

**ANNUAL REPORT
OF THE
U.S. OFFICE OF SPECIAL COUNSEL (OSC)
ON
FREEDOM OF INFORMATION ACT (FOIA) ACTIVITIES
FOR FISCAL YEAR (FY) 2009**

I. BASIC INFORMATION REGARDING REPORT

1. Christopher Kurt
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U.S. Office of Special Counsel
1730 M Street, NW
Suite 218
Washington, DC 20036
Ph. (202) 254-3600
2. This report is accessible online at: <http://www.osc.gov/FOIAAnnualRpt.htm>.
3. Paper copies of this report are available from OSC by writing to or calling the FOIA Officer.

II. MAKING A FOIA REQUEST

1. Send a letter to the FOIA Officer identifying as precisely as possible which documents or information to which you are seeking access. A request letter may be sent by U.S. Mail to the address above or faxed to (202) 653-5151.
2. Brief description of why some requests are not granted: OSC is an investigative and prosecutorial agency. Most requests are for records in agency case files, generally involving: (a) allegations from current or former Federal employees, or applicants for Federal employment, of prohibited personnel practices (including reprisal for whistleblowing); (b) whistleblower disclosures to OSC from current or former Federal employees, or applicants for Federal employment; and (c) allegations of prohibited political activity (*i.e.*, Hatch Act violations) involving covered Federal, state, or local government employees. Most of these records consist of investigatory material, compiled for law enforcement purposes by or under the supervision of attorneys, and kept in a system of records subject to the Privacy Act (5 U.S.C. § 552a). OSC has exempted the system of records from access under the Privacy Act pursuant to § 552a(k) of the act. For that reason, covered records in the system are exempt from disclosure under the Privacy Act to first parties (that is, complainants or others in whose name a record is kept and retrieved), although limited information may be releasable to them under FOIA. Requests from persons other than complainants for case file

information are usually denied under FOIA exemptions (b)(5) and/or (b)(7), because the information: (a) is privileged (either as attorney work product, or as pre-decisional material generated as part of a deliberative process); and/or (b) was compiled for a law enforcement purpose, and disclosure could reasonably be expected to interfere with enforcement proceedings, or result in an unwarranted invasion of the personal privacy of the individuals identified in the record.

III. DEFINITIONS AND EXEMPTIONS

1. Definitions of Terms used in this Report

- a. **Administrative Appeal** – a request to a federal agency asking that it review at a higher administrative level a FOIA determination made by the agency at the initial request level.
- b. **Average Number** – the number obtained by dividing the sum of a group of numbers by the quantity of numbers in the group. For example, of 3, 7, and 14, the average number is 8.
- c. **Backlog** – the number of requests or administrative appeals that are pending at an agency at the end of the fiscal year that are beyond the statutory time period for a response.
- d. **Consultation** – the procedure whereby the agency responding to a FOIA request first forwards a record to another agency for its review because that other agency has an interest in the document. Once the agency in receipt of the consultation finishes its review of the record, it responds back to the agency that forwarded it. That agency, in turn, will then respond to the FOIA requester.
- e. **Exemption 3 Statute** – a federal statute that exempts information from disclosure and which the agency relies on to withhold information under subsection (b)(3) of the FOIA.
- f. **FOIA Request** – a FOIA request is generally a request to a federal agency for access to records concerning another person (i.e., a “third-party” request), or concerning an organization, or a particular topic of interest. FOIA requests also include requests made by requesters seeking records concerning themselves (i.e., “first-party” requests) when those requesters are not subject to the Privacy Act, such as non-U.S. citizens. Moreover, because all first-party requesters should be afforded the benefit of both the access provisions of the FOIA as well as those of the Privacy Act, FOIA requests also include any first-party requests where an agency determines that it must search beyond its Privacy Act “systems of records” or where a Privacy Act exemption applies, and the agency looks to FOIA to afford the greatest possible access. All requests which require

the agency to utilize the FOIA in responding to the requester are included in this Report. Additionally, a FOIA request includes records referred to the agency for processing and direct response to the requester. It does not, however, include records for which the agency has received a consultation from another agency. (Consultations are reported separately in Section XII of this Report.)

- g. **Full Grant** – an agency decision to disclose all records in full in response to a FOIA request.
- h. **Full Denial** – an agency decision not to release any records in response to a FOIA request because the records are exempt in their entirety under one or more of the FOIA exemptions, or because of a procedural reason, such as when no records could be located.
- i. **Median Number** – the middle, not average, number. For example, of 3, 7, and 14, the median number is 7.
- j. **Multi-Track Processing** – a system in which simple requests requiring relatively minimal review are placed in one processing track and more voluminous and complex requests are placed in one or more other tracks. Requests granted expedited processing are placed in yet another track. Requests in each track are processed on a first in/first out basis.
- k. **Expedited Processing** – an agency will process a FOIA request on an expedited basis when a requester satisfies the requirements for expedited processing as set forth in the statute and in agency regulations.
- l. **Simple Request** – a FOIA request that an agency using multi-track processing places in its fastest (non-expedited) track based on the low volume and/or simplicity of the records requested. The FOIA determination for simple requests can be made immediately.
- m. **Complex Request** – a FOIA request that an agency using multi-track processing places in a slower track based on the high volume and/or complexity of the records requested. For OSC, “Complex A” requests are the most complex, “Complex B” requests are less so.
- n. **OSC** – Office of Special Counsel
- o. **Partial Grant/Partial Denial** – in response to a FOIA request, an agency decision to disclose portions of the records and to withhold other portions that are exempt under the FOIA, or to otherwise deny a portion of the request for a procedural reason.
- p. **Pending Request or Pending Administrative Appeal** – a request or administrative appeal for which an agency has not taken final action in all respects.

- q. **Perfected Request** – a request for records which reasonably describes such records and is made in accordance with published rules stating the time, place, fees (if any) and procedures to be followed.
 - r. **Processed Request or Processed Administrative Appeal**
– a request or administrative appeal for which an agency has taken final action in all respects.
 - s. **Range in Number of Days** – the lowest and highest number of days to process requests or administrative appeals.
 - t. **Time Limits** – the time period in the statute for an agency to respond to a FOIA request (ordinarily twenty working days from receipt of a perfected FOIA request).
2. Description of the Nine Exemptions
- a. **Exemption 1:** classified national defense and foreign relations information
 - b. **Exemption 2:** internal agency rules and practices
 - c. **Exemption 3:** information that is prohibited from disclosure by another federal law
 - d. **Exemption 4:** trade secrets and other confidential business information
 - e. **Exemption 5:** inter-agency or intra-agency communications that are protected by legal privileges
 - f. **Exemption 6:** information involving matters of personal privacy
 - g. **Exemption 7:** records or information compiled for law enforcement purposes, to the extent that the production of those records (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or (F) could reasonably be expected to endanger the life or physical safety of any individual
 - h. **Exemption 8:** information relating to the supervision of financial institutions
 - i. **Exemption 9:** geological information on wells

IV. EXEMPTION 3 STATUTES

A. Exemption 3 Statutes Relied upon to Withhold Information

Statute	Type of Information Withheld	Case Citation	Number of Times Relied upon per Component	Total Number of Times Relied upon by Agency
5 USC §1213(h):	Names of whistleblowers	N/A	1	1

V. FOIA REQUESTS

A. Received, Processed and Pending FOIA Requests

Number of Requests Pending as of Start of Fiscal Year	Number of Requests Received in Fiscal Year	Number of Requests Processed in Fiscal Year	Number of Requests Pending as of End of Fiscal Year
6	152	139	19

B. (1) Disposition of FOIA Requests – All Processed Requests

Number of Full Grants	Number of Partial Grants/Partial Denials	Number of Full Denials Based on Exemptions
30	43	26

Number of Full Denials Based on Reasons Other than Exemptions

No Records	All Records Referred to Another Agency	Request Withdrawn	Fee-Related Reason	Records not Reasonably Described	Improper FOIA Request for Other Reason	Not Agency Record	Duplicate Request	Other *Explain in chart below	TOTAL
16	0	4	1	1	3	0	0	15	40

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

Description of “Other” Reasons for Denials, and Number of Times Those Reasons Were Relied Upon	TOTAL
Request misdirected	11
Questions posed as FOIA requests/not required to create documents	2
	-
Request discontinued after OSC contact	2

B. (3) Disposition of FOIA Requests – Number of Times Exemptions Applied

Ex. 1	Ex. 2	Ex. 3	Ex. 4	Ex. 5	Ex. 6	Ex. 7(A)	Ex. 7(B)	Ex. 7(C)	Ex. 7(D)	Ex. 7(E)	Ex. 7(F)	Ex. 8	Ex. 9
0	11	1	1	50	19	8	0	44	1	0	0	0	0

VI. ADMINISTRATIVE APPEALS OF INITIAL DETERMINATIONS OF FOIA REQUESTS

A. Received, Processed and Pending Administrative Appeals

Number of Appeals Pending as of Start of Fiscal Year	Number of Appeals Received in Fiscal Year	Number of Appeals Processed in Fiscal Year	Number of Appeals Pending as of End of Fiscal Year
13	8	11	10

B. Disposition of Administrative Appeals – All Processed Appeals

Number Affirmed on Appeal	Number Partially Affirmed & Partially Reversed/Remanded on Appeal	Number Completely Reversed/Remanded on Appeal	Number of Appeals Closed for Other Reasons	TOTAL
3	6	0	2	11

C. (1) Reasons for Denial on Appeal – Number of Times Exemptions Applied

Ex. 1	Ex. 2	Ex. 3	Ex. 4	Ex. 5	Ex. 6	Ex. 7(A)	Ex. 7(B)	Ex. 7(C)	Ex. 7(D)	Ex. 7(E)	Ex. 7(F)	Ex. 8	Ex. 9
0	4	0	0	4	1	1	0	5	1	0	0	0	0

C. (2) Reasons for Denial on Appeal – Reasons Other than Exemptions

No Records	Records Referred at Initial Request Level	Request Withdrawn	Fee-Related Reason	Records not Reasonably Described	Improper Request for Other Reasons	Not Agency Record	Duplicate Request or Appeal	Request in Litigation	Appeal Based on Denial of Request for Expedited Processing	Other *See chart below
1	0	0	0	0	0	0	0	0	0	1

C. (3) Reasons for Denial on Appeal - "Other" Reasons from Section VI, C (2) Chart

Description of "Other" reasons for Denial on Appeal from above Chart and Number of Times Those Reasons Were Relied upon	TOTAL
Untimely	1

C. (4) Response Time for Administrative Appeals

Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
72	203	26	539

C. (5) Ten Oldest Pending Administrative Appeals

	10 th Oldest Appeal	9 th	8 th	7 th	6 th	5 th	4 th	3 rd	2 nd	Oldest Appeal
Date of Receipt of Ten Oldest Appeals	9/30/09	9/30/09	8/27/09	8/1/08	1/28/08	8/28/07	7/6/07	10/16/06	9/29/06	8/8/05
Days Pending	<1	<1	23	292	423	525	562	743	753	1,041

VII. FOIA Requests: Response Time for Processed and Pending Requests

A. Processed Requests – Response Time for all Processed Perfected Requests

SIMPLE				COMPLEX B			
Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
7	10	<1	59	16	23	<1	198

COMPLEX A				EXPEDITED PROCESSING			
Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
103	155	1	574	4	18	<1	44

B. Processed Requests – Response Time for Perfected Requests in which Information was Granted

SIMPLE				COMPLEX B			
Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
1	6	<1	20	15	21	1	65

COMPLEX A				EXPEDITED PROCESSING			
Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
99	145	1	495	2	14	<1	44

C. Processed Requests – Response Time in Day Increments

C. 1. Processed Simple Requests - Response Time in Day Increments

1-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days
21	2	1	N/A	0	0	0	0	0
181-200 Days	201-300 Days	301-400 Days	401+ Days	TOTAL				
0	0	0	0	24				

C. 2. Processed "Complex A" Requests - Response Time in Day Increments

1-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days
2	3	1	4	2	3	3	2	0
181-200 Days	201-300 Days	301-400 Days	401+ Days	TOTAL				
1	1	1	3	26				

C. 3. Processed "Complex B" Requests - Response Time in Day Increments

1-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days
42	20	4	2	0	1	0	0	0
181-200 Days	201-300 Days	301-400 Days	401+ Days	TOTAL				
1	0	0	0	70				

C. 4. Processed Requests - Response Time in Day Increments

Requests Granted Expedited Processing

1-20 Days	21-40 Days	41-60 Days	61-80 Days	81-100 Days	101-120 Days	121-140 Days	141-160 Days	161-180 Days
15	3	1	0	0	0	0	0	0
181-200 Days	201-300 Days	301-400 Days	401+ Days	TOTAL				
0	0	0	0	19				

D. Pending Requests - All Pending Perfected Requests

SIMPLE			COMPLEX A			COMPLEX B		
Number Pending	Median Number of Days	Average Number of Days	Number Pending	Median Number of Days	Average Number of Days	Number Pending	Median Number of Days	Average Number of Days
2	8	8	6	40	85	11	14	12

EXPEDITED PROCESSING		
Number Pending	Median Number of Days	Average Number of Days
0	N/A	N/A

E. Pending Requests - Ten Oldest Pending Perfected Requests

10 th Oldest Request and Number of Days Pending	9 th	8 th	7 th	6 th	5 th	4 th	3 rd	2 nd	Oldest Request and Number of Days Pending
9/9/09	9/9/09	9/9/09	9/4/09	8/27/09	8/17/09	7/22/09	6/2/09	1/5/09	10/30/08
15	15	15	17	24	31	49	84	187	230

VIII. Requests for Expedited Processing and Requests for Fee Waiver

A. Requests for Expedited Processing

Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate	Number Adjudicated Within Ten Calendar Days
19	3	1	8	17

B. Requests for Fee Waiver

Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate
0	1	8	8

IX. FOIA Personnel and Costs

A. Personnel; B. Costs

Personnel			Costs		
Number of “Full-Time FOIA Employees”	Number of “Equivalent Full-Time FOIA Employees”	Total Number of “Full-Time FOIA Staff” (sum of 1 & 2)	Processing Costs (At initial request and appeal levels)	Litigation- Related Costs	Total Costs
1	.8	1.8	\$ 210,500	\$ 63,500	\$ 274,000

X. Fees Collected for Processing Requests

Total Amount of Fees Collected	Percentage of Total Costs
\$173.10	.06%

XI. FOIA Regulations

OSC’s FOIA regulation can be found in the Code of Federal Regulations at 5 C.F.R. § 1820. For electronic access, [click here](#).

XII. Backlogs, Consultations, and Comparisons

A. Backlogs of FOIA Requests and Administrative Appeals

Number of Backlogged Requests as of End of Fiscal Year	Number of Backlogged Appeals as of End of Fiscal Year
6	8

B. Consultations on FOIA Requests - Received, Processed, and Pending Consultations

Number of Consultations Received from Other Agencies that were Pending at OSC as of Start of the Fiscal Year	Number of Consultations Received from Other Agencies During the Fiscal Year	Number of Consultations Received from Other Agencies that Were Processed by OSC During the Fiscal Year	Number of Consultations Received from Other Agencies that Were Pending at OSC as of End of the Fiscal Year
0	2	2	0

C. Consultations on FOIA Requests - Ten Oldest Consultations Received from Other Agencies and Pending at OSC

10 th Oldest Consultation and Number of Days Pending	9 th	8 th	7 th	6 th	5 th	4 th	3 rd	2 nd	Oldest Consultation and Number of Days Pending

D (1). Comparison of Numbers of Requests from Previous and Current Annual Report – Requests Received, Processed, and Backlogged

Number of Requests <u>Received</u>		Number of Requests <u>Processed</u>	
Number Received During Fiscal Year from Last Year’s Annual Report	Number Received During Fiscal Year from Current Annual Report	Number Processed During Fiscal Year from Last Year’s Annual Report	Number Processed During Fiscal Year from Current Annual Report
121	152	130	139

D.(2). Backlogged Requests for Current and Previous FY

Number of Backlogged Requests as of End of the Fiscal Year from Previous Annual Report	Number of Backlogged Requests as of End of the Fiscal Year from Current Annual Report
6	6

E.(1). Comparison of Administrative Appeals from Previous and Current Annual Reports – Appeals Received, Processed and Backlogged

Number of Appeals <u>Received</u>		Number of Appeals <u>Processed</u>	
Number Received During Fiscal Year from Last Year's Annual Report	Number Received During Fiscal Year from Current Annual Report	Number Processed During Fiscal Year from Last Year's Annual Report	Number Processed During Fiscal Year from Current Annual Report
10	8	11	11

E.(2). Backlogged Appeals for Current and Previous FY

Number of Backlogged Appeals as of End of the Fiscal Year from Previous Annual Report	Number of Backlogged Appeals as of End of the Fiscal Year from Current Annual Report
13	8

F. Other FOIA Activities

In Fiscal Year 2009, OSC contracted temporary help to assist with routine processing. The agency also hired a FOIA attorney, who began service in early FY 2010.

OSC ended the fiscal year having met its target for backlogged requests and appeals with the assistance of several OSC staff members who were assembled in a working group that cut the number of backlogged requests by more than half.