



Department of Defense (DoD)

Freedom of Information Act

Program Report

for

Fiscal Year (FY) 2006



Prepared By:

Director of Administration and Management



**FREEDOM OF INFORMATION ACT
ANNUAL REPORT
FISCAL YEAR 2006**

(Report Period: October 1, 2005 through September 30, 2006)

EXECUTIVE SUMMARY

During fiscal year (FY) 2006, a total of 79,266 public requests for records under the Freedom of Information Act (FOIA) were completed by the Department of Defense (DoD). In the processing of these cases, DoD fully denied 2,390 and partially denied 12,886 on the basis of FOIA exemptions. Of those exemptions, 8% were for classified information; 10% for internal rules and practices; 10% for statutory exemptions; 6% for proprietary data; 7% for deliberative material; 40% for privacy information; and 22% for law enforcement investigations. 28,538 requests could not be filled in whole or in part for other reasons, such as lack of records, referral to another agency, or lack of specificity sufficient to identify the requested records. There were 747 actions taken on appeals of denied requests: 23 granted, 111 partially denied, 324 fully denied, and 289 not filled for other reasons cited above.

The total DoD operating cost associated with the processing of requests during this report period was \$66,877,030. The average cost of processing a single case during this period was approximately \$843.70. Fee collections for records provided to the public amounted to \$518,002.00 (.8% of total program cost).

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Item I.

Basic Information Regarding the Report

- A. Title, address, and telephone number of person to be contacted with questions about the report:

Write to: Chief, Defense Freedom of Information Policy Office
1950 Defense Pentagon
Washington, DC 20301-1950

Telephone: (703) 696-4689

Name of Incumbent Chief, Defense Freedom of Information Policy Office: Mr. Will Kammer

Name of Person who prepared this report: Mr. Stephen L. Fisher

- B. The electronic address (Universal Resource Line, URL) for this report is:

<http://www.defenselink.mil/pubs/foi/>

- C. You may obtain a paper copy of this DoD Annual FOIA Report for Fiscal Year 2006 by writing to the above address. A FOIA request is not necessary. Please include a mailing address.

Item II.

How to Make a FOIA Request

The DoD Freedom of Information Act Handbook provides general information about the FOIA Program within DoD and provides basic information about how to submit a FOIA request. This document also contains DoD Component addresses, a brief description of expected response times, and the reason why some requests are not granted. The DoD Freedom of Information Act Handbook can be found at:

<http://www.defenselink.mil/pubs/foi/foiapm3.pdf>

Item III.

Definitions of Terms and Acronyms Used in the Report

- A. Agency-specific acronyms.
 - 1. Defense Freedom of Information Policy Office: DFOIPO
 - 2. Defense Intelligence Agency: DIA.
 - 3. National Geospatial-Intelligence Agency (formerly National Imagery and Mapping Agency or NIMA): NGA.
 - 4. National Security Agency: NSA.
 - 5. National Reconnaissance Office: NRO.
 - 6. Office of the Secretary of Defense: OSD
 - 7. Prisoner of War/Missing in Action: POW/MIA.
- B. Other agency acronyms.
 - 1. Central Intelligence Agency: CIA.
- C. “Other Reasons” cited on initial and appeal determinations.
 - 1. No Records. A reasonable search of files failed to identify records responsive to the request.
 - 2. Referrals. The request was referred to another DoD Component or Federal Agency for action.
 - 3. Withdrawn. The request was withdrawn by the requester.
 - 4. Fee-Related Reason. The requester is unwilling to pay fees associated with the request; the requester is past due in the payment of fees associated with a previous FOIA request; or the requester disagrees with a fee estimate.
 - 5. Records not Reasonably Described. The request could not be acted upon since the record had not been described with sufficient particularity to enable the DoD Component to locate it by conducting a reasonable search.
 - 6. Not a Proper FOIA Request for Some Other Reason. The requester has failed unreasonably to comply with legitimate procedural requirements which are not fee-related.

7. Not an Agency Record. The requested information was not a record within the meaning of the FOIA.

8. Duplicate Request. A request for the same information by the same requester. This includes identical requests received via different means (e.g., electronic mail, facsimile, mail, courier) at the same or different times.

9. Other. Any other reason a requester does not comply with published rules, other than those mentioned above.

D. Common terminology.

1. Freedom of Information Act/Privacy Act (FOIA/PA) 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.

2. Initial request: A request to a Federal Agency for access to records under the FOIA.

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 FOIA, or any other adverse FOIA determination.

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 a compelling 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 a compelling 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 (nonexpedited) 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 denial: 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 exemptions

under the FOIA; or a decision to disclose some records in their entirety, but to withhold others in whole or in part.

11. Denial: An agency decision not to release any part of a record or records in response to a FOIA request because all the information in the requested records is determined by the agency to be exempt under one or more of the FOIA 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 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 the FOIA office of the agency or agency component in possession of the records, and for which there is no remaining question about the payment of applicable fees.
14. Exemption 3 statute: A separate federal statute prohibiting the disclosure of a certain type of information and authorizing its withholding under FOIA subsection (b)(3).
15. Median number: The middle number, not the 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: the average of 3, 7, and 14 is 8.

Item IV.

Exemption 3 Statutes Invoked

Court Upheld?	Statute	Types of Material Withheld Under Statute
No	5 USC §574(j)	Administrative Dispute Resolution Act
No	10 USC §128	Authority to Withhold Unclassified Special Nuclear Weapons Information
Yes ¹	10 USC §130	Authority to Withhold Unclassified Technical Data with Military or Space Application
No	10 USC §130(b)	Personnel in Overseas, Sensitive or Routinely Deployable Units
No	10 USC §130(c)	Nondisclosure of Information: Certain Sensitive Information on Foreign Governments and International Organizations
Yes ²	10 USC §424	Protection of Organizational and Personnel Information for DIA, NRO, and NGA
No	10 USC §455	Maps, Charts, and Geodetic Data; Public Availability
No	10 USC §457	NGA Operational Files
No	10 USC §618(f)	Action on Reports of Selection, Generally for Promotion, Boards
No	10 USC §1102	Confidentiality of Medical Records
No	10 USC §2305(g)	Protection of Contractor Proposals
No	10 USC §2371(i)	Research Projects: Transactions Other Than Contracts and Grants
No	16 USC §470w-3	National Historic Preservation
Yes ³	18 USC §798(a)	Communications Intelligence
No	22 USC §2778(e) Sec 38(e)	Control of Arms Export
No	31 USC §3729(d)	False Claims Act Civil Action for False Claims against the U.S.
Yes ⁴	41 USC §253b(m)(1)	Disclosure of Contractor Proposals
No	42 USC §290dd-2	Confidentiality of Patient Records
Yes ⁵	42 USC §2162(a)	Restricted Data (Atomic Energy), Atomic Energy Act of 1954

Court Upheld?	Statute	Types of Material Withheld Under Statute
No	42 USC §2168(a)(1)(C)	Formerly Restricted Data (Atomic Energy), Atomic Energy Act of 1954
Yes ⁶	50 USC §402 Note Sec 6	NSA Functions and Information
Yes ⁷	50 USC §403-3(c)(7) National Security Act of 1947, Subsection 102(d)(3), as amended	Intelligence Sources and Methods
Yes ⁸	50 USC §403(g), Section 6 of the CIA Act of 1949	CIA Functions and Information
No	50 USC §421	Protection of Identities of U.S. Undercover Intelligence officers, agents, informants, and sources
No	50 USC §435 Note Sec 1082	Disclosure of Information Concerning US Personnel Classified as POW/MIA During Vietnam Conflict (McCain “Truth Bill”)

Item IV. Endnotes

¹ Chenkin v. Department of the Army, No. 93-494, 1994 U.S. Dist. LEXIS 20907, at *8 (E.D. Pa. Jan. 14, 1994), aff'd, 61 F.3d 894 (3d Cir. 1995) (unpublished table decision); Colonial Trading Corp. v. Department of the Navy, 735 F. Supp. 429, 431 (D.D.C. 1990); see also American Friends Serv. Comm. v. DOD, No. 83-4916, 1986 WL 10659, at *4 (E.D. Pa. Sept. 25, 1986), rev'd on other grounds, 831 F.2d 441 (3d Cir. 1987).

² Larson v. Department of State et al. No. 1:02CV01937, (D.D.C. Aug. 10, 2005).

³ Winter v. NSA, 569 F. Supp. 545, 548 (S.D. Cal. 1983); see also Gilmore v. NSA, No. C 92-3646, 1993 U.S. Dist. LEXIS 7694, at **26-27 (N.D. Cal. May 3, 1993) (finding that information on cryptography currently used by NSA “integrally related” to function and activity of intelligence gathering and thus protected).

⁴ Hornbostel v. Department of Interior, 305 F. Supp. 2d 21 (D.D.C. 2003).

⁵ Meeropol v. Smith, No. 75-1121, slip op. at 53-55 (D.D.C. Feb. 29, 1984), aff'd in relevant part & remanded in part sub nom. Meeropol v. Meese, 790 F.2d 942 (D.C. Cir. 1986). But see General Elec. Co. v. NRC, 750 F.2d 1394, 1401 (7th Cir. 1984) (concluding that provision concerning technical information furnished by license applicants lacked sufficient specificity to qualify as Exemption 3 statute).

⁶ Founding Church of Scientology v. NSA, 610 F.2d 824, 828 (D.C. Cir. 1979); Hayden v. NSA, 452 F. Supp. 247,252 (D.D.C. 1978), aff'd, 608 F.2d 1381 (D.C. Cir. 1979).

⁷ CIA v. Sims, 471 U.S. 159, 167 (1985); see also Minier v. CIA, 88 F.3d 796, 801 (9th Cir. 1996) (finding that agency properly refused to confirm or deny existence of records concerning deceased person's alleged employment relationship with CIA); Maynard v. CIA, 986 F.2d 547, 554 (1st Cir. 1993) (stating that under § 403(d)(3) it is responsibility of Director of CIA to determine whether sources or methods should be disclosed); Krikorian v. Department of State, 984 F.2d 461, 465 (D.C. Cir. 1993) (same); Fitzgibbon v. CIA, 911 F.2d 755, 761 (D.C. Cir. 1990) (same); Hunt v. CIA, 981 F.2d 1116, 1118 (9th Cir. 1992) (upholding agency's "Glomar" response to request on foreign national, because acknowledgement of any records would reveal sources and methods); Knight v. CIA, 872 F.2d 660, 663 (8th Cir. 1989) (same); Levy v. CIA, No. 95-1276, slip op. at 14-17 (D.D.C. Nov. 16, 1995) (same), aff'd, No. 96-5004 (D.C. Cir. Jan. 15, 1997); Roman v. Dailey, No. 97-1164, 1998 U.S. Dist. LEXIS 6708, at **10-11 (D.D.C. May 11, 1998) (concluding that agency properly refused to confirm or deny existence of records pertaining to agency personnel and spy satellite programs); Blazy v. Tenet,

979 F. Supp. 10, 23-24 (D.D.C. 1997) (protecting intelligence sources and methods located in requester's personnel file), summary affirmance granted, No. 97-5330 (D.C. Cir. May 12, 1998); Andrade v. CIA, No. 95-1215, 1997 WL 527347, at **3-5 (D.D.C. Aug. 18, 1997) (holding intelligence methods used in assessing employee fitness protectible); Earth Pledge Found. v. CIA, 988 F. Supp. 623, 627 (S.D.N.Y. 1996) (finding agency's "Glomar" response proper because acknowledgement of records would generate "danger of revealing sources"), aff'd per curiam, 128 F.3d 788 (2d Cir. 1997) (unpublished table decision); Campbell v. United States Dep't of Justice, No. 89-CV-3016, 1996 WL 554511, at *6 (D.D.C. Sept. 19, 1996) ("CIA director is to be afforded 'great deference' by courts determining the propriety of nondisclosure of intelligence sources"); cf. Linder v. DOD, 133 F.3d 17, 25 (D.C. Cir. 1998) ("[C]ourts must give 'great deference' to the Director of Central Intelligence's determination that a classified document could reveal intelligence sources and methods and endanger national security.") (non-FOIA case).

- ⁸ Minier, 88 F.3d at 801; Roman, 1998 U.S. Dist. LEXIS 6708, at **10-11; Blazy, 979 F. Supp. at 23-24; Earth Pledge Found., 988 F. Supp. at 627-28; Campbell, 1996 WL 554511, at *6; Kronisch v. United States, No. 83-2458, 1995 WL 303625, at **4-6 (S.D.N.Y. May 18, 1995); Hunsberger v. CIA, No. 92-2186, slip op. at 3 (D.D.C. Apr. 5, 1995); Rothschild v. CIA, No. 91-1314, 1992 WL 71393, at *2 (D.D.C. Mar. 25, 1992); Lawyers Comm. for Human Rights v. INS, 721 F. Supp. 552, 567 (S.D.N.Y. 1989); Pfeiffer v. CIA, 721 F. Supp. 337, 341-42 (D.D.C. 1989).

Item V.

Initial FOIA/PA Access Requests

A. Numbers of initial requests.

1. Number of requests pending as of end of preceding fiscal year (1 Oct 05): 14,791¹
2. Number of requests received during current fiscal year (FY 2006): 82,691
3. Number of requests processed during current fiscal year (FY 2006): 79,266
4. Number of requests pending as of end of current fiscal year (30 Sep 06): 18,216

B. Disposition of initial requests.

1. Number of grants: 35,452
2. Number of partial denials: 12,886
3. Number of total denials: 2,390
 - a. Number of times each FOIA exemption used (counting each exemption once per request).
 - (1) Exemption 1: 1,963
 - (2) Exemption 2: 2,524
 - (3) Exemption 3: 2,664
 - (4) Exemption 4: 1,438
 - (5) Exemption 5: 1,698
 - (6) Exemption 6: 9,698
 - (7) Exemption 7(A): 447
 - (8) Exemption 7(B): 39
 - (9) Exemption 7(C): 4,501
 - (10) Exemption 7(D): 430

¹ This number differs from the number reported at the end of the 2005 report due to more advanced counting methods. This figure is believed to be more accurate than that reported last year.

(11) Exemption 7(E):	55
(12) Exemption 7(F):	47
(13) Exemption 8:	2
(14) Exemption 9:	0
4. Other reasons for nondisclosure (total):	28,538
a. No records:	7,301
b. Referrals:	10,436
c. Request withdrawn:	2,761
d. Fee-related reason:	723
e. Records not reasonably described:	714
f. Not a proper FOIA request for some other reason:	2,330
g. Not an agency record:	1,007
h. Duplicate request:	1,394
i. Other (total):	1,872
(1) Electronic referral:	58
(2) Insufficient address/information:	551
(3) Lacked 3 rd party waiver:	216
(4) Publicly sold documents :	16
(5) Direct National Personnel Records Center referral:	220
(6) Non-attribution:	14
(7) Improper referrals:	53
(8) National Archives referral:	19
(9) Not agency issue:	725

Item VI.

Appeals of Initial Denials of FOIA/PA Requests

A. Numbers of appeals.

- | | |
|--|-------|
| 1. Number of appeals received during fiscal year (FY 2006): | 1,010 |
| 2. Number of appeals processed during fiscal year (FY 2006): | 747 |

B. Disposition of appeals.

- | | |
|--|-----|
| 1. Number denied in full: | 324 |
| 2. Number denied in part: | 111 |
| 3. Number completely reversed (granted): | 23 |
| a. Number of times each FOIA exemption used (counting each exemption once per appeal). | |
| (1) Exemption 1: | 103 |
| (2) Exemption 2: | 35 |
| (3) Exemption 3: | 83 |
| (4) Exemption 4: | 37 |
| (5) Exemption 5: | 82 |
| (6) Exemption 6: | 122 |
| (7) Exemption 7(A): | 9 |
| (8) Exemption 7(B): | 0 |
| (9) Exemption 7(C): | 83 |
| (10) Exemption 7(D): | 6 |
| (11) Exemption 7(E): | 1 |
| (12) Exemption 7(F): | 3 |
| (13) Exemption 8: | 0 |

(14) Exemption 9:	0
4. Other reasons for nondisclosure (total):	289
a. No records:	82
b. Referrals:	12
c. Appeal withdrawn:	37
d. Fee-related reason:	6
e. Records not reasonably described:	6
f. Not a proper FOIA request for some other reason:	14
g. Not an agency record:	2
h. Duplicate request:	1
i. Other ² (specify):	129

Item VII.

Compliance With Time Limits/Status of Pending Requests

A. Median processing time for requests processed during the year (FY 2006).

1. Simple requests.

a. Number of requests processed:	64,749
b. Median number of days to process:	17.0

2. Complex requests.

a. Number of requests processed:	13,809
b. Median number of days to process:	51.5

² Other reasons were appeals not submitted within required time frame and improper address.

3. Requests accorded expedited processing.	
a. Number of requests processed:	708
b. Median number of days to process:	0
B. Status of pending requests (as of September 30, 2006)	
1. Number of requests pending:	18,216
2. Median age of above cases in days:	73

Item VIII.

Comparison With Previous Year

Number of initial expedited requests received (FY 04)	1057
Number of initial expedited requests granted (FY 04)	841
Number of initial expedited requests received (FY 05)	528
Number of initial expedited requests granted (FY 05)	411
Number of initial expedited requests received (FY 06)	955
Number of initial expedited requests granted (FY 06)	708

Item IX.

FOIA Staffing/Costs

A. Staffing levels (expressed in work-years).	
1. Number of full-time FOIA personnel:	397.63
2. Number of personnel with part-time or occasional FOIA duties:	426.54
3. Total number of personnel:	824.17

B. Total costs (including staff and all resources).

- | | |
|---|--------------|
| 1. FOIA processing (including appeals): | \$64,181,063 |
| 2. Litigation-related activities (estimated): | \$2,695,967 |
| 3. Total costs: | \$66,877,030 |

Item X.

Fees Collected From Public

- A. Total amount of fees collected by the agency for processing requests: \$518,002.00
B. Percentage of total costs: .8%

Item XI.

FOIA Regulation and Fee Schedule

- A. The Department of Defense (DoD) Freedom of Information Act Program Regulation, DoD 5400.7-R, September 4, 1998, which provides guidance regarding administration of FOIA Program within the DoD, can be found at:

http://www.dtic.mil/whs/directives/corres/pdf/540007r_090498/54007r.pdf

- B. The Fee Schedule is Chapter 6 of the above regulation and as modified at:

<http://www.defenselink.mil/pubs/foi/foiafees.pdf>

- C. Additional Department of Defense FOIA documents and hyperlinks can be found by accessing the following Universal Resource Locator (URL):

<http://www.dod.mil/pubs/foi/>

Item XII.

Report on FOIA Executive Order 13392 Implementation

- A. The Director of Administration and Management (DA&M) submitted Modification #1 to the DoD FOIA Improvement Plan on November 2, 2006. A copy of the Plan is at enclosure 1 and the Modification is at enclosure 2. Both Plan and Modification can also be found at: <http://www.dod.mil/odam/DFOIPO/ExecutiveOrder13392.html>. This Modification identifies and implements specific initiatives to reduce the overall DoD FOIA backlog beginning in fiscal year 2008.
- B. The DoD FOIA Improvement Plan identified four areas for improvement, each with specific objectives and milestones. Those areas are Organizational Structure and Manning; Training; Technology; and Resources/Backlog. Modification #1 added five additional milestones which were all within the Resources/Backlog improvement area.
 - 1. **Organizational Structure and Manning.** This area contains three objectives: optimal organizational placement of FOIA Offices; standardized job series and grade levels; and standards for contracting of FOIA functions.
 - a. **Optimal organizational placement of FOIA Offices.** Two milestones for 2006 were met for the first objective. On June 29, 2006, the DoD FOIA Public Liaisons were tasked to provide data on the organizational placement of FOIA Offices within the DoD and recommendations on their optimal placement. DFOIPO conducted an analysis of the data and determined that the current organizational placement of the FOIA Offices within the Military Departments and the Combatant Commands is generally not optimal. On December 29, 2006, the DA&M issued memoranda requesting they review the current placement of their FOIA Offices within their organizational structure. These memoranda also instructed the Military Departments and Combatant Commands that optimal placement of their FOIA Offices is alignment within the offices of the Administrative Assistant or Chief of Staff, respectively.
 - b. **Standardized job series and GS levels.** To meet the first milestone for the second objective, on July 19, 2006, DFOIPO requested the DoD FOIA Public Liaisons to provide input for establishing standard criteria for position descriptions, grade levels, and performance standards for FOIA Officers. DFOIPO met the remaining milestone on September 21, 2006, by providing the DoD Components standard DoD FOIA Officer position descriptions that will enable the proper justification of grade levels commensurate with their duties and responsibilities. Additionally, these position descriptions will assist senior officials in developing suitable performance standards for their FOIA Officers.
 - c. **Standards for contracting of FOIA functions.** Three milestones were met for this objective. On August 4, 2006, DFOIPO requested the DoD FOIA Public Liaisons

provide data on the use of contractors within their respective FOIA Offices. After obtaining a legal review of the applicability of outsourcing FOIA activities, DFOIPO developed a DoD standard identifying inherently governmental FOIA functions and those which could be accomplished by contractors. The standard was published on January 19, 2007.

2. **Training.** This area contains two objectives: develop a DoD FOIA resident training program and develop a DoD FOIA online training capability within a newly created DFOIPO Website.
 - a. **Develop DoD FOIA resident training program.** Three milestones for 2006 were met for this first objective. On July 19, 2006, the first two milestones were accomplished when the DoD FOIA Public Liaisons were requested to identify their resident training requirements and to study the feasibility of adding or increasing FOIA training to Military Judge Advocate General School curricula. The feasibility studies showed that all of the schools included the FOIA somewhere in their curricula. However, any increase in FOIA training at these schools would be problematic because it would result in the reduction of some other critical subject within the curricula and may involve increased funding. The final milestone for 2006 was accomplished on December 19, 2006, when a concept for a FOIA Officer Certification Program was developed. This concept will be implemented upon deployment of FOIA training.
 - b. **Develop a DoD FOIA online training capability within a newly created DFOIPO Website.** The initial milestone for this objective was met with a July, 2006, budget submission.
3. **Technology.** There are three objectives in this area: analyze FOIA software for expanded use in streamlining DoD FOIA processes; standardize DoD FOIA Websites to enable better public access; and conduct a feasibility study for a DoD wide electronic network to expedite FOIA processing.
 - a. **Analyze FOIA software for expanded use in streamlining DoD FOIA Processes.** This objective had two milestones for 2006. On July 19, 2006, DoD FOIA Public Liaisons were provided with a list of FOIA software vendors for dissemination throughout their Components. Additionally, on that date, the FOIA Public Liaisons were asked to assess FOIA software use and applicability. The responses to this tasking indicate that the DoD FOIA Offices use a variety of software tracking tools, ranging from simple spreadsheets to complex off the shelf programs that provide document management, case tracking, and onscreen redaction. The two primary reasons for FOIA Offices not having the software tools they need are funding and security concerns.
 - b. **Standardize DoD FOIA Websites to enable better public access.** Two 2006 milestones for this objective were met. DFOIPO has established its own Website, and on September 29, 2006, DFOIPO published standards for DoD FOIA Websites.

- c. **Conduct a feasibility study for a DoD wide electronic network to expedite FOIA processing.** To meet the milestone for this objective, an Integrated Processing Team (IPT), composed of representatives from DFOIPO, the DoD Components, and information technology (IT) specialists, was formed to study this issue. The IPT had its initial meeting on November 28, 2006.
- 4. **Resources/Backlog.** This area contains three objectives: determine the manpower required to reduce measurable backlogs in FOIA Offices; fund in fiscal year 2008 additional FOIA personnel staffing required to reduce backlogs; and concentrate on initiatives that will reduce DoD FOIA backlog by 10% annually beginning in FY 2008.
 - a. **Determine manpower required to reduce measurable backlogs in FOIA Offices.** Two milestones for 2006 were met to accomplish this objective. On June 29, 2006, DoD FOIA Public Liaisons were asked by DFOIPO to provide data on all FOIA Offices that routinely have backlogs greater than 50 cases. Using this data, DFOIPO determined the resources necessary to reduce the backlog by 10% per year over a five year period within these targeted FOIA Offices.
 - b. **Fund additional FOIA personnel staffing required to reduce backlogs in fiscal year 2009 and beyond.** Two milestones for this objective were accomplished. In June, 2006, DFOIPO submitted a budget request to increase its staffing, and a funding request was submitted to increase resources (staffing and technology) for those DoD FOIA Offices identified during the accomplishment of the previous objective.
 - c. **Concentrate on initiatives that will reduce DoD FOIA backlog by 10% annually beginning in fiscal year FY 2008.** Five milestones for this objective were accomplished. On September 18, 2006, two were accomplished when the Agency Chief FOIA Officer submitted a funding request for FY 2008 to address the backlog within the OSD FOIA Office and to address the backlogs within the 31 DoD FOIA Offices that routinely have backlogs of over 50 cases. On November 17, 2006, DFOIPO met with the requester having the largest backlog within DoD to lay the foundation for future discussions concerning the reduction of this backlog. On December 18, 2006, the OSD FOIA Office documented the process to reduce the backlog of major requesters by at least 10% by the end of calendar year 2007. On December 29, 2006, this Office established a process whereby its ten oldest FOIA cases continuously would be identified, addressed, and closed within six months of identification.
- C. All 25 improvement area objectives projected for completion in 2006 have been completed. Fourteen were completed within the projected milestone dates and 11 exceeded projected milestone dates. Milestone completion dates were generally extended due to the need for data calls out through the DoD Components to FOIA Offices worldwide. Additionally, some complex FOIA improvement initiatives required thorough coordination with other staffs within the Office of the Secretary of Defense. Below is a list of the 11 milestone deficiencies

with the projected date of completion cited in the DoD FOIA Improvement Plan and the actual completion date:

1. DFOIPO memorandum published recommending where DoD Components should place their FOIA Offices.
 - a. Plan date: September 15, 2006.
 - b. Completion date: December 29, 2006.
2. DoD Components requested to provide input and recommendations on job series and grade levels for FOIA personnel.
 - a. Plan date: July 14, 2006.
 - b. Completion date: July 19, 2006.
3. DFOIPO publishes standard position descriptions for DoD FOIA Personnel.
 - a. Plan date: September 15, 2006.
 - b. Completion date: September 21, 2006.
4. DFOIPO obtains legal review on the applicability of outsourcing an activity's FOIA responsibility. NOTE: Extensive DoD General Counsel interest in this initiative was evident during coordination due to the significant legal implications in determining inherently governmental functions in the FOIA process.
 - a. Plan date: October 16, 2006.
 - b. Completion date: December 21, 2006.
5. DFOIPO issues standards for contracting FOIA operations in DoD. NOTE: Following the legal review of proposed FOIA inherently governmental functions, other OSD staff offices and DoD Component FOIA Offices expressed interest in this issue, thus additional coordination was conducted prior to their publication.
 - a. Plan date: December 15, 2006.
 - b. Completion date: January 19, 2007.
6. DoD Components requested to identify their resident training requirements and their plans to provide this training.
 - a. Plan date: July 17, 2006.
 - b. Completion date: July 19, 2006.

7. Military Services requested to study the feasibility of adding/increasing FOIA training to JAG school curriculum.
 - a. Plan date: July 17, 2006.
 - b. Completion date: July 19, 2006.
 8. Concept for FOIA Officer Certification Program approved.
 - a. Plan date: December 15, 2006.
 - b. Completion date: December 19, 2006.
 9. FOIA software standards, commercial options, and vendors defined.
 - a. Plan date: July 14, 2006.
 - b. Completion date: July 19, 2006.
 10. Publish standards for improving DoD Websites.
 - a. Plan date: September 22, 2006.
 - b. Completion date: September 29, 2006.
 11. Form integrated processing team to conduct a feasibility study for a DoD wide electronic network to expedite FOIA processing..
 - a. Plan date: October 2006.
 - b. Completion date: November 28, 2006.
- D. Several significant Executive Order activities were accomplished prior to the submission of the DoD FOIA Improvement Plan:
1. The DA&M, a direct report to the Secretary of Defense, was appointed DoD Agency Chief FOIA Officer by the Deputy Secretary of Defense on January 11, 2006.
 2. The Defense Freedom of Information Policy Office was formally established on January 25, 2006.
 3. DoD FOIA Public Liaisons were appointed by the DA&M for each DoD Component and FOIA Requester Service Centers were identified throughout the Department.
 4. DFOIPO contracted a recognized expert in the administration of Federal Agency surveys to develop a unique instrument to capture data electronically from FOIA Officers at DoD headquarters, major command, and installation levels. To be specific, there were 548 FOIA Office respondents to the survey out of an estimated total potential population of

600 DoD FOIA Offices, with individual data collected from over 1200 military, civilian, and contract personnel performing FOIA functions. The contractors who administered the survey indicated that this survey generated an extraordinarily high response rate, a likely reflection of the high level of interest from DoD personnel who process FOIA actions. In addition to receiving revealing responses from the specific questions posed in the survey, a significant amount of relevant information was also collected from the analysis of responses to open-ended questions that prompted candid comments, recommendations, and insights. The survey instrument collected specific data on the following FOIA issues:

- Identification of methods of communication with requesters
- Identification of methods of FOIA request tracking/control
- Primary redaction methods
- Percentages of requests associated with Initial Request categories
- The impact on backlog of various categories of processing time
- The current backlog in the office of the respondent
- The average number of initial requests received by the respondent's office per year
- Job satisfaction issues including perceived expertise and understanding of FOIA
- Resources, including personnel, equipment, and IT support available to respondent
- Respondent's perception of leadership, teamwork, and cooperation
- Level of customer service from respondent's office
- Obstacles impeding timely FOIA processing
- Respondent's recommendations to improve the FOIA process
- Position levels of FOIA staff in respondent's office
- Type of FOIA training received (if any) within respondent's office during the year

This survey data from 548 FOIA Offices enabled the development of the DoD FOIA Improvement Plan to be based on empirical data. The objectives in the Plan, therefore, concentrate on those measures that will, in fact, improve customer service and reduce backlog.

E. Concise descriptions of FOIA exemptions:

- (b)(1)--records currently and properly classified in the interest of national security;
- (b)(2)--records related solely to internal personnel rules and practices; Two profiles – Low and High.

Low – Records qualifying under the Low (b)(2) profile are those that are trivial and housekeeping in nature for which there is no legitimate public interest or benefit to be gained by release, and it would constitute an administrative burden to process the request in order to disclose the records.

High – Records qualifying under High (b)(2) are those containing or constituting statutes, rules, regulations, orders, manuals, directives, instructions, and security classification guides, the release of which would allow circumvention of these

records thereby substantially hindering the effective performance of a significant function of DoD.

(b)(3)--records protected by another law that specifically exempts the information from public release;

(b)(4)--trade secrets and commercial or financial information obtained from a private source which would cause substantial competitive harm to the source if disclosed;

(b)(5)-- inter-agency or intra-agency memorandums or letters containing information considered privileged in litigation;

(b)(6)--records which if released, would result in a clearly unwarranted invasion of personal privacy;

(b)(7)--investigatory records or information compiled for law enforcement purposes;

(b)(8)--records for the use of any agency responsible for the regulation or supervision of financial institutions; and

(b)(9)--records containing geological and geophysical information (including maps) concerning wells.

F. Additional statistics:

1. Time range of requests pending, by date of request:

March 10, 1991 – September 30, 2006

2. Time range of consultations pending with other agencies, by date of initial interagency communication:

May 3, 1993 – September 30, 2006

G. Attachments:

1. DoD FOIA Improvement Plan, June 14, 2006

2. Modification #1 to DoD FOIA Improvement Plan, November 2, 2006