

DEPARTMENT OF THE INTERIOR

**Freedom of Information Act 2007 Annual Report
(October 1, 2006 - September 30, 2007)**

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)
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B. The electronic address for this report on DOI's World Wide Web site is:

<http://www.doi.gov/foia/07anrep.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)
Bureau of Indian Affairs (BIA)	Bureau of Land Management (BLM)
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)	

- B. While the median number of days for DOI's bureaus and offices to process requests ranges from **7 - 917** 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. 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.
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 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 entireties, 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's exemptions, or for some procedural reason (such as because no record is located in response to a FOIA request).
12. 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).
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, not 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, 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 a list of archaeological sites at Santa Rosa/Santa Cruz Island, an inventory of Native American Human remains and associated funerary objects in possession of Yosemite National Park, descriptions and locations of archaeological sites, the location of an historical shipwreck, archaeological inventories, and information related to archaeological resources and their specific 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, lists of unsuccessful submitters, and certain information in contract 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 Historic Preservation Act Amendments of 1980, 16 U.S.C. § 470w-3.
 - 1) Used to withhold the locations of archaeological inventories.
 - 2) DOI is not aware of any court cases upholding the use of this statute.

- d. National Parks Service Omnibus Management Act of 1998 (16 U.S.C. § 5937).
 - 1) Used to withhold the location of endangered plant species, map locations for paleontological objects, a plan for parkwide eradication proposal and analysis for Point Reyes National Park, and narrative descriptions of objects and their locations.
 - 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).

- e. Rule 6(e), Federal Rules of Criminal Procedure (Grand Jury), 18 U.S.C. Appendix
 - 1) Used to withhold grand jury material relating to the identities of witnesses or jurors, the substance of the testimony, the strategy or direction of the investigation, and the deliberations or questions of the jurors.
 - 2) The D.C. Circuit has concluded that Rule 6(e) of the Federal Rules of Criminal Procedure, regulating disclosure of matters occurring before a grand jury, satisfies exemption (3)'s "statute" requirement because it was specially amended by Congress in 1977. Fund for Constitutional Gov't v. National Archives & Records Serv., 656 F.2d 856, 867 (D.C. Cir. 1981).

- f. Copyright Act cited incorrectly one time to withhold official court transcripts.
(17 U.S.C. § 101 et seq.)

V. Initial FOIA/PA Access Requests

A. Numbers of initial requests

- 1. Number of requests pending as of end of preceding fiscal year 1,422*
- 2. Number of requests received during current fiscal year 4,891

*Although DOI indicated in its FY 2006 Annual Report that there were 1,481 requests pending at the end of the fiscal year, the figure denoted in V.A.1. is correct. The difference is attributed to the fact that 1) although many requests were completed in FY 2006, the bureaus did not show them as being completed until after the FY 2006 report was finalized; and 2) there were also a few discrepancies in accounting.

- 3. Number of requests processed during current fiscal year 5,437
- 4. Number of requests pending as of end of current fiscal year 876

B. Disposition of initial requests

- 1. Number of total grants 2,578
- 2. Number of partial grants 949
- 3. Number of denials 174
 - a. Number of times each FOIA exemption used (counting each exemption once per request)
 - (1) Exemption 1 3
 - (2) Exemption 2 105
 - (3) Exemption 3 46
 - (4) Exemption 4 172
 - (5) Exemption 5 333
 - (6) Exemption 6 662
 - (7) Exemption 7 (A) 69

(8) Exemption 7 (B)	<u>0</u>
(9) Exemption 7 (C)	<u>121</u>
(10) Exemption 7 (D)	<u>11</u>
(11) Exemption 7 (E)	<u>16</u>
(12) Exemption 7 (F)	<u>9</u>
(13) Exemption 8	<u>1</u>
(14) Exemption 9	<u>11</u>
4. Other reasons for nondisclosure (total)	<u>1,736</u>
a. no records	<u>502</u>
b. referrals	<u>138</u>
c. request withdrawn	<u>171</u>
d. fee-related reason	<u>88</u>
e. records not reasonably described	<u>107</u>
f. not a proper FOIA request for some other reason	<u>65</u>
g. not an agency record	<u>52</u>
h. duplicate request	<u>29</u>
i. other (specify)	<u>584</u>
- Requester failed to provide additional clarification requested	<u>18</u>
- Records released under routine use	<u>243</u>
- Mail returned-unable to locate requester	<u>8</u>

- Records not yet in existence 2
- Referred to DOI website 2
- Request administratively closed 85
- Requester failed to provide 221
written consent of subject individual
- Glomar response 4
- Denied under the Privacy Act 1

VI. Appeals of Initial Denials of FOIA/PA Requests

A. Numbers of appeals.

- 1. Number of appeals received during fiscal year 192
- 2. Number of appeals processed during fiscal year 284

B. Disposition of appeals.

- 1. Number completely upheld 9
- 2. Number partially reversed 1
- 3. Number completely reversed 28
- a. Number of times each FOIA exemption used
(counting each exemption once per appeal)
 - (1) Exemption 1 0
 - (2) Exemption 2 0
 - (3) Exemption 3 0
 - (4) Exemption 4 0
 - (5) Exemption 5 1
 - (6) Exemption 6 6
 - (7) Exemption 7(A) 0
 - (8) Exemption 7(B) 0
 - (9) Exemption 7(C) 3
 - (10) Exemption 7(D) 0

(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)	<u>246</u>
a. no records	<u>2</u>
b. referrals	<u>0</u>
c. request withdrawn	<u>0</u>
d. fee-related reason	<u>5</u>
e. records not reasonably described	<u>0</u>
f. not a proper FOIA request for some other reason	<u>2</u>
g. not an agency record	<u>0</u>
h. duplicate request	<u>0</u>
i. other (specify)	<u>237</u>
- Adequate search conducted	<u>9</u>
- Administratively closed	<u>91</u>
- Appellants are deceased	<u>3</u>
- Appeal withdrawn	<u>75</u>
- Bureau did not receive request	<u>4</u>
- Bureau failed to timely respond	<u>3</u>
- Bureau responded to request before appeal filed	<u>4</u>
- Expedited processing denied	<u>2</u>
- Litigation	<u>20</u>
- Premature appeal	<u>5</u>

- Remand due to procedural deficiencies (failed to review records (1); incomplete processing (2); no exemption cited (1); did not release records (1) 5
- Remand (7A issue moot) 3
- Remand—Further processing under the Privacy Act 2
- Unable to obtain information needed to finalize decision 6
- Vaughn Index not required at the administrative level 3
- Withheld documents not responsive to the FOIA request 2

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 429
- b. median number of days to process (by bureau/office)

OS	<u>1</u>
OIG	<u>4</u>
SOL	<u>0</u>
OSM	<u>120</u>
MMS	<u>5</u>
BLM	<u>4</u>
FWS	<u>5</u>
NPS	<u>1</u>
BOR	<u>3</u>
USGS	<u>5</u>
BIA	<u>53</u>

2. Normal requests

- a. number of requests processed 4,275
- b. median number of days to process (by bureau/office)

OS	<u>12</u>
OIG	<u>917</u>

SOL	<u>27.5</u>
OSM	<u>24</u>
MMS	<u>21</u>
BLM	<u>29</u>
FWS	<u>23</u>
NPS	<u>23</u>
BOR	<u>21</u>
USGS	<u>7</u>
BIA	<u>91</u>

3. Complex requests

a. number of requests processed 636

b. median number of days to process (by bureau/office)

OS	<u>59</u>
OSM	<u>36</u>
MMS	<u>43</u>
BLM	<u>134</u>
FWS	<u>50</u>
BOR	<u>13</u>
USGS	<u>16</u>
OIG	<u>169</u>
NPS	<u>69</u>
BIA	<u>25</u>
SOL	<u>0</u>

4. Requests accorded expedited processing

a. number of requests processed 97

b. median number of days to process (by bureau/office)

OS	<u>15</u>
OIG	<u>0</u>
SOL	<u>0</u>
OSM	<u>20</u>
MMS	<u>0</u>
BLM	<u>10</u>
FWS	<u>5</u>
NPS	<u>0</u>
BOR	<u>7</u>
USGS	<u>0</u>
BIA	<u>7</u>

B. Status of pending requests.

1. Number of requests pending as of end of current fiscal year 876

2. Median number of days that such requests were pending as of that date (by bureau/office)

OS	<u>62</u>
OIG	<u>914</u>
SOL	<u>300</u>
OSM	<u>44</u>
MMS	<u>18</u>
BLM	<u>52</u>
FWS	<u>39</u>
NPS	<u>37</u>
BOR	<u>147</u>
USGS	<u>2</u>
BIA	<u>39</u>

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

A. Comparison of numbers of requests received

- 2% increase from FY 2006

B. Comparison of numbers of requests processed

- 7% increase from FY 2006

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 2007, the Department continued to focus on complying with the mandates of FOIA Executive Order (EO) 13392, i.e., meeting the milestones in the Plan (see Section XII below, and DOI's FOIA Improvement Plan, as amended, at http://www.doi.gov/foia/exec_order.html), in particular those that were noted as deficient in the FY 2006 FOIA Annual Report and received a "red" on OMB's scorecard. All of the milestones were completed with the exception of one item which is still pending at OMB. The DOI FOIA Office also worked diligently with the bureaus and offices to reduce their backlogs. As a result, the Department

reduced its backlog significantly. In July 2007, modifications to the Department's electronic FOIA tracking system were implemented which enable Bureau/Office FOIA Officers to readily provide real-time "snapshots" of their backlogs.

- In an effort to improve customer service, DOI established a toll-free FOIA telephone number with options to the individual bureaus/offices. This should facilitate the public's communications with the Department concerning the status of their requests.

- In FY 2007, the DOI FOIA Office also developed consistent personnel standards (i.e., PDs and performance criteria) for its FOIA personnel.

- In FY 2007, the Department continued to populate its FOIA Intranet website which was developed in FY 2006 consistent with the goals in its FOIA Improvement Plan. While this site primarily provides information for FOIA personnel, it is accessible to all DOI staff. This website contains policy and procedural guidance, electronic FOIA correspondence templates, and information pertaining to EFTS users, upcoming events, and training material. Eventually, the site will allow FOIA personnel to submit questions and concerns for response by the DOI FOIA Office.

- DOI continues to be concerned about the fluctuation and retirement of staff dedicated to the FOIA program. The learning curve for new FOIA staff and lack of institutional memory contributes to processing delays and DOI's FOIA backlog. In compliance with the DOI FOIA Improvement Plan addressing training and personnel standards, DOI has developed core competencies, standard PDs, performance criteria etc., to provide assistance to bureaus and offices in improvement of their overall FOIA program. DOI is developing a FOIA computer-based training (CBT) module for FOIA personnel to take annually. This CBT will be modified as statutory requirements change. The CBT will be part of the training procedures that will lead to a FOIA certification program. DOI believes these efforts will lead to an enhanced program and workforce.

- At the end of FY 2005, Indian Affairs (IA) had a significant FOIA backlog, in part due to ineffective processes. In FY 2007, IA increased its backlog reduction efforts. Consistent with DOI's FOIA Improvement Plan, the bureau met and exceeded its FOIA backlog reduction goal of 67 percent. In September, BIA provided mandatory training to its Regional FOIA Coordinators/Alternates. The majority of the Bureau's backlog was due to requests related to the Office of Justice Service's law enforcement accident and investigation issues. Therefore, IA has made FOIA processing training a top priority for the law enforcement FOIA Coordinators.

- In FY 2007, IA issued a memorandum transferring the Central Office FOIA function for the Bureau of Indian Affairs from its Albuquerque Office to the Assistant Secretary's Office, IA. The memorandum also reminded employees of

their responsibilities under the FOIA which include improving service to the requesters by ensuring that they respond to requests within the statutory deadlines.

- In FY 2006, FWS was identified as having a significant backlog. In 2007, FWS, accordingly, continued to focus on reducing its FOIA backlog, in particular the backlog within Region 1. Through the efforts of the Washington Office and the Regional FOIA Officer, which included providing training and guidance; contacting the requesters and updating them on the status of their requests; providing partial responses for the readily available material; detailing an employee to focus solely on the backlog; and improved communication; the FWS exceeded its backlog reduction goal of 67 percent.

- In an effort to reduce the FOIA backlog in the OIG, the FOIA Officer continues to process the 10 oldest backlogged requests in addition to handling the more complex requests. The OIG Information Specialist continues to process the newer requests and some of the FOIA appeals. Additionally, an attorney has been assigned to assist the OIG FOIA Officer in reviewing its FOIA responses and the Office of General Counsel (OGC) administrative assistant has been delegated to provide administrative support to the FOIA team. The OIG OGC is in the process of hiring another attorney as early as March 2008, who will mainly work on processing FOIA requests until the backlog is greatly reduced.

- NPS worked very hard to reduce its backlog in FY 2007. However, at the same time, the Bureau continues to receive more complex FOIA requests. NPS updated its FOIA website and continues to post more documents to its website, a move which has helped reduce the number of FOIA requests received. In 2007, NPS focused on improving customer service by working with requesters regarding the clarity and scope of their requests to enable requesters to obtain the information they are actually seeking.

- In March 2007, the Department conducted specialized FOIA/Privacy Act training for employees attending the American Society of Access Professionals Western Symposium.

- The Department also provided two FOIA/Privacy Act training sessions for BIA Managers at headquarters.

- In FY 2007, several bureaus and offices provided training to their staff. This furthers implementation of the Improvement Plan and provides a means to 'get the word out' regarding changes in the program, requirements, case law, and other issues associated with the Plan. Additionally, FOIA staff are becoming more aware of the importance regarding information sharing with regard to processing techniques and handling requests, FOIA policy, and the benefits of using the EFTS. Among the Bureaus/Offices providing training in FY 2007 were the Department's FOIA Office, the OS FOIA Office, the Bureau of Land Management, and the Bureau of Reclamation. Below are the bureau efforts

completed during this reporting period.

- The OS FOIA Office developed a “Practical Introduction to FOIA Processing” course that covers the basics of FOIA processing, as well as the statutory and EO requirements. The OS FOIA Office provided this training 10 times during FY 2007, as the basis of on-the-job training for new OS FOIA Team Processors, for FOIA processors in other bureaus, and to a new processor from an agency outside DOI. The OS also provided informal demonstrations of the EFTS to FOIA Officers of other bureaus to enhance Departmental expertise in this area. Additionally, the OS FOIA Team developed checklists for several EFTS tasks which are available to DOI FOIA staff. The checklists are designed to improve the quality and quantity of EFTS data entry in support of the Departmental program.

- The BOR FOIA Officer provided FOIA training to the Bureau’s regional FOIA coordinators and FOIA staff at the American Society of Access Professionals Western Symposium.

- In August, the BLM provided FOIA/Privacy Act training for all of its FOIA Coordinators in Denver.

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

F.	Number of requests for expedited processing received	<u>140</u>
	Number of requests for expedited processing granted	<u>97</u>

IX. Costs/FOIA Staffing

A. Staffing levels

1.	Number of full-time FOIA personnel	<u>42</u>
2.	Number of personnel with part-time or occasional FOIA duties (in total work-years)	<u>142</u>
3.	Total number of personnel (in work-years)	<u>184</u>

B. Total Costs (including staff and all resources)

1.	FOIA processing (including appeals)	<u>\$9,797,472</u>
2.	Litigation-related activities (estimated)	<u>\$227,443</u>

3. Total costs \$10,024,915

4. Comparison with previous year

- 25% increase from FY 2006

C. Statement of additional resources needed for FOIA compliance

As a result of DOI's review of its FOIA operations in 2006, the Department is now more aware of the need for additional resources to ensure total compliance with the FOIA. Funding constraints and staffing issues continue to have a significant impact on the Department's FOIA program, particularly in the areas of training, processing FOIA requests, and reducing and/or eliminating existing backlogs. Further, Executive Order 13392 and DOI's FOIA Improvement Plan, as well as the FOIA Amendments of 2007, have imposed new requirements and obligations on the Department's FOIA Office and Bureau/Office FOIA offices.

A major concern of the DOI FOIA Office relates to those bureaus and offices where FOIA is handled as a "collateral duty" and/or offices where the FOIA Officers are tasked with other duties outside their primary function. FOIA is a collateral duty for most of the Bureau's personnel with assigned FOIA responsibilities. For example, the FOIA Officers are also the Bureau Privacy Act Officers and some serve as the Bureau Records Officer. These programs, like the FOIA program, are also expanding, particularly the Privacy program. All Bureaus are faced with the challenge of maintaining compliance with the FOIA while providing a quality product with a FOIA workforce that is required to devote its time and resources to other duties and responsibilities. The combination of limited resources and the increasing number of complex requests necessitates the need for more resources devoted to the FOIA program in order to address and eliminate gaps in knowledge and expertise, and to reduce the FOIA backlog.

The Department is also concerned about the turnover of FOIA personnel and retiring workforce, especially at the FOIA Officer and Coordinator levels. Staffing challenges are becoming evident. For example, the program level of expertise and knowledge is affected by such moves and transitions when key personnel with program and institutional knowledge leave and have not been able to train backup FOIA personnel.

The Department continues to receive more complex and voluminous FOIA requests. Further, many of these requests are exceedingly costly to process without DOI being able to recoup the fees by law. In addition, the number of appeals received and the increased focus on E-FOIA, E-Records Management, E-GOV Act, HSPD-12, FISMA, and Privacy Act requirements have added to the existing workload burden. As a result of the analysis of the Interior program in developing the EO Plan, it was evident that 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 system upgrades.

X. Fees

A. Total amount of fees collected by agency for processing requests \$100,388

B. Percentage of total costs 1%

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).

XII. **REPORT ON EXECUTIVE ORDER 13392 IMPLEMENTATION**

This section of the FOIA annual report contains the Department of the Interior's description of its progress in implementing the milestones and goals of the Department's FOIA Improvement Plan.

A. Description of supplementation/modification of agency improvement plan (if applicable)

The Department modified and resubmitted its Plan to DOJ/OMB on April 2, 2007 (Amendment 1.1 to the Plan (dated March 29, 2007)). The Plan was modified to reflect adjustments in the milestones for FY 2007, FY 2008, and beyond due to the fact that at the time, DOI was operating under a Continuing Resolution (CR). Adjustments to the Plan were made to reflect budget constraints and hiring limitations imposed by the CR.

B. Report on agency implementation of its plan, including its performance in meeting milestones, with respect to each improvement area

Department of the Interior narrative for FOIA Improvement Plan Update

In May 2007, Michael Howell, the new Chief Information Officer was designated as the new Chief FOIA Officer.

During this reporting period, all planned activities, with the exception of one item listed under Section XII C., were accomplished. In addition to meeting planned milestones, the DOI FOIA program enjoyed a number of successes during FY 2007. For example, DOI established a toll-free FOIA telephone number with options to the individual bureau/offices. This should facilitate the public's communications with the Department

concerning the status of their requests. The Department also continued to populate the FOIA Intranet site which has proven extremely beneficial for FOIA personnel and for those employees who want to peruse aspects of the program that are not posted to DOI's publicly accessible Website. This website contains policy and procedural guidance, electronic FOIA correspondence templates, and information pertaining to EFTS users, upcoming events, and training material. The FOIA newsletter which is issued quarterly has also proven to be very successful. The issues have received accolades from staff throughout the country, noting that material is time-sensitive and informative. Additional success has been achieved in the area of building/retaining a highly skilled workforce. In FY 2007, the DOI FOIA Office developed consistent personnel standards (i.e., PDs and performance criteria) for its FOIA personnel.

The DOI FOIA Office also worked diligently with the bureaus and offices to reduce their backlogs. As a result, the Department reduced its backlog significantly. In July 2007, modifications to the Department's electronic FOIA tracking system were implemented which enable Bureau/Office FOIA Officers to readily provide real-time "snapshots" of their backlogs. Based on the goals in DOI's FOIA Improvement Plan, we plan to continue to build on our successes and evaluate other areas of opportunity to improve the program.

In addition to our initial year's success, we are facing a number of challenges. Funding constraints and staffing issues continue to have a significant impact on the Department's FOIA program, particularly in the areas of training, processing FOIA requests, and reducing and/or eliminating existing backlogs. Further, Executive Order 13392 and DOI's FOIA Improvement Plan, as well as the FOIA Amendments of 2007, have imposed new requirements and obligations on the Department's FOIA Office and Bureau/Office FOIA offices with no additional funding.

C. Identification and discussion of any deficiency in meeting plan milestones (if applicable)

Per guidance from the Department of Justice, Section XII of the annual report for FY 2007 is extended to additionally cover planned activities through January 1, 2008.

Performance Measure

- A. 1. **Goal:** Improve Customer Service
2. **Milestone:** On-line FOIA request form available for public use by 12/31/07
Delayed due to the fact that 1) it was not clear whether DOI needed to obtain clearance from OMB under the Paperwork Reduction Act (PRA) and 2) DOI has not received approval and/or a response from OMB regarding the status of Interior's form.
3. **Steps taken to correct deficiency:**
 - Electronic FOIA request form developed 9/12/07
 - After discussions within DOI, with DOJ, & other agencies, form sent to OMB 11/9/07 to determine if clearance under the PRA required

- Per OMB's conversation with OS Information Collection Officer in mid-December, clearance under the PRA not required. OMB asked to see form DOI proposes to post.
 - Form revised per OS Information Collection Officer and resubmitted to OMB 12/18/07
 - Follow-up email (including form) sent to OMB again 1/9/08
 - As of 1/31/08, no response from OMB
4. **Future remedial steps:** Form will be posted to DOI FOIA website within 6 weeks after receiving approval from OMB

B. 1. **Goal:** Improve DOI Communication and Consistency

2. **Milestone:** Issue proposed rule in Federal Register updating DOI's FOIA regulations (including EO mandates and other required changes) by 9/28/07
Delayed due to internal coordination and surnaming process.
3. **Steps taken to correct deficiency:**
- Proposed rule issued in Federal Register 10/25/07
4. **Future remedial steps:** This milestone has been completed--there are no future remedial steps to be taken.

D. Additional narrative statement regarding other executive order-related activities

Not applicable

E. Concise descriptions of FOIA exemptions

The nine exemptions to the FOIA authorize federal agencies to withhold information covering:

- (1) classified national defense and foreign relations information;
- (2) internal agency rules and practices;
- (3) information that is prohibited from disclosure by another Federal law;
- (4) trade secrets and other confidential business information;
- (5) inter-agency or intra-agency communications that are protected by legal privileges;
- (6) information involving matters of personal privacy;
- (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;

- (8) information relating to the supervision of financial institutions; and
- (9) geological and geophysical information and data, including maps, on wells.

F. Additional Statistics

1. Ten Oldest Pending FOIA Requests

See chart below.

2. Consultations

DOI is unable to provide these statistics for FY 2007. The Department is in the process of modifying its electronic FOIA tracking system in order to provide this information in the FY 2008 report.

G. Agency improvement plan

The Department of the Interior's FOIA Improvement Plan (dated June 12, 2006) and Amendment 1.1 to the Plan, the revised Plan (dated March 29, 2007) may be accessed electronically at http://www.doi.gov/foia/exec_order.html.