

**U.S. DEPARTMENT OF STATE
FREEDOM OF INFORMATION ACT
ANNUAL REPORT
FISCAL YEAR 2004**

I. Basic Information

In compliance with the Freedom of Information Act Amendments of 1996, the Department of State (hereinafter the "Department") submits the attached report on the Freedom of Information Act program. This report addresses the time period for the 2004 fiscal year (October 1, 2003 to September 30, 2004). Questions pertaining to this report may be addressed to:

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This report is available on our web site at <http://www.foia.state.gov>. Paper copies may be requested by contacting A/RPS/IPS at the above address.

II. How to Make A FOIA Request

Freedom of Information Act (hereinafter "FOIA") requests to the Department can be made in writing and submitted by mail to the Office of Information Programs and Services (hereinafter "IPS") at the address indicated, by fax or via the Department's FOIA website at foia.state.gov/foiareq/foialetter.asp.

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 label their letter as a "Freedom of Information Act Request" on the envelope or on the subject line of their fax, and include a daytime telephone number at which they may be reached. As of August 2004, the Department is receiving FOIA requests through its FOIA website. The new eFOIA request letter allows the public to easily request Department of State records. In addition, the helpful tips provide assistance in formulating the FOIA request.

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 when there are unresolved fee issues. IPS staff will notify the requester of any deficiencies in the request, and advise the requester how to perfect the request.

The Department will respond to requests within 20 working 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. The Department's policy is 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://www.foia.state.gov> or contact IPS at the address indicated.

III. Definitions of Terms and Acronyms Used in the Report

A. Agency-Specific Terms

1. A/RPS/IPS - Bureau of Administration, Deputy Assistant Secretary for Records and Publishing Services, Office of Information Programs and Services.

B. Basic Terms from the U.S. Department of Justice ("FOIA Update," Spring 1997).

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 (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 - 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 the Statute Been Upheld in Court?
5 U.S.C. App.3, § 7(b)	Protects the identity of employees who provide a complaint or information to the Inspector General	No
8 U.S.C. § 1202(f)	Protects records pertaining to the issuance or refusal of visas to enter the United States	<u>Medina-Hincapie v. U.S. Department of State</u> 700 F.2d 737 (D.C. Cir. 1983)
10 U.S.C. § 424	Protects organizational and personnel information for Defense Intelligence Agency, National Reconnaissance Office, and National Imagery and Mapping Agency	No
22 U.S.C. § 2778	Protects information concerning arms export licensing cases	<u>Council for a Livable World Education Fund v. U.S. Department of State</u> Docket #96-1807 (D.D.C. Nov. 23, 1998)
22 U.S.C. § 4004	Protects Foreign Service employee records	No
26 U.S.C. § 6103	Income Tax Act - protects tax returns	<u>Church of Scientology v. IRS</u> , 484 U.S. 9 (1987)
42 U.S.C. § 2011	Protects records defining policy for the development, use and control of atomic and nuclear energy in private, peaceful and military matters	No
50 U.S.C. § 402 <u>note</u> sec. 6	Information regarding National Security Agency activities and personnel	<u>Church of Scientology v. NSA</u> , 610 F.2d 824 (D.C. Cir. 1979)
50 U.S.C. § 403-g	Protects the nature of the CIA's functions and personnel under the Central Intelligence Agency Act	<u>Minier v. CIA</u> 88 F. 3d 796 (9 th Cir. 1996)
50 U.S.C. § 403-3(c)(7)	Protects intelligence sources and methods under the National Security Act	<u>Sims v. CIA</u> 471 U.S. 159 (1985)
50 U.S.C. App. 2411 (c)(1)	Protects confidential information concerning the licensing procedure under the Export Administration Act	<u>Africa Fund v. Mosbacher</u> Docket #92-289 (S.D.N.Y. 5/26/93)
50 U.S.C. § 1701- <u>note</u>	Protects records on arbitration of claims before the Iran-U.S. Claims Tribunal	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 are 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 (as in section B. 4) indicates additional information concerning the data provided. 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 **3008**
2. Number of requests received during current fiscal year **3951**
3. Number of requests processed during current **4963**
4. Number of requests pending as of end of current fiscal year **1996**

B. Disposition of Initial Requests.

1. Number of total grants **837**
2. Number of partial grants **1370**
3. Number of denials **345**
- a. Number of times each FOIA exemption used

Exemption 1	762
Exemption 2	138
Exemption 3	485
Exemption 4	126
Exemption 5	377
Exemption 6	624
Exemption 7 (A)	39
Exemption 7 (B)	2
Exemption 7 (C)	121
Exemption 7 (D)	27
Exemption 7 (E)	50
Exemption 7 (F)	8
Exemption 8	0
Exemption 9	0

4. Other reasons for nondisclosure (total) **2411**

- a. no records **758**
- b. referrals **438** (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 **50**
- d. fee-related reason* **0**
- e. records not reasonably described* **0**
- f. not a proper FOIA request for some other reason **81**
- g. not an agency record* **0**
- h. duplicate request **34**
- i. other (specify) **1050**
(This statistic reflects requests which were not perfected or administratively closed.)

*Data not collected.

VI. Appeals of Initial Denials of FOIA/PA Requests

A. Number of appeals

1. Number of appeals received during fiscal year **368**
2. Number of appeals processed during fiscal year **294**

B. Disposition of Appeals

1. Number completely upheld **100**
2. Number partially reversed **165**
3. Number completely reversed **9**
 - a. Number of times each FOIA exemption used

Exemption 1	197
Exemption 2	9
Exemption 3	39
Exemption 4	10
Exemption 5	78
Exemption 6	69
Exemption 7 (A)	7
Exemption 7 (B)	1
Exemption 7 (C)	10
Exemption 7 (D)	5
Exemption 7 (E)	3
Exemption 7 (F)	2
Exemption 8	0
Exemption 9	0

4. Other reasons for nondisclosure (total) **20**

- a. no records 11
- b. referrals 0
- c. request withdrawn 4
- 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 1
- i. other (specify) **4**
 1. appeal overtaken by litigation: 1
 2. appeal of other agency documents: 2
 3. document under appeal was determined to be non-relevant: 1

VII. Compliance with Time Limits/Status of Pending Requests

A. In accordance with the amended FOIA, the Department has established multiple-tracks for processing FOIA requests for the public so as to distinguish simple requests from complex requests. At this time, requests can be assigned to one of two tracks, the simple/fast track or the routine/complex track. Requests are assigned to a particular tracking queue contingent upon the level of effort required to complete the request, the number and location of searches/record sources, and the estimated volume of responsive records. Assigning a case to an appropriate track is often difficult during the initial processing stage of a request. Since the Department's search function is decentralized, the number and complexity of responsive documents and the amount of other agency concurrences are unknown until all searches are returned and the review of the documents has been completed. As a result, movement between tracks can become very fluid. A seemingly routine case can quickly become complex as searches are returned with voluminous documents. This type of case activity blurs the line between routine and

complex cases, thus, making it impossible to break out the complex track under our current system.

As reported last year, in order to improve response times to new and pending requests and reduce the existing FOIA backlog, additional resources were allocated to the Department's FOIA program for a two-year period. This year the IPS task force, Operation Due Diligence, has completed its FOIA backlog reduction project. The team surpassed its goal of closing 80% of all cases. Over the two-year project cycle, more than 11,500 requests have been completed representing a closure rate of 85%. We have reduced the overall FOIA backlog from 6,214 to fewer than 2,000 cases. The median processing time has decreased by 65% over the last two years. We are confident that the "lessons learned" will enable the Department to keep up with the incoming workload and prevent future backlogs of FOIA requests.

IPS continues to target the following initiatives: 1) reduce the remaining FOIA backlog; 2) prevent future backlogs of information requests by constructing a permanent FOIA workforce infrastructure to keep up with the incoming workload; and 3) identify areas in which procedural improvements can be made and implement process improvements to streamline the FOIA process.

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

1. Simple Requests - "Fast Track"

- a. number of requests processed **1236**
- b. median number of days to process **6**

2. Routine/Complex Requests

- a. number of requests processed **3710**
- b. median number of days to process **209**

3. Requests Accorded Expedited Processing

- a. number of requests processed **17**
- b. median number of days to process **184**

B. Status of Pending Requests

- 1. Number of FOIA/PA requests pending as of end of current fiscal year **1996**
- 2. Median number of days that such requests were pending **189**

VIII. Comparisons with previous year(s) (Optional)

	FY2003	FY 2004	Percentage of Change
A. Comparison of numbers of requests received	3438	3951	14.9% increase
B. Comparison of numbers of requests processed	5773	4963	14.0% decrease**
C. Comparison of median number of days requests were pending as of end of fiscal year	312	189	39.4% decrease

*This figure also includes cases re-opened in FY 2004.

**The 14% decrease in requests processed is a direct result of the completion of the intense two-year backlog reduction effort of Operation Due Diligence. May we note that this remains a 10% increase in requests processed over FY2002.

D. Other statistics significant to Agency:

- 1. Number of requests for expedited processing **95**
- 2. Number of requests granted expedited processing **8**

E. Other Narrative Statements:

1. Training

IPS provides ongoing training for both new employees and IPS staff. Training continues to cover the FOIA amendment (P.L. 107-306) exempting intelligence communities from releasing information to foreign governments. Training also allows for discussion of procedural issues pertaining to FOIA and the implementation of E.O. 12958, and provides guidance on new rules and directives. Also covered are new court decisions and their effect on the Department's FOIA program.

We continue to recruit students from local colleges and universities to provide support in response to FOIA and other document production demands. The students are provided training in the various phases of FOIA and are encouraged to remain as permanent employees after graduation, ensuring a continuous FOIA infrastructure.

2. Public Availability of New Categories of Records

As mandated by the 1996 amendments to the Freedom of Information Act (E-FOIA), IPS has established a web site on the Internet located at

<http://www.foia.state.gov> in part to make new categories of records publicly available. Since its inception in March 1998, the site has developed into an information-rich direct source of Department documents and information. The site encompasses a continuously growing collection of unique records of international significance, which have been made available to the public under the FOIA or as special collections. The site averages over 19 million visitors per month (2 million more per month than last year's report), and typically experiences a huge increase in the number of visits immediately following a release of special document collections. By proactively making declassified record collections available to the requesting public in our electronic reading room, we believe we have reduced the amount of direct FOIA cases received per year. However, this effect is not verifiable.

Special interest collections currently total over 100,000 pages in addition to a continually expanding FOIA library of previously released documents. This year we have added new materials to the collection. As of January 2004, all new International Agreements and International Traffic in Arms Regulations have been added. We have also posted the Kissinger Telephone Transcripts. The collection covers September 1973 to December 1976. This is the first release of 5,700 pages of telephone transcripts that the Department has obtained from the Library of Congress. Additional pages are being coordinated with other agencies and will be posted when the coordination has been completed. The transcripts include records of Dr. Kissinger's role in the Middle East peace process, US-Soviet Union relations, Strategic Arms Limitation Talks (SALT) negotiations, and actions in negotiating a Vietnam peace treaty.

The site also provides a number of aids to help users understand the content of our records and how to access that information; how records are reviewed and processed for release; why some information may continue to be withheld; and what users' appeal rights are. The search engine offers both standard and advanced search capabilities that include full text retrieval of the documents on the site. In addition, the site provides extensive links to other sources of Department records or information. In general, IPS has applied technology to enhance performance and increase the level of satisfaction for our many customers, who include the general public, the White House, the Congress, other Federal agencies, the courts, academia, historians, journalists, attorneys, private interest groups, and the Department's offices and overseas posts.

IX. Costs/FOIA Staffing

As previously reported, the Department has committed resources to establish a dedicated staff exclusively for processing Department of Justice, General Accounting Office, Congressional Committee and other special document requests. We no longer need to divert staffing resources from the central FOIA processing office for these high visibility

cases. With these better-defined staffing roles, we are able to estimate the resources dedicated to FOIA cases more effectively. We have, therefore, refined both our staffing and total costs resources for this reporting period and will continue to do so in future years. The staffing levels reported below also reflect an estimate of those resources in the decentralized FOIA processing bureaus.

1. Number of full-time FOIA/PA personnel **134**
 2. Number of personnel with part-time or occasional FOIA/PA duties (in work-years) **48**
 3. Total number of personnel (in work-years) **182**
- A. Totals Costs (including staff and all resources - estimates)**
1. FOIA/PA processing (including appeals) \$12,656,689
 2. Litigation-related activities \$123,156
 3. Total costs \$ **12,779,845**

X. Fees

- A. Total amount of fees collected for processing requests **\$30,767.03**
- B. Percentage of total costs 0.24%

XI. FOIA Regulations

The Department's FOIA regulations have been revised and are located at 22 CFR 171. These can be found directly at the Government Printing Office's (GPO) website at <http://www.gpoaccess.gov/cfr/index.html> or from links at website at <http://foia.state.gov>.

The Department's search and review fees are basic pay plus 16 percent of basic pay. The cost for duplication of records has been reduced to \$.15 per page.