

U.S. Agency for International Development Freedom of Information Act Annual Report Fiscal Year 2012

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I. Basic Information Regarding Report

A. Name, title, address, and telephone number of person to contact with questions about the report.

Sylvia Lankford FOIA Team Leader 1300 Pennsylvania Avenue, N.W. Ronald Reagan Building, Rm. 2.07C Washington, D.C. 20523-2701 (202) 712-0879

or

Kimberly Frazier Sr. Government Information Specialist 1300 Pennsylvania Avenue, N.W. Ronald Reagan Building, Rm. 2.07C Washington, D.C. 20523-2701 (202) 712-1218

B. Electronic address for report on the World Wide Web

http://www.usaid.gov/foia-requests/foia-annual-reports

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

U.S. Agency for International Development
Bureau for Management
Office of Management Services 1300 Pennsylvania Avenue, N.W.
Information and Records Division (M/MS/IRD)
1300 Pennsylvania Avenue, N.W.
Ronald Reagan Building, Room 2.07C
Washington, D.C. 20523-2701

II. How to Make a FOIA Request

You may submit FOIA requests in writing, by fax, or by e-mail describing the records you would like to obtain. Include an agreement to pay any FOIA processing fees, your address and telephone number. Please mark your envelope with the notation, "FOIA REQUEST."

You may fax your request. Our fax number is (202) 216-3070. You may e-mail your request to our FOIA Mailbox at <u>foia@usaid.gov</u>. When you e-mail your request please make sure that you include a mailing address.

If you fax your request, you normally do not have to mail us the original copy. However, there are some cases in which we need both the faxed version and the signed original version. You should send both versions if your request is both a FOIA request and a Privacy Act request for records about you. We also need both versions if a third-party (an attorney, for example) requests records about you on your behalf. When a third-party makes such a request on your behalf, we need an original consent letter signed by you which gives us authorization to release records about you to the third-party.

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

Initial Requests:

U.S. Agency for International Development FOIA Team – M/MS/IRD 1300 Pennsylvania Avenue, N.W Ronald Reagan Building Room 2.07C Washington, D.C. 20523-2701 Telephone: 202-712-0960

Facsimile: 202-216-3070

E-mail address: FOIA@usaid.gov

Appeals:

U.S. Agency for International Development Director, Office of Management Services 1300 Pennsylvania Avenue, N.W. Ronald Reagan Building, Room 2.12-010 Washington, D.C. 20523-4601

Telephone: 202-712-4410 Facsimile: 202-216-3369

2. Description of why some requests are not granted.

In some cases, USAID was required to withhold requested information under one or more of the FOIA's exemptions. The number of instances in which USAID used an exemption in Fiscal Year 2012 is listed in Section V.B.3. Exemption 2 was used to protect information solely related to internal personnel rules or practices. Exemptions 3 and/or 4 were normally used to protect commercial or financial information provided by contractors and grantees. Exemption 5 was used to protect vital deliberative-process information or attorney-client information. Exemption 6 was used to protect the privacy of individuals named in documents. Exemption 7 was used to protect information that could be reasonably expected to interfere with law enforcement proceedings, the privacy of individuals named in documents, the

identity of a confidential source, techniques and procedures of a law enforcement investigation, and endanger the life or physical safety of any individual. At times, a request was not fulfilled for an administrative reason such as "no records" or "request withdrawn." For a more complete listing of the various types of administrative reasons, see Section V.B.2.

III. Acronyms, Definitions, and Exemptions

1. Agency-specific acronyms or other terms

USAID - U.S. Agency for International Development

- 2. Basic terms, expressed in common terminology.
 - **a. Administrative Appeal** a request to a federal agency asking that it review at a higher administrative level a FOIA determination made by the agency at the initial request level.
 - **b. 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.
 - **c. Backlog** the number of requests or administrative appeals that are pending at an agency at the end of the fiscal year that are beyond the statutory time period for a response.
 - **d.** 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.
 - **e. 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).
 - **f.** Exemption 3 Statute a federal statute that exempts information from disclosure and which the agency relies on to withhold information under subsection (b)(3A) of the FOIA.
 - **g. 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.
 - **h. 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.)
- **i. Grant** an agency decision to disclose all records in full in response to a FOIA request.
- **j. Initial Request** a request to a federal agency for access to records under the Freedom of Information Act.
- **k. Median Number** the middle, not average, number. For example, of 3, 7, and 14, the median number is 7.
- 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).
- **m. Partial Grant/Partial Denial** in response to a FOIA request, an agency decision to disclose portions of the records and to withhold other portions that are exempt under the FOIA, or to otherwise deny a portion of the request for a procedural reason.
- n. Pending Request or Pending Administrative Appeal a request or administrative appeal for which an agency has not taken final action in all respects.
- **o. Perfected Request** a request for records which reasonably describes such records and is made in accordance with published rules stating the time, place, fees (if any) and procedures to be followed.
- p. Processed Request or Processed Administrative Appeal a request or administrative appeal for which an agency has taken final action in all respects.
- **q. 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.
- **r. 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).
- 3. Concise descriptions of the nine FOIA exemptions.
 - **a.** Exemption 1: classified national defense and foreign relations information

- **b.** Exemption 2: information that is related solely to the internal personnel rules and practices of an agency
- **c. Exemption 3:** information that is prohibited from disclosure by another federal law
- **d.** Exemption 4: trade secrets and other confidential business information
- **e. Exemption 5:** inter-agency or intra-agency communications that are protected by legal privileges
- **f. Exemption 6:** information involving matters of personal privacy
- g. Exemption 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 person 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 investigations 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
- **h.** Exemption 8: information relating to the supervision of financial institutions
- i. Exemption 9: geological information on wells

IV. Exemption 3 Statutes

| Statute | Type of Information Withheld | Case Citation | Total Number of Times Relied upon by Agency |
|--|--|---|---|
| 26 U.S. C. § § 6103, 6105 (Internal Revenue Code) | Certain tax return information and certain tax convention information | Church of Scientology v. IRS, 484 U.S. 9,15 (1987); Pac. Fisheries, Inc. v. IRS, 395 F. App'x. 438, 440 (9th Cir. 2010) (unpublished disposition) (26 U.S.C. §§ 6103, 6105); Tax Analysts v. IRS, 217 F. Supp. 2d 23, 27-29 (D.D.C. 2002) (26 U.S.C. § 6105) | 45 |
| 41 U.S.C. § 253b(m)(1) | Contractor proposals that are in the possession or control of an executive agency and that have not been set forth or incorporated by reference into contracts | Sinkfield v. HUD, No. 10-885, 2012 U.S. Dist. LEXIS 35233, at *13-15 (S.D. Ohio Mar. 15, 2012); Hornbostel v. U.S. Dep't of the Interior, 305 F. Supp. 2d 21, 30 (D.D.C. 2003), summary affirmance granted, No. 03-5257, 2004 WL 1900562 (D.C. Cir. Aug. 25, 2004). | 9 |

V. FOIA Requests

A. Received, Processed and Pending FOIA Requests

| | Number of Requests Pending as of Start of Fiscal Year | Number of Requests Received in Fiscal Year | Number of Requests Processed in Fiscal Year | Number of Requests Pending as of End of Fiscal Year |
|-------------------|---|---|--|---|
| Agency Overall | 248* | 267 | 295 | 220 |

B. (1) Disposition of FOIA Requests - All Processed Requests

| Number of Full Grants | Number of Partial Grants/Partial Denials | Number of Full Denials Based on Exemptions | | | | | | | | | | |
|-----------------------------|---|--|---------------|---|----------------------|---------------------------|---|-----------------------------|----------------------------|----------------------|--------------------------------|-------|
| | | | No Records | All Records Referred to Another Component or Agency | Request Withdrawn | Fee- Related Reason | Records not Reasonably Described | Improper FOIA Request | Not An Agency Record | Duplicate Request | Other *Explain in chart below | Total |
| 53 | 122 | 10 | 39 | 4 | 40 | 3 | 0 | 2 | 2 | 3 | 17 | 295 |

^{*}FY-11 reported 256 requests pending which included all requests received. The FY-12 pending requests begins with eight (8) less than the FY-11 total which now excludes requests that were previously on hold.

B. (2) Disposition of FOIA Requests - "Other" Reasons for "Full Denials Based on Reasons Other than Exemptions"

| Description of "Other" Reasons for Denials from Chart B (1) & Number of Times Those Reasons Were Relied upon | Total |
|---|-------------------|
| No response from requester Request for future records Request document not responsive Final response letter returned | 14 1 1 1 |

B. (3) Disposition of FOIA Requests - Number of Times Exemptions Applied

| | (b)(1) | (b)(2) | (b)(3) | (b)(4) | (b)(5) | (b)(6) | (b)(7)(A) | (b)(7)(B) | (b)(7)(C) | (b)(7)(D) | (b)(7)(E) | (b)(7)(F) | (b)(8) | (b)(9) |
|-----------------|--------|--------|--------|--------|--------|--------|-----------|-----------|-----------|-----------|-----------|-----------|--------|--------|
| Agency Total | 0 | 4 | 53 | 87 | 18 | 81 | 1 | 0 | 5 | 1 | 2 | 1 | 0 | 0 |

VI. Administrative Appeals of Initial Determinations of FOIA Requests

A. Received, Processed and Pending Administrative Appeals

| Number of Appeals | Number of Appeals | Number of Appeals | Number of Appeals |
|---------------------|--------------------|---------------------|-------------------|
| Pending as of Start | Received in Fiscal | Processed in Fiscal | Pending as of End |
| of Fiscal Year | Year | Year | of Fiscal Year |
| 23 | 18 | 5 | 36 |

B. Disposition of Administrative Appeals - All Processed Appeals

| Number | Number Partially | Number Completely | Number of | |
|-------------|-------------------|-------------------|---------------|-------|
| Affirmed on | Affirmed & | Reversed/Remanded | Appeals | |
| Appeal | Partially | on Appeal | Closed for | Total |
| | Reversed/Remanded | • • | Other Reasons | |
| | on Appeal | | | |
| 3 | 0 | 0 | 2 | 5 |

C. (1) Reasons for Denial on Appeal - Number of Times Exemptions Applied

| (b)(1) | (b)(2) | (b)(3) | (b)(4) | (b)(5) | (b)(6) | (b)(7)(A) | (b)(7)(B) | (b)(7)(C) | (b)(7)(D) | (b)(7)(E) | (b)(7)(F) | (b)(8) | (b)(9) |
|--------|--------|--------|--------|--------|--------|-----------|-----------|-----------|-----------|-----------|-----------|--------|--------|
| 0 | 0 | 0 | 1 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

C. (2) Reasons for Denial on Appeal - Reasons Other than Exemptions

| No Record | Records Referred at Initial Request Level | Request Withdrawn | Fee- Related Reason | Records not Reasonably Described | Improper Request for Other Reasons | Not Agency Record | Duplicated Request or Appeal | Request in Litigation | Appeal Based Solely on Denial of Request for Expedited Processing | Other *Explain in chart below | Total |
|--------------|---|----------------------|---------------------------|---|---|-------------------------|------------------------------------|-----------------------------|---|--------------------------------|-------|
| 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 2 |

C. (3) Reasons for Denial on Appeal - "Other" Reasons

| Description of "Other" Reasons for Denial on Appeal from Char C(2) & Number of Times Those Reasons Were Relied upon | Total |
|---|-------|
| Referrals | 1 |
| Administrative error (wrong requester) | 1 |

C. (4) Response Time for Administrative Appeals

| Median Number of Days | Average Number of Days | Lowest Number of Days | Highest Number of Days |
|-----------------------|------------------------|-----------------------|------------------------|
| 58 | 216.60 | <1 | 885.00 |

C. (5) Ten Oldest Pending Administrative Appeals

| | 10 th Oldest Appeal | 9th | 8th | 7th | 6th | 5th | 4th | 3rd | 2nd | Oldest Appeal |
|-----------------|--------------------------------------|------------|------------|------------|------------|------------|------------|------------|------------|------------------|
| Date | 08/23/2010 | 08/05/2010 | 02/18/2010 | 01/22/2010 | 09/09/2009 | 08/07/2009 | 07/10/2009 | 06/30/2009 | 11/14/2008 | 02/01/2008 |
| Days Pending | 528 | 540 | 658 | 676 | 767 | 789 | 809 | 816 | 971 | 1170 |

VII. *FOIA Requests: Response Time for Processed and Pending Requests

A. Processed Requests - Response Time for All Processed Perfected Requests

| | | Sim | ıple | | | Com | plex | | | Expedited | Processing | 5 |
|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|-----------|------------|---------|
| | Median | Average | Lowest | Highest | Median | Average | Lowest | Highest | Median | Average | Lowest | Highest |
| | Number | Number | Number |
| | of Days | of Days | of Days |
| Agency | 73 | 163.02 | 2 | 759 | 145 | 280.2 | <1 | 1500 | 59 | 154.12 | 12 | 487 |
| Overall | | | | | | | | | | | | |

B. Processed Requests - Response Time for Perfected Requests in Which information Was Granted

| | | Sin | nple | | | Com | plex | | | Expedited | Processing | , |
|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|-----------|------------|--------------|
| | Median | Average | Lowest | Highest | Median | Average | Lowest | Highest | Median | Average | Lowest | Highest |
| | Number | Number | Number |
| | of Days | of Days | of Days |
| Agency | 79.5 | 164.47 | 2 | 759 | 144 | 256.44 | 4 | 1500 | 59 | 154.12 | 12 | 487 |
| Overall | | | | | | | | | | | | |

C. Processed Requests - Response Time in Day Increments

Simple Request

| | <1 | 1-20 | 21-40 | 41-60 | 61-80 | 81-100 | 101-120 | 121-140 | 141-160 | 161-180 | 181 - 200 | 201-300 | 301-400 | 401 + | |
|-------------------|-----|------|-------|-------|-------|--------|---------|---------|---------|---------|-----------|---------|---------|-------|-------|
| | Day | Days | Days | Days | Days | Days | Days | Days | Days | Days | Days | Days | Days | Days | Total |
| Agency Overall | 0 | 18 | 5 | 3 | 5 | 2 | 1 | 0 | 1 | 3 | 2 | 4 | 6 | 7 | 57 |

Complex Request

| | <1 | 1-20 | 21-40 | 41-60 | 61-80 | 81-100 | 101-120 | 121-140 | 141-160 | 161-180 | 181 - 200 | 201- 300 | 301-400 | 401 + | |
|-------------------|-----|------|-------|-------|-------|--------|---------|---------|---------|---------|-----------|----------|---------|-------|-------|
| | Day | Days | Days | Days | Days | Days | Days | Days | Days | Days | Days | Days | Days | Days | Total |
| Agency Overall | 10 | 17 | 18 | 21 | 21 | 11 | 8 | 6 | 8 | 5 | 4 | 16 | 18 | 67 | 230 |

Requests Granted Expedited Processing

| | <1 | 1-20 | 21-40 | 41-60 | 61-80 | 81-100 | 101-120 | 121-140 | 141-160 | 161-180 | 181 - 200 | 201- 300 | 301-400 | 401 + | |
|-------------------|-----|------|-------|-------|-------|--------|---------|---------|---------|---------|-----------|----------|---------|-------|-------|
| | Day | Days | Days | Days | Days | Days | Days | Days | Days | Days | Days | Days | Days | Days | Total |
| Agency Overall | 0 | 1 | 1 | 2 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 8 |

D. Pending Requests - All Pending Perfected Requests

| | | Simple | | | Complex | | Expe | dited Proce | ssing |
|-------------------|---------|---------|---------|---------|---------|---------|---------|-------------|---------|
| | | Median | Average | | Median | Average | | Median | Average |
| | Number | Number |
| | Pending | of Days | of Days | Pending | of Days | of Days | Pending | of Days | of Days |
| Agency Overall | 22 | 261.5 | 266.27 | 187 | 214 | 270.67 | 2 | 358 | 358 |

E. Pending Requests - Ten Oldest Perfected Requests

| Agency Overall | 10 th Oldest Request and Number of Days Pending | 9th | 8th | 7 th | 6th | 5th | 4th | 3rd | 2nd | Oldest Request and Number of Days Pending |
|-------------------|---|------------|------------|-----------------|------------|------------|------------|------------|------------|--|
| | 09/15/2009 | 08/17/2009 | 08/04/2009 | 07/23/2009 | 07/15/2009 | 03/13/2009 | 02/24/2009 | 05/01/2008 | 04/28/2008 | 04/21/2008 |
| | 763 | 783 | 792 | 800 | 806 | 892 | 905 | 1107 | 1110 | 1115 |

VIII. Requests for Expedited Processing and Requests for Fee Waiver

A. Requests for Expedited Processing

| | Number Granted | Number Denied | Median Number of Days to Adjudicate | Average Number of Days to Adjudicate | Number Adjudicated Within Ten Calendar Days |
|-------------------|-------------------|------------------|--|---|--|
| Agency Overall | 5 | 1 | <1 | 2.17 | 5 |

B. Requests for Fee Waiver

| | Number Granted | Number Denied | Median Number of Days to Adjudicate | Average Number of Days to Adjudicate |
|---------|----------------|---------------|---|--|
| Agency | 5 | 0 | <1 | <1 |
| Overall | | | | |

IX. FOIA Personnel and Costs

| | Personnel | [| | Cos | sts | |
|-------------------|------------|-------------|------------|----------------|-------------|--------------------|
| | | Number of | | | | |
| | Number of | "Equivalent | Total | | | |
| | "Full-Time | Full-Time | Number of | | Litigation- | |
| | FOIA | FOIA | "Full-Time | Processing | Related | |
| | Employees" | Employees" | FOIA Staff | Costs | Costs | Total Costs |
| Agency Overall | 9 | 4 | 13.00 | \$1,192,789.43 | \$0 | \$1,192,789.43 |

X. Fees Collected for Processing Requests

| | Total Amount of Fees Collected | Percentage of Total Costs |
|----------------|---------------------------------------|---------------------------|
| Agency Overall | \$8,477.93 | 0.71 |

XI. FOIA Regulations

The U.S. Agency for International Development's FOIA regulations and fee schedule are located at http://www.usaid.gov/foia-requests/foia-regulations

XII. Backlogs, Consultations, and Comparisons

A. Backlogs of FOIA Requests and Administrative Appeals

| | Number of Backlogged | Number of Backlogged |
|----------------|------------------------------|-----------------------------|
| | Requests as of End of Fiscal | Appeals as of End of Fiscal |
| | Year | Year |
| Agency Overall | 201 | 35 |

B. Consultations on FOIA Requests - Received, Processed, and Pending Consultations

| | Number of | | | |
|---------|----------------|----------------|----------------|--------------------------|
| Agency | Consultations | Number of | Number of | Number of |
| Overall | Received from | Consultations | Consultations | Consultations |
| | Other Agencies | Received from | Received from | Received from |
| | that Were | Other Agencies | Other Agencies | Other Agencies |
| | Pending at the | During the | that Were | that Were |
| | beginning of | Fiscal Year | Processed | Pending at the |
| | Fiscal Year | | During the | End of the Fiscal |
| | | | Fiscal Year | Year |
| | 4 | 2 | 3 | 3 |

C. Consultations on FOIA Requests Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency

| Agency Overall | 10th Oldest Consultation and Number of Days Pending | 9th | 8th | 7th | 6th | 5th | 4th | 3rd | 2nd | Oldest Request and Number of Days Pending |
|-------------------|---|-----|-----|-----|-----|-----|-----|------------|------------|---|
| | | | | | | | | 07/31/2012 | 08/30/2011 | 08/15/2011 |
| | | | | | | | | 42 | 272 | 283 |

D. Comparison of Numbers of Requests from Previous and Current Annual Report

- Requests Received, Processed, and Backlogged

| * | Number of Reques | sts Received | Number of Requests Processed | | |
|-------------------|---|--|--|---|--|
| | Number Received During Fiscal Year from Last Year's Annual Report | Number Received During Fiscal Year from Current Annual Report | Number Processed During Fiscal Year from Last Year's Annual Report | Number Processed During Fiscal Year from Current Annual Report | |
| Agency Overall | 296 | 267 | 342 | 295 | |

| | Number of Backlogged Requests as of End of the Fiscal Year from Previous Annual Report | Number of Backlogged Requests as of End of the Fiscal Year from Current Annual Report | | |
|-------------------|--|---|--|--|
| Agency Overall | 215 | 201 | | |

E. Comparison of Numbers of Administrative Appeals from Previous and Current Annual Report - Appeals Received, Processed and Backlogged

| * | Number of App | eals Received | Number of Appeals Processed | | |
|-------------------|---|---|---|---|--|
| | Number Received During Fiscal Year from Last Year's Annual Report | Number Received During Fiscal Year from Current Annual Report | umber Received Number Processed N ng Fiscal Year from During Fiscal Year D | | |
| Agency Overall | 13 | 18 | 3 | 5 | |

| | Number of Backlogged Appeals as of End of the Fiscal Year from Previous Annual Report | Number of Backlogged Appeals as of End of the Fiscal Year from Current Annual Report | | |
|-------------------|---|--|--|--|
| Agency Overall | 22 | 35 | | |

F. Discussion of Other FOIA Activities (Optional)