

U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT
FY2007 FOIA ANNUAL REPORT
(Covers October 1, 2006 through September 30, 2007)

I. Basic Information Regarding Report

A. Name, title, address, and telephone number of person(s) to be contacted with questions about the report.

J.M. Paskar, FOIA Liaison Officer
U.S. Agency for International Development
Information and Records Division
Room 2.7C
Washington, DC 20523-2701
TELEPHONE: 202-712-1217

B. Electronic address for report on the World Wide Web.

<http://www.usaid.gov/about/foia>

C. How to obtain a copy of the report in paper form.

Contact the USAID FOIA Liaison Officer at the address or telephone number given in Section I.A. above or obtain a copy via the USAID FOIA website, <http://www.usaid.gov/about/foia>

II. How to make a FOIA Request

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

Initial Requests:

U. S. Agency for International Development
Information and Records Division
Room 2.07C

Washington, DC 20523-2701
TELEPHONE: 202-712-0960
TELEPHONE FAX: 202-216-3070
E-MAIL ADDRESS FOR SUBMITTING REQUESTS:
FOIA@usaid.gov

Appeals:

U.S. Agency for International Development
Director of the Office of Administrative Services
Room 4.06B
Washington, DC 20523-4601
TELEPHONE: 202-712-4410
TELEPHONE FAX: 202-216-3369

B. Brief description of the agency's response-time ranges.

During FY2007, the median processing time for all combined initial requests was 146 **calendar days**. Not all requests took 146 **calendar days** to process. Requests for readily available documents that involved little or no review were processed faster. Other requests took longer to process for a variety of reasons. Some requesters asked for a large volume of documents that had to be located, photocopied or scanned, and reviewed. USAID is an international organization that has many overseas offices. Delays in our response time occurred when documents had to be transmitted from the overseas offices to Washington. USAID received many requests for procurement-related documentation, especially for grant/cooperative agreement proposals and other documents relating to contracts, grants and cooperative agreements. Such requests were often time-consuming and labor-intensive because they involved repeated discussions with the awardees concerning the ramifications of releasing requested information that may be confidential commercial or proprietary information.

C. Brief description of why some requests are not granted

USAID sometimes was required to withhold requested information under one or more of the FOIA's exemptions. The numbers of instances in which USAID used an exemption in FY2007 are listed in Section V.B.3.

Exemptions 3 and/or 4 normally were used to protect commercial or financial information provided by contractors and grantees. Exemption 5 was used to protect vital deliberative-process information or attorney-client information. Exemption 6 was used to protect the privacy of individuals named in documents. At times, a request was not fulfilled for an administrative reason such as “no records” or “request withdrawn.” The various types of administrative reasons are listed in Section V.B.4.

III. Definitions of Terms and Acronyms Used in the Report

A. Agency-specific acronyms or other terms.

USAID - U.S. Agency for International Development

B. Basic terms, expressed in common terminology.

1. **FOI/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 described 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

A. List of Exemption 3 statutes relied on by agency during current fiscal year.

Federal Property and Administrative Services Act, 41 U.S.C. § 253b(m)
United States Internal Revenue Code, 26 U.S.C. §6103

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

41 U.S.C. 253b(m) - Places restrictions on the release of proposal information submitted by a contractor in response to the requirements of a competitive solicitation.

Internal Revenue Code, 26 U.S.C. §6103 – Places restrictions on the release of tax return information.

2. Statement of whether a court has upheld the use of each statute.

41 U.S.C.253b(m): Hornbostel v. United States Dep't of the Interior, 305 F. Supp. 2d 21, 30 (D.D.C. 2003)

Internal Revenue Code, 26 U.S.C. §6103: Church of Scientology v IRS, 484 U.S. 9 (1987)

V. Initial FOIA/PA Access Requests

A. Numbers of initial requests.

1. Number of requests pending as of end of FY 2006: 279
2. Number of requests received during FY2007: 261 perfected
3. Number of requests processed during FY2007: 267
4. Number of requests pending as of end of FY2007: 273 requests, 1 “unperfected” request not included

B. Disposition of initial requests.

1. Number of total grants: 71
2. Number of partial grants: 71
3. Number of denials: 14

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

- (1) Exemption 1: 2
- (2) Exemption 2: 0
- (3) Exemption 3: 21
- (4) Exemption 4: 42
- (5) Exemption 5: 18
- (6) Exemption 6: 51
- (7) Exemption 7(A): 1
- (8) Exemption 7(B): 0
- (9) Exemption 7(C): 1
- (10) Exemption 7(D): 0
- (11) Exemption 7(E): 0
- (12) Exemption 7(F): 0
- (13) Exemption 8: 0
- (14) Exemption 9: 0

4. Other reasons for nondisclosure (total): 111

- a. no records: 34
- b. referrals: 0
- c. request withdrawn: 57
- d. fee-related reason: 8
- e. records not reasonably described: 2
- f. not a proper FOIA request for some other reason: 2
- g. not an agency record: 1

- h. duplicate request: 2
- i. other reason : 5 (1 lost; 4 Glomars)

VI. Appeals of Initial Denials of FOIA/PA Requests

A. Number of appeals.

- 1. Number of appeals received during FY2007: 15
- 2. Number of appeals processed during FY2007: 12

B. Disposition of appeals.

- 1. Number completely upheld: 2
 - 2. Number partially reversed: 4
 - 3. Number completely reversed: 1
- 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: 1
- (5) Exemption 5: 3
- (6) Exemption 6: 3
- (7) Exemption 7(A): 0
- (8) Exemption 7(B): 0
- (9) Exemption 7(C): 0
- (10) Exemption 7(D): 0
- (11) Exemption 7(E): 0
- (12) Exemption 7(F): 0
- (13) Exemption 8: 0
- (14) Exemption 9: 0

- 4. Other reasons for nondisclosure (total): 5

- a. no records: 1
- b. referrals: 0
- c. request withdrawn: 0
- d. fee-related reason: 0

- e. records not reasonably described: 0
- f. not a proper FOIA request for some other reason: 0
- g. not an agency record: 0
- h. duplicate request: 0
- i. other (specify): 4 (Glomars)

VII. Compliance with Time Limits Status of Pending Requests

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

- 1. All regular requests
 - a. number of requests processed: 266
 - b. median number of **calendar days** to process: 146 **calendar days**
- 2. Requests accorded expedited processing
 - a. number of requests processed: 1
 - b. median number of days to process: 85 **calendar days**

B. Status of pending requests.

- 1. Number of requests pending as of end of FY2007: 273
 - a. Non-expedited: 256
 - b. Expedited: 17
- 2. Median number of **calendar days** that non-expedited requests were pending as of the end of FY2007: 365 **calendar days**
- 3. Median number of calendar days that expedited requests were pending at the end of FY2007: 753 **calendar days**

VIII. Comparison with Previous Year(s) (Optional):

During FY2007, the median number of **calendar days** needed to process all non-expedited requests was 146 **calendar days**. In FY2006, the median number of calendar days needed to process all non-expedited requests was 127 **calendar days**. This is a 14% increase. This increase is attributed to the closing of older backlogged cases.

In FY2007, 261 requests were received. In FY2006, 276 requests were received. This is a 5% decrease.

In FY2007, 267 requests were processed. In FY2006, 458 requests were processed. This is a 41% decrease.

Improvements in FOIA Program:

USAID is installing an automated system that will improve tracking, redacting, client communications, and reporting capabilities.

IX. Costs/FOIA Staffing

A. Staffing levels.

1. Number of full-time FOIA personnel: 5
2. Number of personnel with part-time or occasional FOIA duties (in total work-years): 1.5
3. Total number of personnel (in work-years): 6.5

B. Total costs (including staff and all resources).

1. FOIA processing (including appeals): \$685,000
2. Litigation-related activities (estimated): \$0
3. Total Costs: \$685,000
Comparison with previous year(s) (including percentage of change) (optional) – FY2006's total costs were \$740,000. FY2007's costs are \$685,000. This is a 7% decrease.

X. Fees

This includes charges for search, review, document duplication, and any other direct costs permitted under agency regulations.

- A. Total amount of fees collected by agency for processing requests: \$5,950
- B. Percentage of total costs: .008%

XI. FOIA Regulations and Fee Schedule

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SECTION XII. REPORT ON EXECUTIVE ORDER 13,392 IMPLEMENTATION

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

USAID has not submitted a modified agency improvement plan.

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

USAID's ability to meet the goals and milestones of its plan was based on the premise that contractor assistance would be available. A contract for FOIA services was issued on September 26, 2006. Unfortunately, the contractor soon unexpectedly withdrew from the contract due to facility security clearance difficulties. This lack of contractor assistance forced USAID to reduce or suspend many improvement efforts and adversely impacted the ability to fully meet goals and milestone in the areas of backlog reduction and the revision of FOIA regulations and directives.

A second FOIA services contract was issued on September 27, 2007. The first contingent of three contract employees arrived during the period of December 2007 through January 2008. Additional contractor personnel are scheduled to arrive beginning June 2008 through March 2009. With the availability of new additional resources, USAID can again resume its improvement effort with a renewed vigor.

Even without the securing of supplemental processing assistance, the USAID FOIA Team was able to substantially reduce its FOIA backlog. Since the implementation of its Improvement Plan, the pre-FY2005 backlog has been reduced by 90% with a total of 23 open requests on December 31, 2007. In 2007, the FY-2005 backlog was reduced by 42% with a total of 66 open requests. The FY-2006 backlog was reduced by 33% with a total of 60 open requests. 45% of the FY-2007 cases received (253 cases) were closed.

The deployment of a new FOIA automated tracking, redacting, and reporting program was initiated and completed in 2007. Ironically, the deployment of the new system somewhat interfered with the FOIA backlog reduction effort since limited direct-hire resources had to be split between these two efforts. The long-term improvements expected through the use of the new automated system justified the concurrent efforts.

C. Identification and discussion of any deficiency in meeting plan milestones.

1. FOIA Improvement Plan area to which the deficient milestone relates:

FOIA Backlog Reduction/Elimination Effort

2. Deficient milestones and the original target date from the FOIA Improvement Plan.

Under its FOIA Improvement Plan, USAID originally intended to eliminate its backlog of pre-FY2005 requests by December 31, 2006. The backlog of FY-2005+ requests was scheduled to be eliminated by December 31, 2007. Neither of these goals has been met because of the lack of planned contractor assistance.

3. Steps taken to correct the deficiency and the dates by which the steps were completed.

A contract for FOIA services was issued on September 27, 2007. Three contractor FOIA Specialists began work during the period of December 2007 through January 2008.

4. Future remedial steps and the dates by which the steps will be completed.

The level of contractor assistance will be increased beginning June 2008 through March 2009 to assist in the processing of backlogged cases.

1. FOIA Improvement Plan area to which the deficient milestone relates:

Training and Implementation of FOIA System

2. Deficient milestone and the original target date from the FOIA Improvement Plan.

The deployment milestone date of February 28, 2007 was not met.

3. Steps taken to correct the deficiency and the dates by which the steps were completed.

The deployment was delayed because of data migration problems and a decision to initiate the new automated system at the beginning of a fiscal year reporting period rather than in the midst of a fiscal year reporting period. Deployment occurred on October 1, 2007.

4. Future remedial steps and the dates by which the steps will be completed.

No future remedial steps are necessary.

1. FOIA Improvement Plan area to which the deficient milestone relates:

Improvement of the Agency's FOIA Regulations/Directives

2. Deficient milestone and the original target date from the FOIA Improvement Plan.

The milestone date for the drafting stage (May 19, 2007) was met. The subsequent milestone dates for the clearance and public review stages (June 19, 2007 through July 17, 2007) and publication stages (December 31, 2007) were delayed and have not been completed. The completion of this effort was hampered by the lack of planned contractor assistance and the subsequent need to divert direct-hire resources to the backlog reduction and automated processing efforts.

3. Steps taken to correct the deficiency and the dates by which the steps were completed.

A contract for FOIA services was issued on September 27, 2007. Three contractor FOIA Specialists began work during the period of December 2007 through January 2008.

4. Future remedial steps and the dates by which the steps will be completed.

Additional contractor FOIA personnel will be in place beginning in June 2008 through March 2009. The addition of these Specialists will allow direct-hire staff to again direct its energies to the revision of the FOIA regulations/directives.

The new completion milestone date for the issuance of revised regulations and directives is January 31, 2009.

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

A member of the FOIA Team participated in an Agency knowledge management working group. Participation in this effort hopefully will result in the identification of Agency information sources of interest to our Agency's FOIA requesters.

- 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 adjudications, (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 sources, (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 information on wells.

F. Additional Statistics

1. Ten Oldest Pending FOIA Requests

Calendar Year	1999	2000	2001	2002	2003	2004	2005	2006	2007
Requests	Sept 11	Nov 9	Mar 15	Apr 26 July 5 July 25 Dec 2	Feb 5 Apr 14 June 5				

2. Consultations

- a.) Number of Consultations Received, Processed, and Pending During FY07
- b.) Ten Oldest Pending Consultations Received from Other Agencies as of January 1, 2008

Since USAID's data collection methods have not involved the collection of statistics identifying consultations, USAID is unable to compute statistics regarding consultations for Fiscal Year 2007 and earlier fiscal years. Beginning in FY 2008, USAID began to collect consultation data and will be able to report such data in its Fiscal Year 2008 report.

G. Attachment: USAID Improvement Plan

The USAID Improvement Plan is attached.

http://www.usaid.gov/about/foia/reports/foiaplan_2006.pdf

