

April 10, 2000

Richard Huff and Daniel Metcalfe  
Office of Information and Privacy  
Department of Justice  
Room 570 Flag Building  
Washington, D.C. 20530

Dear Messrs. Huff and Metcalfe:

In accordance with subsection (e) of the Freedom of Information Act, 5 USC 552, as amended, the Department of State hereby submits its annual report for the time period October 1, 1998 to September 30, 1999.

Please do not hesitate to contact me on (202) 261-8300 if I can be of assistance concerning this matter.

Sincerely,

Margaret P. Grafeld  
Director  
Office of IRM Programs & Services

Enclosure:  
As stated.



**U.S. DEPARTMENT OF STATE**  
**FREEDOM OF INFORMATION ACT**  
**ANNUAL REPORT**  
**FISCAL YEAR 1999**



## **I. Basic Information**

In compliance with the Electronic Freedom of Information Act Amendments of 1996 the Department of State submits the attached report on the Freedom of Information Act program. This report addresses the time period for the 1999 fiscal year (October 1, 1998 to September 30, 1999). Questions pertaining to this report may be addressed to:

Margaret P. Grafeld  
Information and Privacy Coordinator  
Office of IRM Programs and Services  
RPS/IPS, SA-2, Room 5073  
Department of State  
Washington, D.C. 20522-6001  
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This report is available on our web site at <http://foia.state.gov>. Paper copies may be requested by contacting RPS/IPS at the above address.

## **II. How to Make A FOIA Request**

Freedom of Information Act requests must be made in writing and submitted by mail or fax (not e-mail) to RPS/IPS at the address indicated. Requesters must describe the records sought as clearly and precisely as possible, and state their willingness to pay applicable fees or provide justification to support a fee waiver. Requesters should clearly mark their request "Freedom of Information Act Request" and include a daytime telephone number at which they may be reached.

In order for a request to be processed, it must be "perfected." A request is deemed not perfected when unresolved issues exist, such as when the records sought have not been reasonably described or there are unresolved fee issues. RPS/IPS staff will notify the requester of any deficiencies of the request, and advise the requester how to perfect the request.

The Department will respond to requests within 20 days of receipt, advising the requester of the date of receipt, the case number assigned to the request, and whether or not the records sought are under the Department's control. Whenever possible, the request will be processed within 20 working days. It is the Department's policy to release information to the maximum extent possible. However, if some information must be withheld, the requester will be notified of the amount of information withheld, the basis for the withholding and the procedures for appealing the withholding. For more information on making a FOIA request, you may visit our web site at <http://foia.state.gov> or contact RPS/IPS at the address indicated.

### **III. Definitions of Terms and Acronyms Used in the Report**

#### **A. Agency-Specific Terms**

1. RPS/IPS - Deputy Assistant Secretary for Records and Publishing Services, Office of Information Resources Management Programs and Services

#### **B. Basic Terms**

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 to afford maximum access. (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 (non-expedited) 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

Statute Cited	Description of type of information withheld	Has use of statute been upheld in court?
8 USC 1202(f)	Records pertaining to the issuance or refusal of visas to enter the United States	No
22 USC 4004	Records concerning work performance of Foreign Service members	No
5 USC 7301	Records concerning a drug free workplace	No
22 USC 2778	Information concerning arms export licensing cases	<u>Council for a Livable World v. U.S. Department of State,</u> (D.D.C., decided Nov.23, 1998) *
50 USC 403	Protects material regarding nature of agency functions; prohibits release of documents that would endanger the intelligence gathering process	No

\*The statute was upheld, but final court interpretation of the statute is still pending.

**IV. Exemption 3 Statutes (continued)**

<b>Statute Cited</b>	<b>Description of Type of Information Withheld</b>	<b>Has Use of the Statute Been Upheld in Court</b>
18 USC 2518	Information concerning wiretaps	No
50 USC App. 2411 (c)(1)	Confidential information concerning the licensing procedure under the Export Administration Act	No

**V. Initial FOIA/PA Access Requests**

**N.B.** Statistics reported herein are based on data currently available and are accurate to the extent possible. However, not all data required to prepare this report is currently being collected in the Department's requests tracking system. For example, statistics for the medians (section VII) are based on the dates that acknowledgement letters were sent to requesters, and in some cases the dates that requests were received, not on the dates when the requests were perfected (and thus processable) or when expeditious processing was granted. An asterisk indicates that data was not collected in a particular category and, therefore, no statistics are available. Note also that statistics throughout this report include "non perfected" requests pending resolution (fee issues, scope, etc) as well as perfected requests being processed. Lastly, the Department processes requests incrementally, i.e., segments of a case are processed as they become available. Requests in which there have been incremental releases, but which have not been processed to

completion are not reflected in this report. Time is reported in calendar days.

A. Numbers of Initial Requests.

1. Number of requests pending as of end of preceding fiscal year	<u>5,349</u>
2. Number of requests received during current fiscal year	<u>3,716</u>
3. Number of requests processed during current fiscal year	<u>3,824</u>
4. Number of requests pending as of end of current fiscal year	<u>5,241</u>

B. Disposition of Initial Requests.

1. Number of total grants	<u>1203</u>
2. Number of partial grants	<u>817</u>
3. Number of denials	<u>120</u>

a. number of times each FOIA exemption used

Exemption 1	418
Exemption 2	18
Exemption 3	117
Exemption 4	30
Exemption 5	96
Exemption 6	168
Exemption 7 (A)	5
Exemption 7 (B)	1
Exemption 7 (C)	24
Exemption 7 (D)	12
Exemption 7 (E)	11
Exemption 7 (F)	3
Exemption 8	0
Exemption 9	1

4. Other reasons for nondisclosure (total)	<u>1684</u>
a. no records	245
b. referrals	570
(This statistic reflects cases in which all documents were referred to another agency for response and cases in which the request itself should be directed to another agency)	
c. request withdrawn	30
d. fee-related reason*	0
e. records not reasonably described*	0
f. not a proper FOIA request for some other reason	11
g. not an agency record*	0
h. duplicate request	122
i. other (specify)	706
(This statistic reflects requests which were not perfected and/or which were cancelled.)	

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

A. Number of appeals

1. Number of appeals received during fiscal year	<u>133</u>
2. Number of appeals processed during fiscal year	<u>151</u>

B. Disposition of Appeals

1. Number completely upheld	<u>38</u>
2. Number partially reversed	<u>90</u>
3. Number completely reversed	<u>12</u>

a. Number of times each FOIA exemption used

Exemption 1	107
Exemption 2	0
Exemption 3	21
Exemption 4	3
Exemption 5	9
Exemption 6	21
Exemption 7 (A)	0
Exemption 7 (B)	0
Exemption 7 (C)	0
Exemption 7 (D)	0
Exemption 7 (E)	0
Exemption 7 (F)	1
Exemption 8	0
Exemption 9	0

4. Other reasons for nondisclosure (total)	<u>11</u>
a. no records	8
b. referrals	0
c. request withdrawn	3
d. fee-related reason	0
e. records not reasonably described	0
f. not a proper FOIA request for some other reason	0
g. not an agency record	0
h. duplicate request	0
i. other (specify)	0

**VII. Compliance with Time Limits/Status of Pending Requests**

A. Consistent with the amended FOIA, the Department is establishing multiple tracks for processing Freedom of Information Act requests from the public, so as to distinguish more simple requests from more complex requests. At this time, requests can be assigned to the simple/fast or routine/complex tracks. Requests are assigned to a particular tracking queue contingent upon the level of effort required to complete the request; number and location of searches/record sources; and estimated volume of responsive records. We anticipate that an additional track will be initiated for the most voluminous and complex cases sometime in the future. Our efforts to establish this complex track have been hampered by the fact that it is often difficult to assign an appropriate track during the initial processing stage of a request. Since the Department's search function is decentralized, the number and intricacy of responsive documents and amount of other agency concurrences is

unknown until all searches are returned and the review of the documents has been completed. As a result, movement among tracks can become very fluid. A seemingly routine case can quickly become complex as multiple searches are returned with voluminous documents. This type of case activity blurs the line between routine and complex tracks.

Median processing time for FOIA/PA requests processed during the year:

1. Simple Requests - "Fast Track"

a. number of requests processed	<u>387</u>
b. median number of days to process	<u>48</u>

2. Routine/Complex Requests

a. number of requests processed	<u>3,424</u>
b. median number of days to process	<u>308</u>

3. Requests Accorded Expedited Processing

a. number of requests processed	<u>13</u>
b. median number of days to process	<u>168</u>

B. Status of Pending Requests

1. Number of FOIA/PA requests pending as of end of current fiscal year	<u>5,241</u>
2. Median number of days that such requests were pending	<u>543</u>

**IX. Costs/FOIA Staffing**

Data provided in this section reflects only costs and staffing for the Office of IRM Programs and Services, the

Department's central office for processing FOIA/PA requests. We are unable at this time to capture data for decentralized offices or for personnel outside of the Office of IRM Programs and Services who have FOIA/PA duties.

A. Staffing levels

1. Number of full-time FOIA/PA personnel	<u>96</u>
2. Number of personnel with part-time or occasional FOIA/PA duties (in work-years)	<u>28</u>
3. Total number of personnel (in work-years)	<u>124</u>

B. Totals Costs (including staff and all resources) (estimates)

1. FOIA/PA processing (including appeals)	\$ <u>9,943,435</u>
2. Litigation-related activities	\$ <u>60,000</u>
3. Total costs	\$ <u>10,003,435</u>

C. Statement of additional Resources needed for FOIA/PA Compliance

To eliminate the current FOIA backlog and to meet the 20-day timeframe for FOIA responses as required by the E-FOIA amendments, additional funding in the amount of \$5,200,000 is required to cover all personnel costs for FY00 including overtime, WAE and contractor costs.

**X. Fees**

A. Total amount of fees collected for processing requests	<u>5,821.75</u>
B. Percentage of total costs	<u>.06%</u>

## XI. FOIA Regulations

The Department's FOIA regulations are located at 22 CFR 171. Copies may be obtained by visiting our web site at <http://foia.state.gov> or by contacting RPS/IPS at the address given in section I.

The Department's search and review fees are assessed at the following rates:

Administrative/Clerical  (GS-1 through GS-8; or FS-9 through FS-6)	\$8.00/hour
Professional  (GS-9 through GS-13; or FS-5 through FS-3)	\$17.00/hour
Executive  (GS-14 and above; or FS-2 and above)	\$30.00/hour

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IPS/PP:MGPepe  
IPS/CR:FMonroe  
IPS/RL:KMuse  
L/LM:JKropf  
A/RPS:FMMachak