

U.S. Environmental Protection Agency
Chief Freedom of Information Act Officer's Report
To The Attorney General

I. Steps Taken to Apply the Presumption of Openness

EPA continues to proactively ensure that the presumption of openness is applied to its initial FOIA decisions and in its administrative appeals process.

Message from the Administrator - To ensure Agency awareness of the President's FOIA Memorandum and the Attorney General's FOIA Guidelines, the EPA Administrator issued a memorandum, "Transparency in EPA's Operations" to all employees on April 23, 2009, that communicates the Agency's full commitment to these policies. The Administrator stated that "All Agency personnel should ensure that this principle of openness is applied to the extent possible when responding to a FOIA request. Managers should give their staffs and the Agency's FOIA professionals the support needed to satisfy FOIA's transparency requirement in as timely and efficient a manner as possible. In accordance with guidance issued by Attorney General Holder on March 19, 2009, EPA offices should exercise their discretion in favor of disclosing documents whenever possible under the FOIA. Offices should assert an exemption to disclosure only where the Agency reasonably foresees that disclosure would harm an interest protected by an exemption or disclosure is prohibited by law. Offices should also take steps to make information public on the Agency's Web site without waiting for a request from the public to do so. More detailed FOIA implementation procedures will be provided in the near future to assist you in carrying out this important government responsibility."

Training and Outreach - The National FOIA Office, in partnership with the Office of General Counsel, conducts a variety of FOIA trainings at Headquarters and in EPA's ten EPA Regional Offices. EPA sponsors national training conferences for employees and contractors. EPA holds bi-weekly conference calls with Regional FOIA Officers; monthly meetings with FOIA contacts in the headquarters program offices; and semi-annual meetings with Regional FOIA Officers. All of these meetings involve, and some are entirely focused on educating, informing and training employees who support FOIA activities in diverse ways on new developments in the FOIA program, including Administration policies. All offices within EPA were provided guidance on the policy change through various means, from memoranda to staff explaining the policy changes to dissemination of the President's Memoranda on FOIA and Transparency, along with the Attorney General Guidelines. Additionally, individual offices within EPA have also provided training and issued memoranda concerning transparency at the Agenc

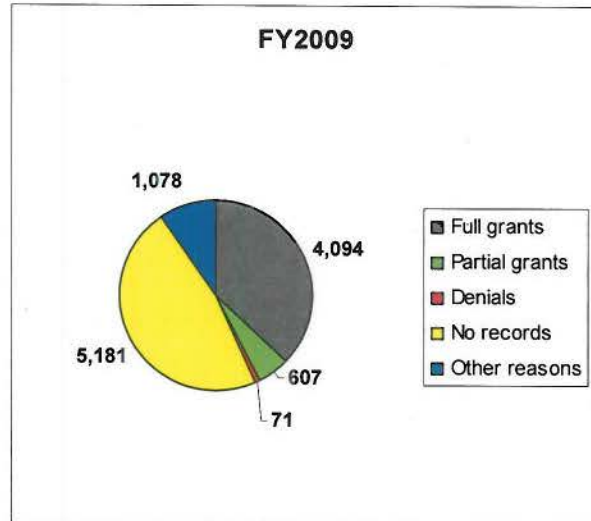
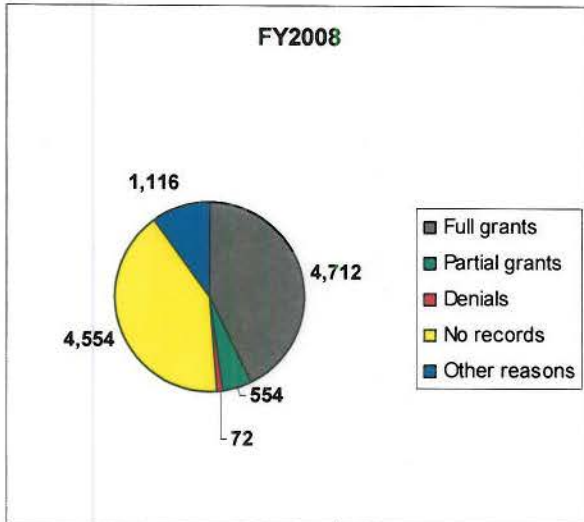
Agency FOIA Hotline - The Agency operates a national FOIA Hotline, where the public can speak to a FOIA Specialist about their requests (whether filed at headquarters or in the regions) or receive responses to general FOIA questions.

FOIA Web site - The President's FOIA Memorandum, the Attorney General's FOIA Guidelines, the Administrator's Memorandum on Transparency in EPA's Operations and general guidance on processing FOIA requests under these policies are available to the public on the Web site. The Web site also provides the public with the status of all FOIA requests received during the current fiscal year and those pending from previous years.

Appeal Process – In matters under appeal, records or portions of records that were previously withheld are being reviewed, applying the new policy and presumption of disclosure.

Discretionary releases – EPA reviews all response records with an eye toward discretionary releases of records if there is no harm being protected by the withholding.

2. Comparisons of Records Released in Full or in Part as Reported in FY 2008 and FY 2009 Annual Reports



Although EPA saw a decrease in the number of new FOIA requests from FY2008 (11,492) to FY2009 (10,317), the number of partial grants increased.

II. Steps Taken to Ensure that Your Agency has an Effective System for Responding to Requests

To ensure effectiveness and efficiency in its FOIA processes, the Agency educates its broad spectrum of employees who may be required to respond to a FOIA request by sponsoring FOIA trainings at Headquarters annually and in its regional offices bi-annually. A national FOIA Training Conference is held each year at headquarters. (See Section I, "Training and Outreach.") In its oversight role, the National FOIA Office holds regularly scheduled monthly meetings with its FOIA components. In 2009, EPA moved all fee waivers and expedited processing decisions from the regions to its national office, thereby, eliminating inconsistencies in the application of the statutory criteria.

FOIA professionals primarily rely on IT support from the office which has the responsibility for responding to the request. This support varies across the Agency. The National FOIA Program, which has national oversight responsibility, provides the following IT support to the FOIA community:

Redaction software - Deployed a redaction software that allows the redaction of information using a software tool. The application uses "pixel" replacement and does not just electronically "white out" the information that is being protected.

E-mail Data bases - Developed a software application that allows the creation of collection databases for processing large e-mail searches and responses. The application allows for duplicate e-mails to be identified and eliminated, facilitating more timely reviews and processing timeframes.

The National FOIA Program is currently:

E-mail searches - Collaborating with IT staff to search for responsive emails via the "back end" of Lotus Notes servers using key word searches. This service will expedite FOIA searches and assure that all e-mails maintained on the system are identified.

Posting FOIA responses - Working with the IT staff to develop the ability to post significant FOIA responses (and the originating FOIA requests) on the Web.

III. Steps Taken To Increase Proactive Disclosures

Public Access to Data Bases - In embracing the President's mandate for greater transparency, the Agency made data bases containing information frequently requested under FOIA available to the public on EPA's Web sites. For example, an individual desiring to export an automobile is required to produce a certificate issued by EPA. In the past, the individual had to make a FOIA request for the certification and then wait for the Agency to respond to the request. Promoting transparency, quicker access and accountability, Agency FOIA Officer worked with the program office to make the database available online. The public can now go directly to EPA's FOIA Web site (epa.gov/foia) and print the certificate(s) in seconds as opposed to waiting days, or weeks to obtain the necessary documentation.

What is the "Status of my FOIA Request?" - The Agency launched a Web page that allows requesters to easily obtain the status of their FOIA requests on-line. The "Status of My FOIA Request" page became available in March 2009 (http://www.epa.gov/foia/foia_request_status.html).

Proactive Disclosure of FOIA - The Office of Pesticide Programs (OPP) completely overhauled its electronic reading room to make tens of thousands of highly sought after pesticide science and regulatory records publicly available without the filing of a FOIA request. OPP established a dual component electronic reading room where records most amenable to Web-based indexing are hosted on the OPP FOIA Website, while records most amenable to a docket format are hosted on Regulations.gov.

The OPP FOIA Website provides access to approximately 13,000 OPP scientific reviews on 300 pesticide active ingredients. The Regulations.gov regulatory repository contains approximately 800 pesticide product registration working files comprising some 150,000 pages. Thousands of additional records are in the queue for posting in both repositories.

Since revamping the Electronic Reading Room in 2007, FOIA requests for previously requested records have plummeted from twenty percent to three percent of all FOIA requests received by OPP. The science reviews and pesticide registration files information are vital to industry, interest groups, state, local, and foreign governments, and many other stakeholders. The rapidly expanding OPP FOIA Electronic Reading Room is providing instant access to these highly sought after records.

Other parts of the Agency are exploring opportunities to use similar technology in proactively disclosing records.

EPA.gov – EPA publishes all news release, reports, major program updates, proposed and final regulations on its Web site. The Agency continues to look for additional information it can publish on the Web site. In the aftermath of Hurricane Katrina, EPA created a Web site to allow the public access to Hurricane related information as soon as it became available at: (<http://www.epa.gov/katrina/>) This site is still active and being used by the public.

Data sets – EPA is developing working to adapt its Envirofacts and My Environment systems to allow individuals and businesses the ability to directly access the data bases and create customized reports instead of filing FOIA requests. The requested reports are primarily used for real estate transactions as part of the due diligence package. It is anticipated that this tool may reduce the number of Agency FOIA requests by 20 percent by allowing the public direct access to this environmental information.

IV. Steps Taken To Greater Utilize Technology

1.) Does your agency currently receive requests electronically.

Yes. An online request form is available on the Agency's FOIA Web page at <http://www.epa.gov/foia/requestform.html>. Requesters can indicate the amount of processing fees they are willing to pay, request expedited processing, fee waiver and, if known, specify the Agency component to which their request is directed.

2.) If not, what are the current impediments to your agency establishing a mechanism to receive requests electronically.

Currently implemented.

3.) Does your agency track requests electronically.

Yes. All Agency components began using *FOIAXpress* in 2005. *FOIAXpress* provides “cradle to grave” electronic tracking of incoming FOIA requests and Agency responses. In addition to its tracking capability, the system features Web-based access and enhancements such as workflow management, metadata tracking, on-line review and redaction, Web posting, automated billing, and generation of the Annual FOIA Report.

4.) If not, what are the current impediments to your agency utilizing a system to track requests electronically.

Currently implemented.

5.) Does your agency use technology to process requests.

FOIA requesters can submit requests to EPA electronically through EPA’s FOIA Web site. *FOIAXpress* allowed the Agency to automate its FOIA business processes, from initial receipt of a request, to its final disposition. Requesters may also pay their processing fees using pay.gov.

6.) If not, what are the current impediments to your agency utilizing technology to process requests.

Currently implemented.

7.) Does your agency utilize technology to prepare you agency Annual FOIA Report.

Yes. The Agency’s Annual FOIA Report is prepared using *FOIAXpress*.

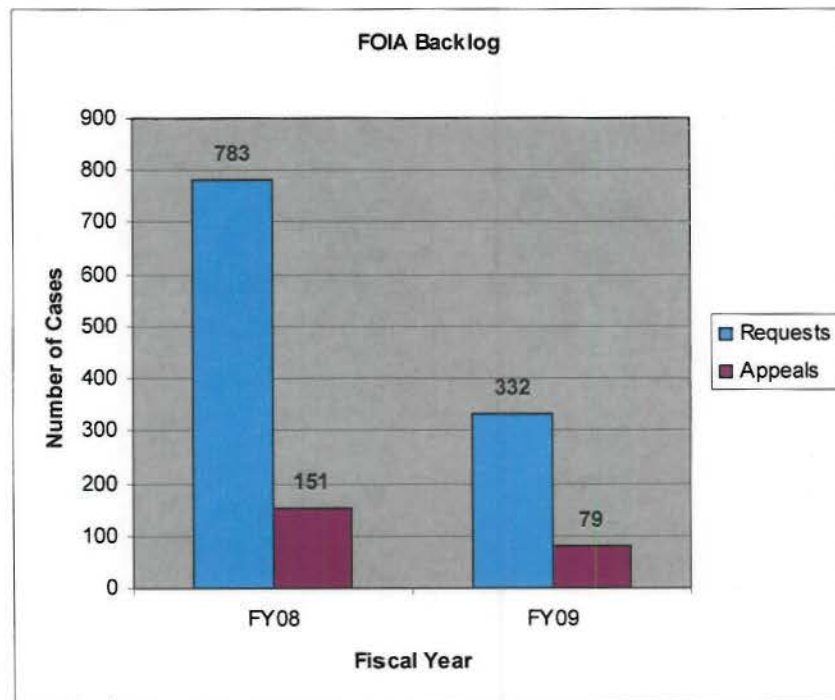
8.) If not, what are the current impediments to your agency utilizing technology in preparing your Annual FOIA Report.

Currently implemented.

V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests

1. Backlog status.

The Agency's backlog is decreasing. EPA has taken aggressive steps to address its backlog of FOIA requests and improve its timeliness in responding. The Agency began a focused effort to address its FOIA response backlog in 2001. In July 2001, there were 23,514 overdue requests. At the end of FY 2009, the Agency's backlog was 332. As stated in EPA's "Response to Executive Order 13392, "Improving Agency Disclosure of Information", the Agency believes that it will likely always have a small backlog given the number and complexity of FOIA requests that it receives. The Agency's measure of success under Section E., "Improvement Area Planning" stated that "EPA's FOIA response backlog will not exceed 10 percent of the number of new FOIA requests received each year" as a measure of success and that the performance level would be achieved by October 1, 2007. The Agency met the October 2007 milestone (see 2007 FOIA Annual Report) and went on to exceed this initial goal. Although the Agency received 10,317 requests in FY 2009, its backlog number at the end of the fiscal year was 332. Furthermore, the number of overdue FOIA appeals has decreased significantly. At the end of FY 2009, the number of overdue appeals was reduced to 79.



As reported in EPA FY 2008 and FY 2009 FOIA Annual Reports: In FY 2008 the oldest perfected FOIA request was received by EPA on June 13, 2003, and the oldest appeal was received on February 26, 1999. In the FY2009 Report, the oldest perfected FOIA request was received by EPA on May 17, 2004, and the oldest appeals was received on April 24, 2001. These cases have been closed by the Agency.

2. If these has not been a reduction in the backlog described why that has occurred and what steps your agency is taking to bring about a reduction.

N/A.

3. Backlog reduction steps.

National Standard Operating Procedures – EPA is developing national FOIA standard operating procedures (SOPs). Each program and regional office will be creating similar SOPs based upon the national guidelines.

Proactive disclosures – EPA is working to identify additional information and data bases that can be made available to the public through its Web site.

Better communications with requesters – EPA held four FOIA Requester Forums over the past few years to engage frequent requesters on ways to improve the Agency FOIA process. The feedback received during these sessions indicated that EPA is working well with requesters. EPA is committed to continuing this type of dialog with the requester community.

Centralization of critical FOIA decisions (Fee Waiver and Expedited Processing) - The National FOIA Program reengineered the Fee Waiver and Expedited Processing determinations process to Headquarters to provide greater customer service to the public and maintain a consistent standard for issuing these important determinations. Within a very short time, the public recognized the benefit of the centralization by receiving prompt decisions to their requests.