

**DEPARTMENT OF THE INTERIOR**

**Freedom of Information Act 2004 Annual Report  
(October 1, 2003 - September 30, 2004)**

I. Basic Information Regarding Report

A. Questions about the report should be directed to:

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Office of the Chief Information  
Officer (OCIO)  
Department of the Interior (DOI)  
1849 C Street, NW  
MS-5312-MIB  
Washington, D.C. 20240  
Telephone No.: (202) 208-5342

B. The electronic address for this report on DOI's World Wide Web site is:  
**<http://www.doi.gov/foia/04anrep.pdf>**

C. A copy of the report in paper form may be obtained by contacting the Departmental FOIA Officer (see A, above).

II. How to Make a FOIA Request (see DOI's **Guide for Obtaining Information** which is located at the following Internet address: **<http://www.doi.gov/foia/foitabl.htm>**).

A. FOIA requests should be submitted to the FOIA contact at the bureau/office where the records are maintained. A list of the Department's bureaus/offices is provided below. If it is unclear where to send the request, contact the Departmental FOIA Officer. A list of DOI's FOIA contacts may be found at the following Internet address:

**<http://www.doi.gov/foia/contacts.html>**.

**Bureaus/Offices**

Office of the Secretary (OS)	Minerals Management Service (MMS)
Office of Hearings & Appeals (OHA)	Bureau of Land Management (BLM)
Office of Aircraft Services (OAS)	Fish & Wildlife Service (FWS)
Office of Inspector General (OIG)	National Park Service (NPS)
Office of the Solicitor (SOL)	Bureau of Reclamation (BOR)
Office of Surface Mining (OSM)	U.S. Geological Survey (USGS)
Bureau of Indian Affairs (BIA)	

- B. While the median number of days for DOI's bureaus and offices to process requests ranges from 15 - 158 days\* (see VII.A., Normal Requests), the timeframes in a large, highly decentralized organization, such as DOI, are often longer than they would be in a small, centralized agency. In DOI, the response time varies considerably depending on the existing workload, the complexity of the request, the volume of responsive records, and the need to consult and coordinate with other bureaus/offices and agencies.
- C. In accordance with its FOIA regulations, DOI makes records available to the public unless the information is protected from disclosure by one or more of the nine specific FOIA exemptions (see 43 CFR § 2.21(b)(2)). Some requests are not granted due to one of the reasons cited in V.B.4., below (see DOI's FOIA regulations, 43 CFR § 2.21(e)).

### III. Definitions of Terms and Acronyms Used in the Report

- A. Agency-specific acronyms or other terms (see II.A., above).
- B. Basic terms, expressed in common terminology.
  - 1. FOIA/PA request - Freedom of Information Act/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).
  - 2. Initial Request - a request to a Federal agency for access to records under the Freedom of Information Act.
  - 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 Freedom of Information Act, or any other FOIA determination such as a matter pertaining to fees.
  - 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.

\* There was an administrative error in one office which located 26 old cases that would have resulted in a median range of 15 - 834 days, but that does not fairly represent the median number of days to process requests in DOI.

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).

6. 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.
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.

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.

8. Grant - an agency decision to disclose all records in full in response to a FOIA request.
9. 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's exemptions; or a decision to disclose some records in their entirety, but to withhold others in whole or in part.
10. 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's exemptions, or for some procedural reason (such as because no record is located in response to a FOIA request).
11. 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).
12. "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.
13. 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).
14. Median number - the middle, not average number. For example, of 3, 7,

and 14, the median number is 7.

15. 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.

#### IV. Exemption 3 Statutes

A1. and 2. List of Exemption 3 statutes relied on by DOI during current fiscal year with a brief description of the type of information withheld under each statute, and a statement of whether a court has upheld the use of each statute.

- a. Archaeological Resources Protection Act of 1979, 16 U.S.C. § 470hh(a).

- 1) Used to withhold information describing historical (cultural) and archaeological resources and their specific locations; documents include maps, and narrative descriptions of objects and their locations.

- 2) Pertinent litigation:

Starkey v. United States Department of the Interior, et al., Civil No. 01CV1458 (S.D. Calif. Dec. 15, 2002) (finding that the agency properly withheld, pursuant to exemption (3), narrative descriptions of archaeological resources, descriptions of objects, and commentary on their condition).

- b. National Defense Authorization Act For Fiscal Year 1997 (contains a provision which amends the Federal Property and Administrative Services Act of 1949 (41 U.S.C. § 253b)).

- 1) Used to withhold the proposals of unsuccessful bidders and certain information in contractor proposals.

- 2) Pertinent litigation:

Hornbostel v. Department of the Interior, 305 F. Supp. 2d 21 (D.D.C. 2003) (finding that the agency properly withheld, pursuant to exemption 3 (subsection 821(b)(m) of the National Defense Authorization Act For Fiscal Year 1997, 41 U.S.C. § 253b), contractor proposals, as defined by the Act, because they are not set forth or incorporated by reference in a contract between the agency and the contractor that submitted the proposal.

- c. National Parks Service Omnibus Management Act of 1998 (16 U.S.C. § 5937).

- 1) Used to withhold specific cactus ferruginous pygmy owl location information.

- 2) Pertinent litigation:

- (i) Southwest Center for Biological Diversity v. Department of Agriculture, No. Civ. 98-1022-PHX-SMM (D. Ariz. Sept. 28, 2000) (determining that section 207 of the National Parks Omnibus Management Act of 1998 is an exemption 3 statute that protects all information in Forest Service records that identifies the location of goshawk nest sites located within one square mile of a National Park boundary); and

- (ii) Pease v. United States Department of the Interior, No. 1:99CV113, slip op. at 2, 4 (D. Vt. Sept. 17, 1999) (finding that the agency properly withheld, pursuant to exemption 3 (section 207 of the National Parks Omnibus Management Act of 1998), certain information pertaining to the location, tracking and/or radio frequencies of grizzly bears in the Yellowstone National Park ecosystem).

- d. National Historic Preservation Act Amendments of 1980, 16 U.S.C. § 470w-3.

- 1) Used to withhold information describing historical (cultural) and archaeological resources and their specific locations; documents include maps, and narrative descriptions of objects and their locations.

- 2) DOI is not aware of any court cases upholding the use of this statute.

## V. Initial FOIA/PA Access Requests

### A. Numbers of initial requests

- 1. Number of requests pending as of end of preceding fiscal year 1,430\*
- 2. Number of requests received during current fiscal year 4,587

\*Although DOI indicated in its FY 2003 Annual Report that there were 1471 requests pending at the end of the fiscal year, the figure denoted in V.A.1. is correct. The difference is due to discrepancies in accounting and the fact that some of the bureau offices are still transitioning to DOI's centralized electronic FOIA tracking system (EFTS). The EFTS ultimately will provide for greater accuracy and accountability.

3. Number of requests processed during current fiscal year 4,219

4. Number of requests pending as of end of current fiscal year 1,798

B. Disposition of initial requests

1. Number of total grants 1,809

2. Number of partial grants 854

3. Number of denials 183

a. Number of times each FOIA exemption used (counting each exemption once per request)

(1) Exemption 1 0

(2) Exemption 2 46

(3) Exemption 3 38

(4) Exemption 4 122

(5) Exemption 5 318

(6) Exemption 6 478

(7) Exemption 7 (A) 82

(8) Exemption 7 (B) 5

(9) Exemption 7 (C) 256

(10) Exemption 7 (D) 13

(11) Exemption 7 (E) 14

(12) Exemption 7 (F) 11

(13) Exemption 8 0

(14) Exemption 9 2

4.	Other reasons for nondisclosure (total)	<u>1,373</u>
	a. no records	<u>422</u>
	b. referrals	<u>175</u>
	c. request withdrawn	<u>178</u>
	d. fee-related reason	<u>135</u>
	e. records not reasonably described	<u>113</u>
	f. not a proper FOIA request for some other reason	<u>256</u>
	g. not an agency record	<u>44</u>
	h. duplicate request	<u>46</u>
	i. other (specify)	<u>4</u>
	- Requester failed to provide additional clarification requested	<u>1</u>
	- Previously requested same information	<u>1</u>
	- Glomar response provided	<u>2</u>

VI. Appeals of Initial Denials of FOIA/PA Requests

A. Numbers of appeals.

1. Number of appeals received during fiscal year 254
2. Number of appeals processed during fiscal year 67\*

B. Disposition of appeals.

1. Number completely upheld 7
2. Number partially reversed 6
3. Number completely reversed 32

\* In FY 2004, DOI processed 56% fewer appeals as a result of staffing changes.

a. Number of times each FOIA exemption used  
(counting each exemption once per appeal)

(1) Exemption 1	<u>0</u>
(2) Exemption 2	<u>0</u>
(3) Exemption 3	<u>0</u>
(4) Exemption 4	<u>1</u>
(5) Exemption 5	<u>7</u>
(6) Exemption 6	<u>3</u>
(7) Exemption 7(A)	<u>0</u>
(8) Exemption 7(B)	<u>0</u>
(9) Exemption 7(C)	<u>2</u>
(10) Exemption 7(D)	<u>0</u>
(11) Exemption 7(E)	<u>0</u>
(12) Exemption 7 (F)	<u>0</u>
(13) Exemption 8	<u>0</u>
(14) Exemption 9	<u>0</u>

4. Other reasons for nondisclosure (total) 22

a. no records	<u>12</u>
b. referrals	<u>0</u>
c. request withdrawn	<u>0</u>
d. fee-related reason	<u>2</u>
e. records not reasonably described	<u>1</u>
f. not a proper FOIA request for some other reason	<u>0</u>



- g. not an agency record           0
- h. duplicate request               0
- i. other (specify)                 7
- Appeals closed due to         7  
litigation

VII. Compliance with Time Limits/Status of Pending Requests

A. Median processing time for requests processed during the year.

1. Simple requests

- a. number of requests processed         150
- b. median number of days to process (by bureau/office)
  - OS       3 (includes OHA/OAS)
  - BLM     13

2. Normal requests

- a. number of requests processed         3,976
- b. median number of days to process (by bureau/office)
  - OS       48 (includes OHA/OAS)
  - OIG     834
  - SOL     15
  - OSM     21
  - MMS     22
  - BLM     21
  - FWS     35
  - NPS     20
  - BOR     20
  - USGS    18
  - BIA     158

NOTE: In January 2004, DOI began using multitrack processing. The following bureaus/offices are currently using 2 - 3 tracks to process their requests: BLM, OS, and OSM.

3. Complex requests
  - a. number of requests processed 30
  - b. median number of days to process (by bureau/office)
 

OS	<u>99</u> (includes OHA/OAS)
OSM	<u>0</u>
BLM	<u>56</u>

4. Requests accorded expedited processing
  - a. number of requests processed 63
  - b. median number of days to process (by bureau/office)
 

OS	<u>64</u> (includes OHA/OAS)
OIG	<u>2</u>
SOL	<u>0</u>
OSM	<u>0</u>
MMS	<u>14</u>
BLM	<u>5</u>
FWS	<u>10</u>
NPS	<u>10</u>
BOR	<u>8</u>
USGS	<u>0</u>
BIA	<u>0</u>

B. Status of pending requests.

1. Number of requests pending as of end of current fiscal year 1,798
2. Median number of days that such requests were pending as of that date (by bureau/office)

OS	<u>54</u> (includes OHA/OAS)
OIG	<u>1,539</u>
SOL	<u>25</u>
OSM	<u>45</u>
MMS	<u>22</u>
BLM	<u>23</u>
FWS	<u>530</u>
NPS	<u>16</u>
BOR	<u>9</u>
USGS	<u>14</u>
BIA	<u>63</u>

## VIII. Comparisons with Previous Year(s) (Optional)

- A. Comparison of numbers of requests received
  - 13% decrease from FY 2003
- B. Comparison of numbers of requests processed
  - 10% decrease from FY 2003
- C. Comparison of median numbers of days requests were pending as of end of fiscal year - N/A
- D. Other statistics significant to agency - Not available
- 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 efforts, specification of average number of hours per processed request; training activities; public availability of new categories of records):

- In FY 2004, all bureaus/offices with Internet access, both in headquarters and the field, used the Electronic FOIA Tracking System (EFTS) to track and manage their requests. The system allows FOIA Officers/Coordinators to share valuable information and identify duplicate requests; it also assists in ensuring consistency in responses, reducing processing time, facilitating reporting and reviews, and improving customer service, thereby improving the overall efficiency of the FOIA process. In September 2004, the EFTS was certified and accredited in accordance with approved DOI certification and accreditation methodology which complies with NIST SP 800-37. The Department continues to implement enhancements to the system, pending the availability of funding, which are designed to meet the additional needs of the bureaus and improve customer service.

- In January 2004, the Department authorized implementation of multitrack processing. Each bureau/office administering its own FOIA program is responsible for determining whether to use a single track or multi-tracks to process the FOIA requests it receives. To date, the following DOI components are using a multitrack processing: BLM, OS, and OSM.

- In April 2004, the Department issued the revision to the Departmental FOIA Handbook (383 DM 15). The Handbook establishes Departmentwide policies and procedures for administering and implementing the FOIA and supplements the requirements prescribed by DOI's FOIA regulations (43 CFR Part 2, Subparts A through E). The revised Handbook has been posted to DOI's FOIA website at <http://www.doi.gov/foia/policy.html>.

- DOI continues to be concerned about the decrease in the number of FTEs allocated to the FOIA program. This has exacerbated DOI's FOIA backlog.

- At the end of FY 2003, BIA had a significant backlog of FOIA requests, primarily due to the number of requests it receives for law enforcement reports. In an effort to reduce the backlog, in FY 2004, the Department met with program

leads in BIA and SOL on numerous occasions and consulted with DOJ, OMB, and other agencies to see how these requests could be processed in a more timely manner. The Department made recommendations to senior-level management which would expedite processing of these requests. Additionally, the Department collaborated with BIA and SOL in facilitating access to routine law enforcement reports by making them available to certain parties through a new Privacy Act routine use. The change in procedures will assist in reducing the FOIA backlog and the number of related appeals, and improve customer service.

- In March 2004, the Department conducted specialized FOIA/Privacy Act training for employees attending the American Society of Access Professionals Western Symposium.

- The Department also provided four FOIA/Privacy Act training sessions to employees through the DOI University, both in headquarters and the field.

- In April 2004, the Departmental Privacy Act Officer and the OSM FOIA Officer provided assistance to the Bureau of Indian Affairs (BIA) in conducting FOIA/Privacy Act training for approximately 70 BIA employees at a three-day conference in Nashville, TN.

In FY 2004, BLM increased its employee awareness and training efforts. BLM developed and implemented a FOIA/Privacy Act course through its National Training Center in Phoenix; the course was used to conduct two training sessions held in FY 2004, with a total of 62 Coordinators receiving training. An on-line FOIA course developed by BLM in FY 2003 was updated to reflect the Department's revised FOIA regulations. BLM's Washington Office held a week-long FOIA training session at the National Training Center in August for its FOIA Leads (State and Center Coordinators). A number of the State/Center FOIA Leads provided additional training for their employees. The Washington Office FOIA Coordinator provided training for its employees at 2 brownbag lunches at the Washington Office. The BLM FOIA Lead made several FOIA/Privacy Act presentations at meetings throughout the year. FOIA program reviews were conducted at the Denver Centers and the Alaska State Office, including four of the Alaska Field Offices. At the Washington Office, a contract employee was replaced by a full-time employee and a summer intern was hired to assist in reducing the existing backlog. At the Colorado State Office, a part-time college student was hired resulting in the elimination of the State Office's existing backlog.

- The NPS provided FOIA training to its employees in headquarters in July 2004.

- The FWS developed guidelines for its employees regarding fee waivers, the application of the FOIA exemptions to law enforcement records, and the treatment of drafts and related materials under the FOIA.

- The Department and the bureaus continue to enhance their FOIA websites making more information available on-line. This has contributed to a decrease in the number of FOIA requests received by some bureaus, e.g., the Office of

Surface Mining (OSM). In addition, requesters are accessing DOI's reading rooms more frequently and conducting their own research, rather than submitting formal FOIA requests.

F.	Number of requests for expedited processing received	<u>133</u>
	Number of requests for expedited processing granted	<u>63</u>

IX. Costs/FOIA Staffing

A. Staffing levels

1.	Number of full-time FOIA personnel	<u>35</u>
2.	Number of personnel with part-time or occasional FOIA duties (in total work-years)	<u>79</u>
3.	Total number of personnel (in work-years)	<u>114</u>

B. Total Costs (including staff and all resources)

1.	FOIA processing (including appeals)	<u>\$7,251,721</u>
2.	Litigation-related activities (estimated)	<u>\$358,718</u>
3.	Total costs	<u>\$7,610,439</u>
4.	Comparison with previous year(s)	
	• 1% decrease from FY 2003	

C. Statement of additional resources needed for FOIA compliance

- Additional resources are needed throughout the Department to ensure total compliance with the FOIA. This is especially true in the bureaus and offices where FOIA is handled as a "collateral duty" and in offices where the FOIA Officers are tasked with other duties outside their primary function, e.g., the OIG. Although the number of FOIA requests the Department received in FY 2004 decreased, the requests are becoming more complex and voluminous. Many of these requests require coordination with other components in DOI and other Federal agencies. Such requests take longer to process--this adds to the Department's FOIA backlog which has increased by 26% this year. Further, many of these requests are exceedingly costly to process without DOI ever recouping the fees. In addition, the number of appeals received and the increased focus on E-FOIA, E-Records Management, E-GOV Act, and Privacy Act requirements have added to the existing workload burden. Additional staffing is needed for the FOIA program both at the Department level and the bureau level. Resources are needed to train FOIA Coordinators in order to bring them up to the appropriate level of expertise. Finally, additional funding is required for operation and maintenance of the electronic FOIA tracking system, training on the system, and for any future upgrades, including the appeals, litigation, and document management modules.

X. Fees

A. Total amount of fees collected by agency for processing requests \$177,734

B. Percentage of total costs 2%

XI. FOIA Regulations (Including the Fee Schedule)

A copy of DOI's FOIA regulations, including the fee schedule (43 CFR Part 2, Subparts A thru E) may be found at the following Internet address:  
<http://www.doi.gov/foia/FOIARegulations.pdf>. A copy of the regulations in paper form may be obtained by contacting the Departmental FOIA Officer (see I..A., above).