

FREEDOM OF INFORMATION ANNUAL REPORT -- FY 2006

I. AGENCY: U.S. Department of Health and Human Services

Indian Health Service

REPORT PREPARED BY: Janet Ingersoll

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ELECTRONIC ADDRESS FOR THIS REPORT ON THE WORLD WIDE WEB:

** Copies of the annual reports of a number of individual HHS Operating Divisions can be found by contacting the responsible component shown in Section II below, or by locating a FOIA link at the following websites: <http://www.ihs.gov/>

ADDRESS FOR PAPER COPIES OF THIS REPORT: Same as above

II. HOW TO MAKE A FOIA REQUEST: Please see HHS Guide to Information Resources at: <http://www.hhs.gov/about/infoguid.html#foia>

- A. Names, addresses, and telephone numbers of all individual agency components and offices that process FOIA requests:

FOIA Officer

12300 Twinbrook Parkway, Suite 450

Rockville, Maryland 20852

301-443-1116

- B. Brief description of agency=s response time range(s): There is no overall time range because individual operating divisions (OPDIVS) have authority to release or deny their own records, and vary greatly in terms of the size and volume of FOIA requests processed. Individual OPDIV response times can range from same day response to over a year, depending on the complexity of the request.
- C. Brief description of why some requests are not granted: Documents requested were protected by an exemption and release would have caused harm to the interest protected by the exemption.

III. DEFINITIONS OF TERMS AND ACRONYMS USED IN REPORT:

A. 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

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

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

FOIA/PA request - Freedom of Information/Privacy Act request. A FOIA request is generally a request for access to records concerning a third party, an organization, or a particular topic of interest. A Privacy Act request is a request for records concerning oneself. Such requests are also treated as FOIA requests. (All requests for access to records, regardless of which law is cited by the requester, are included in this report).

Initial Request - A request to a federal agency for access to records under the Freedom of Information Act.

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 Freedom of Information Act, or any other FOIA determination such as a matter pertaining to fees.

Processed Request or Appeal - A request or appeal for which an agency has taken final action on the request or appeal in all respects.

Multi-track processing - A system in which simple requests requiring relatively minimal review are placed in one processing track and more voluminous and complex requests are placed in one or more other tracks. Requests in each track are processed on a first-in/first-out basis. A requester who has an urgent need for records may request expedited processing (see below).

Expedited processing - An agency will process a FOIA request on an expedited basis when a requester has shown an exceptional need or urgency for the records which warrants prioritization of his or her request over other requests that were made earlier.

Simple request - A FOIA request that an agency using multitrack processing places in its fastest (non-expedited) track based on the volume and/or simplicity of the records requested.

Complex request - A FOIA request, which an agency using multi-track processing places in a slower track, based on the volume and/or complexity of records requested.

Grant - An agency decision to disclose all records in full response to a FOIA request.

Partial grant - 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 of the FOIA exemptions; or a decision to disclose some records in their entireties, but to withhold others in whole or in part.

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 FOIA exemptions or for some procedural reason (such as because no record is located in response to a FOIA request).

Time Limits - The time period in the Freedom of Information Act for an agency to respond to a FOIA request (ordinarily 20 working days from proper receipt of a perfected FOIA request).

Perfected request - A FOIA request for records which adequately describes the records sought, which has been received by the FOIA office of the agency component in possession of the records, and for which there is no remaining question about the payment of applicable fees.

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).

Median number - The middle number, not the average. For example, of 3, 7, and 14, the median number is 7.

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 eight.

IV. EXEMPTION 3 STATUTES:

A. List of Exemption 3 statutes relied on by the agency during report year:

1. Brief description of type(s) of information withheld under each statute:

Exemption 3 was used to solidify the additional use of Exemption 6 invasion of privacy deletions provided that the denial of information was appealed. If released, they would have been a clear invasion of the personal privacy of the individual in question and a clear violation of the Health Insurance Portability and Accountability Act (HIPAA), P.L. 104-191, 42 U.S.C. and 1320-d and 1320-4; 45 C.F.R. 164.502(g)(4).

On the instances during this Fiscal Year when the denials were made, they were denied records because the requester was absent of signed authorization from the individual and releasing it not only would have fit under an Exemption 6 withholding, but would most importantly the Agency's release of the requested information could have indeed been deemed a HIPAA violation. Therefore, for these withholdings, Exemptions 3, 6 were applied with the additional reference to HIPAA above referenced Public Law and its sections.

2. Has a court upheld the use of each statute? If so, cite example:

We have had no appeals of the denied information but most importantly, we do not process our own appeals.

V. INITIAL FOIA/PA ACCESS REQUESTS (Include all requests, 3rd or 1st party):

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

1. Number of requests pending at close of preceding fiscal year: 42

2. Number of requests received during reporting fiscal year: 183,315
3. Number of requests processed during reporting fiscal year: 183,323
4. Number of requests pending at close of reporting fiscal year: 34

(This number should match Line VII.B.1.)

**Privacy Act Requests 183,190

B. Disposition of Initial Requests:

1. Number granted in full: 183,203
2. Number granted in part: 93
3. Number of full denials: 11
 - a. Number of times each FOIA exemption was used:
 - Exemption 1:
 - Exemption 2: 2
 - Exemption 3: 3
 - Exemption 4: 72
 - Exemption 5: 11
 - Exemption 6: 16
 - Exemption 7
 - Exemption 7(A):
 - Exemption 7(B):
 - Exemption 7 (C):
 - Exemption 7 (D):
 - Exemption 7 (E):
 - Exemption 7 (F):
 - Exemption 8: 0000
 - Exemption 9: 0000
4. Other reasons for non-disclosure (total): 16
 - a. No records: 10
 - b. Referrals: 2
 - c. Request withdrawn:
 - d. Fee-related reason:

- e. Records not reasonably described:
- f. Not a proper FOIA request for some other reason:
- g. Not an agency record: 4
- h. Duplicate request:
- i. Other (specify):

VI. APPEALS OF INITIAL DENIALS OF FOIA/PA REQUESTS (include all access requests whether first or third party):

A. Numbers of Appeals:

- 1. Number of appeals received during the fiscal year: 0
- 2. Number of appeals processed during the fiscal year: 0

B. Disposition of Appeals:

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

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

4. Other reasons for non-disclosure (total):
 - a. No records:
 - b. Referrals:
 - c. Request withdrawn:
 - d. Fee-related reason:
 - e. Records not reasonably described:
 - f. Not a proper FOIA request for some other reason:
 - g. Not an agency record:
 - h. Duplicate request:
 - i. Other (specify):

VII. COMPLIANCE WITH TIME LIMITS/STATUS OF PENDING REQUESTS:

A. Median Processing Time for Requests Processed During the Year:

1. Simple Requests (if multiple tracks used):
 - a. Number of requests processed:
 - b. Median number of days to process:
2. Complex Requests (includes total of complex requests and single-track systems):
 - a. Number of requests processed:
 - b. Median number of days to process:
3. Requests Accorded Expedited Processing:
 - a. Number of requests processed:
 - b. Median number of days to process:
4. Requests Accorded (single track system):
 - a. Number of requests processed: 183,323**
 - b. Median number of days to process: 32

**Total number includes first and third party requests for information for all twelve of the IHS Area Offices.

B. Status of Pending Requests (if multiple tracks are being used, report for each track as well as totals).

1. Number of requests pending as of the end of the fiscal year covered in this report (from Line V.A.4): 34

2. Median number of days that such requests were pending as of that date:
Medians vary greatly from OPDIV to OPDIV. 32

VIII. COMPARISONS WITH PREVIOUS YEAR (S): (Optional):

- A. Comparison of numbers of requests received:
- B. Comparison of numbers of requests processed:
- C. Comparison of median numbers of days requests were pending as of end of fiscal year:
- D. Other statistics significant to components:
- E. Other narrative statements describing agency efforts to improve timeliness of FOIA performance and to make records available to the public (e.g., backlog-reduction activities; public availability of new categories of records): None

Other: With the help of the implementation of the Release of Information (ROI) program used in most service units, hospitals, and clinics, it has made the reporting component of this report much easier at the end of each fiscal year. In last year's annual report, we saw an increase in numbers far greater than in years past and this year's data is even higher. Another strategy of the Agency's to improve the timeliness and efficiency of reporting, was the constant support of the Headquarters personnel to the Area FOIA Coordinators in meetings, several site visits, and other conferences throughout the year. This gave them the opportunity to consult with the FOIA team from HQ East in order to keep the lines of communication open at all times. Another factor to consider is the implementation of HIPAA and the change in the Authorization for Consent (Form 810).

IX. COSTS/FOIA STAFFING:

- A. Staffing levels:
 1. Number of full-time FOIA personnel: 2
 2. Number of personnel with part-time or occasional FOIA duties (in total work-years): 14
 3. Total number of personnel (in work years): 16
 - 4.
- B. Total costs (including staff and all resources):
 1. FOIA processing (including appeals): \$588,534.40
 2. Litigation-related activities (estimated): 0
 3. Total costs: \$588,534.40

4. Comparison with previous year(s) (including percentage of change) (optional):

X. FEES: (See chart below)

- A. Total amount of fees collected by agency for processing requests: 5,885.34
- B. Percentage of total costs: 1%

XI. FOIA REGULATIONS (including fee schedule):

The FOIA regulation implementing the 1996 amendments to the Freedom of Information Act has been published as a Notice of Proposed Rule Making and public comments have been received. The passage of PL 105-277 requiring OMB to revise circular A-110 will require further revisions to the HHS FOIA regulation and public comments on those new sections. That effort is currently underway. Until such time as the revised regulation is published as a new final rule, the current HHS FOIA regulation can be found at 45 CFR Part 5, and at: <http://www.hhs.gov/foia/45cfr5.html>.

XII. Report on FOIA Executive Order Implementation

- A. Description of supplementation/modification of agency improvement plan (if applicable: N/A)
- B. Report on agency implementation of its plan, including its performance in meeting milestones, with respect to each improvement area:
 - **Backlog**—Goal: To reduce the existing backlog of pending initial FOIA requests by an increasing percentage each year (*i.e.*, 10% by 1-15-07, 15% by 1-15-08, and 20% by 12-31-08, as measured by number of requests pending), by periodically and consistently focusing on the existing backlog. Target 10% reduction by 1/15/07 will be met. Target completion: 1-15-08, 12-31-08.
 - On a quarterly basis, FOIA Staff reviewed existing backlog together with FOIA Officer in order to determine the number of cases pending for more than the twenty days provided by statute. Meeting held on 8-15-06, 10-15-06. To be completed by 1-15-07, 4-15-07, 7-15-07, 10-15-07.
 - On a quarterly basis, entire FOIA Staff met to address further means of backlog reduction. Completed on 8-15-06, 10-15-06. To be completed by 1-15-07, 4-15-07, 7-15-07, 10-15-07.
 - Forward status letter to requesters who have requests that are over 50 days old. To be completed by 12-15-06
 - To close the ten oldest FOIA requests pending each year. Target completion: 12-31-06, 12-31-07, 12-31-08, 12-31-09.

- **Multitrack processing**—Goal: Increase efficiency in processing FOIA requests and eliminate any potential backlog. Target completion: 12-1-06.
 - Segregate all requests into three groups: (1) simple; (2) complex; and (3) expedited. To be completed by 12-31-06.
 - Assign all simple requests to additional component personnel for processing. Such requests will include the "no records" requests, or easily obtainable existing materials. This step will permit the primary FOIA Specialist to concentrate on processing more complex and expedited requests, thus creating a shorter response time. To be completed by 7-31-06.
 - Assign FOIA-related tasks (such as retrieval of responsive records and photocopying of records) to additional component personnel. This step will permit the primary FOIA Specialist to concentrate on processing requests, thus creating a shorter response time. To be completed by 7-31-06.
- **Web site**—Goal: Ensure that subsection (a)(2) materials are posted in a timely manner and ensure the prompt removal of out-of-date material, with FOIA Specialist taking responsibility for full subsection (a)(2) compliance. Target completion: 12-31-06 (and continuing thereafter).
 - Review Web page and remove outdated material. To be completed by 12-31-06 (and quarterly thereafter).
 - Develop a better system to obtain subsection (a)(2) material from the sections in a timely manner so that it can be posted on our Web site. To be completed by 12-31-06 (with reviews quarterly thereafter to ensure that current materials are promptly posted).
- **Automated tracking capabilities**—Goal: To purchase electronic FOIA processing system to include updated tracking and redacting functions as well as the ability to receive requests electronically. Target completion: 12-31-07.
 - Contact vendors regarding system-specific requirements and price quotations for FOIA software. To be completed by 1-31-06.
 - Preparation and full processing (including interviewing of vendors) of a request for purchase of FOIA software. To be completed by 6-30-07.
 - FOIA software installed and implemented, including any customizations needed to fit IHS specifications. To be completed by 12-31-07.
 - Discuss budgetary requirements with appropriate officials. To be completed by 7-1-07.
 - Seek approval from appropriate IT officials for software purchase. To be completed by 6-1-07.
 - Install data port in order to connect copier to network. To be completed by 12-1-07.

- Train staff and implement integration of scanning copier into office computer network. To be completed by 12-1-07.
- **Consultation process at Area level and OGC**—Goal: To encourage timely attention to consultations on the part of the entities with whom we are consulting. Target completion: 12-31-06
 - Initiate use of form to be sent with all consultations to be completed and returned (in self-addressed stamped envelope) by the receiving entity. The form will ask for the entity's case number and contact person for that specific consultation. This will facilitate follow-up on the status of a consult by Headquarters FOIA staff. To be completed by 12-1-06.
 - Initiate follow-up calls by analyst to the agency-specified contact for long-pending consultations. If agency still does not respond to consultations, the FOIA Liaison will send a list of pending consultations to the head of that Area Office for response. To be completed by 10-1-06.
- **Customer relations/Communications**—Goal: To ensure that requesters who call the FOIA Requester Service Center receive the information they seek in a timely and efficient manner. Target completion: 12-1-06.
 - To improve communications with requesters as emphasized in Executive Order 13,392. Target completion: 10-1-06.
 - Improve customer satisfaction by training the FOIA Public Liaison and intake personnel to answer telephone calls. Target completion: 6-30-06 (and continuing thereafter).
 - Improve customer satisfaction by reviewing and revising acknowledgment letters to ensure that the public is aware of the new public information officers. All FOIA letters will be reviewed and wherever possible templates will be updated to include the telephone number to the FOIA Requester Service Center and proper listing of responders. Completed: 6-30-06 (and continuing thereafter).
 - Improve forms of communications with FOIA requesters. Target completion: 3-31-07.
 - Train individual(s) who answer FOIA Requester Service Center calls on how to determine status of a request, when to send a requester to the analyst for more detailed information, and when the FOIA Public Liaison should handle the call. To be completed by 12-1-06.

- Create a log to be used by FOIA Requester Service Center personnel; each time such personnel speak with a requester, a note is made in the log which will include the date, the name of the requester, the information requested, and the result of the conversation. This log will be reviewed by the FOIA Public Liaison to determine whether improvements in handling telephone calls can be made and to determine whether there are trends that may show other changes in the FOIA process that need to be made. To be completed by 12-1-06.
 - Initiate training for support staff regarding the importance of treating FOIA requesters with courtesy and respect. Completed on 7-1-06.
 - Clarify the responsibilities of the staff within the FOIA Requester Service Center. Completed on 6-30-06.
 - Educate staffs via memorandum and briefing regarding Executive Order requirements. To be completed by 12-31-06.
- C. Identification and discussion of any deficiency in meeting plan milestones (if applicable): N/A
- D. Additional narrative statement regarding other executive order-related activities (optional)
- E. Concise description of FOIA exemptions
- Exemption 2 – any release of information that applies to internal personnel rules and/or practices of this Agency. Releases made using this exemption in the past were applied because of their request of security information/guard schedules, policy on security in IHS facilities and staff rotations at specific sites. Because of September 11, the Agency has been more resilient to use this exemption where necessary so as not to release information to the public which would put its employees in possible harms way or create a security breach which may expose the hospital or service unit to any kind of theft, vandalism, and/or threat of terrorism.
 - Exemption 3 – When releases of information go past the usual Exemption 6 withholdings criteria and after the implementation of the Health Insurance Portability and Accountability Act (HIPAA).
 - Exemption 4 – Typical information found in contracts, grants and in the case of this Agency, also in Tribal Annual Funding Agreements and include the deletion of such information as estimated costs, negotiated amounts, unit pricing, etc.
 - Exemption 5 – The Agency applied this Exemption when withholding confidential reports, investigations materials, privileged attorney-client documentation and inter-Agency documents that would be considered allowing insight into the Agency’s deliberative process.

- Exemption 6 – Used when the release of information would have been deemed an invasion of privacy for the individual in question or information that could be deemed harmful to the surviving family members if released to the public. Also used when next of kin or executor of the estate could not be established.
- Exemption 9 – Aerial photos or maps relating to the public where water wells and water supplies are located on an Indian reservation unless it's a general map without topographical references and other landmarks that would tell the requester exactly where the water source is which could be construed as harmful to a Tribe.

F. Additional statistics:

1. Time range of requests pending, by date of request (or, where applicable, by date of referral from another agency). The time range of requests pending are from November 2005, to August 2006. These are the backlog cases from oldest to the most recent. The FOIA cases are pending due to legal issues and/or staff shortages at the Area and Service Unit level.
2. Time range of consultations pending with other agencies, by date of initial interagency communication. N/A

G. Attachment: Agency improvement plan (in current form). The Indian Health Service Improvement Plan is attached.