

Office of the Inspector General

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Principal Deputy Commissioner
of Social Security

Acting Inspector General

The Social Security Administration's Management of Its Freedom of Information Act Activities (A-13-98-01027)

Attached is a copy of our subject final report. The objective of our audit was to evaluate the Social Security Administration's management of its Freedom of Information Act (FOIA) activities to determine compliance with FOIA and related criteria, and the level of service provided to the public.

You may wish to comment on any further action taken or contemplated on our recommendations. If you choose to offer comments, please provide them within the next 60 days. If you wish to discuss the final report, please call me or have your staff contact Daniel R. Devlin, Acting Assistant Inspector General for Audit, at (410) 965-9700.

James G. Huse, Jr.

Attachment

**OFFICE OF
THE INSPECTOR GENERAL**

SOCIAL SECURITY ADMINISTRATION

**THE SOCIAL SECURITY
ADMINISTRATION'S
MANAGEMENT OF ITS
FREEDOM OF INFORMATION
ACT ACTIVITIES**

September 1999 A-13-98-01027

AUDIT REPORT



EXECUTIVE SUMMARY

OBJECTIVE

The objective of this audit was to evaluate the Social Security Administration's (SSA) management of its Freedom of Information Act (FOIA) activities to determine compliance with FOIA and related criteria, and the level of service provided to the public.

BACKGROUND

Key FOIA Concepts and Provisions

FOIA, as originally enacted in 1966, established a presumption that records in the possession of agencies and Departments of the Executive Branch of the Federal Government are accessible to the public and provided for broad disclosure of those records. FOIA requires agencies and Departments to establish procedures advising the public of what records they keep and their availability for examination upon request, and provides appeal rights if disclosure is denied. It shifts the burden from an individual requester to establish a right to examine Government records to the Government if access to records is denied. FOIA also provides that certain records be kept in reading rooms and made available to the public, contains time limits for providing responses to requesters of records, and requires an annual report to Congress on FOIA activities.

The Electronic Freedom of Information Act (EFOIA), enacted in 1996, significantly amended FOIA. Key provisions confirm that FOIA applies to information maintained in electronic formats, lengthen the time limits for responding to requests, expand the scope of records available in reading rooms, and require that additional data be included in each agency's annual report on FOIA activities.

SSA's Annual Report on FOIA Activities

FOIA requires each agency to submit an annual report with certain information about its FOIA administration and statistics. Reports covering periods prior to Fiscal Year (FY) 1998 were required to be submitted to Congress. EFOIA made extensive changes to the annual report requirements. Reports beginning with FY 1998 must contain additional data regarding the FOIA workload and its processing, and be submitted to the Attorney General of the United States (Attorney General) for inclusion with other agency FOIA reports on a single World Wide Web site. The Attorney General is required to notify Congress when this is done. Also, agencies are required to make their reports available to the public on their respective World Wide Web sites.

SSA Reading Rooms

FOIA requires that certain agency records be kept in reading rooms where the public may access, inspect, and copy any of the material therein. Before EFOIA, reading room requirements were limited to final opinions, policies and procedures, and staff manuals affecting the public. EFOIA requires additional types of records be kept in reading rooms. It also requires that certain reading room records be made available on-line or in some other type of electronic format.

Organizational Responsibilities for FOIA Activities

The Office of Disclosure Policy (ODP) is responsible for SSA's overall implementation of FOIA. Responsibilities include formulation of disclosure policies, processing FOIA requests, and preparation of SSA's annual report on FOIA activities. By regulation, only the Director of ODP (or his/her designee) may determine whether to grant or deny a request to release any records in SSA's control and possession.

ODP staff controls and processes all types of FOIA requests, although the most common type of request (for a copy of a deceased person's application for a Social Security number) is generally handled by staff dedicated to this type of workload in the Office of Central Records Operations (OCRO). In addition to ODP and OCRO staff, each major component in SSA has the responsibility to appoint a FOIA coordinator to help retrieve records, provide advice and training, make disclosure recommendations, and report on component FOIA activities.

RESULTS OF REVIEW

SSA has taken numerous initiatives to improve its administration of FOIA activities. However, the Agency needs to improve compliance with legal criteria and service to the public. We found that:

- SSA limits the modes by which the public can make a FOIA request. Only mailed requests are encouraged while requests via telecommunications are either discouraged or not accepted.
- SSA's average time in providing responses containing determinations to requesters has exceeded statutory time limits.
- SSA, contrary to its Customer Service Pledge, does not provide the public with its best estimate of the time it takes to provide replies to FOIA requests.
- Annual FOIA reports to Congress prior to the 1998 report did not provide important data about FOIA activities, such as backlogs and average processing time. Those reports, as well as the 1998 report, were also misleading in that the section on compliance with time limits did not provide data regarding compliance with statutory

time limits. The reports have also failed to provide complete and accurate data because not all FOIA requests are recorded and reported.

- In general, SSA's field offices (FO) lack hard copies of at least some materials that are required to be available for public access in FOIA reading rooms. Also, in most FOs, managers do not have the knowledge or equipment to assist the public in accessing the records in SSA's electronic FOIA reading room.

CONCLUSIONS AND RECOMMENDATIONS

Our review indicates that the modes by which the public may make a FOIA request are limited, requests are generally not answered within statutory time limits, and the annual reports to Congress have lacked important, complete and accurate data necessary to fully reflect SSA's management of its FOIA activities. Also, advice to the public regarding estimated reply times should be improved, and some FOIA reading room materials are not readily available at SSA's FOs.

We recommend that SSA take the following actions:

- Expand the modes by which the public may make a FOIA request and make commensurate changes in its regulations and other relevant publications. SSA should consider accepting requests made over the phone or computer and provide appropriate instruction to its staff and the public on the use of these modes. SSA should consider providing a request form on its World Wide Web site which can be used by the public to complete and transmit to SSA by postal mail or telecommunications.
- Make further efforts to comply with the legal requirement to provide a determination reply to a FOIA request within 20 business days. Some options to consider are: (1) continued periodic use of additional staff to significantly reduce the current pending workload, so that new requests can be more quickly addressed under the "first-in, first-out" method, (2) remind FOIA coordinators and SSA management that they need to monitor the timeliness of FOIA requests submitted to their components, and (3) improve controls in SSA's case control systems in ODP and OCRO, so that staff are reminded of important processing dates.
- Provide the public with its best estimate of the time SSA takes to provide a determination in response to a FOIA request. Estimates would be most informative if provided in the *FOIA Guide* and annual report; and the estimate referred to average processing time and type of request. This could easily be accommodated by referring to the median times now included in the annual FOIA report.
- Provide additional and more accurate data in the annual report to the Attorney General on its effort to fully administer FOIA. SSA needs to: (1) instruct all its reporting components as to what constitutes a FOIA request, how requests should be handled, and how requests should be tracked and counted for the annual report;

- and (2) consider revising its report to clearly show its data vis-à-vis the statutory time frames to provide the most forthright data on “compliance with time limits.”
- Provide a workstation with on-line computer access to the SSA FOIA Web page at every FO whereby the public can access, inspect, and copy FOIA reading room records. SSA needs to provide training to FO staff, so they are familiar with SSA’s FOIA records that are available on-line and can direct the public in the use of the technology, either at the SSA office or an off-site location.

AGENCY COMMENTS

SSA agreed with our recommendations to make further efforts to comply with the legal requirements to provide a determination reply to a FOIA request within 20 business days, and to provide the public with its best estimate of the time it takes to provide a determination in response to a FOIA request.

SSA disagreed with our recommendation to expand the modes by which the public may make a FOIA request, at least until such time as it can provide an appropriate level of customer service. SSA also disagreed with our recommendation to provide additional and more accurate data in its annual report on FOIA activities.

SSA will not decide whether to provide a workstation with on-line computer access to the public in its FOs for FOIA reading room records until it conducts and completes an assessment of relevant issues. Appendix A includes a copy of the complete text of SSA's comments.

OIG RESPONSE

We continue to believe that SSA should expand the modes by which the public may make a FOIA request. This would be consonant with SSA's broad strategic goal "to deliver customer-responsive, world class service" and strategic objective of increasing the range of services available over the telephone or electronically. Also, we continue to believe that SSA would improve its annual reporting of FOIA activities by providing additional and more accurate data. Respective examples would be reporting the extent to which it provides replies within statutory time limits, and more accurately capturing all FOIA-related work performed by the Agency.

We believe SSA's decision to study the issues regarding whether to provide on-line access to the public in its FOs for FOIA reading room records is reasonable.

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INTRODUCTION

OBJECTIVE

The objective of this audit was to evaluate the Social Security Administration's (SSA) management of its Freedom of Information Act (FOIA) activities to determine compliance with FOIA and related criteria, and the level of service provided to the public.

BACKGROUND

Key FOIA Concepts and Provisions

FOIA,¹ as originally enacted in 1966, established a presumption that records in the possession of agencies and Departments of the Executive Branch of the Federal Government are accessible to the public. FOIA provided for broad disclosure of those records with its rationale being that an informed public is necessary to keep Government accountable. Prior to FOIA, there were no statutory guidelines or procedures to help a person seeking information in Government records, nor any judicial remedies for those denied access to such records, and the burden was on the individual to establish a right to examine Government records. The FOIA required agencies and Departments to establish procedures advising the public of what records they keep and how they are made available for examination upon request, provided appeal rights if disclosure is denied, and shifted the burden to the Government if access to records is denied.

Key provisions of FOIA as amended require each Federal agency to:

1. Publish certain material in the Federal Register, such as descriptions of agency organizations, functions, substantive rules, statements of general policy, and instructions for requesting access to agency records.
2. Index certain basic agency records, such as final adjudicative opinions, specific agency policy statements, and certain administrative staff manuals that are not required to be published in the Federal Register, and make both the index and the records available to the public for inspection and copying in what is commonly referred to as a "FOIA reading room."
3. Make all records, with certain exceptions, available to the public upon request.

¹ FOIA was established under title 5, United States Code, 552 (5 U.S.C. § 552).

4. Determine whether to furnish requested records and provide the requester with a reply within specific time limits.
5. Establish a schedule of fees to be charged when members of the public request records.
6. Report annually to Congress on FOIA activities.

Key Electronic Freedom of Information Act (EFOIA) Concepts and Provisions

EFOIA,² enacted in 1996, amended FOIA with respect to records maintained in electronic formats, the timing of agency responses to FOIA requests, the maintenance of records in reading rooms, and the data required in each agency's annual report on FOIA activities. Significant amendments include:

1. Provisions confirming that FOIA applies to information maintained in electronic formats.
2. A provision requiring "reading room" treatment for FOIA-processed records that an agency determines has become or is likely to become the subject of a future request for substantially the same records.
3. A provision for making available electronically all reading room records created on or after November 1, 1996.
4. Provisions that lengthen the time limits for responding to FOIA requests (generally, increasing the time limit from 10 business days to 20), establish procedures for circumstances in which agencies cannot meet those time limits, and establish standards under which FOIA requesters can seek "expedited processing" of their requests.
5. A provision requiring agencies to prepare reference material or a guide for public dissemination about how to request records from the agency.
6. Provisions which change the required data elements, timing, and methods of distribution for the filing of annual FOIA reports effective with the Fiscal Year (FY) 1998 annual report.
7. A provision encouraging agencies experiencing difficulties in meeting FOIA's time limits to use "multi-track" processing. Instead of using first-in, first-out processing on an overall basis, agencies can use that methodology within each track; thereby, providing flexibility to handle relatively simple requests more quickly.

² Public Law 104-231, the Electronic Freedom of Information Act Amendments of 1996, amended 5 U.S.C. § 552.

SSA's Estimated Response Times

SSA's Customer Service Pledge states that SSA will provide the public with its best estimate needed to reply to a request and explain any delays. Regarding FOIA requests, SSA advises the public in its *Guide to FOIA Requests* (FOIA Guide) that it will try to provide replies within 20 days, but some may take longer. SSA has provided similar advice for the first time in its annual FOIA report (the 1998 Report). The public is advised that SSA will try to furnish information as quickly as possible, but past experience suggests it may take 1 month or longer.

SSA's Annual Report on FOIA Activities

FOIA requires each agency to produce an annual report containing certain information about its FOIA administration and statistics. Prior to EFOIA, the annual report provisions required a calendar year report to Congress on FOIA activities with certain required data categories. These included: the number of denials; the title or position of the person responsible for denials; the number of appeals; a copy of agency rules and fee schedule; the total amount of fees collected; and any other information which indicated efforts to fully administer this section of the law.

EFOIA made extensive revisions to the annual report requirements. For the first time, the report was required to include data on the number of requests received, processed, and pending as of the end of the reporting year, and the median number of days those requests were pending. Also, the annual report provisions were changed to require FY data and electronic submission to the Attorney General, for inclusion with other agency reports in a single World Wide Web site. The first report subject to the new requirements covers FY 1998 data and was due to the Attorney General on February 1, 1999. Thereafter, a report to the Attorney General will be due annually on February 1.

SSA Reading Rooms

FOIA, as enacted in 1966, divided agency records into the following three categories: (1) records that must be published in the Federal Register, such as substantive rules of general applicability and descriptions of the agency organization; (2) records that must be either published and offered for sale, or deposited in agency "reading rooms" where the public may examine an index of the records, inspect records and copy records of interest to them; and (3) all other agency records which, unless exempt, must be made available to the public in response to a request.

Prior to EFOIA amendments, required "reading room" records were limited to final opinions in adjudicated cases, policy statements not published in the Federal Register, and staff manuals affecting the public. EFOIA required another type of record be included in agency reading rooms—records identified in response to a FOIA request which, because of the nature of the subject matter, the agency determines has become or is likely to become the subject of a future request for substantially the same records.

This requirement is intended to satisfy much of the future demand for those records in a more efficient manner and deter the need to seek such information with a FOIA request. Reading room records shall be based not only on the type of record, but by the public's interest in the record. This new category of reading room records must be made available on-line (or in some other electronic form, such as a CD-ROM). Electronic reading rooms were required to be operational by November 1, 1997, and contain reading room records created subsequent to November 1, 1996.

SSA regulations³ specify which Agency records are, or will be made, available for inspection and copying at its field offices (FO). These records include a compilation of Social Security laws, regulations, rulings, and certain handbooks and manuals. Each FO must provide a reading room setting for the public to inspect and/or copy these records.

SSA's FOIA Process Review Team Report

The FOIA Process Review Team, which began its review in December 1996, was formed by SSA to develop recommendations on how the FOIA process could be streamlined to speed up the processing of FOIA requests, make the best use of employee skills, and provide improved service to the public. The review was designed to facilitate taking actions to improve the FOIA process in the short - and long - term. At that time, SSA management was concerned that the backlogs of FOIA requests were growing and the workload had historically received very little management attention.

The Team issued a report in May 1997, which concluded that the main problems were process centered and it made 20 recommendations aimed at improving those processes. The report concluded that, even if the recommendations were implemented, it might not be adequate to meet the requirements of the law, in view of increasing workloads and decreasing staff.

Organizational Responsibilities for FOIA Activities

By regulation,⁴ the public is advised to send a request for disclosure of a record maintained by SSA to the Director of the Office of Disclosure Policy (ODP). This official is SSA's Freedom of Information Officer and is responsible for the Agency's overall implementation of FOIA. By regulation,⁵ only the Director of ODP (or his/her designee) may determine whether to grant or deny a request to release any record in SSA's control and possession (except as otherwise provided by another regulation).

FOIA requests are primarily controlled and processed in two components. ODP controls and processes all types of FOIA requests. However, the most common type, which is a request for a copy of a deceased person's original application for a Social

³ 20 Code of Federal Register (CFR) 402.50 and 402.55.

⁴ 20 CFR 402.135.

⁵ 20 CFR 402.125.

Security number, is generally handled by staff dedicated to that workload in the Office of Central Records Operations (OCRO). The decision to separate this workload was negotiated and approved by management officials in the respective components.

In addition to ODP and OCRO, each major SSA component has the responsibility to appoint a FOIA coordinator. The coordinators' main responsibilities are to retrieve records which are the subject of a FOIA request, provide advice and training on the FOIA to component staff, transmit to ODP the component's recommendations for disclosure of particular requested documents, and provide justification for any recommended withholding. FOIA coordinators are also responsible for reporting annual FOIA activities back to ODP for inclusion in SSA's annual report.

Both ODP and OCRO have assigned staff to control and process FOIA requests. ODP staff handles this workload in addition to Privacy Act and Social Security Act related disclosure requests and Agency disclosure policy decisions and issuances. OCRO staff generally works full-time on their segment of FOIA cases. FOIA coordinators in the components usually perform other duties within their components, and FOIA function is ancillary to their principal duties. Organizationally, ODP has no line of management authority over OCRO staff performing FOIA related work or over FOIA coordinators in the various components.

SCOPE AND METHODOLOGY

We reviewed:

- SSA's receipt and processing of FOIA requests;
- applicable laws and related criteria, Department of Justice guidance and various academic articles on FOIA;
- SSA's 1997 Annual Report to Congress on FOIA Activities and the data available during our field work compiled for the 1998 report; and
- SSA's implementation of the mandates of FOIA, as amended, and the FOIA Process Review Team's recommendations.

Our methodology included interviewing SSA Headquarters personnel responsible for the FOIA workload and annual report. We also conducted interviews via telephone of a stratified, cluster sample of 68 FO managers (see Appendix B). One of the offices in our population did not meet our sampling criteria. We reviewed the processing of FOIA requests to determine how they are received, controlled, processed, and how that data is captured and reported. Our review was limited to overall compliance, processing, and reporting. It did not include or address the accuracy of SSA's determinations to grant or deny the FOIA request; the accuracy of the data in the FOIA data bases; or the remittance process for FOIA fees.

We conducted our audit from May through November 1998 at SSA Headquarters in Baltimore, Maryland. Subsequent to the end of our field work, SSA filed its FOIA Annual Report for 1998. Additionally, SSA staff advised us that OCRO implemented initiatives in 1999 which significantly reduced the FOIA backlogs. We included observations on these items, so as to acknowledge the most recent and relevant data. The audit was performed in accordance with generally accepted government auditing standards.

RESULTS OF REVIEW

Based on our review, we found that:

- the modes by which the public may make a FOIA request are limited;
- requests are generally not answered within the statutory time frames;
- advice to the public regarding estimated reply times could be improved;
- the annual reports to Congress on FOIA activities have lacked important, complete, and accurate data necessary to reflect SSA's management of its FOIA activities; and
- FOIA reading room materials are not readily available at SSA's network of FOs.

PUBLIC REQUEST MODES ARE LIMITED

SSA limits the avenues by which the public can make a FOIA request. Only mailed requests are encouraged while requests via telecommunications are discouraged or not accepted. These limitations are expressed in or are the result of SSA regulations, publications, and operating instructions that provide information regarding how and where the public may submit a FOIA request. These limitations result in diminished service to the public.

Regulations Should Be Revisited

Each Federal agency is required to issue regulations governing access to its records under FOIA. The regulations must inform the public where and how to make FOIA requests. SSA's regulation⁶ in effect until July 1998 stated that the public ". . . may request a record in person, by telephone, or by mail." While that language was clear, the regulations⁷ implied that mail was favored or required by only providing advice as to where and how to submit a request by postal mail. Similar advice was not provided for any alternatives. The regulations indicated that the staff of any Social Security office could help with preparation of the request.⁸

⁶ 20 CFR 402.130.

⁷ 20 CFR 402.130, 402.135 and 402.40.

⁸ 20 CFR 402.130.

New regulations promulgated as a result of EFOIA became effective July 29, 1998. They expand the modes by which the public can make a FOIA request by including "telecommunications" instead of "telephone." The regulations state that the public ". . . may request a record in person or by mail or by electronic telecommunications. To the extent practicable, and in the future, we will attempt to provide access for requests by telephone, fax, Internet, and e-mail."⁹ Again, the regulatory instructions on how to make a request only provided a postal mailing address.

This is an opportune time for SSA to consider expanding its service to the public by providing access for FOIA requests via telecommunications. Even though expanding modes of access would likely result in increased workloads, SSA has demonstrated its ability to respond successfully to such workloads. Recent SSA initiatives have been successful in reducing backlogs, as well as the time required to process requests, in spite of a significant increase in the number of FOIA requests (which SSA personnel attribute to a commercial website which provides instructions on how to send a FOIA request to SSA). If a decision is made to proceed with expanded access, SSA regulations and operating procedures should be revised to reflect that decision.

FOIA Guide Does Not Provide Alternate Request Modes for Certain SSA Records

The message that postal mail is the only method for making at least certain types of FOIA requests is reiterated in SSA publications. EFOIA requires each agency to maintain reference material or a guide containing advice on requesting records from the agency. SSA has issued a *FOIA Guide* on the World Wide Web informing the public that it can inspect and copy certain SSA records at any SSA office or on SSA's FOIA Internet Home Page. For records not available in SSA offices or not published on the Internet, the instructions provide that a written request for records be mailed to specific addresses at SSA Headquarters or submitted at any SSA FO. The Guide does not provide any alternative modes, such as telecommunications, for the public to use to submit a FOIA request.

SSA Instructions Do Not Specify Alternate Request Modes

SSA's Program Operations Manual System, which provides operating instructions to SSA personnel and is available to the public, states that FOIA requests may be either oral or written. However, there are no discreet instructions for handling oral FOIA requests made at FOs or on SSA's 800 telephone number.

Limited Request Modes Are Inconsistent with Agency Capability and Goals

SSA has the current capability to accept FOIA requests from the public via telecommunications but does not do so. SSA is already an acknowledged leader in providing service by telephone and in making information available to the public by computer over the Internet. SSA posts on the Internet many of its consumer information handbooks and publications, an index of its staff manuals and guidelines, and even

⁹ 20 CFR 402.130.

forms whereby the public can request services, such as a Social Security number card, a hearing, or a benefits summary.¹⁰ Although most of these forms need to be downloaded, completed, and mailed to SSA, some requests for services can be made directly on-line, such as requesting a Personal Earnings and Benefit Estimate Statement.

Limited modes of public access to services are also inconsistent with SSA's goal to deliver customer responsive service by emphasizing convenience of access to SSA services. SSA has already acknowledged that it needs to provide more convenient public access to services, and will increasingly use the Internet to meet this challenge.¹¹

No Current Plans to Provide New Request Modes

Even though the Agency regulations indicate the public may request records by telecommunications and that SSA will try to provide such access in the future, ODP staff informed us that there are no current plans to provide new modes for the public to make FOIA requests. This is likely due to the FOIA Process Review Team's recommendation to limit request modes and management's apprehension that increasing modes would result in more requests than SSA staff can effectively handle. The FOIA Process Review Team recommended that traditional postal mail be the single entry point for FOIA requests because accepting FOIA requests by alternative methods, such as telephone, could cause problems with workflow priorities and create an impression of preferential treatment. The Team did issue a caveat by indicating that the practice of utilizing traditional mail exclusively might require an explanation to some users and require a change in SSA regulations.

ODP management also acknowledged a tension between maximizing convenient public service and the workload reality that SSA cannot provide timely responses to the current level of mailed requests. Fostering alternative modes for the public to make FOIA requests could likely result in an increase in the number of FOIA requests. Even though SSA has no current plans to expand the modes for accepting FOIA requests, some agencies have already begun to accept FOIA requests electronically.¹²

¹⁰ Stephen M. Johnson, *The Internet Changes Everything: Revolutionizing Public Participation and Access to Government Information through the Internet*, *Administrative Law Review*, Spring 1998, pp. 293, 294.

¹¹ SSA's *Strategic Plan, 1997-2002*.

¹² Stephen M. Johnson, pg. 297.

REQUESTS ARE GENERALLY NOT ANSWERED WITHIN STATUTORY TIME LIMITS

SSA data indicates that its average processing time for responding to FOIA requests exceeds statutory time limits. Once an agency is in proper receipt of a FOIA request, the law requires it to inform the requester of the decision to grant or deny access to the requested records within 20 business days (EFOIA increased the basic time limit from 10 business days to 20 effective October 1997). Agencies are not necessarily required to release records within the statutory time limit, but access to releasable records should be granted promptly thereafter. Agencies may request a 10-business day extension by written notice to the requester.

SSA's data bases used to control and report on FOIA requests provided the following information. In the abbreviated 9-month reporting period for the 1997 FOIA Annual Report (January 1, 1997, through September 30, 1997), the average processing time from receipt in the appropriate FOIA office through disposition (SSA's mailed notification to the requester that the request was granted or denied in full or in part) was 122.5 calendar days for ODP, and 111.8 calendar days for OCRO. For another 9-month time frame (approximately October 1, 1997, through June 30, 1998), FY 1998 data shows an average processing time of 108.8 calendar days for ODP cases and 32 calendar days for OCRO.

OCRO processes the majority of FOIA requests. In the first 9 months of FY 1998, OCRO completed processing 25,988 FOIA determinations and ODP completed 6,593. OCRO's processing time improved to the point where it did not significantly exceed the 20 business day statutory time limit. Several factors contribute to the disparity between OCRO's and ODP's processing time. OCRO only processes "simple" requests for copies of a deceased person's original application for a Social Security number and its staff works full-time processing these requests. ODP staff handle all other types of FOIA requests, including all complicated cases and cases requiring the assistance and cooperation of FOIA coordinators and SSA staff in other components. In addition, ODP staff works only part-time on FOIA requests. ODP staff are also responsible for providing responses to disclosure requests made pursuant to the Privacy Act and Social Security Act, formulating disclosure policy, and other duties.

Several Factors Contribute to Delays in Agency Responses

Based on our research and interviews with staff involved with processing and responding to FOIA requests, the following factors contribute to delays in responding to requests.

- Constant Backlogs - Constant backlogs have impeded the Agency's ability to respond to new requests within the 20 business days required by law because requests are generally processed on a first-in, first-out basis. SSA has attempted to address this in part by adopting "multi-track" processing, so it can use first-in, first-out processing within each track; thereby, providing more flexibility in handling

simple requests. Even so, total FOIA backlogs in ODP and OCRO increased from about 9,600 to about 18,600 during FY 1998.

SSA has shown that with sufficient resources, it can reduce backlogs and provide more timely responses even when faced with significantly increased workloads. OCRO has begun to use resources not regularly assigned to the FOIA workload to help reduce the backlog. By using these additional resources for short periods of time, OCRO was successful in reducing its share of the FOIA backlog from about 8,100 to 4,400 during the first 6 months of FY 1999. At the same time OCRO reduced its average processing time from about 35 calendar days to 22. These improvements occurred even though requests increased to about 78,100 for this time period versus about 43,000 for the entire FY 1998. SSA personnel attribute much of the increase in FOIA requests to commercial websites that provide information on how to make a FOIA request to SSA.

ODP staff suggested the following factors may affect the timely processing of FOIA requests.

- Controls Are Not Adequate - ODP does not maintain any manual or automated diaries to remind its staff of deadlines and the need to check or follow up with components or agencies from which assistance was sought.
- Reliance on Other Components - ODP is dependent on FOIA coordinators and other personnel in SSA's various components to locate records, make disclosure recommendations, etc. Although ODP is ultimately responsible for making disclosure determinations and responding to requests, it has no control over the personnel whose cooperation is needed.
- Record Location -The statutory time frame is unrealistic for some requests because the records may be in a Federal Records Center or similar facility and need to be located, shipped, and/or reviewed.
- Complexity of Requests - The statutory time frame is unrealistic for some requests because they are complex, labor-intensive, and time consuming because of the volume and/or subject matter of the records.

SSA CAN PROVIDE THE PUBLIC WITH BETTER ESTIMATES FOR RESPONSE TIMES

SSA's Customer Service Pledge states that SSA will provide the public with its best estimate needed to reply to a request and explain any delays. SSA has attempted to implement this in the *FOIA Guide* it publishes by stating that it will try to handle FOIA requests within 20 days after receipt (statutory time limit), but some requests may take additional time. Similarly, in its 1998 FOIA Annual Report,¹³ SSA states that replies

¹³ Appendix C, *FOIA Annual Report of SSA for 1998*, section IIB., pg.1.

may take 1 month or longer. SSA can provide the public with a better estimate by providing the public with average processing time for both “simple” requests and all others, or at least referring the public to the median processing time for various types of requests now included in SSA’s FOIA annual report.¹⁴

PREVIOUS AND CURRENT ANNUAL REPORTS LACKED BOTH IMPORTANT AND ACCURATE DATA

Prior to the 1998 FOIA Annual Report, SSA’s annual report to Congress was generally in compliance with statutory criteria but failed to provide important data such as backlogs and average processing time. Also, certain data included in the annual reports was misleading since it implied SSA had no problems in compliance with time limitations. In addition, the data did not capture all FOIA work done by the Agency, i.e., work done in FO’s was not reported.

We reviewed SSA’s 1997 Annual Report (see Appendix C) which was issued prior to the effective date of the EFOIA revisions concerning annual report requirements, and found it to be in compliance with the six specific data categories which were then required by the statute. However, the seventh and last data category required by the statute called for “. . . such information as indicates efforts to administer fully this section.” There was no data provided on the number of requests received, pending, average processing time, or number of requests that were not answered within the statutory time frame. The EFOIA beginning with the 1998 Annual Report now requires most of this data.

A section of the 1997 Annual Report titled “Compliance with Time Limitations” is misleading because it did not address SSA’s performance in meeting the statutory time limits for providing FOIA determinations to requesters. Instead, SSA provided data on items such as the number of times it was necessary to seek an extension of the time limit. SSA reported “zero” instances. We believe this was misleading because it implies that SSA never needed an extension because determinations were made timely. This is not the case. SSA reported “zero” extension requests simply because extensions were not sought. By way of explanation, ODP staff advised us that extensions were not sought because the public never appealed the lack of a timely response and it would have been a waste of time to request extensions when there was no repercussion for not meeting the time limit for responses. However, the fact that SSA did not seek extensions had no reflection on “compliance with time limitations,” as it regards timely responses.

The 1997 Annual Report also lacked accuracy because it did not fully reflect all FOIA related work. Most FOs we surveyed responded that they handled FOIA requests directly when feasible, but approximately 61 percent of Field Managers we questioned did not record it as a discrete work item or report it for annual reporting purposes.

¹⁴ Ibid., section VII, pp. 5, 6.

Although not subject to our audit work, we offer a few observations on the 1998 FOIA Annual Report (see Appendix D) relevant to our analysis of previous annual reports. The 1998 report provided more information than previous reports, as required by EFOIA. Data was provided on the number of requests received, processed, pending, and median number of days regarding processing and pending. The report also acknowledged that the data is not complete and accurate in that it does not fully reflect all FOIA-related work because processing statistics were not kept by SSA's 1,500 FOs and various other components with limited FOIA responsibilities.¹⁵ However, the report still does not indicate the extent to which SSA processes requests within statutory time limits.

FOIA READING ROOMS NEED IMPROVEMENT

We found that SSA has complied with the EFOIA requirement to provide the public with an electronic reading room on its World Wide Web site, but, in general, does not provide adequate reading rooms in its FOs. SSA regulations¹⁶ state that certain materials (administrative staff manuals, laws, regulations, rulings, etc.) are available or will be made available for inspection and copying at FOs.

Via telephone, we interviewed the 67 FO managers in our sample and found that 82 percent believed their office did not maintain a discrete hard copy library of some required reading room materials. Most managers told us that they have staff manuals such as the Program Operations Manual Systems (hard copy or CD-ROM) readily available and that other reading room materials will be made available upon request. However, none of the offices we contacted had a computer workstation available for the public to access reading room materials on-line, including those materials required to be placed in the electronic reading room. Less than half (46 percent) of the FOs we contacted currently had Internet or Intranet access. Of those with access, none of the managers had ever provided a requester with a computer to use to inspect and/or copy material available in SSA's electronic reading room on the World Wide Web. Even those managers with on-line access were usually not familiar with SSA's on-line FOIA material and, therefore, did not advise the public of its availability.

We questioned these same FO managers to determine what advice is provided to a requester at the FO and whether FOIA-related work is recorded, tracked, and reported. We found that, in general, FOs: try to directly handle FOIA requests (90 percent); give similar advice regardless of how the request was made (in person, by phone, mail, etc. 81 percent); and do not always track or report FOIA requests handled in the office (61 percent).

¹⁵ Ibid., section VII, 2nd paragraph, pg. 6.

¹⁶ 20 CFR 402.50 and 402.55.

The results of our interviews with FO managers indicated that:

- Ninety percent responded that when a person contacts a FO with a FOIA request, the FO tries to handle it directly. The managers advised us that they would generally disclose records such as regulations or policies and procedures in staff manuals. Requests for records pertaining to individuals other than the requester would be handled on a case-by-case basis. Ten percent responded that they never get any FOIA requests or do not handle any locally because all requests are forwarded to the regional office.
- Eighty-one percent responded that the advice given to a FOIA requester would not differ regardless of whether the request was made in person, by traditional or electronic mail, or over the phone. Nineteen percent would either never accept a request by phone or would require that a request be submitted in writing.
- Eighty-two percent responded that the FO provides some basic physical space where a FOIA requester can sit down (such as an empty cubicle or conference room) and review limited reading room records. Nine percent responded that they did not maintain any physical space, equipment and/or records available to constitute a public reading room, and 9 percent responded that they maintained a discrete physical space and a "library" of records for the public in a reading room.
- Fifty-four percent responded that their offices have neither Internet nor Intranet access and, therefore, cannot access on-line information. Of those with on-line access, only one manager indicated familiarity with the fact that SSA's Web Site contained an EFOIA reading room. There was no instance in which a computer with Internet or Intranet was made available for the public to review or copy records available in SSA's "electronic" reading room.
- Sixty-one percent of FO managers indicate that their offices do not record FOIA requests as a discrete workload nor report it as such. The work that is done is not reflected in SSA's annual report on FOIA activities. SSA's 1997 Annual Report shows that in only 5 of SSA's 10 regions were any FOIA requests reported as having been handled at a FO (without being referred to ODP or OCRO).

CONCLUSION AND RECOMMENDATIONS

SSA has taken numerous initiatives intended to improve its management of FOIA activities, such as implementing “multi-track” processing of requests and creating and maintaining FOIA information on-line so that the public has access to FOIA information from SSA’s Web page. However, further improvements are necessary to improve service to the public. We found that the modes by which the public may make a FOIA request are limited; requests have generally not been answered within statutory time limits; the annual reports to Congress lack important, complete, and accurate data necessary to fully reflect SSA’s management of its FOIA activities; advice to the public regarding estimated reply times can be improved; and FOIA reading room records are not readily available at SSA’s FOs.

We recommend that SSA take the following actions:

1. Expand the modes by which the public may make a FOIA request and make commensurate changes in its regulations and other relevant publications. SSA should consider accepting requests made over the phone or computer and provide appropriate instruction to its staff and the public on the use of these modes. SSA should consider providing a request form on its World Wide Web site which can be used by the public to complete and transmit to SSA by mail or telecommunications.
2. Make further efforts to comply with the legal requirement to provide a determination reply to a FOIA request within 20 business days. Some options to consider are: (1) continued periodic use of additional staff to significantly reduce the current pending workload, so that new requests can be more quickly addressed under the “first-in, first-out” method, (2) remind FOIA coordinators and SSA management that they need to monitor the timeliness of FOIA requests submitted to their components, and (3) improve controls in SSA’s case control systems in ODP and OCRO, so that staff are reminded of important processing dates.
3. Provide the public with its best estimate of the time SSA takes to provide a determination in response to a FOIA request. Estimates would be most informative if provided in the *FOIA Guide* and annual report; and the estimate referred to average processing time and type of request. This could easily be accommodated by referring to the median times now included in the annual FOIA report.
4. Provide additional and more accurate data in the annual report to the Attorney General on its effort to fully administer FOIA. SSA needs to: (1) instruct all its reporting components as to what constitutes a FOIA request, how requests should be handled, and how requests should be tracked and counted for the annual report;

- and (2) consider revising its report to clearly show its data vis-à-vis the statutory time frames to provide the most forthright data on "compliance with time limits."
5. Provide a workstation with on-line computer access to the SSA FOIA Web page at every FO whereby the public can access, inspect, and copy FOIA reading room records. SSA needs to provide training to FO staff, so they are familiar with SSA's FOIA records that are available on-line and can direct the public in the use of the technology, either at the SSA office or an off-site location.

AGENCY COMMENTS

SSA agreed with our recommendations to make further efforts to comply with the legal requirements to provide a determination reply to a FOIA request within 20 business days, and to provide the public with its best estimate of the time it takes to provide a determination in response to a FOIA request.

SSA disagreed with our recommendation to expand the modes by which the public may make a FOIA request, at least until such time as it can provide an appropriate level of customer service. SSA also disagreed with our recommendation to provide additional and more accurate data in its annual report on FOIA activities.

SSA will not decide whether to provide a workstation with on-line computer access to the public for FOIA reading room records until it conducts and completes an assessment of relevant issues.

OIG RESPONSE

We continue to believe that SSA should expand the modes by which the public may make a FOIA request. We agree it may not be prudent to offer such options until it is able to provide an appropriate level of customer service. However, current inability to provide adequate service with expanded modes should not equate with a decision to not pursue expanded modes in the future. Alternative modes would be consonant with SSA's broad strategic goal "to deliver customer-responsive world class service" and strategic objective of increasing the range of services available over the phone or electronically.

Also, we continue to believe that SSA would improve its annual reporting of FOIA activities by providing additional and more accurate data. Respective examples would be reporting the extent to which it provides replies within statutory time limits, and more accurately capturing FOIA-related work performed by the Agency.

We believe SSA's decision to study the issues regarding whether to provide on-line access to the public in its FOs for FOIA reading room records is reasonable.

APPENDICES

SSA'S COMMENTS

SAMPLING METHODOLOGY

We sampled 68 of the 137 field offices (FO) contained in the frame provided to us by the Social Security Administration's (SSA) Office of Workforce Analysis (OWA). One of the offices in our population did not meet our sampling criteria. We used a random start to select the first office and then systematically selected every other office. For the selected offices, we developed a questionnaire and addressed the question to a FO manager. The primary sampling unit is the FO and each question from the questionnaire is a secondary sampling unit.

The source of the primary sampling units is the District Office Multi-Purpose Sample. The frame received from OWA represented 10 percent of SSA's FOs. The frame is a stratified, cluster sample. It is stratified by SSA region, and is clustered or grouped by FOs. The sample consists of 10 distinct pairs of FO clusters; 1 pair per region. Each pair of clusters is similar to the next pair relative to the number of FO personnel, the number of offices, and the broadest possible representation of areas. Within each cluster, the goal is to have heterogeneous offices, so as to have a variety of office types (urban, suburban, and rural; large and small, etc.).

To form 1 of the 10 multi-purpose samples, 1 pair of clusters was selected at random for each of the 10 regions. A random number between 1 and 10 was selected (3). Thus, cluster pair 3 was selected for all 10 regions.

Although our subsample of the OWA 10 percent sample is projectable at the national level, we did not project the questionnaire results nationwide.

FREEDOM OF INFORMATION ACT REPORT TO CONGRESS 1997

FREEDOM OF INFORMATION ACT REPORT TO THE ATTORNEY GENERAL 1998

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