



**U.S. DEPARTMENT OF STATE**  
**FREEDOM OF INFORMATION ACT**  
**ANNUAL REPORT**  
**FISCAL YEAR 2005**



## **I. Basic Information**

In compliance with 5 U.S.C. § 552(e), the Department of State (hereinafter “the Department”) submits the attached report on its Freedom of Information Act program. This report addresses the time period for fiscal year 2005 (October 1, 2004 to September 30, 2005). Questions about this report may be addressed to:

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U.S. Department of State  
Washington, D.C. 20522-8100  
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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 in one of three ways:

- by mail to the Office of Information Programs and Services at the address indicated at the end of this section;
- by fax to (202) 261-8579; or
- on-line via our website at <http://www.foia.state.gov/foiareq/foialetter.asp>.

Requesters must describe the records they seek 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 envelopes containing requests, or fax subject lines with “Freedom of Information Act Request,” and include a daytime telephone number where we can reach them. Requesters may also make requests through the Department’s FOIA website. The on-line request form allows the public to easily request Department of State records, and the site itself contains helpful tips to assist requesters in formulating their requests.

In order for us to process a request, the request must be “perfected.” An unperfected request is one involving unresolved issues, such as where the description of the records sought is incomplete, or when there are unresolved fee issues. The staff of the Office of Information Programs and Services (hereinafter “IPS”) will notify the requester of any deficiencies in the request, and how to perfect the request.

We will respond to requests promptly to advise 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, we will process the request within twenty working days. The Department's policy is to release information to the maximum extent possible. However, if information must be withheld, the requester will be notified of the amount of information withheld, the basis for the withholding, and how to appeal the withholding. For more information about making a FOIA request, you may visit our web site at <http://www.foia.state.gov>. You may also contact IPS by writing to us at the following address:

Information and Privacy Coordinator  
Office of Information Programs and Services  
A/RPS/IPS, SA-2  
Department of State  
Washington, D.C. 20522-8100

You may also call us at (202) 261-8484.

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

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

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

#### **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 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 - 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 therefore 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	Type of Information Withheld	Statute Upheld in Court?
8 USC § 1202(f)	Protects records pertaining to the issuance or refusal of visas to enter the United States	<i>Medina-Hincapie v. DOS</i> 700 F.2d 737 (DC Cir. 1983)
10 USC § 424	Protects organizational and personnel information for Defense Intelligence Agency, National Reconnaissance Office, and National Imagery and Mapping Agency	<i>Larson v. DOS</i> Docket # 02-1937 (DDC Aug. 10, 2005)
22 USC § 2778	Protects information concerning arms export licensing cases	<i>Council for a Livable World Education Fund v. DOS</i> Docket #96-1807 (DDC Nov. 23, 1998)
22 USC § 4004	Protects Foreign Service employee records	No
41 USC § 253b(m)	Protects contractor proposal solicited by and made to executive agency except for proposal set forth or incorporated by reference in an ensuing contract between the contractor and the soliciting agency	<i>Hornbostel v. DOI</i> 350 F. Supp. 2d 21 (DDC 2003)
42 USC § 2011	Protects records defining policy for the development, use and control of atomic and nuclear energy in private, peaceful and military matters	No
50 USC § 402 note sec. 6	Information regarding National Security Agency activities and personnel	<i>Church of Scientology v. NSA</i> , 610 F.2d 824 (DC Cir. 1979)
50 USC § 403g	Protects the nature of the CIA's functions and personnel under the Central Intelligence Agency Act	<i>Minier v. CIA</i> 88 F. 3d 796 (9 <sup>th</sup> Cir. 1996)
50 USC § 403-3(c)(7)	Protects intelligence sources and methods under National Security Act	<i>Sims v. CIA</i> 471 US 159 (1985)
50 USC § 1701 note	Protects records on arbitration of claims before the Iran-U.S. Claims Tribunal	No

## V. Initial FOIA/PA Access Requests

**N.B.** Statistics reported are based on available data and are accurate to the greatest extent possible. Not all data required to prepare this report are being collected in the Department's requests tracking system. For example, statistics for the medians (section VII) are calculated using as start dates, the dates of acknowledgement letters, and, in some cases, the dates requests were received, instead of the dates on which requests were actually perfected (and thus able to be processed), or when expeditious processing was granted.

The Department typically processes requests incrementally. Thus, as material is retrieved and reviewed, we process it and provide the results to the requester so the requester does not wait until all searching and reviewing is done to receive responsive records. However, when we calculate how long it takes to process a request, incremental releases are not reflected in that calculation. Time is reported in calendar days.

As part of the program review requirements of E.O. 13392, we plan to review our data entry procedures and reports for accuracy and completeness, and, wherever possible, to increase our tracking and reporting capacity.

### A. Numbers of Initial Requests.

1. Number of requests pending as of end of preceding fiscal year	<b><u>1996</u></b>
2. Number of requests received during current fiscal year	<b><u>4602</u></b>
3. Number of requests processed during current fiscal year	<b><u>3870</u></b>
4. Number of requests pending as of end of current fiscal year	<b><u>2728</u></b>

### B. Disposition of Initial Requests.

1. Number of total grants	<b><u>437</u></b>
2. Number of partial grants due to some information being denied under FOIA exemptions	<b><u>905</u></b>
3. Number of denials due to FOIA exemptions	<b><u>199</u></b>

## a. Number of times each FOIA exemption used

<b>Exemption 1</b>	<b>503</b>
<b>Exemption 2</b>	<b>97</b>
<b>Exemption 3</b>	<b>345</b>
<b>Exemption 4</b>	<b>80</b>
<b>Exemption 5</b>	<b>230</b>
<b>Exemption 6</b>	<b>393</b>
<b>Exemption 7 (A)</b>	<b>38</b>
<b>Exemption 7 (B)</b>	<b>0</b>
<b>Exemption 7 (C)</b>	<b>100</b>
<b>Exemption 7 (D)</b>	<b>31</b>
<b>Exemption 7 (E)</b>	<b>37</b>
<b>Exemption 7 (F)</b>	<b>10</b>
<b>Exemption 8</b>	<b>0</b>
<b>Exemption 9</b>	<b>0</b>



4. Other reasons for nondisclosure (total)	<u>2329</u>
a. no records	<u>394</u>
b. referrals	<u>418</u>
(“Referrals” include cases in which all responsive records were referred to originating agencies for direct reply, and in which the entire request was directed to another agency.)	
c. request withdrawn	<u>92</u>
d. fee-related reason*	<u>0</u>
e. records not reasonably described*	<u>0</u>
f. not a proper FOIA request for some other reason	<u>34</u>
g. not an agency record*	<u>0</u>
h. duplicate request	<u>35</u>
i. other (specify)	<u>1356</u>
(“Other” includes cases with unresolved issues related to fees, third-party access and inadequately described records, requests for records not maintained by the Department, requests for records that did not exist, and requests for information in the public domain, which we either provided requesters, or told them how to find.)	

**\*See explanation of “other” category above.**

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

### **A. Number of appeals**

- |   |            |
|---|------------|
| 1. Number of appeals received during fiscal year  | <u>326</u> |
| 2. Number of appeals processed during fiscal year | <u>243</u> |

### **B. Disposition of Appeals**

- |                               |            |
|-------------------------------|------------|
| 1. Number completely upheld   | <u>82</u>  |
| 2. Number partially reversed  | <u>137</u> |
| 3. Number completely reversed | <u>11</u>  |

- a. Number of times each FOIA exemption used in responding to an appeal

<b>Exemption 1</b>	<b>162</b>
<b>Exemption 2</b>	<b>11</b>
<b>Exemption 3</b>	<b>57</b>
<b>Exemption 4</b>	<b>12</b>
<b>Exemption 5</b>	<b>59</b>
<b>Exemption 6</b>	<b>62</b>
<b>Exemption 7 (A)</b>	<b>6</b>
<b>Exemption 7 (B)</b>	<b>1</b>
<b>Exemption 7 (C)</b>	<b>5</b>
<b>Exemption 7 (D)</b>	<b>2</b>
<b>Exemption 7 (E)</b>	<b>2</b>
<b>Exemption 7 (F)</b>	<b>2</b>
<b>Exemption 8</b>	<b>0</b>
<b>Exemption 9</b>	<b>0</b>

4. Other reasons for nondisclosure (total)	<u>13</u>
a. no records	<u>7</u>
b. referrals	<u>0</u>
c. request withdrawn	<u>5</u>
d. fee-related reason	<u>0</u>
e. records not reasonably described	<u>0</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)	<u>0</u>
1) appeal overtaken by litigation:	<u>0</u>
2) appeal of other agency documents:	<u>0</u>
3) document under appeal was determined to be non-relevant:	<u>0</u>

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

A. In accordance with the amended FOIA and Department regulations, the Department may use two or more processing tracks for distinguishing simple requests from more complex requests. Placement in a processing track is based on the degree of effort required to complete a particular request, such as the number of searches and/ or location of record sources, the volume of responsive records, the complexity of the search, the sensitivity of the records, and the need for consultation on the review. The Department's search function is generally centralized but is decentralized for certain bureaus and for contemporary records, so the number and complexity of responsive documents are usually not known until all searches are returned. Similarly, the amount of necessary consultation is unknown until the documents are available for review. As a result, movement between tracks

can be fluid. For example, a seemingly simple case can become complex when searches come back with voluminous amounts of material or particularly sensitive records. We continue to review our processing tracks to find ways to improve and refine them.

Median processing time for FOIA/PA requests processed during the year.\*

1. Simple Requests – “Fast Track”\*

a. number of requests processed	<b><u>1647</u></b>
b. median number of days to process	<b><u>14</u></b>

\* (“Fast Track” cases included requests involving minimal search and review effort, requests for previously released records or records in the public domain, requests that were never perfected, withdrawn requests, and requests for records the Department did not maintain.)

2. Routine/Complex Requests

a. number of requests processed	<b><u>2216</u></b>
b. median number of days to process	<b><u>142</u></b>

3. Requests Accorded Expedited Processing

a. number of requests processed	<b><u>7</u></b>
b. median number of days to process	<b><u>136</u></b>

B. Status of Pending Requests

1. Number of FOIA/PA requests pending as of end of current fiscal year	<b><u>2728</u></b>
2. Median number of days that such requests were pending	<b><u>148</u></b>

\*(Median processing times shown in this report for FY 2005 may be lower than the actual median processing times due to changes in data entry procedures and delays in initial responses in FY 2005 that affected reporting data. We are currently working to rectify this problem.)

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

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

FY 2004 3951  
 FY 2005 4602  
 Percentage of Change: 16.5% increase

### B. Comparison of numbers of requests processed

FY 2004: 4963  
 FY 2005: 3871  
 Percentage of Change: 22.0% decrease

### C. Comparison of median number of days requests were pending as of end of fiscal year:

FY 2004: 189  
 FY 2005: 148  
 Percentage of Change: 21.7% decrease

\*Includes cases that were re-opened in FY 2005.

### D. Other statistics significant to Agency:

- |  |                   |
|--|-------------------|
| 1. Number of requests for expedited processing     | <b><u>170</u></b> |
| 2. Number of requests granted expedited processing | <b><u>7</u></b>   |

### E. Other Narrative Statements:

#### 1. Training

In partnership with the Department of Justice (DOJ), the Department of State hosted a training session for employees with FOIA responsibilities in March 2005. In its *FOIA Post* (<http://www.usdoj.gov/oip/foiapost/2005foiapost5.htm>), DOJ commented that the seminar was the “largest such conference in many years, ... with three days of extensive FOIA training and related sessions, the most offered by any agency in an annual or biennial FOIA conference.” More than 200 participants received two days of FOIA/PA training with special emphasis on Department-related issues, and one day of panel presentations from the requester community, including representatives from the National Security Archive, Reporters Committee for Freedom of the Press, the Electronic Privacy Information Center, and the Canadian Embassy.

IPS also provides ongoing training for both new employees and staff. Training continues to cover the 2002 FOIA amendment (P.L. 107-306 codified at 5 U.S.C. § 552(a)(3)(A),(E)) exempting intelligence communities from releasing information to foreign governments. Training also allows for discussion of FOIA procedural issues and the implementation of E.O. 12958 (Classified National Security Information), and provides guidance on new rules and directives. Also covered are new court decisions and their effect on the Department's FOIA program.

IPS continues to recruit students from local colleges and universities to provide support in response to FOIA requests and other document production demands. The students are trained in the various phases of FOIA request processing and are encouraged to remain as permanent employees after graduation, to support continuity in the infrastructure.

## 2. Public Availability of New Categories of Records

As mandated by the 1996 amendments to the Freedom of Information Act (E-FOIA) to make new categories of records publicly available, IPS established a web site on the Internet at <http://www.foia.state.gov>. Since its inception in March 1998, the site has developed into an information-rich, direct source for Department documents and information.

The site encompasses a large collection of unique records of international significance that have been made available to the public under the FOIA, or as special collections. The site averages almost 240 million visitors annually (one million more per month than the previous year), and that number tends to spike immediately following the release of a special collection. By proactively making declassified records available to the public in our electronic Reading Room, we had hoped to reduce the number of new requests. However, since we began accepting on-line requests via our website approximately two years ago, we have experienced annual increases in the number of new requests received, as discussed in paragraph number 3 below.

Special interest collections currently total over 100,000 pages in addition to previously released FOIA documents. We continue to post new International Agreements and International Traffic in Arms Regulations.

We also continue to post additional Kissinger Telephone Transcripts, dating from September 1973 to December 1976, for which the Department has completed coordination with other agencies. 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 provides a number of aids to help users understand the content of our records and how to access them; how records are reviewed and processed for release; why some information may continue to be withheld; and appeals procedures. 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. 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 Department offices and overseas posts.

### 3. Backlog Reduction

As previously reported, additional resources were allocated to the FOIA program for approximately two years beginning in FY 2002 to fund a project to improve response times, and reduce the request backlog. At the end of the project, IPS had surpassed its goal of closing 80 percent of all cases and closed nearly 85 percent. The backlog was reduced from 6,214 to below 2,000 cases at the end of FY 2004. At the end of FY 2005, the backlog had risen to about 2,700 cases. We believe this increase is due to some long-term and short-term factors, including annual increases of 15 – 17 percent in the number of requests received since the initiation of the on-line FOIA request form on our website, which number increases to 19 – 26 percent if limited to FOIA/PA requests made directly to the Department. This has meant that, in a two-year period, the number of new direct FOIA/PA requests received by the Department has increased by about 50 percent. In addition, IPS experienced an eight (8) percent cut in its funding allotment for FY 2005, which is the allotment from which salaries of reviewer, technology and support staff are paid. IPS also has had to divert FOIA reviewer staff to work on systematic review in order to reach the mandatory deadline of Executive Order 12958 (Classified National Security Information) to review 25 year-old records by December 2006.

### 4. Process Improvement Initiatives

Based on the success of the Backlog Reduction project, IPS realigned its workforce and organizational structure at the beginning of FY 2006 to address

other business requirements, including records management, privacy, classification management, and historical records declassification. Some organizations within IPS were expanded, while others were consolidated. Although these changes have resulted in a temporary slowdown in initial receipt and case processing productivity, we anticipate this situation to be mitigated by streamlining measures designed from “lessons learned” in the backlog reduction project, and by allowing employees to have input as to which activities they were reassigned.

IPS also has launched an initiative to achieve certification under the ISO 9000 quality management standard. This internationally recognized standard requires that an organization create and maintain full, complete, and accurate documentation of its work procedures. The documentation is then audited by an external auditing entity for certification. The branch within IPS that serves as the initial point of receipt for incoming FOIA requests is the first IPS component to participate in this initiative. Procedures surrounding the validity of a FOIA request, expedited processing determinations, and the granting or denial of fee waivers have been reviewed and documented to ensure that these determinations are made in a consistent manner and in full conformance with our published regulations. Participation in the ISO 9000 initiative has already achieved documented results in producing more comprehensive communications at the initial processing stage in FOIA and Privacy cases.

## **IX. Costs/FOIA Staffing**

As previously reported, the Department has committed resources to establish a dedicated staff for responding to special document demands, such as requests from the Department of Justice, Government Accountability Office, Congressional Committees and others. We no longer need to divert FOIA staff to work on these high visibility cases, which helps us to better estimate the resources dedicated to FOIA activities. In addition, the realignment of the IPS workforce and organizational structure discussed above has had a short-term impact on productivity, but is expected to increase performance in the long-term. Staffing levels reported below reflect estimates of both IPS staff resources and staff resources in departmental bureaus that maintain decentralized records and also perform FOIA case processing activities. However, the Department continues to experience budget cuts, which will continue to impact our FOIA reviewer, technology and support staff.



**Staffing levels**

- |  |                   |
|--|-------------------|
| 1. Number of full-time FOIA/PA personnel   | <b><u>85</u></b>  |
| 2. Number of personnel with part-time or occasional FOIA/PA duties (in work-years) | <b><u>58</u></b>  |
| 3. Total number of personnel (in work-years)                                       | <b><u>143</u></b> |

**A. Totals Costs (including staff and all resources - estimates)**

- |   |                            |
|---|----------------------------|
| 1. FOIA/PA processing (including appeals) | <b><u>\$9,926,300</u></b>  |
| 2. Litigation-related activities          | <b><u>\$176,800</u></b>    |
| 3. Total costs                            | <b><u>\$10,103,100</u></b> |

**X. Fees**

- |   |                           |
|---|---------------------------|
| A. Total amount of fees collected for processing requests | <b><u>\$15,217.81</u></b> |
| B. Percentage of total costs                              | <b><u>0.15%</u></b>       |

**XI. FOIA Regulations**

The Department's FOIA regulations have been revised and codified at *22 CFR, Part 171*. These regulations are available through the Government Printing Office's (GPO) website at <http://www.gpoaccess.gov/cfr/index.html> or from links at our website at <http://www.foia.state.gov>.

Search and review fees are assessed at the rate of basic pay for the individual performing the activity, plus 16 percent. Paper copies are assessed at the rate of \$0.15 per page. For all other copies, including electronic media, the Department assesses the actual cost of reproduction.