30 FY02-30 FY03-22 FY04-21 FY05-60 FY06-26

D. Other statistics significant to agency

1. Requests received for expedited processing 8
2. Requests for expedited processing granted 8

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).

1. Send interim responses to requesters on a rolling basis as we process documents.
2. Provide FOIA and records training for all employees.
3. Continue to monitor and update websites to include more publicly available information.
4. Enhanced FOIA processing with electronic solutions.

IX. Costs/FOIA Staffing

A. Staffing levels.

1. Number of full-time FOIA personnel 12
2. Number of personnel with part-time or occasional FOIA duties (in total work-years) 7,25
3. Total number of personnel 19.25

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

1. FOIA processing (including appeals) 1,742,221.70
2. Litigation-related activities (estimated) 269,823.92
3. Total Costs 2,012,045.62
4. Comparison with previous year(s) (including percentage of change) (optional) Optional data is not provided.

X. Fees

A. Total amount of fees collected by agency for processing requests 83,667.02

B. Percentage of total costs 4.15%

XI. FOIA Regulations (Including Fee Schedule)

15 C.F.R. part 4 ([copy attached](#))

XII. Report on FOIA Executive Order 13,392 Implementation

A. Description of supplementation/modification of agency improvement plan.

In October 2006, the Department of Commerce modified its improvement plan to include one additional backlog reduction goal. The goal is to decrease the existing backlog of pending FOIA requests, per bureau, by 10% from May 5, 2006 through December 31, 2006, by 30% in FY07, and by 50% in FY08.

B. Report on agency implementation of its plan, including its performance in meeting milestones, with respect to each improvement area.

The Department of Commerce has met all, but one of the goals and milestones established in the improvement plan submitted in October 2006, in response to Executive Order 13,392, that were to be completed for this reporting period.

To increase employee awareness of FOIA procedures and requirements, a goal was set the goal of providing additional web based training. In-house training will be available through the Learning Management System. Training materials are in development.

The on line FOIA Reference Guide was updated on the FOIA web site. It is now more comprehensive and is organized in a more user-friendly fashion. It will be updated on an continuing basis, as changes become necessary.

The U.S. Patent and Trademark Office (PTO) started using contract personnel on June 30, 2006 to assist with the processing of large-volume FOIA requests. Thus far, it is working very well at PTO. Use of contract personnel will be discussed at the FOIA Officers Roundtable meeting.

To provide better customer service, all bureaus, as of November 30, 2006, are sending letters to requesters to acknowledge receipt of their FOIA request. To provide better communication among Department FOIA personnel, a List Serv has been established.

We are at the beginning stage of our goal in determining the technology that is currently being used to electronically scan and redact throughout the Department. After the results of the survey are final, site visits will be scheduled in order to attend demonstrations of those technologies identified.

The Department had two backlog reduction goals for this reporting period. The first goal is to identify the 10 oldest FOIA requests pending as of September 30, 2006 and for those that do, to implement steps to complete the processing of those requests. The second goal is to decrease the existing backlog, for those bureaus that have them, by 10% from May 5, 2006 through December 31, 2006.

The 10 oldest FOIA requests pending as of September 30, 2006, have been identified by each bureau. The National Oceanic and Atmospheric Administration (NOAA) and the National Institute of Standards and Technology (NIST) identified ten oldest pending requests. Steps have been identified and implemented to complete the processing of those requests.

The second backlog reduction goal to decrease the existing backlog of pending FOIA requests by 10%, per bureau, from May 5, 2006 to December 31, 2006, has been exceeded by all bureaus, with the exception of one. The following bureaus identified a backlog for the reporting period:

Bureau	# Pending 5/5/06	# Pending 12/31/06	Percent
OS	10	0	100%
NOAA	155	121	22%
NIST	1	1	0%
OIG	15	2	86%

C. Identification and discussion of any deficiency in meeting plan milestones (if applicable).

The National Institute of Standards and Technology (NIST) had one pending request from May 5, 2006 that was not completed, due to voluminous nature of the request. An interim response was mailed to the requester on November 17, 2005. NIST is awaiting consultation responses from other agencies. NIST is making every effort to complete the request as expeditiously as possible.

D. Additional narrative statements regarding other executive order-related activities (optional).

Not applicable

E. Concise descriptions of FOIA exemptions.

The nine exemptions to the FOIA authorize federal agencies to withhold information covering: (1) classified national defense and foreign relations information; (2) internal agency rules and practices; (3) information that is prohibited from disclosure by another federal law; (4) trade secrets and other confidential business information; (5) inter-agency or intra-agency communications that are protected by legal privileges; (6) information involving matters of personal privacy; (7) records or information compiled for law enforcement purposes, to the extent that the production of those records (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a persons of a right to a

fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, (E) would disclose techniques and procedures for law enforcement investigation or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or (F) could reasonably be expected to endanger the life or physical safety of any individual; (8) information relating to the supervision of financial institutions; and (9) geological information on wells.

F. Additional Statistics:

1. Time range of requests pending, by date of request (or, where applicable, by date of referral from another agency).

OS: September 12, 2006 - January 31, 2007

Census: September 11, 2006 - October 26, 2006

EDA: September 14, 2006 - November 15, 2006

BIS: July 13, 2006 - December 19, 2006

ITA: July 21, 2006 - January 31, 2006

NIST: April 28, 2005 - January 31, 2007

NTIA: September 20, 2006 - January 29, 2007

NOAA: August 2, 2002 - January 31, 2007

PTO: June 16, 2006 - January 31, 2007

OIG: March 10, 2006 - January 31, 2007

2. Time range of consultations pending with other agencies, by date of initial interagency communication.

OS: December 15, 2006 - January 31, 2007

NIST: August 4, 2005 - January 31, 2007

NTIA: December 19, 2006 - January 29, 2007

OIG: January 2, 2007 - January 31, 2007

G. Attachment: Agency improvement plan (in current form).

The FOIA Improvement Plan for the Department of Commerce is attached.