

U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT
FY2006 FOIA ANNUAL REPORT
(Covers October 1, 2005 through September 30, 2006)

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 FY2006, the median processing time for all combined initial requests was 127 **calendar days**. Not all requests took 127 **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, 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, 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 FY2006 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
Procurement Integrity Act, 41 U.S.C. §423

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.

Procurement Integrity Act, 41 U.S.C. §423 – Places restrictions on the release of pre-award contractor bids, proposal information, and source selection 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)

Procurement Integrity Act, 41 U.S.C. §423 – None

V. Initial FOIA/PA Access Requests

A. Numbers of initial requests.

1. Number of requests pending as of end of FY 2005: 449*
2. Number of requests received during FY2006: 276 perfected
3. Number of requests processed during FY2006: 458
4. Number of requests pending as of end of FY2006: 267 requests, 12 “unperfected” requests not included

*In our FY2005 report, we reported 469 cases as being pending at the end of FY2005. During 2006, an extensive inventory of open cases was performed. As a result of that inventory it was discovered that 20 cases that had been reported as “open” in our tracking database had in reality either been closed or were duplicate database entries. Those 20 cases have been subtracted.

B. Disposition of initial requests.

1. Number of total grants: 73
 2. Number of partial grants: 78
 3. Number of denials: 16
- a. Number of times each FOIA exemption used (counting each exemption once per request):
- (1) Exemption 1: 2
 - (2) Exemption 2: 1
 - (3) Exemption 3: 17
 - (4) Exemption 4: 40
 - (5) Exemption 5: 25
 - (6) Exemption 6: 39
 - (7) Exemption 7(A): 0
 - (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): 291
 - a. no records: 99
 - b. referrals: 0
 - c. request withdrawn: 155
 - d. fee-related reason: 5
 - e. records not reasonably described: 1
 - f. not a proper FOIA request for some other reason: 2
 - g. not an agency record: 0
 - h. duplicate request: 5
 - i. other reason : 24 (3 combined; 1 referred record not responsive; 1 request handled by another office; 19 lost)

VI. Appeals of Initial Denials of FOIA/PA Requests

A. Number of appeals.

1. Number of appeals received during FY2006: 7
2. Number of appeals processed during FY2006: 4

B. Disposition of appeals.

1. Number completely upheld: 1
 2. Number partially reversed: 0
 3. Number completely reversed: 0
- 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: 0
 - (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): 3
 - a. no records: 3
 - 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): 0

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: 455
 - b. median number of ***calendar days*** to process: 127 ***calendar days***
- 2. Requests accorded expedited processing
 - a. number of requests processed: 3
 - b. median number of days to process: 46 ***calendar days***

B. Status of pending requests.

- 1. Number of requests pending as of end of FY2006: 267
 - a. Non-expedited: 255
 - b. Expedited: 12
- 2. Median number of ***calendar days*** that non-expedited requests were pending as of the end of FY2006: 388 ***calendar days***

3. Median number of calendar days that expedited requests were pending at the end of FY2006: **387 calendar days**

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

During FY2006, the median number of **calendar days** needed to process all requests was **127 calendar days**. In FY2005, the median number of calendar days needed to process all requests was **55 calendar days**. This is a 130% increase. This increase is attributed to the closing of a large number of older backlogged cases.

In FY2006, 288 requests were received. In FY2005, 369 requests were received. This is a 28% decrease.

In FY2006, 458 requests were processed. In FY2005, 197 requests were processed. This is a 132% increase.

In FY2006, 3 requests for expedited processing were received. All of these requests were granted. In FY2005, 12 requests for expedited processing were received. All 12 requests were granted. This is a 300% decrease.

Improvements in FOIA Program:

USAID purchased 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): \$740,000
2. Litigation-related activities (estimated): \$0
3. Total Costs: \$740,000

Comparison with previous year(s) (including percentage of change) (optional) – FY2005's total costs were \$460,000. FY2006's costs are \$740,000. This is a 61% increase.

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:
\$1,650.00
- B. Percentage of total costs: .0022%

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 yet submitted a modified agency improvement plan. Unanticipated contracting issues adversely affected our ability to meet all of our FOIA backlog reduction and FOIA website improvement goals. As those contracting issues are resolved, USAID will issue a revised plan with new milestones in these two areas. At that time, we will also note that a decision has been made to focus on the continuous updating of our Reference Guide to USAID Information in lieu of a printed version.

- B. Report on Agency implementation of its plan, including the performance in meeting milestone, with respect to each improvement areas.

USAID had many successes in meeting its improvement goals and milestones. A sophisticated COTS FOIA automated processing program was purchased and installed within the planned timeframes. This program provides improved tracking capabilities, on-line redacting, and improved reporting capabilities. Most importantly, the program will allow requesters to submit and track their requests within the system. The FOIA Team's IT hardware was upgraded to facilitate the use of the automated program.

USAID's internal operating procedures traditionally have required that an acknowledgement letter be sent to the requester within two to four days, depending on the complexity of the letter. Prior to its FOIA Improvement Program, compliance with these measurements were not being met consistently. To improve performance in this area, a new standard operating procedure and a new reporting approach were developed. USAID was successful in sending acknowledgement letters for simple requests within two days 97% of the time. Many letters (79 %) were sent within one day. This was possible since USAID has an electronic mailbox that requesters can use to submit requests. Allowing requesters to submit their requests electronically provides spontaneity and improved communications.

The USAID FOIA Contact Officers (FCOs) are responsible for obtaining their organizations' responsive records that have been requested under the FOIA. This individual is pivotal to the USAID FOIA Program. In order to improve organizational sensitivity to the importance of the FCO and to facilitate the appointment of appropriate FCOs, various steps were taken under the FOIA Improvement Plan: the issuance of an Agency Notice from the USAID Administrator concerning the importance of the FOIA Program, the issuance of a memorandum by the Agency Chief FOIA Officer to the Bureau/Office heads concerning the importance of the FCO role, briefing of the FCOs, and expressions of appreciation from the FOIA Team to the FCOs. All of the milestones for this improvement area were met.

The USAID FOIA Improvement Plan included improvements in the USAID FOIA website. A review of the website was conducted, invalid links were eliminated, and new links established within the Plan's milestones. The goal of establishing a "searching/decision tree" was not met due to the suspension of a knowledge management contract that was to be used. USAID will revise its FOIA Improvement Plan and establish new milestones for this effort once contractor resources again become available.

The USAID FOIA Improvement Plan included steps to review and update the Reference Guide to USAID Information. The review and updating of the Guide were accomplished and will be a continuing area of effort with quarterly reviews and updates. Originally, it was planned to issue a glossy printed guide for non-electronic distribution. This approach was re-examined and deemed impractical because a printed version soon becomes outdated and continuous updates are costly. USAID will focus on its continuous review and updating efforts of its website version of the Handbook. The decision to forego the publication of a glossy printed guide will be noted in our revised plan.

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

Contractor assistance to assist in the reduction of the FOIA request backlog was obtained within the improvement plan's timeframes. Unfortunately, the contractor withdrew at an early stage due to difficulties related to obtaining a facility security clearance. This withdrawal was unanticipated. USAID intends to issue a new FOIA processing contract

during the third quarter of this fiscal year.

A major improvement goal was the elimination of the FOIA request backlog for requests received prior to Fiscal Year 2005. USAID was successful in closing 87% of these cases. This was a commendable effort on the part of the USAID FOIA team since the planned supplemental contractor assistance was not available to assist in this effort. USAID is still committed to its backlog reduction efforts. When a new FOIA processing contract is issued, USAID will issue a revised FOIA Improvement Plan with new time milestones related to its backlog reduction efforts.

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

None.

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. Time range of requests pending, by date of request:
May 12, 2000 to March 1, 2007
2. Time range of consultations pending with other agencies at this time:
July 30, 2004 (the only open consultation)

G. Attachment: Agency Improvement Plan:

The USAID Improvement Plan is attached.

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