

## FREEDOM OF INFORMATION ANNUAL REPORT -- FY 2009

I. AGENCY: Indian Health Service

REPORT PREPARED BY: Janet Ingersoll

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ELECTRONIC ADDRESS FOR THIS REPORT ON THE WORLD WIDE WEB:

[http://www.ihs.gov/AdminMngrResources/FOIA/index.cfm?module=foia\\_elec\\_read\\_room](http://www.ihs.gov/AdminMngrResources/FOIA/index.cfm?module=foia_elec_read_room)

ADDRESS FOR PAPER COPIES OF THIS REPORT:

Indian Health Service  
Freedom of Information Act Requester Service Center  
801 Thompson Ave (TMP 450)  
Rockville, Maryland 20852

II. HOW TO MAKE A FOIA REQUEST:

FOIA requests can be made using mail or fax. \* Requests can also be made using the online form on our website which can be found here:

[http://www.ihs.gov/AdminMngrResources/FOIA/index.cfm?module=foia\\_make\\_request](http://www.ihs.gov/AdminMngrResources/FOIA/index.cfm?module=foia_make_request)

\* Please note that any information that is an invasion of personal privacy will not be released. This is not the correct form to use when making a Privacy Act request (requesting your own records).

Information that was withheld by the Agency was withheld because one of the nine FOIA exemptions would apply to the released information.

III. ACRONYMS, DEFINITIONS, AND EXEMPTIONS:

1. Agency-specific acronyms or other terms:

HHS - U.S. Department of Health and Human Services

OPDIVs - Operating Divisions of HHS

OS - Office of the Secretary, HHS

OASPA - Office of the Assistant Secretary for Public Affairs, HHS  
AoA - Administration on Aging  
ACF - Administration for Children and Families  
AHRQ - Agency for Healthcare Research and Quality  
ATSDR - Agency for Toxic Substances and Disease Registry  
CDC - Centers for Disease Control and Prevention  
FDA - Food and Drug Administration  
HRSA - Health Resources and Services Administration  
IHS - Indian Health Service  
NIH - National Institutes of Health  
OIG – Office of the Inspector General  
OPHS - Office of Public Health and Science  
PHS - Public Health Service  
PRO - Professional Review Organization  
PSC - Program Support Center  
SAMHSA - Substance Abuse and Mental Health Services Administration

2. Basic terms (from FOIA UPDATE, Summer 1997):

- 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. **Component** – for agencies that process requests on a decentralized basis, a “component” is an entity, also sometimes referred to as an Office, Division, Bureau, Center, or Directorate, within the agency that processes FOIA requests. The FOIA now requires that agencies include in their annual report data for both the agency overall and for each principal component of the agency.
- e. **Consultation** – the procedure whereby the agency responding to a FOIA request first forwards a record to another agency for its review because that agency has an interest in the document. Once the agency in receipt of the consultation finishes its review of the record, it responds back to the agency that forwarded it. That Agency, in turn, will then respond to the FOIA requester.
- f. **Exemption 3 Statute** – a federal statute that exempts information from disclosure and which the agency relies on to withhold information under subsection (b)(3) of the FOIA.
- g. **FOIA Request** – a FOIA request is generally a request to a federal agency for access to records concerning another person (i.e., a “third-party” request), or concerning an organization, or a particular topic of interest.

FOIA requests also include requests made by requesters seeking records concerning themselves (i.e., “first-party” requests) when those requesters are not subject to the Privacy Act, such as non-U.S. citizens. Moreover, because all first-party requesters should be afforded the benefit of both the access provisions of the FOIA as well as those of the Privacy Act, FOIA requests also include any first-party requests where an agency determines that it must search beyond its Privacy Act “systems of records” or where a Privacy Act exemption applies, and the agency looks to FOIA to afford the greatest possible access. All requests which require the agency to utilize the FOIA in responding to the requester are included in this Report. Additionally, a FOIA request includes records referred to the agency for processing and direct response to the requester. It does not, however, include records for which the agency has received a consultation from another agency. (Consultations are reported separately in Section XII of this Report.)

- h. **Full Grant** - an agency decision to disclose all records in full in response to a FOIA request.
- i. **Full Denial** - an agency decision not to release any records in response to a FOIA request because the records are exempt in their entirety under one or more of the FOIA exemptions, or because of a procedural reason, such as when no records could be located.
- j. **Median Number - Median Number** – the middle, not average, number. For example, of 3, 7, and 14, the median number is 7.
- k. **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 granted expedited processing are placed in yet another track. Requests in each track are processed on a first in/first out basis.
  - i. **Expedited Processing** – an agency will process a FOIA request on an expedited basis when a requester satisfies the requirements for expedited processing as set forth in the statute and in agency regulations.
  - ii. **Simple Request** – a FOIA request that an agency using multi-track processing places in its fastest (non-expedited) track based on the low volume and/or simplicity of the records requested.
  - iii. **Complex Request** – a FOIA request that an agency using multi-track processing places in a slower track based on the high volume and/or complexity of the records requested.
- l. **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.
- m. **Pending Request or Pending Administrative Appeal** – a request or administrative appeal for which an agency has not taken final action in all respects.
- n. **Perfect 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.
- o. **Processed Request or Processed Administrative Appeal** – a request or administrative appeal for which an agency has taken final action in all respects.
  - p. **Range in Number of Days** – the lowest and highest number of days to process requests or administrative appeals.
  - q. **Time Limits** – the time period in the statute for an agency to respond to a FOIA request (ordinarily twenty working days from receipt of a perfected FOIA request).
3. Include the following concise descriptions of the nine FOIA exemptions:
- a. **Exemption 1:** classified national defense and foreign relations information
  - b. **Exemption 2:** internal agency rules and practices
  - 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	Number of Times Relied upon per Component	Total Number of Times Relied upon by Agency

**V. FOIA Requests**

A. Numbers of initial requests (line 1 + line 2 - line 3 = line 4):

1. Number of requests pending as of start of fiscal year: 49
2. Number of requests received in fiscal year: 97
3. Number of requests processed in fiscal year: 115
4. Number of requests pending as of end of fiscal year: 31

	<b>Number of Requests Pending as of Start of Fiscal Year</b>	<b>Number of Requests Received in Fiscal Year</b>	<b>Number of Requests Processed in Fiscal Year</b>	<b>Number of Requests Pending as of End of Fiscal Year</b>
OS				
ACF				
AOA				
CMS				
OIG				
OPHS				
AHRQ				
CDC				
FDA				
HRSA				
IHS	49	97	115	31
NIH				
SAMHSA				
PHS Total				
HHS Total				

B. (1) Disposition of FOIA Requests:

1. Number of full grants: 7
2. Number of partial grants: 32
3. Number of full denials based on Exemptions: 4
4. Number of Full Denials Based on Reasons Other than Exemptions (Total): 72
  - a. No records: 8

- b. Referrals: 2
- c. Request withdrawn: 2
- d. Fee-related reason: 0
- e. Records not reasonably described: 0
- f. Improper FOIA request for some other reason: 5
- g. Not an agency record: 2
- h. Duplicate request: 2
- i. Other (specify): 51

Number of Full Grants	Number of Partial Grants/ Partial Denials	Number of Full Denials Based on Exemptions	Number of Full Denials Based on Reasons Other than Exemptions									
			No Records	All Records Referred to Another Component or Agency	Request Withdrawn	Fee-Related Reason	Records not Reasonably Described	Improper FOIA Request for Other Reason*	Not Agency Record	Duplicate Request	Other *Explain in chart below"	
7	32	4	8	2	2	0	0	5	2	2	51	

\* Improper FOIA request column above includes those requests that were made but were public information and could readily be found on the IHS website.

B. (2) Disposition of FOIA Requests –“Other” Reasons for “Full Denials Based on Reasons Other than Exemptions” from Section V, B (1) Chart

Component	Description of “Other” Reasons for Denials from Chart B (1) & Number of	TOTAL
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FDA														
HRSA														
IHS				11	7	18								
NIH														
SAMHSA														
PHS Total														
HHS Total														

**Section VI is not applicable to IHS since we do not process our own appeals.**

**VI. ADMINISTRATIVE APPEALS OF INITIAL DETERMINATIONS OF FOIA REQUESTS**

- A. Received, Processed and Pending Administrative Appeals \_\_\_\_
  - 1. Number of appeals pending as of start of Fiscal Year
  - 2. Number of appeals received in Fiscal Year:
  - 3. Number of appeals processed in Fiscal Year:
  - 4. Number appeals pending as of end of Fiscal Year
  
- B. Disposition of Administrative Appeals – All Processed Appeals \_\_\_\_
  - 1. Number affirmed on appeal
  - 2. Number partially affirmed and partially reversed/remanded on appeal
  - 3. Number completely reversed/remanded on appeal
  - 4. Number of appeals closed for other reasons

C. (1) Reasons for denial on Appeal – Number of Times Exemptions applied

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

(2) Reasons for denial on Appeal – Reasons other than exemptions









CMS														
OIG														
OPHS														
AHRQ														
CDC														
FDA														
HRSA														
IHS			5	2	5	4	3	4	4	2				29
NIH														
SAMHSA														
PHS Total														
HHS Total														

VII. C

Requests Granted Expedited Processing

	1-20 Days	21 – 40 Days	41 – 60 Days	61 – 80 Days	81- 100 Days	101- 120 Days	121- 140 Days	141- 160 Days	161- 180 Days	181- 200 Days	201- 300 Days	301- 400 Days	401+ Days	TOTAL
OS														
ACF														
AOA														
CMS														
OIG														
OPHS														
AHRQ														
CDC														
FDA														
HRSA														
IHS	1	2	1											4
NIH														
SAMHSA														
PHS Total														
HHS Total														

VII. D. Pending Requests –All Pending Perfected Requests



VII. E. Pending Requests- Ten Oldest Pending Perfected Requests

	10 <sup>th</sup> Oldest Request And Number of Days Pending	9 <sup>th</sup>	8 <sup>th</sup>	7 <sup>th</sup>	6 <sup>th</sup>	5 <sup>th</sup>	4 <sup>th</sup>	3 <sup>rd</sup>	2 <sup>nd</sup>	Oldest Request And Number of Days Pending
OS										
ACF										
AOA										
CMS										
OIG										
OPHS										
AHRQ										
CDC										
FDA										
HRSA										
IHS	3/10/09 201	2/18/09 220	1/08/09 263	12/22/08 279	12/17/08 284	11/25/08 306	11/20/08 311	11/20/08 311	11/04/08 326	10/08/08 372
NIH										
SAMHSA										
PHS Total										
HHS Total										

VIII. REQUESTS FOR EXPEDITED PROCESSING AND REQUESTS FOR FEE WAIVER (continued)

A. Requests for Expedited Processing (See chart)

VIII. 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
OS					
ACF					
AOA					
CMS					
OIG					
OPHS					
AHRQ					
CDC					
FDA					
HRSA					
IHS	2	0	13	33	14
NIH					
SAMHSA					
PHS Total					
HHS Total					

VIII. B. Requests for Fee Waiver

	Number Requested	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate
OS				
ACF				
AOA				
CMS				
OIG				
OPHS				
AHRQ				
CDC				
FDA				
HRSA				
IHS	1	0	10	10
NIH				
SAMHSA				
PHS Total				
HHS Total				

IX. FEES COLLECTED FOR PROCESSING REQUESTS (See Chart)

	Personnel			COSTS		
	Number of "Full-Time FOIA Employees"	Number of "Equivalent Full-Time FOIA Employees"	Total Number of Full-Time FOIA Staff "	Processing Costs	Litigation-Related Costs	Total Costs
OS OS						
ACF						
AOA						
CMS						
OI OIG						
OPHS						
AHRQ						
CDC						
FDA						
HRSA						
IHS	1*	2.30*	3.30*	\$276,180	\$0	\$276,180
NIH						
SAMHSA						
PHS Total						
HHS Total						

**\*NOTE:** This number reflects the eleven Area FOIA Coordinators (Area Coordinators have other duties besides FOIA duties so they are being counted as 15%. Since there are 11, they are being accounted for as 1.65. We also have two personnel assisting with the FOIA program in 2009; one started in April and one started in August. There was one full time FOIA Specialist for 6 months then the FOIA Coordinator was full time for 9 months. The first column reflects a change in staff due to a full-time FOIA staff member being assigned to other duties part of the fiscal year and also to due to leave.



X. FEES COLLECTED

	Total Amount of Fees Collected	Percentage of Total Costs
OS		
ACF		
AOA		
CMS		
OIG		
OPHS		
AHRQ		
CDC		
FDA		
HRSA		
IHS	\$1,050.00	0.4%
NIH		
SAMHSA		
PHS Total		
HHS Total		

X. FOIA REGULATIONS

<http://www.hhs.gov/foia/45cfr5.html>

XII. BACKLOGS, CONSULTATIONS, AND COMPARISONS

A. Backlogs of FOIA Requests and Administrative Appeals

(\*NOTE: ONLY BACKLOGGED FOIA REQUESTS REPRESENTED IN THIS CHART)

	Number of Backlogged Requests as of End of Fiscal Year	Number of Backlogged Appeals as of End of Fiscal Year
OS		
ACF		
AOA		
CMS		
OIG		
OPHS		
AHRQ		
CDC		

