

**U.S. Environmental Protection Agency
Response to Executive Order 13392
'Improving Agency Disclosure of Information'**

In response to Executive Order 13392, Improving Agency Disclosure of Information, this report describes the U.S. Environmental Protection Agency's plan for continued improvements to the Agency's Freedom of Information Act Program. The report offers a brief overview of the program, identifies the areas we considered for improvement, and concludes with a plan for strengthening some key areas of our FOIA program.

A. Overview of EPA's Freedom of Information Act Program

EPA's Freedom of Information Act Program is one of the top FOIA programs in the federal government, providing oversight, leadership, direction, training and support for FOIA activities across the Agency's 10 regions and headquarters program offices. EPA's commitment to excellence is evident from the efforts already undertaken by the Agency to institute many of the activities required by Executive Order 13392, including the deployment of a state-of-the-art information technology infrastructure to support and manage this important Agency program. The Agency's program is customer-focused and efficiency-oriented.

The Agency received 14,252 FOIA requests in 2001 and 12,201 in 2005, a drop of about 15 percent. EPA believes that this decline in requests is largely due to the continued improvements we have made in the FOIA program and the Agency's commitment to make as much information as possible available through EPA's publicly-accessible web sites.

EPA's Assistant Administrator for Environmental Information and Chief Information Officer serves as the Agency's Chief FOIA Officer. EPA's Chief FOIA Officer is responsible for Agency-wide compliance with the Act, providing periodic reports to the Administrator on the status of the Agency's FOIA Program and making recommendations for improvements. The Agency's Chief FOIA Officer facilitates public understanding of the Act's statutory exemptions by including information about these exemptions in the Agency's FOIA Handbook and on EPA's web site (see Section D).

The Chief of the Records, FOIA and Privacy Branch within the Office of Environmental Information is the Agency Public Liaison, and the FOIA staff of the Records, FOIA and Privacy Branch serves as the FOIA Requester Service Center. The Branch Chief is a supervisory position and the incumbent is in a position to deal with concerns raised by any requester. The Branch Chief is directly responsible for the performance of the staff composing the Requester Service Center.

Our FOIA Requester Service Center is an easily accessible, first point-of-contact for requesters. The Center staff routinely provides general information on the Agency's FOIA process and detailed information on the status of pending requests. The Center staff is also responsible for the maintenance of EPA's FOIA web site and processes requests received at headquarters. The Center also offers a FOIA hotline that has been operational for many years.

Through the hotline, callers may receive basic information on the status of their requests, general information on how and where to submit a FOIA request, and information about the types of information available on EPA web sites.

The Appendix to this document provides an overview of the FOIA Program roles and responsibilities within EPA.

B. FOIA Areas Selected for Review

The following areas were selected for review by the Agency:

- FOIA training for Agency staff;
- Agency web sites (including the FOIA web site);
- Utilizing information technology in the Agency's FOIA Program;
- FOIA request processing;
- Expedited processing and multi-track processing of FOIA requests; and
- EPA's FOIA response backlog.

C. Summary of Review Findings

In order to address the requirements of the Executive Order, EPA established an EO implementation workgroup, headed by EPA's National FOIA Officer, to review its FOIA policies and operations. The workgroup conducted its review using the guidance issued by the Department of Justice.

This section identifies the areas reviewed by the workgroup for improvement and provides a high-level assessment of the area:

1. FOIA Training for Agency Staff

EPA's commitment to excellence is reflected in its FOIA training and outreach program. This robust and mature program includes: regular national training conferences for employees and contractors; bi-weekly conference calls with the Regional FOIA Officers; monthly meetings with FOIA contacts in the headquarters program offices; and semi-annual meetings with Regional FOIA Officers. All of these meetings involve, or are entirely focused on, providing staff with training on new developments in the FOIA program.

EPA has recently conducted a dialogue with stakeholders to find ways to further improve FOIA management at EPA. EPA plans to conduct similar sessions with other members of the public in the future.

Overall, the Agency feels it has an effective FOIA training regimen.

2. Agency Web Sites, Including FOIA Site

EPA has a long-term commitment to proactive disclosure. Since the advent of the Internet, the Agency has made heavy use of the EPA web site to disclose data, information, and analyses of many kinds. EPA believes the decline in the number of FOIA requests received by EPA over the past four years (from 14,252 in 2001 to 12,201 in 2005) is largely attributable to the quantity and quality of information on the Agency's web sites.

EPA has also made considerable efforts to develop the FOIA web site so that it is responsive to the public interest. This site contains contact information and information on filing FOIA requests at EPA headquarters and for each regional office. FOIA staff ensure that the web site is user-friendly, up-to-date, accurate, and consistent with Agency policy on web site content and format.

EPA's commitment to full disclosure was demonstrated during the aftermath of Hurricanes Katrina, Rita and Wilma. The Agency made hurricane-related information available on its web site as soon as it was practicable. EPA was and remains committed to ensuring that first responders, citizens, the media and others have access to the information they need without having to submit a FOIA request.

EPA believes its FOIA web site is generally responsive to public needs; however, the Agency will undertake a comprehensive review of the web site to ensure it is providing timely, accurate information to the public. This is an action area described in Section D.

3. Using Information Technology in EPA's FOIA Program

EPA deployed an enterprise FOIA management system (FOIAXpress) in 2005. This system replaced an outdated tracking system (FOIAMATS) which had been in use since 1991. FOIAXpress is a state-of-the art system that provides "cradle to grave" electronic tracking of incoming FOIA requests and Agency responses. The system features web-based access and enhancements such as workflow management, metadata tracking, on-line review and redaction, web posting, automated billing, and generation of the annual FOIA Report. The National FOIA Officer uses FOIAXpress to monitor the timeliness of FOIA responses and EPA program offices preparing FOIA responses use the application to respond to FOIA requests.

The Agency concluded that, except for maintaining FOIAXpress, no further information technology investments are currently needed in the program.

4. FOIA Request Processing

EPA processes and manages FOIA requests in a consistent and efficient manner. FOIA requesters can submit requests to EPA electronically through EPA's FOIA web site, by fax, through the mail, or via courier services to headquarters or to one of the Agency's 10 regional offices. With FOIAXpress, the Agency's internal FOIA business processes are now

primarily electronic, from initial receipt to final disposition. At the present time, however, payments associated with FOIA requests cannot be made electronically.

From a process perspective, upon receipt of a request, a FOIA Specialist reviews the request for completeness and enters requester and request metadata into FOIAXpress. The system electronically assigns the tracking number and due date. Using the workflow features of the application, the FOIA request is electronically assigned and delivered to the appropriate program office for processing.

When a FOIA request is received in the program office assigned responsibility for preparing the response, the office searches for the requested records, reviews the records, makes determinations to release or withhold the records, and notifies the requester by letter of the Agency's decision. Staff in the program office sign the determinations to release information in consultation with the OEI FOIA office. Only Division Directors or equivalent senior-level employees are authorized to sign denials. A copy of the decision letter is provided to the OEI FOIA Specialist through FOIAXpress for inclusion in the official FOIA request files. After reviewing the response letter, OEI staff determine the disposition of the final action and record the disposition in the application (e.g. grant, denial, partial response).

As FOIA requests are being processed, the National FOIA Office and Regional FOIA Offices, along with the program offices, may communicate with the requester to modify or clarify the request. All such conversations are documented by e-mail or by a letter mailed to the requester.

EPA's current FOIA processing methods are much more efficient with the implementation of FOIAXpress. However, the Agency is pursuing the ability to provide requesters the option of electronically paying FOIA fees (see Section D).

5. Expedited Processing and Multi-Track Processing of FOIA Requests

EPA grants all expedited processing requests that meet the criteria set in the statute and our implementation regulations. Recently, EPA granted numerous expedited processing requests from media requesters in the aftermath of Hurricanes Katrina, Rita and Wilma.

EPA uses multi-tracking of FOIA requests when appropriate. Multi-tracking means that requests are designated as simple (must be responded to within the 20-day deadline) or complex (complicated and/or voluminous and will be responded to as soon as reasonably possible). Requesters are notified if their request is placed into the complex category. EPA follows the first-in first-out practice within each track.

The Agency concluded that the proper choice of these designations is an important aspect of the Agency's program. Because making the proper designation is getting a high level of attention in the training activities described in section C.1, EPA concluded that no additional action is needed at this time.

6. EPA's FOIA Response Backlog

EPA began a focused effort to address its FOIA response backlog in 2001. At that time (July 2001) there were 23,514 backlogged requests. As of the date of this report, EPA's backlog is approximately 2,000 overdue request responses. This represents a net reduction in overdue responses of over 90 percent compared to the 2001 figure.

The Agency concluded two things with regard to the response backlog. First, it is likely that EPA will always have a backlog given the number and complexity of FOIA requests that it receives. Second, EPA's backlog requires additional and continuing attention to reduce it to a reasonable level. This is an action area described in Section D.

D. Plan for Strengthening EPA's FOIA Program

EPA concluded that improvements in the following areas would provide the biggest benefit for the Agency's FOIA program:

- Electronic payment of FOIA fees;
- FOIA web site improvement; and
- Further backlog reduction.

E. Improvement Area Planning

The workgroup developed recommendations and proposed milestones and deadlines for improvement, when appropriate.

1. Electronic Payment of FOIA Fees

EPA is working with the U.S. Department of the Treasury to allow FOIA requesters to pay fees electronically.

Milestones:

- EPA recently met with the U.S. Department of the Treasury to explore the implementation of electronic payment of FOIA fees through a portal known as Pay.gov.
- EPA will enter into an agreement with the U.S. Department of the Treasury to allow EPA FOIA requesters access to Pay.gov by October 1, 2006.
- EPA will enable FOIA requesters to pay fees for the processing of FOIA requests using Pay.gov by December 31, 2006.

Measure of Success:

Implement an electronic payment option for FOIA fees processed by headquarters by December 31, 2006.

2. FOIA Web Site Improvement

The Agency will undertake a comprehensive review of its FOIA web site to make it more user-friendly and informative.

Milestones:

- A workgroup will identify additional content that should be included on the FOIA main page and create a prototype site to be used by headquarters and all regional offices. The workgroup members will be identified by July 1, 2006.
- Workgroup concludes its review and makes recommendations for the prototype site by December 31, 2006.
- Workgroup provides a formatted prototype site to headquarters and regional office web site owners by April 1, 2007.
- The Agency's FOIA web site is updated no later than September 30, 2007.

Measure of Success:

FOIA officers and coordinators update the FOIA web site by September 30, 2007.

3. Backlog Reduction

The Agency has determined that its present backlog of FOIA request responses is not acceptable, in spite of the fact that EPA reduced the back log of 23,514 overdue requests in July 2001 by over 90 percent, to approximately 2,000 overdue requests. The Agency will continue to identify additional ways to further reduce the backlog.

Milestones:

- Headquarters and regional FOIA Officers complete review of their backlog by October 1, 2006.
- Headquarters and regional FOIA Officers make recommendations to the National FOIA Officer on ways to significantly reduce the backlog by January 15, 2007.
- The National FOIA Officer will establish specific approaches for further reducing the backlog by March 1, 2007, and will provide guidance to EPA managers and staff.

Measure of Success:

EPA's FOIA response backlog will not exceed 10 percent of the number of new FOIA requests received each year. This level will be achieved by October 1, 2007.

F. TIME TABLE of FOIA IMPROVEMENT MILESTONES

Improvement	Deadline
<i>Improvements scheduled for completion by December 31, 2006</i>	
Establish workgroup to identify additional content to be included on FOIA web page and reorganize topics.	July 1, 2006
Enter into agreement with the U.S. Department of Treasury to allow EPA to use Pay.gov to collect FOIA fees.	October 1, 2006
Conclude FOIA web page review and make recommendations.	October 1, 2006
Complete FOIA backlog review.	October 1, 2006
Allow FOIA requesters to headquarters to pay fees though Pay.gov.	December 31, 2006
Conclude workgroup review and make recommendations on web site review.	December 31, 2006
<i>Improvements scheduled for completion by December 31, 2007</i>	
Make backlog reduction recommendations to the NFO.	January 15, 2007
Issue backlog reduction guidance.	March 1, 2007
Provide draft EPA FOIA web page to Website owners.	April 1, 2007
Update EPA FOIA web site.	September 30, 2007
<i>Improvements scheduled for completion by December 31, 2007</i>	
All improvements scheduled to be completed by December, 2007.	

Appendix
EPA FOIA Program Roles and Responsibilities

EPA has a decentralized FOIA processing system but has a central point-of-focus in OEI for policy issues and management of the FOIAXpress application. The key roles and responsibilities in the FOIA process at EPA are:

Chief FOIA Official - EPA's Chief FOIA Officer is responsible for Agency-wide compliance with the Act, providing periodic reports to the Administrator on the status of the Agency's FOIA program and making recommendations for improvements. The Agency's Chief FOIA Officer facilitates public understanding of the Act's statutory exemptions by including information about these exemptions in our FOIA Handbook and on EPA's web site.

National FOIA Officer – The NFO coordinates and oversees the Agency's FOIA program; issues determinations on fee waiver and expedited processing requests; develops and reviews FOIA procedures, policies, and guidance; provides advice to Agency FOIA personnel in the program and regional offices; prepares the Annual FOIA Report; maintains the official FOIA files for headquarters; and provides training to Agency FOIA personnel.

Regional FOIA Officers – Each of the 10 EPA regions has a Regional FOIA Officer. Each Regional FOIA Officer routes requests to the appropriate action office within the region; tracks FOIA requests; provides guidance to regional personnel, in collaboration with the NFO; coordinates with the action office on initial fee waiver decisions; submits materials for the annual FOIA report; maintains the official FOIA files for the region; and monitors the quality and timeliness of responses from the regions.

Program Office Coordinators – Each headquarters program office has a lead FOIA coordinator, who works under the general direction of the NFO. The program coordinators route requests to the appropriate action office within the program; track FOIA requests for timeliness; monitor the quality of the responses; and provide guidance to program personnel, in collaboration with the NFO.

Office of General Counsel – EPA's OGC plays a key role in its FOIA program. OGC provides legal advice on FOIA matters; issues final decisions on FOIA appeals, final confidentiality determinations, and fee waiver appeal determinations, except when a conflict of interest arises; provides on FOIA exclusions; and serves as co-counsel with U.S. Department of Justice attorneys in FOIA litigation. The Counsel to the Inspector General provides most of these services for the Agency's Office of Inspector General.