

**ANNUAL REPORT
OF THE
U.S. OFFICE OF SPECIAL COUNSEL (OSC)
ON
FREEDOM OF INFORMATION ACT (FOIA) ACTIVITIES
FOR FISCAL YEAR 1999**

I. BASIC INFORMATION REGARDING THIS REPORT

- A. OSC contact person for questions about this report: Marlene A. Cleaveland, FOIA Officer, U.S. Office of Special Counsel, 1730 M Street, N.W., Suite 300, Washington, D.C. 20036-4505, telephone (202) 653-8971.
- B. Electronic address for report on World Wide Web: <http://www.osc.gov>.
- C. Requesting a paper copy of this report: download from OSC website (see I.B. above) or request it from OSC contact person (see I.A. above).

II. HOW TO MAKE A FOIA REQUEST

- A. Names, addresses, and telephone numbers of all individual agency components and offices that receive FOIA requests: Marlene A. Cleaveland, FOIA Officer, U.S. Office of Special Counsel, Planning and Advice Division, 1730 M Street, N.W., Suite 300, Washington, D.C. 20036-4505; telephone (202) 653-8971; fax (202) 653-5161.
- B. Brief description of agency's response-time ranges: median processing time is 130 days.
- C. Brief description of why some requests are not granted:

OSC is an investigative and prosecutorial agency. Most requests concern records maintained in OSC's case files, involving allegations of prohibited personnel practices against federal agencies and employees (including retaliation for whistleblowing); whistleblower allegations of fraud, waste, or abuse; and allegations of prohibited political activity (*i.e.*, Hatch Act violations) against federal, state, or local government employees. These records, consisting of investigatory material compiled for law enforcement purposes by or under the supervision of attorneys, are maintained in a system of records subject to the Privacy Act. OSC has exempted its system of records from the Privacy Act's access provisions in accordance with section 552a(k) of that law. For that reason, most requests for these records are exempt from disclosure to first-parties (complainants or subjects) under the Privacy Act, but

small portions may be releasable to them under the FOIA. Requests for these records by third parties (individuals other than complainants or subjects) are typically denied because the records were compiled for a law enforcement purpose, and because disclosure could reasonably be expected to result in an unwarranted invasion of the personal privacy of the individuals identified in the records under 5 U.S.C. § 552(b)(7)(C). Additionally, all parties are denied access under 5 U.S.C. § 552(b)(5), as appropriate, for records that are either subject to the attorney work product privilege or subject to the deliberative process privilege because they contain evidence of OSC's predecisional, deliberative process.

III. DEFINITION OF TERMS AND ACRONYMS USED IN THIS REPORT

A. Agency-specific acronyms and other terms:

1. OSC - U.S. Office of Special Counsel
2. FOIA - Freedom of Information Act (5 U.S.C. § 552)
3. PA - Privacy Act (5 U.S.C. § 552a)
4. FY - Fiscal Year (October 1 through September 30)

B. Basic Terms:

1. FOIA/PA Request - Freedom of Information Act/Privacy Act request. A FOIA request is generally a request for disclosure of records concerning a third party, an organization, or a particular topic of interest. A Privacy Act request is a request for records covered by that Act concerning oneself; such requests are also treated as FOIA requests. (All requests for records, regardless of which law is cited by the requester, are included in this report.)
2. Initial Request - A request to OSC for records under the Freedom of Information Act.
3. Appeal - A request to OSC asking that for review at a higher administrative level of a full denial or partial denial of a FOIA request, or any other FOIA determination, such as a decision pertaining to fees.
4. Processed Request or Appeal - A request or appeal for which OSC has taken a final action on the request or appeal in all respects.

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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. OSC does not have multi-track processing. A requester who has an urgent need for records may request expedited processing (see III.B.6 below).
6. **Expedited Processing** - OSC will process a FOIA request on an expedited basis when a requester has shown an exceptional need or urgency for the records which warrants giving his or her request priority over other records that were made earlier. OSC may also process, on an expedited basis, requests for records that are easily retrievable or not covered, in whole or in part, by one or more of FOIA's nine exemptions.
7. **Simple Request** - A FOIA request that a federal agency using multi-track processing places in its fastest (non-expedited) track based on the volume and/or simplicity of records requested. As noted, OSC does not have multi-track processing.
8. **Complex Request** - A FOIA request that a federal agency using multi-track processing places in a slower track based on the volume and/or complexity of records requested. As noted, OSC does not have multi-track processing.
9. **Grant** - An OSC decision to disclose all records in full in response to a FOIA request or FOIA appeal.
10. **Partial Grant** - An OSC decision to disclose a record in part in response to a FOIA request or FOIA appeal, redacting 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 OSC decision not to release any part of a record or records in response to a FOIA request or FOIA appeal because all the information in the requested records by OSC 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 or because the requester sought answers to questions instead of actual records or sought a creation of a record).

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12. **Time Limits** - The time period in the FOIA 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 OSC's FOIA office, 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.
17. **Working Days** - Days excepting Saturdays, Sundays, and legal public holidays.

IV. EXEMPTION 3 STATUTES RELIED ON BY OSC DURING FISCAL YEAR 1999: None

V. INITIAL FOIA/PA ACCESS REQUESTS

A. Numbers of Initial Requests

1. Numbers of requests pending as of the end of the preceding fiscal year: 68
2. Numbers of requests received during current fiscal year: 135
3. Number of requests processed during current fiscal year: 139
4. Number of requests pending as of the end of current fiscal year: 64

B. Disposition of Initial Requests

1. Number of total grants: 26
2. Number of partial grants: 31

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3. Number of denials: 73
 - a. Number of times each FOIA exemption used (counting each exemption once per request):
 - (1) Exemption 1: 0
 - (2) Exemption 2: 28
 - (3) Exemption 3: 0
 - (4) Exemption 4: 0
 - (5) Exemption 5: 71
 - (6) Exemption 6: 3
 - (7) Exemption 7(A): 9
 - (8) Exemption 7(B): 0
 - (9) Exemption 7(C): 78
 - (10) Exemption 7(D): 0
 - (11) Exemption 7(E): 0
 - (12) Exemption 7(F): 0
 - (13) Exemption 8: 0
 - (14) Exemption 9: 0
4. Other reasons for nondisclosure in whole or in part (total): 31
 - a. No records: 5
 - b. Referrals: 4
 - c. Request withdrawn: 0
 - d. Fee-related reason: 0

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- 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): 22
 - 1) files destroyed prior to FOIA request in accordance with National Archives Records Administration (NARA) guidelines: 10
 - 2) request misdirected: 1
 - 3) file misplaced: 1
 - 4) questions posed as FOIA request(s) (not request for actual records): 3
 - 5) neither confirm nor deny existence of records: 7

VI. APPEALS OF INITIAL DENIALS OF FOIA/PA REQUESTS

A. Number of appeals

- 1. Number of appeals pending at the end of preceding fiscal year: 6
- 2. Number of appeals received during current fiscal year: 9
- 3. Number of appeals processed during current fiscal year: 8
- 4. Number of appeals pending at end of current fiscal year: 7

B. Disposition of Appeals

- 1. Number completely upheld: 3
- 2. Number partially reversed: 5
- 3. Number completely reversed: 0
 - a. Number of times each FOIA exemption used (counting each exemption once per appeal):
 - (1) Exemption 1: 0
 - (2) Exemption 2: 0

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- (3) Exemption 3: 0
- (4) Exemption 4: 0
- (5) Exemption 5: 1
- (6) Exemption 6: 0
- (7) Exemption 7(A): 1
- (8) Exemption 7(B): 0
- (9) Exemption 7(C): 4
- (10) Exemption 7(D): 0
- (11) Exemption 7(E): 0
- (12) Exemption 7(F): 0
- (13) Exemption 8: 0
- (14) Exemption 9: 0

4. Other reasons for nondisclosure in whole or in part (total):

- a. No records: 0
- b. Referrals: 0
- c. Request withdrawn: 0
- 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

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- i. Other (specify): 0

VII. COMPLIANCE WITH TIME LIMITS/STATUS OF PENDING REQUESTS

A. Median processing time for requests processed during FY 99

- 1. Total for all requests (note: OSC does not have multi-track processing):
 - a. Number of requests processed: 139
 - b. Median number of days to process: 130
- 2. Requests accorded expedited processing: 0
 - a. Number of requests processed: 0
 - b. Median number of days to process: 0

B. Status of pending requests as of the end of FY 99

- 1. Number of requests pending as of the end of FY 99: 64
- 2. Median number of days such requests were pending as of end of FY 99: 34

VIII. COSTS/FOIA STAFFING

A. Staffing levels

- 1. Number of full-time FOIA personnel: 0
- 2. Number of personnel with part-time or occasional FOIA duties (in total work-years): 1
- 3. Total number of personnel (in work-years): 1

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B. Total costs (including staff and all resources)

1. FOIA processing (including requests and appeals): \$44,142.62
2. Litigation-related activities: 0
3. Total costs: \$44,142.62

X. FEES

- A. Total amount of fees collected by OSC for processing requests: 0
- B. Percentage of total costs: 0

XI. REGULATIONS (INCLUDING FEE SCHEDULE)

OSC's FOIA regulation, including a fee schedule, is codified at 5 C.F.R. § 1820. (A copy is attached.) OSC has also included information on processing FOIA requests at its web site, www.osc.gov, as required by the Electronic FOIA Amendments of 1996.

Attachment