

FOIA's 40th Anniversary
**Agencies Respond to the President's Call for
Improved Disclosure of Information**

July 4, 2006

A Report

Prepared by OpenTheGovernment.org

in collaboration with

Access Reports

American Association of Law Libraries

Center for American Progress

Center for Financial Privacy and Human Rights

Center for Democracy and Technology

Coalition of Journalists for Open Government and the National

Newspaper Association

Federation of American Scientists Project on Government Secrecy

National Security Archive

OMB Watch

Project on Government Oversight

Public Citizen

Society of Environmental Journalists

Sunshine in Government Initiative

This report is made possible by the generous contributions of: Angelina Fund, the CS Fund, Educational Foundation of America, HKH Foundation, the John S. and James L. Knight Foundation, the Open Society Institute, and the Warsh-Mott Legacy Fund.

Today, July 4th, is the fortieth anniversary of the Freedom of Information Act. The Act was created to “ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption, and to hold the governors accountable to the governed.”

In recognition of this important milestone in the history of disclosure of agency information, members and staff of OpenTheGovernment.org, the Sunshine in Government Initiative (SGI), Coalition of Journalists for Open Government (CJOG), and other friends of openness in government undertook a collaborative look at a sample of the plans submitted¹ by federal agencies in response to E.O. 13392, “Improving Agency Disclosure of Information,” issued on December 14, 2005.² (Appendix One)

The requirements of the Executive Order include:

- the designation by the head of each agency (within 30 days of the date of the order) of a senior official of such agency (at the Assistant Secretary or equivalent level), to serve as the Chief FOIA Officer of that agency.³
- the establishment of a FOIA Requester Service Center and FOIA Public Liaisons, in order to ensure appropriate communication with FOIA requesters and to serve as the first place that a FOIA requester can contact to seek information concerning the status of the person's FOIA request and appropriate information about the agency's FOIA response.
 - a review of the agency's FOIA operations;
 - an agency-specific plan to ensure that the agency's administration of the FOIA is in accordance with applicable law and policies addressing the agency's implementation of the FOIA during fiscal years 2006 and 2007;
 - a report, no later than 6 months from the date of this order, to the Attorney General and the OMB Director that summarizes the results of the review and encloses a copy of the agency's plan.

A recent FOIA Post, <http://www.usdoj.gov/oip/foiapost/2006foiapost6.htm>, from the U.S. Department of Justice Office of Information and Privacy spells out the requirements for agency reporting. The categories at which this report looks are drawn from that guidance. They are also attached as Appendix Two.

Background

Prior to its passage, public access to records of federal agencies was governed by Section 3 of the Administrative Procedure Act (APA), which had been interpreted as giving agencies unlimited discretion to withhold such records. Efforts to amend this system began as early as 1955 but were not successful until 1966.⁴ Under the APA, the burden was on the individual to establish a *right* to examine records in the possession of agencies and departments of the executive branch of the U.S. government and to *prove s/he has a need to know*. There were no statutory guidelines or procedures to help a person seeking information, and no judicial remedies for those denied access.⁵ The FOIA, however, established a presumption that these records are accessible to the people.

Since 1966, the FOIA has been amended six times: in 1974, (with minor amendments in 1976, 1978, 1978, and 1984) in 1986, and, most recently, in 1996. In each instance, the original Act has been broadened to include more information deemed necessary to the public as well as to the

oversight of the federal government. In 1974, after the Watergate scandal, the Act was amended to force greater agency compliance. The Act was amended in 1996 to allow for greater access to electronic information.⁶

Concerns With the Processes of Implementation

From its inception the implementation and usability of the Freedom of Information Act have been matters of concern. One of the largest concerns of users, particularly media users, is agency backlogs in responding to FOIA requests. FOIA does not require agencies to *release* information within a certain amount of time; agencies must respond to requests in some way within 20 days. Actual processing often takes much longer. Even requests that are stamped "expedited" based on an exceptional need or urgency can lag for many months. The Justice Department's Office of Information and Privacy, which is in charge of administering FOIA across the federal government, kept an expedited request pending for 185 days last year.

In December 2000⁷, the General Accounting Office (GAO) briefed Senators Fred Thompson and Patrick Leahy and Representative Stephen Horn on its review of the progress made at 25 major federal departments and agencies in implementing the 1996 Electronic Freedom of Information Act Amendments. GAO found that:

- All 25 agencies reviewed had established electronic reading rooms, but agencies had not made all required documents electronically available.
- While the Department of Justice and other federal agencies have implemented reporting provisions required by e-FOIA, including annual workload reports, data quality issues limit their usefulness.

They recommended that the Attorney General direct the Department of Justice to improve the reliability of data in the agencies' annual reports by providing guidance addressing the data quality issues we identified and by reviewing agencies' report data for completeness and consistency.

A 2002⁸ follow-on report looked at 1) the progress the 25 federal agencies had made in processing FOIA requests and in developing online access to materials as required by e-FOIA; and 2) the views of FOIA officials and requesters regarding the impact of the post-September 11, 2001, environment on implementation. Changes in how agencies report processing time made GAO unable to identify any clear trends; the changes improved data quality but also reduced comparability among years.

GAO did find that although agencies were continuing to make progress in making material required by e-FOIA available on line, not all of the required materials were yet available. They found that materials were sometimes difficult to find, and Web site links were not always functioning properly. According to GAO, the situation "appears to reflect a lack of adequate attention and continuing review by agency officials to ensure that these materials are available."

For fiscal years 1999 through 2001, the number of requests received and processed appears to peak in fiscal year 2000 and decline slightly in fiscal year 2001 for most agencies – except the Department of Veterans Affairs. However, agency backlogs of pending requests were substantial and growing government-wide. Agency officials attributed this growth primarily to the

increasing complexity of the requests.

In testimony⁹ delivered on Wednesday, May 11, 2005, GAO reported that, according to data reported by agencies in their annual FOIA reports, the number of requests that the 25 agencies received increased by 71 percent from 2002 to 2004. Further, agencies reported they have been processing 68 percent more requests from 2002 to 2004. For 92 percent of requests processed in 2004, agencies reported that responsive records were provided in full to requesters. However, the backlog has also been increasing, rising 14 percent since 2002.

A series of reports on government secrecy by OpenTheGovernment.org (OTG)¹⁰ have noted that public demand for “information from the government” has been rising – with over 3 million requests for information from government agencies under the Freedom of Information Act in 2003, while resources devoted to handling public requests for information has held steady. For 2004, both the OTG coalition and the Coalition of Journalists for Open Government (CJOG)¹¹ found the public made over 4 million FOIA requests to government agencies – a 25 percent jump in overall requests from 2003, despite only a 5 percent rise (to \$336.8 million) in spending on FOIA. Moreover, of the roughly 90 agencies surveyed by the Department of Justice, only 14 (16%) were able to keep up with FOIA requests they received. But, the report notes, that’s good news: only 7 agencies had been able to keep up in 2003.

A 2006 Associated Press analysis¹² of about 250 annual FOIA reports submitted to the Justice Department between 1998 and 2005 found that:

1. Backlogs are increasing at most agencies. Overall, the total number of requests pending at the 15 executive departments at the end of Fiscal Year 2004 was 147,810, a 24 percent increase over the previous year. Nine of the 15 federal departments reported an increase in their backlogs from Fiscal Year 2003 to Fiscal Year 2004.

2. Many backlogs are lengthy. According to the analysis, the most recent reports available from the 50 worst laggards show the median wait for a request to be handled ranges from about three months to more than four years, depending on the agency. The slowest federal agency is the National Archives; most of the requests to them, pending for an average of 1,631 days, have to be reviewed by the originating agency for declassification before they can be released.

3. Agencies involved with national security are clamping down on the amount of information they release to the public. The FBI, CIA and Defense departments, all agencies that have considerable investigative branches, again reduced the percentage of requested information released in full in 2005, continuing a trend dating back at least seven years. The Justice Department, however, showed a slight increase in the amount of information it released in full for the first time since the 2001 terror attacks.

4. A full month after the Feb. 1 deadline, about 30 percent of federal agencies and departments required to submit annual FOIA reports to the Justice Department had failed to do so. Those with late reports included the Department of Veterans Affairs, the Social Security Administration and the Department of Health and Human Services which, all together, received about 88 percent of all FOIA requests in the country in 2004.

There is, however, “absolutely no incentive for federal government employees to act with any sense of urgency on FOIA requests, and there are every sort of incentive to delay and delay. Those incentives are a culture of secrecy that has always existed in government, from 40 years ago when FOIA was passed to the present time.”¹³

Legislative Efforts to Address Process Concerns

To address many of these concerns, in February 2005, Senators John Cornyn (R-TX) and Patrick Leahy (D-VT) introduced the “Openness Promotes Effectiveness in our National (OPEN) Government Act of 2005” (S. 394). The bill is ambitious in the scope of procedural concerns it would remedy. A Judiciary Committee hearing was held the same day as the introduction. The following day, the companion bill (HR 867), was filed by Rep. Lamar Smith (R-TX).

In March 2005, the Senators introduced the *Faster FOIA Act of 2005* (S.589), to establish a Commission on Freedom of Information Act Processing Delays. S. 589 was marked up by the Judiciary Committee a week later and ordered to be reported without amendment favorably. There is no schedule for marking S. 394 up in Committee. On May 9th, the Subcommittee on Government Management, Finance, and Accountability of the House Government Reform Committee held an oversight hearing on “Information Policy in the 21st Century: A Review of the Freedom of Information Act.”

The Ashcroft Memorandum

While there have been other legislative efforts to address the substantive concerns created by the former Attorney General Ashcroft’s 2001 memorandum requiring agencies to carefully consider national security, effective law enforcement and personal privacy before releasing information, none have moved forward.

Nor are these concerns addressed by E.O. 13392.

The Findings

The ratings (Table) and evaluations on which this report is based looked only at the plans submitted by the agencies. In some cases, the reviewer may have had ongoing knowledge of the agency's FOIA efforts; in others, not. The ratings and evaluations are, necessarily, subjective as there was no objective benchmark against which to measure the responses. Due to this inherent subjectivity, comparisons among agencies should be drawn with caution.

Having said that, it is still surprising how many of the improvement areas were either not addressed or rated as poorly addressed, especially for the non-Cabinet agencies. The worst (the most Ps and NAs) in this regard were the SEC (24) and the OMB (22), followed closely by the Council on Environmental Quality (21) and the NRC (20).

Of interest to those of us collaborating in this report was category 21 – In-house training on “safeguarding label”/FOIA exemption distinctions (e.g., FOUO, SBU). Out of the 23 government entities reviewed, only 4 *responded* to an issue that is, avowedly, of great and deep concern to the federal government. Of those, 4 received a “Poor” rating.

Summary Overall Evaluations Provided by Reviewers¹⁴

Department of Agriculture

The Department of Agriculture has a low backlog rate, only 4% of the requests processed. Its reported response times – the median times reported by its 21 FOIA components – range from among the lowest to among the highest reported by all government agencies. Its processing appears reasonably efficient. The department cut the number of people working on FOIA by 62% in 2005 but it also cut the man-hours spent handling requests by 56%. And its cost per request handled is among the lowest of the agencies.

Its improvement report includes individual reports developed by some of its 21 component agencies. All but one is positive in tone. The target dates appear realistic, indeed a bit aggressive with one exception. I was surprised by the number of June 30, 2006 deadlines.

The plan closely follows the Justice guidelines, with each component commenting on and developing an improvement plan for many of the 27 criteria.. The report jams a lot of information into short, manageable chunks, and makes good use of grids to allow for easy reference. In short, the report is reader-friendly. It calls for improvements in almost all of the areas. And it permits easy tracking and establishes accountability. So overall, a “3” even though none of the individual remedial steps knocked my socks off and most of the individual ratings are in the (2) category.

The areas highlighted for improvement were:

- Reduction of backlogs, which stood at 4 percent overall for the department. That's one of the lowest overall backlog rates among all agencies.
- Development and use of electronic tracking systems to inform both the agency and the public.
- Better use of the web to inform the public and reduce requests.

- Electronic submission and response for requests.

There is no specific reference to “response” delays in either the Justice guidelines nor in the Department’s report. The presumption seems to be those issues will go away if other things are done. And perhaps if they make real improvements in all of these areas, it will.

Department of Defense

The Department of Defense appears to have used the Executive Order process to initiate a serious review of FOIA processes. They conducted an extensive survey across the agency which resulted in a 90% response rate. The survey identified organizational placement, lack of senior leadership support and lack of technology as major concerns, and rated communication with requesters as a positive. The survey also found that a principal reason for delayed responses is the need to search for the records and that the backlog is confined to a small number of offices. DOD also collected data from Component Chief Public Liaisons and senior FOIA managers. These responses indicated that inadequate resources are a primary reason for the backlogs, but also noted that the complexity of some requests the existence of classified material and referral system cause delay. Several noted various specific bottlenecks and the delay caused by competing responsibilities. Other findings related to the grades and recruitment of FOIA personnel, web site compliance, and technology. Overall, the observations of the problem areas appear honest and consistent with our experience as requesters. One frustration as a FOIA requester is that the report is not broken down by component, and so it is difficult to judge whether DOD has accurately identified the offices that FOIA requesters have problems with. Further, the goals tend to be DOD-wide, and our experience is that offices and components within each individual service may lack unity so it is difficult to assess whether the department-wide goals are realistic with respect to all offices and components.

Having said that, DOD recognized serious deficiencies and recommends significant changes to their FOIA programs, including: evaluating organization placement and staffing (placement, visibility, job series and grade levels, and standards for what can be contracted out), training (FOIA staff, managers and legal advisors), and technology (streamlined FOIA software, standardized websites, electronic document control system). For the offices with the backlogs, the plan acknowledges that they need additional manpower and/or funding to address the backlogs. DOD’s plan is ambitious and it will require funding and cooperation from diverse components and offices to put all the pieces into place.

Department of Education

The Department of Education's (ED) FOIA plan is lacking. ED selected 10 areas for review (out of the 27), but proceeded to address only the 8 they chose as "improvement areas." ED points to an in-depth review they conducted in FY 2004, which led to, "reengineered processes, customer service and training expansion, and technology improvements," pointing especially to their expanded use of FOIAXpress to process FOIA requests. Perhaps this is why they seem to give this review little time or attention.

A major focus of the review was the conclusion that releasing more information could actually reduce the administrative burden on requesters and the Department. By making proactive disclosure of information, making better use of technology, and expanding the use of

FOIAXpress, they say could meet this goal.

One positive and specific goal is the rollout of FOIAXpress to headquarters. As about 20 percent of the total FOIA requests received by ED seek records maintained by one or more of the 12 regional offices of ED's Office for Civil Rights, it makes sense to give these offices the means to deal with requests efficiently.

Although ED mentions that there is a need to "reduce or eliminate" the backlog (currently at 480), there is no serious plan to do so. They suggest the use of multi-track processing and keeping requesters more informed, but their only plan is to increase the use of FOIAXpress. It is unlikely that just by implementing this technology, other problems (such as a need for increased staffing) would disappear.

Overall, the report is not detailed enough to offer real improvements, instead relying on the increased use of FOIAXpress to solve current problems.

Department of Energy

The Department of Energy's Plan to Improve FOIA Requests is a paper tiger. The DOE's FOIA improvement plan appears to add over the next two years another layer of bureaucracy to address FOIA shortcomings. It calls for intra-department training announcements, conference calls, FOIA templates, a procedures manual followed by a plan to process FOIA requests, various reports and standardized FOIA request forms. There is no sense of urgency and only a few time frames given. The department's FOIA lite plan is only four pages, two pages less than the six page Executive Order on Improving Agency Disclosure of Information.

The six areas identified for fiscal 2006-07 needing improvement include: training, processing of requests, communication with requesters, backlog reduction, receiving of electronic FOIA requests and web access to FOIA materials.

The DOE FOIA office is decentralized and the plan focuses on coordinating the headquarters with the field FOIA officers. Follow up will be needed to see if this plan results in more than paper shuffling.

Department of Health and Human Services

The Department of Health and Human Services has a decentralized structure with many agencies under its umbrella. The department's FOIA Review and Improvement Plan reflects this organization. The Assistant Secretary for Public Affairs conducted the review with the input of each of HHS's 12 separate FOIA offices, so some of the issues that the review addresses pertain only to one or a few of the HHS agencies. For example, five of the 12 FRSCs receive the majority of HHS's FOIA requests (OS, FDA, NIH, CDC and CMS), and only they have substantial backlog trouble, so most of the recommendations for reducing backlog relate to these five agencies.

The highlights of the report include both positives and negatives. The most prominent positive is the both broad and deep analysis of HHS's FOIA problems, considering the department's various agencies. The department and ASPA seem to have a good grasp on the problems that

confront HHS's complex FOIA system. Another positive is the report's emphasis on improving the system's web-based aspects. The most significant negative is that the only broad goal is to reduce backlog (for which one of the solutions identified included "reducing backlog"?). The report mentions that the planned steps will bring further benefits, such as making FOIA processes more transparent and responsive to the public. However, these aspirations are not explicit objectives with practical methods to assess the progress toward their achievement. An annual user survey could hold HHS accountable to these expectations.

The overall assessment of FOIA performance appears sound. According to the report, of the 200,000 FOIA requests in 2005, there were over 24,000 backlogged. The number of backlogs is considerable, but considering the total number they receive and their complexity, it is understandable.

The problems identified as contributing to backlog appear to be on target, though they did not include any troubles associated with tracking problems between the various agencies or within any of the agencies. Of the mentioned problems, the report suggests improvements for four of them: the need to provide original submitters notice when proprietary data may be at issue; the need to frequently perform detailed, line-by-line, word-by-word review of material located that may be responsive to FOIA requests; complicated coordination of many requests, which require substantive research and work involving multiple offices across the Department; and an increased or more complex workload which exceeds staff resources. The improvements they suggest—improving processing and resources—seem realistic enough.

Considering the reports conclusion about staff resources, (i.e. that they are incommensurate with the FOIA workload), the report says little about agencies solving their backlog problems with hiring. This may suggest the issue is being downplayed.

The improvement plan that the report puts forward appears reasonable both for each agency and for the department overall, with the possible exception that a few more hires would add more value than some of the suggested improvements in processing.

The report is fairly positive in tone; I do have the sense that it will seriously undertake service improvements. The report offers a few solutions and insights that might be useful in reviewing other agencies. Particularly, the complex response that fits HHS's organizational structure is an analytical method that other departments that similarly possess lower agencies should implement. Furthermore, the stress on internet utilization could make FOIA more relevant in this digital age. All executive departments should strive to bring this to fruition.

Department of Interior

The Department of the Interior's plan is a lengthy overview identifying broad needs within the agency to improve its Freedom of Information program.

The plan correctly identifies some major problem areas – especially the dearth of personnel focused on the importance of FOIA, knowledgeable about its requirements and holding requisite authority to see that the law is enforced. The plan provides a framework for examining the serious shortcomings of the department in adhering to Freedom of Information law. The easing

of some court requirements as a result of the U.S. Court of Appeals decisions in the Cobell cases will require some amendments the plan.

We found disturbing the absence at this stage of the promise of specific, tangible improvements and the identification of specific personnel at various levels of the department who will ensure that they are made. It is a plan to plan and while that may be useful as a necessary first step, we had hoped to see actual commitment to concrete change by officials with the necessary clout to enforce it.

Goal I - Improve Customer Service. The first articulated goal, to improve customer service, is to be accomplished by monitoring and improving the agency's Web sites through "benchmark FOIA web site best practices" and "customer feedback as appropriate."

Goal II - Backlog Reduction. The immediate attention to backlog reduction cited in this plan, the initiation of quarterly reviews of remedial actions and the agreement by at least some bureaus within the Department to assign additional support to Freedom of Information processing is laudatory and we are hopeful that these measures will successfully reduce the backlogs Interior is experiencing, and help to achieve the goal of backlog reduction.

Goal III - Need for full commitment to FOIA. Interior's emphasis in this plan on the need for full commitment to FOIA by Interior employees in our view correctly identifies a major area for improvement. The assignment of FOIA responsibilities as a collateral duty and the acceptance of short tenure of FOIA processors can cripple the effective administration of the Act.

We would suggest that model FOIA performance standards suggested here for other individuals such as the supervisors of FOIA processors might also be added to the performance standards of program individuals. The failure of personnel who hold requested records to provide them in a timely fashion to FOIA processors cripples the ability of processors to comply with the law.

Goal IV - Regulatory and Policy Changes. Several regulatory and policy changes are included in the plan for the purpose of facilitating compliance and accountability and improving customer service and we certainly believe these are valuable steps. However, we note that regulations exist also to inform the public as to what it can expect, and are hopeful that the regulatory effort here will give the public clear explanation of Departmental FOIA procedures and how it may be involved in ensuring that its requests are timely fulfilled.

We are pleased to note in this plan the provision for dealing with unexpected/ unplanned workloads and are hopeful that the Department will be prepared to respond quickly to the multiple requests that will follow events on Interior lands by posting on the agency's Web site as much information as possible and as quickly as possible.

Department of Justice

The reviewer sampled several of plans submitted by the 34 components of the Justice Department responding to the FOIA E.O. These include:

- Antitrust
- OIP

- ATF
- Bureau of Prisons
- Civil Division
- Criminal Division
- FBI
- Executive Office for Immigration Review
- Executive Office for United States Attorneys
- Executive Office for U.S. Trustees
- Office of Professional Responsibility
- Public Affairs

These offices appeared to have particular issues in their FOIA processing, such as large recent increases in backlogs (EOIR). I also read or scanned the plans of many other components.

Overall, the reviews appeared to be taken seriously, with detailed management improvement goals and timelines. Most of the goals and steps were refinements of the existing process within each DOJ component rather than wholesale or major shifts to new processing techniques. Some examples include delegating reviews of denials to a deputy employee to spread the workload, obtaining authority to query the backlog database directly without submitting requests to the IT department, & upgrading copier equipment to accelerate and automate some functions. In at least one case, a goal of high importance to staff (electronic processing) was not included because it was perceived as unrealistic. They did not expect to receive adequate funds to implement such a plan.

Backlogs were the biggest issue for DOJ components. The FBI plan stood out because some of its goals and steps were more opaque, but overall the plans were specific, clear and not defensive. The DOJ plan overall revealed no clear revolutions in FOIA processing. It should also be noted that the components were largely silent on the confusion around sensitive but unclassified markings (area #21).

To the extent that the reviews and changes identified in this plan are limited to the FOIA offices of each of the 34 different components, the plans do not address some major hurdles. Beyond more badgering from the FOIA offices, how does the agency intend to improve search and responses from program staff? How will program staff be incentivized to affirmatively post more information online? The agency's chief FOIA Officer should have a role in pushing changes among program offices, but the DOJ plan generally does not set goals or key tasks for *program offices* to improve their responsiveness to FOIA requests. (See also area #18.)

Except for one office's effort to train staff on appropriate uses of using sensitive but unclassified labels, the Justice Department's Improvement Plan completely ignores the use of "pseudo-classifications."

Department of Labor

According to the FOIA plan, the biggest problem in the FOIA process at DOL is backlogs. There is a significant backlog problem not at the agency levels but at the appellate level. FOIA is very decentralized at DOL, with each agency having its own process and with a wide array of

procedures for handling requests. The appeals from each of the agencies go to one office and have created a huge backlog due to limited staff. The other aspect of the FOIA process that is stressed in the report is its decentralized nature and how each agency has different demands and request levels and thereby different procedures for handling requests. An evaluation of the problems associated with this and the solutions to it is lacking. My main criticism is that the plan is a plan of plans of sorts and that real work to assess problems and develop solutions has not been done in this but is scheduled to be done in the coming months and years. Based on their comments alone, I have no reason to believe that DOL is unsound in its presentation of the FOIA process. I have no history of interactions with DOL, so I can't speak from experience as to whether or not the report is accurate.

Specific problems identified are backlogging and decentralization. The report somewhat addresses backlogging by stating that they have hired more staff for the appellate level. Decentralization: the problem is discussed but not evaluated.

Most of the work has not been done in this report. Instead, the report states that the real work to solve the problems will be done in later reports and plans or by "working groups." Most of these later plans won't be drafted until next year. So, there's a problem in the timeliness of solving some of the problems. What's also lacking is a sense of creativity in solving some of these problems and effort devoted to this. It's more of a postponement of work to be done than a serious plan for the implementation of solutions to solve identified problems.

It does, though, seem to confront the problems at DOL head on and to offer sensible solutions, though not much time has been devoted to good solutions. I get the impression that the report was taken seriously, but I have reservations as to whether or not the agency will follow through with the future reports and plans. Again, most of the work in finding solutions to problems associated with the FOIA process has not been done in this report. Instead, they've assigned themselves a lot of work to do over the coming year and a half, and I have no reason to believe or disbelieve that they'll actually carry through with it.

Department of State

The DOS improvement plan highlights several areas where the Department has already implemented initiatives, such as establishing a customer liaison division and taking advantage of training opportunities in order to improve customer service, making improvements to the DOS FOIA website, and engaging in a two-year endeavor to reduce the significant FOIA backlog. DOS acknowledges that while it has made strides in improving its FOIA operations, there are areas where problems still exist or where new setbacks have arisen. For example, DOS's two-year "Operation Due Diligence" Project resulted in an over 80% reduction of the Department's overall FOIA backlog by September 30, 2004, from 6,214 to fewer than 2,000 cases. However, the backlog is steadily rising again due to an unforeseen increase in the number of FOIA requests filed as a result of the 2004 addition of a website function allowing requesters to file online. The DOS plan also identifies areas where there is a need to update technology and information and establish standard operating procedures (SOPs).

DOS seems intent on building on its concerted efforts over recent years to improve its FOIA process. The DOS plan focuses on improving customer service, using the website and

information technology to inform the public about the FOIA process and respond to customer needs, ensuring consistency in expedited and multi-track processing, improving overall compliance with FOIA (a)(2), reducing the FOIA backlog, and establishing standards for data integrity for the automated case tracking system. The plan lays out how DOS plans to achieve each of its goals and how it intends to measure the success of its initiatives. DOS anticipates achieving a majority of the goals by the end of 2007. One of the problem areas targeted in the improvement plan is the difficulty in easily transferring properly declassified information to the website or to requesters in electronic format. DOS is currently investigating IT solutions for transferring this data from the classified to the unclassified environment and plans to work with OMB, DOJ and the intelligence community to resolve this and other public access issues. While the report addresses the classified vs. unclassified environment impediments to FOIA processing, there is no mention of handling “sensitive but unclassified” (SBU) or other safeguarding measures. Another area targeted in the improvement plan is the reduction of the current backlog. The short-term goal is to reduce the backlog by 35% by the end of December 2006, with the long-term goal of determining by March 2007 a reasonable backlog level and the resources necessary to maintain that level. The success of this goal will depend on the commitment of funds, personnel and other resources.

*Note: The decentralized bureaus at DOS have been asked to conduct their own internal reviews of their FOIA operations. The final analysis of their reviews is one of the milestones in the improvement plan.

Department of Transportation

The Department of Transportation (DOT) posted on its website its FOIA Action Improvement Plan, dated June 9, 2006. In its plan, DOT recognizes a need for improvement in 19 of the 27 potential improvement areas identified by the Department of Justice in its guidance memo, although DOT combines various of the improvement areas in its discussion of goals, steps, and timetables.

DOT has multiple operating administrations (OAs), including, for example, the National Highway Traffic Safety Administration (NHTSA), the Federal Motor Carrier Safety Administration (FMCSA), the Federal Aviation Administration (FAA), and the Pipeline and Hazardous Materials Safety Administration (PHMSA). One of the positive aspects of DOT’s improvement plan is that the agency recognizes that these different OAs may require improvement in different areas and that different strategies and time tables may be necessary for each OA. For example, the improvement plan establishes different timelines for reducing backlogs at the different OAs. The fact that DOT realizes that certain OAs need to improve in areas in which other OAs do not indicates that DOT studied its FOIA program at the sub-agency level, rather than just at the broadest level possible. Another positive element of DOT’s improvement plan is that it recognizes that the Office of the Secretary’s FOIA office needs to provide increased guidance to the other FOIA offices throughout the agency.

DOT is honest about its need for improvement in the multiple areas identified, and does not come across as defensive in its assessment. At the same time, the improvement plan offers few details about why DOT has determined that the agency’s FOIA program needs improvement. For example, DOT has identified a need to improve its FOIA websites and FOIA reference

guides. The only comment it makes about that need, however, is that they “[n]eed to be customer-friendly and up-to-date.” DOT provides no explanation of why it does not believe the websites and reference guides are currently customer-friendly and up-to-date. Similarly, the agency identifies multi-track processing as an area that needs improvement, but it gives no details about how its multi-track processing system currently works or about why that system is not effective.

Just as DOT provides little explanation of why the areas identified need improvement, it has provided little detail about the specific ways in which it plans to make the improvements. In general, for each improvement area identified, DOT states its intent to hold meetings, conduct reviews, disseminate best practices, and implement those best practices. In only a few instances does it explain exactly what practices it intends to implement or provide other concrete examples of the ways in which it intends to improve its FOIA performance. Although the agency provides concrete target dates for the activities it has planned as part of its improvement plan, and although its few planned activities seem realistic, the plan in general comes across as extremely vague and unspecific.

Because of the lack of detail in the improvement plan, it is hard to ascertain the seriousness of the agency’s commitment to improvement. We do not know whether the agency will in fact address the current problems with its FOIA performance or whether it will just make cosmetic changes in the areas it has marked as needing improvement. Moreover, because of the vagueness of the agency’s plans for improvement, it is difficult to know whether or not the plan will have an ascertainable positive impact on the agency’s response to FOIA requests.

In short, DOT’s FOIA improvement plan comes across as a good first step in developing an improvement plan, but not like a comprehensive improvement plan in and of itself. Though its recognition of the many areas in which it needs to improve is laudable, one would hope, given the many months the agency had in which to prepare its plan, that it could have come up with a plan with more specific details both about the problems with the agency’s current FOIA performance and about how it plans to address those problems.

Department of the Treasury

Department of Treasury is very decentralized with 98% of its work force conducted by its dozen bureaus. Most FOIA requests are to the Internal Revenue Service from individuals about themselves. The Treasury report does not specifically address most of the 27 concerns delineated by the Department of Justice.

Since the Treasury report focuses almost exclusively on its concern addressing the FOIA request backlog, one infers that the department believes the other concerns are satisfied. According to its presentation to the Office of Management and Budget on May 18, 2006, all listed completion dates for various elements of the EO's requirements precede June 1, 2006. The report focuses almost entirely on administrative/bureaucratic issues raised by the review. The department has hired an overall FOIA response chief and plans a FOIA council to coordinate and review bureau issues throughout the department.

The department FOIA page, on the other hand, is a simple but complete reference to the various bureaus. The site has complete, useful and informative explanations, examples, listed exemptions, and brief guidance. The individual bureaus have a wide variety of FOIA quality on their web pages: some do not have a FOIA link on the home page (some of those merely refer to the department site) while a few offer extensive explanations and guidance.

Council on Environmental Quality – Executive Office of the President

CEQ plans to publish regulations by June 2007 to incorporate requirements of EO and the 1996 FOIA amendments, and submit draft regulations by Dec 2006. They indicated a need to update their FOIA regulations.

They acknowledged a back-log (but did not indicate the number of requests) and that they need to communicate with the public better, among other things identified below. Problems include the need to improve communication w/ public regarding nature of CEQ work and availability of documents; They suggest improvement to enhance website and keep people updated on status of requests. Other problems would include lack of FOIA staff instructional documents. They don't cite any specific delays that inhibited the public interest.

The report is not defensive, but written in a way to not assert any blame for what may be an inadequate FOIA system, given the very basic improvements suggested, like listing FOIA officer contact information on website.

Central Intelligence Agency

The CIA improvement plan does not appear to set any ambitious goals. In part this may be because the agency's FOIA program already is run in a fairly professional manner. Although plagued by backlogs, our experience is that the majority of requests are acknowledged and do not fall through the cracks. The CIA plan cites success in reducing its backlog over recent years, but does not acknowledge that the number of FOIA requests filed with the agency has decreased sharply over the same period. For example, it received 6121 requests in 1998, 3850 requests in 2000, 2727 requests in 2002, and 2935 requests in 2005.

Part of the reason that the number of requests has decreased may be that the agency appears to be denying more information now than in the past. The CIA has altered some policies – including its news media fee policy – in order to discourage requests, and the CIA has only granted 1 or 2 expedited processing requests since that became an option in 1996, so the agency is not a very useful source of information for breaking news.

The technology improvements suggested in the plan appear to be ones that already were in the works prior to the President's executive order, including a new FOIA workflow program and better web site indexing. Some of the goals, such as adding documents to the web site will be impossible to monitor, although the CIA has set up a quarterly updating plan. CIA sets the goal of reducing backlogs, and we have seen through our own FOIA requests evidence of an increased effort to follow up on older pending FOIA requests. The plan includes measurable goals for assessing the reduction in their backlog, but to the extent the backlog is reducible because CIA is being successful in discouraging new requests, the improvement does not advance the purposes of the FOIA.

Environmental Protection Agency

While EPA has been a government-wide leader in some areas, such as electronic information access and reduction of FOIA-request backlogs, it still has a number of problems with information disclosure. EPA's June 2006 response to Executive Order 13392 offers a plan that will make significant further improvements in the agency's FOIA performance, but may leave some problems unaddressed.

The agency's June 2006 FOIA improvement plan highlights five key areas for review and improvement:

- continuation of a good training program
- further improvements of agency and FOIA Web sites
- continuing to make good use of its new FOIAXpress automated tracking and processing system
- continuing current performance of its multitracking and expedited request system
- further backlog reduction.

Note that EPA is generally satisfied with its own performance in three of the above five areas, and has only targeted two of them for major improvement efforts. The three areas targeted for major improvement are:

- further improvements to agency and FOIA Web sites
- further efforts at backlog reduction
- enabling online payment of FOIA fees.

EPA's own assessment of its own performance finds few or no deficiencies. This assessment is at odds with the perceptions and assessments of many in the requester community.

A number of journalists, for example, have complained about the agency's openness generally. More specifically, journalists have complained about the timeliness of EPA response to requests, the amount of information denied, difficulty in getting fee waivers and expedited processing, and communication and follow-through.

The few available statistics do not uphold EPA's satisfied assessment of its own performance. While backlog was reduced in the 2001-2005 timeframe, it increased significantly from 2004 to 2005. It is to EPA's credit that its denials were lower as a percentage of requests than many other agencies. But EPA's waiting time, appeals backlog, and cost-per-request were worse than those for many other civilian agencies.

Assessment of EPA's Performance and Its Plan for Improving Disclosure

We think a "reality check" is in order for EPA's improvement plan. The picture it paints is of an agency whose disclosure performance is virtually flawless. That is not the perception of many in the requester community.

We recognize that EPA does have a lot to be proud of. From almost the beginning of the personal computer era, and since before the Internet took its present form, EPA was a pioneer in electronic disclosure of information. The Toxics Release Inventory (TRI) set a benchmark for many other federal agencies and programs; EPA was implementing the E-FOIA legislation of 1986 at a time when other agencies were still trying to figure out what it required of them. This commitment to pro-active electronic disclosure persisted and expanded, eventually resulting in the "Envirofacts Warehouse," a paragon in many ways of what government electronic data

disclosure should be.

But EPA is an agency where access to information has in many important ways been eroding and worsening over at least the past five years. The once standard-setting TRI, for example, has been steadily downgraded, diminished, and made more difficult to access over the past five years.

As FOIA intended, EPA's historical tradition of pro-active disclosure did not depend on FOI requests coming to the agency. The agency put out the information or made it accessible before being asked. Likewise, the stark reduction of disclosure by the agency is not merely a matter of filling fewer FOIA requests -- but a shutting down of various kinds of discretionary disclosure. This is essentially a top-down policy decision, coming not only from the Administrator's office, but from the Justice Department and the White House, and even Congress. Very often, when a citizen has to make a FOIA request at all, the system has already failed.

Requesters have found since the 2001 "Ashcroft Memo" that policy at EPA's FOIA office and elsewhere has reversed from a presumption in favor of disclosure to a presumption in favor of non-disclosure. Requesters have been met with expansion of many of the traditional legal justifications for exemption (non-disclosure) under FOIA -- whether the reason be "proprietary" information, privacy, deliberative process, security, or something else. Moreover, requesters have found EPA meeting them with new requirements which seem to make delay almost a deliberate thing -- such as requiring resolution of all fee (or fee-waiver) issues before a search is even begun. The end result is less public access to information.

One symptom of this disconnect is that EPA cites rather proudly in its plan its "expedited" disclosure performance in Katrina and related hurricanes. Many of the FOIA requests following Katrina were from members of the Society of Environmental Journalists (SEJ), who in fact prepared this assessment of EPA's plan. EPA's performance was in that case nothing to boast of. FOIA requests would not have been necessary at all if EPA had been willing to disclose information referenced in its press releases. Even SEJ member whose requests were granted "expedited" status never received any information or communication directly responsive to their requests. In the process of controlling and limiting disclosure of post-Katrina pollution information, EPA invented a new "data quality" barrier to disclosure which has absolutely no legal basis under FOIA. The source of the problem is that EPA's FOIA office in such cases gives responsibility for disclosure decision to the program offices, the press office, or the administrator's office, rather than letting it be determined by the law.

That said, it must be acknowledged that EPA's improvement plan is constructive -- as far as it goes. The three measures it proposes to take will all help -- not hurt -- disclosure. But they will leave more basic problems unaddressed.

Timetable of FOIA Improvement Milestones

Improvements scheduled for completion by December 31, 2006

- Establish workgroup to identify additional content to be included on FOIA web page and reorganize topics. Deadline July 1, 2006
- Enter into agreement with the U.S. Department of Treasury to allow EPA to use Pay.gov to collect FOIA fees. Deadline October 1, 2006

- Conclude FOIA web page review and make recommendations. Deadline October 1, 2006
- Complete FOIA backlog review. Deadline October 1, 2006
- Allow FOIA requesters to headquarters to pay fees through Pay.gov. Deadline December 31, 2006
- Conclude workgroup review and make recommendations on web site review. Deadline December 31, 2006

Improvements scheduled for completion by December 31, 2007

- Make backlog reduction recommendations to the NFO. Deadline January 15, 2007
- Issue backlog reduction guidance. Deadline March 1, 2007
- Provide draft EPA FOIA web page to Website owners. Deadline April 1, 2007
- Update EPA FOIA web site. Deadline September 30, 2007

Improvements scheduled for completion by December 31, 2007

All improvements scheduled to be completed by December, 2007.

National Aeronautic and Space Administration

The NASA FOIA Improvement Plan is cursory and not very informative. The report correctly acknowledges a small backlog and the need to improve FOIA performance. The proposed remedies include the training of additional FOIA staff to backup existing personnel at several of its distributed locations and the acquisition of new computer hardware to facilitate redaction of requested records. There is no explicit commitment to affirmative or proactive disclosure. No real metrics are proposed for assessing performance improvements. But FOIA Requester Service Centers have been established and FOIA liaison personnel have been named, as required. In summary, the NASA Plan is a minimal response to the executive order.

National Archives and Records Administration

Pursuant to Executive Order 13,392, the National Archives and Records Administration (NARA) has submitted an FOIA improvement plan that describes in great detail how the agency deals with FOIA requests, identifies the several offices that have the biggest problems in responding to FOIA requests, and suggests a number of ways in which the agency's performance can be improved. Those areas are largely based on guidance concerning potential improvement areas circulated by Justice's Office of Information and Privacy. While the plan is extensive and the description of NARA's current shortcomings is candid, what seems to be missing is any practical discussion of how the agency will use the major tools laid out in the executive order – the Chief FOIA Officer, the Public Liaison, and the FOIA Service Center – to implement the improvements NARA hopes to accomplish. However, it is unfair to blame NARA since its focus is largely pre-determined by the guidance set out by OIP.

NARA is clearly a very unique agency since its mission is largely to make public records available to the public. The plan quickly points out that in FY 2005 NARA answered 1,124,066 written non-FOIA reference requests and answered 694,758 of those within 10 working days. By contrast, the agency received only 9,484 FOIA requests for archival records, completing 7,308 of them within the statute's 20 working day time limit. These FOIA requests are separate from the 255 requests the agency received pertaining to its own administrative records; the agency completed 237 of those within 20 working days.

There are several major obstacles NARA faces in disclosing information. Foremost among them is the Presidential Records Act, which applies to the records of Ronald Reagan, George H.W. Bush, and Bill Clinton. The report notes that “the high level of interest in Presidential records and the high volume of electronic records, coupled with the complex review procedures for such modern and sensitive records and the relatively limited staff resources available to Presidential libraries, have resulted in disproportionate FOIA backlogs at the Presidential libraries containing records subject to the Presidential Records Act.” Beyond this, the Bush administration’s E.O. 13,233, which requires significantly more review and consultation with former and present Presidents before records are released, has slowed the process down further. Finally, the Clinton records just became subject to FOIA/PRA requests in January 2006 and there is currently a backlog of 9 million pages for review in response to FOIA requests.

Another significant problem is the fact that NARA has no delegated classification authority and must refer classified records to the originating agency for declassification purposes. The report observes that “NARA cannot control the review process of other agencies and often requests for declassification review remain pending for months, often years, before the originating agency makes a determination. Currently, the Office of Records Services – Washington has 90 FOIA requests that are over 10 years old, because the records remain under review by the classifying agency.”

The third problem area is the National Personnel Records Center, although its ability to respond to personnel-related FOIA requests has improved steadily and in FY 2005 the on-time completion rate was 93 percent. However, records that were destroyed in a 1973 fire at the facility still take a bit more time since the data has to be reconstructed from other sources.

Having identified these problem areas, the plan puts forth a detailed proposal for improving the agency’s performance. The plan includes increased use of electronic dissemination, better communications with requesters, more training, better coordination of referrals, and reduction of backlogs. The plan is ambitious, but seems realistic if the agency is able to follow through with its plan. The report does note that overall FOIA staff has been reduced and that there is little chance of increased funding. Even taking that into consideration, the plan, if executed, promises to improve the agency’s performance.

Nuclear Regulatory Commission

The NRC stated that its FOIA Programs is "effective, but the agency can improve it." Data shows that on average the NRC received an average of 401 FOIA requests and closed 395 requests. That turnover, however, contributed to an aggregate backlog of 58 cases at the end of FY 2005.

The NRC makes information public via FOIA (of which 70% are requests for information that the NRC would not make publicly available), its Electronic and Public Document Rooms, its Public Affairs Office, and public meetings.

The NRC review looked at the following areas and made the following findings:

1) NRC’s administration of the FOIA program – in FY 2005, 65% of requests were responded to

in 20 days or less; 14 out of 34 expedited requests were granted, although 6 took longer than 20 days. The agency concluded that it needs to improve its expedited process, hire an additional full-time equivalent to help with its backlog, and provide better training to reduce response times.

2) NRC's procedures and practices to assist and inform the public regarding the FOIA – sufficient information is publicly available, but the agency can improve by listing types of documents that fall within a FOIA exemption.

3) NRC's use of information technology in responding to FOIA requests and communicating with requesters – the NRC can improve processing time by using electronic processing tool and more accurate tracking.

4) NRC's policies and practices with respect to making records available through its Web site and other means without receiving a FOIA request – the NRC was happy with its openness

The NRC listed the following areas of improvement: (1) Reduce the backlog; (2) Leverage the use of information technology to electronically track requests, perform on-screen redactions, and communicate with requesters; (3) Enhance training of FOIA coordinators and staff who conduct initial reviews of records and make document release recommendations to the FOIA staff; (4) Improve expedited processing; and (5) Update publications and the NRC Web site to include examples of the types of NRC documents to which exemptions apply.

The NRC outlined the following timeline to complete the improvements:

Areas anticipated to be completed by December 31, 2006:

- (a) Develop a process and begin acknowledging receipt of requests via email.
- (b) Complete the development of a specific plan to enhance processing of requests granted expedited processing and distribute it to FOIA office coordinators and senior management FOIA officials.
- (c) Update the NRC FOIA Information Guide and NRC Web site with examples of the NRC record types for which FOIA exemptions apply.
- (d) Develop FOIA CBT module.

2. Areas anticipated to be completed by December 31, 2007:

- (a) Hire an additional FOIA specialist.
- (b) Acquire additional contractor assistance for FOIA processing.
- (c) Complete test of onscreen redaction software and identify best business practice for its use.

3. Areas anticipated to be completed after December 31, 2007:

- (a) Obtain additional software and hardware, conduct training, and complete implementation of full-scale use of onscreen redactions no later than December 31, 2008.
- (b) By September 30, 2008, improve FOIA responsiveness for simple FOIA requests by providing 75 percent of completed responses within 20 days.
- (c) By September 30, 2008, improve FOIA responsiveness for complex FOIA requests so that 50 percent of complex requests are completed in 180 days or less.

(d) By September 2008, process 75 percent of simple requests granted expedited processing within 15 days.

(e) By September 2008, process 75 percent of complex requests granted expedited processing within 90 days.

Office of Management and Budget - Executive Office of the President

OMB seems to address what are genuinely biggest problems for FOIA implementation at this office – proactive dissemination, response tracking/accountability, and even backlog (although according to the plan, this was dealt with prior to this plan). On the negative side the plan is far too narrow and short-term focused. All of the goals are scheduled for accomplishment by fall of this year, except for hiring of a new FOIA officer.

The report's assessment of OMB's FOIA performance seems fairly accurate. I would agree that generally, they get a much smaller number of requests than other agencies and, in general, probably do fairly good job of getting prompt response back to many of the requests. However, there are problems with OMB's performance assessment.

Overall, the OMB plan is a reasonable short term plan to improve the office's implementation of FOIA. The agency appears to be making serious commitments to the improvements listed in the plan. However, there are missing pieces and an insufficient examination of larger, longer-term improvements. For instance the report mentions but provides little detail on steps taken in 2004 and 2005 to reduce OMB's ongoing FOIA backlog. These were successful steps and greater detail could prove useful to other agencies given the consistent problem that FOIA backlogs have become among federal agencies.

Specifically, the office appears to be attempting to set the most positive tone for its assessment and avoiding discussing any real problems. For instance, OMB lists the number of FOIA request received so far for 2006, FY2005, and FY2004. However, after that point OMB only discusses the 2005 and 2006 performance in responding to these requests. OMB appears to avoid discussing 2004 or any other previous years in terms of performance. The 2004 OMB annual report on FOIA states that the office had a much longer median response time as well as a much higher number of pending requests. Later, OMB makes several references to a previous backlog problem that existed recently and the efforts made by the office to resolve this situation. However, they appear to have avoided discussing it in the performance assessment. This avoidance of openly and frankly discussing such an obvious FOIA problem in the assessment raises questions about what other FOIA issues may have been avoided or overlooked.

The OMB identifies four general areas for review and improvement. 1) Process for Tracking FOIA requests and Appeals; 2) Responses to simple requests; 3) Disseminating Information on the Website; and 4) Role of the FOIA Officer. The plan identifies additional specific items within these areas (and sometimes not too related to these areas) for improvement. The plan lists improved tracking of FOIA requests, process to improve response to request from program staff, identifying and posting frequently requested information to the website, improve citizen usability of the website, and hiring a new FOIA officer to replace the one that left.

Many of the described improvements are vague or even have only vague commitments to

implement them. There are several areas where detail in precisely what will be done and when is lacking. Also, there appears to be a low effort made to identify problems or areas for long term improvements. For instance, while the office discusses improved tracking of and accountability for FOIA request responses as an internal administrative process, the plan never supposes that an area for additional improvement would be to offer requesters the ability to track the progress of their request electronically. Additionally, while OMB commits to posting online two major information sources from which many FOIA requesters seek records, the office makes no ongoing plans to evaluate additional information sources for posting.

Small Business Administration

SBA's report seemed to result from a thorough review of its FOIA processing procedures. The comparably short list of areas designated for improvement is most likely a reflection of the relatively small number of FOIA requests received each year. Its median response time is 7 business days, and it maintains no backlog of requests.

These conditions may have allowed SBA to foster a proactive culture with regards to FOIA request processing. It uses an electronic case tracking system and seems committed to increasing training for employees and contractors, especially recent political appointees, who may not be familiar with the case tracking system. A large part of SBA's plan focuses on improving training.

SBA is also proposing a random audit of disclosure determinations to test for proper disclosure/improper withholding, an area not specifically mentioned in DOJ's areas for improvement.

One disappointment was with the lack of specificity with regards to website and affirmative disclosure improvement. Also, it appears that much of the agency's review was the product of an internal survey of FOIA employees.

Overall, the report is positive and thorough in that seems to reflect an actual commitment to improving a process which may not suffer from the systemic problems found in other agencies.

Social Security Administration

The Social Security Administration, which processes more FOIA requests than all other federal government agencies combined, and has an almost negligible backlog, may have also filed the shortest improvement plan -- five lines over three pages.

The vast majority of requests to SSA are requests for personal information also filed under the Privacy Act and handled by the agency's 1,400 field offices. It notes that "We rarely deny simple PA requests and individual access requests, which contributes to SSA's comparatively low percentage of denials and our quick turnaround time." The agency says it has experienced a sharp increase in requests in recent years but also notes that new reporting procedures mask that to large extent. The agency reported 1.4 million requests in 2004 and 17.2 million in 2005.

Where SSA does have some service problems is in its Office of Public Disclosure, which handles about 2,500 requests a year. Its review focused in part on a restructuring of that operation to bring improvements.

The agency said it is putting emphasis in five areas and gave itself a Dec. 31 deadline to have all in place, including conversion to a new electronic processing system already underway.

- Streamlining of OPD procedures to allow greater flexibility.
- System improvements
- Further backlog reduction
- Increased Training
- Closer monitoring of staffing

The agency appears to have identified its problems areas and its steps are doable. The budgeting for training and regular management discussions of service problems should result in better service. The e-FOIA system should facilitate this, permit tracking, and make it easier for individuals to make requests.

Commentary¹⁵ by Reviewers on Agency Responses to Areas for Improvement Responses

1) Affirmative Disclosure: Posting frequently requested records, policies, manuals and FAQs on website.

USDA - will link to all of its agencies from the departmental website by December. It will create reading rooms on agency sites where there are none and establish new guidelines for posting additional information by next June.

ED - The Department will develop protocols to determine, in advance, what information would be of interest to the public. Increase use of electronic info technology to make it more readily accessible to the public.

HHS - FDA to make its FOI Handbook available to requestor community through it's website; FDA to assess posting frequently requested records; SAMHSA to update its FOIA Guide Book and post on its webpage; HRSA to assess possibility of releasing electronic copies of grant documents (most frequently requested); HRSA to identify most frequently requested documents and provide them in the Electronic Reading Room.

DOJ - Hard to evaluate this early. While many components reviewed their website content and chose this area for improvement, it is unclear how much more information is going to be available affirmatively

DOL - They post the policies and contact info. as well as a FOIA guide. They will make a review of the additional steps needed at each agency website and draft a plan by the middle of 2007.

DOS - Agency recognizes need for improvement and updates and has targeted this as one of the areas for improvement.

DOT - A) No immediate problems identified. Most of steps involve conducting initial reviews, preparing memoranda, and posting memoranda to agency's website, with implementation as far as 18 months away.

- B) DOT has combined these two [1 and 2] potential improvement areas and has recognized that it needs to improve them. Its primary goal in this area is to conduct a review of current policies and procedures related to these areas and to send a memo to the OAs about the review's findings and their statutory responsibilities. It has set deadlines for these activities. However, given the vagueness of the goal of conducting a review, and the lack of a description of what such a review will entail or of any means of encouraging the OAs to implement the best practices the review identifies, it is difficult to know whether the review will lead to any positive change in affirmative or proactive disclosure.

Treasury - Good; completed goal, straightforward web site.

CEQ - The improvements needed suggest that they are currently deficient in 1 - accurate contact information on website; 2 - instruction on submitting FOIA requests; 3 - scope of CEQ records; 4 - CEQ handbook on FOIA; 5 - Records Management for CEQ staff.

CIA - Difficult to monitor.

EPA - FOIA site does the legal minimum in this regard. Very little in area of "frequently requested records."

NARA - Posting of frequently requested FOIA records. Posted links to various holdings of staff offices.

NSF - This improvement area is somewhat difficult to assess. There is not a portion of the NSF website that is called a "FOIA Reading Room," nor is there a link to "Frequently Requested Documents." The FOIA link for the website is at the bottom of the page, and the user has to scroll down the page to find it. There is a link to what the NSF calls its "Public Information Handbook ("Handbook"), which is a FOIA reference guide. There are no links to FOIA FAQs. If you are specifically looking for an electronic FOIA Reading Room, there is no indication that any part of the NSF website is a Reading Room. The only references to a Reading Room are to the physical library. Although the NSF Management Plan and Report for Improving Agency Disclosure of Information Under E.O. 13392 (the "Report") identifies "review and revise NSF's FOIA web page" as an area for review and proposes to implement the improvement by December 31, 2006, the Report does not mention adding an electronic reading room to the website. Reviewing the "web posting of policy statements and copies of frequently requested documents" is an area for review as a general part of the agency's FOIA Improvement Processes. This area needs to be more specifically addressed by NSF.

NRC - Doesn't mention data about frequently requested materials, but it does have a lot of that information on its web site and library.

OMB - Plans to post top 2 requested databases online. Mentioned a vague commitment (under simple requests section) to identify additional requested documents that are likely to be re-requested and post them – no detail to the process.

SEC - The SEC plans to increase uploading of filing correspondence. These efforts seem very

limited. Posting more correspondence is also listed as an improvement to reduce backlog, and it seems more consonant with that goal than a goal of actively making useful information available.

SBA - Plans to review frequently requested materials, develop an update schedule, and post them on website. Implementation schedule is relatively proactive, with periodic reviews through 12.31.07. Lack of specifics makes this section only adequate. Thorough review would have been more useful prior to submission of plan

2) Proactive Disclosure on Web of publicly available information.

USDA - See above.

ED - List several ideas for being proactive: identify grants/contract awards that are likely to be requested, identify records that the media would want and release them through public affairs channels, increase intra-agency communication, and track records requests and trends to know what to post in Reading Room.

HHS - FDA to assess proactive posting.

DOJ - Many components mentioned the need to comply with affirmative disclosure requirements & planned to conduct minimal reviews, such as reviewing the reading room section of the website on a quarterly or semi-annual basis. So much could be done in this area that it is hard to evaluate whether this is a minimalist approach or something more substantial.

DOL - They do not post frequently requested materials. They request that agencies identify frequently requested document types, draft a plan by the end of 2006 to make these documents publicly available and implement the plan in 2007.

DOS - Agency recognizes need for improvement and updates and has targeted this as one of the areas for improvement.

DOT - A) See above. B) See above.

CEQ - Said they need to increase reliance on the dissemination of records that can be made available to the public through website or other means so public doesn't have to FOIA, and have better instruction on available information, contact information on website.

EPA - EPA satisfied with its Web disclosure -- with some reason. In recent years, however, its achievements as a fed-wide leader in electronic disclosure have been degraded.

NARA - Besides posting recently requested federal and Presidential records, NARA makes available "finding aids" and access to various databases .

NSF - This area is not directly addressed as an area for improvement. The NSF online FOIA page states that: "Most NSF documents are readily available to the public... Please check our link to Documents Online to browse, search, and retrieve electronic copies of available NSF publications. ..." It is not clear from searching the database what the dates of coverage are for each type of document, but it is very easy to search. However, "publicly available information" and

“frequently requested FOIA documents” are not the same thing. According to a close reading of the Handbook and the web page, NSF tries to make everything publicly available except the full text of funded grant applications. These would appear to be the bulk of FOIA requests, according to the Handbook. The database could easily be expanded to include a field for “frequently requested documents.” Although the NSF Management Plan and Report for Improving Agency Disclosure of Information Under E.O. 13392 (the “Report”) identifies “review and revise NSF’s FOIA web page” as an area for review and proposes to implement the improvement by December 31, 2006, the Report does not mention making access to FOIA documents (versus access to non-FOIA documents) a part of the new web page.

NRC - NRC brags that it provides “millions” of record available without a FOIA, although 70% of FOIAs are for non-public information, which seems to be a high number.

OMB - While getting more information available on the web is explored, it is all info that either qualifies as frequently requested (above) or FOIA process and guides (below). No plan to quickly put up electronic copies of new data as it comes in, even before requests are made.

SBA - See above.

3) Overall FOIA Website Improvement.

USDA - Consensus seemed to be that the current site and the several component sites are in pretty good shape. I know nothing to the contrary.

Commerce - Site is easy to navigate. The department reviews all FOIA sites quarterly to ensure that the information is up to date.

ED - Plans to redesign E-FOIA reading room to accommodate more info. In general, increase use of internet (for customer feedback questionnaires, recent FOIA news, etc).

DOD - Standardization and better implementation of E-FOIA guidelines.

HHS - OS to review its FOIA website and make it more user-friendly; OS to conduct usability testing on the HHS FOIA website to improve customer service; OS and HHS Web Communications Division to conduct review of FRSC websites to ensure easy access and to link records and information online. With HHS Web Communications Division, OS to issue recommendations to standardize FRSC websites.

DOI - Interior has the as a goal to achieve by monitoring and improving the agency’s Web sites through “benchmark FOIA web site best practices” and “customer feedback as appropriate.” The applicable “best practices” are to be identified by the team charged with carrying out this plan by the end of September; however, the customer feedback arm of this goal – an on-line comment forum – is not slated to be implemented until the end of August, 2008. We suspect that asking the requesters who use the Freedom of Information Act may be useful up front. We have little quarrel with the need for most of the best practices outlined for agencies by the Department of Justice but requesters who are frustrated in their abilities to get information from Interior may have immediate and pertinent suggestions which should be considered early on in the

development of improvement plans.

We are also concerned that while customer comments are going to be available to Interior personnel, and there is an "ongoing" step for analyzing feedback from customer comments, there does not appear to be any formal policy that requires their consideration by anyone who could demand change where change is needed. It may be that the Department has put customer concerns on a back burner.

We suspect, for instance, that the Department's failures to provide expedited review as it is required by the 1996 Electronic Freedom of Information Act seriously affects the ability of journalists to convey information from Interior that is immediately important to public discussion and understanding of issues faced by the Department. We found no mention of expedited review in this plan even though the Justice Department guidance on implementation of the Executive Order suggests agencies could make improvements here. As we read the Interior plan, if requesters hope to remind the Department of its need to comply with the law on expedited review, their comments would probably only be considered after August 2008 and then it is not clear who would consider them or how change could come about.

DOJ - Unclear how general website improvements will be handled separate and distinct from #1 and #2. Generally speaking, this was not seen as a means of reducing backlog or addressing other priority FOIA goals.

DOS - Agency recognizes need for improvement and updates and has targeted this as one of the areas for improvement.

DOT - A) Again, as above, plan only involves review of website. Target date for completion of review is 7.31.06, with target implementation 11.30.06. This review should have been done prior to 6.14 plan submission deadline.

- B) DOT has combined these two [3 and 4] potential improvement areas as well. It has set dates by which to conduct a meeting to discuss best practices, by which to have completed a review, and by which to have implemented updates/improvements. Once again, however, the plan is very vague about what sorts of improvements might be undertaken and it is difficult to evaluate how serious of an effort DOT will make to improve its websites and reference guides.

CEQ - Many of the improvement they want to make are to the website, including website postings to assist the public in making FOIA requests and tracking FOIA responses. Propose a section on website revision to ensure that it includes accurate info on CEQ FOIA officers and their contact; info on status of requests and info on scope of CEQ records and available info on agency activities.

EPA - EPA satisfied with FOIA site -- although it is bare-bones. Plans review and improvement.

NARA - Availability of records is largely covered under proactive category.

NSF - The NSF website generally is easy to use and to navigate, but there is no part of the website that is specifically segregated for frequently requested FOIA documents, nor is there an

index of frequently requested documents. NSF conflates FOIA and non-FOIA requests on its FOIA page and in its Handbook, making it look like all documents are available online. However, the Report states that 90% of FOIA requests are for funded grant applications, and the Handbook states that the request will be filled after redaction for privacy. But there are no full text funded grant applications online, just abstracts. Either no one has ever requested a funded grant application more than once, or the NSF has never complied with the FOIA requirement that frequently requested documents be posted in an online reading room. Improvement of the website is a goal of the Report, and it is expected to be accomplished by December 2006. However, the goal of improving the website is not broken down into specific goals that are responsive to the 27 point Guidance Memorandum from the DOJ, but there is a statement that the NSF will include a “review of the web posting of policy statements and copies of frequently requested records” as part of its improvement process.

NRC - Does not mention this factor, but it has come a long way since the mid-1990s.

OMB - Attempting to make information easier to find, adding listings, simple subject references to make it more "citizen centered." Unfortunately, the review/plan only lists changes that "can" be made to improve thing and doesn't commit to doing them at any point.

SBA - Goal is to improve accuracy and availability of information and enhance customer service through its website. It plans a review of the FOIA homepage and revisions by 9.30.07. However, a lack of specifics makes this goal only adequate.

4) Improvement of FOIA Reference Guide.

USDA - Agencies will develop FOIA reference guides if they don't have one and all will post their guides on their websites. Existing guides will be updated.

Commerce - The guide should be updated to have “more comprehensive information.” Format changes should be made. The guide does need to be expanded, but the discussion in the report is insufficient – stating some specific areas of content that should be added would be much more meaningful.

HHS - NIH to revise FOIA “General Guidance”; FDA to revise FOIA “Staff Manual Guide.”

DOJ - The Justice Department has a great deal of information about FOIA handling largely because DOJ, through the Office of Information and Privacy, has a central role in FOIA implementation. This area was largely unaddressed by components outside OIP, but probably rightly so.

DOT - A) See above. B) See above.

CEQ - Plan to develop a handbook for CEQ staff on FOIA and Records Management for training.

NARA - Reviewed reference guide and intends to make changes to more accurately describe current case-law interpretation. Plans to make the contact page more obvious and easier to

access.

NSF - The agency addressed this issue, and identified it as an area for improvement. The "Public Information Handbook" was last updated in 1999. It addresses both non-FOIA and FOIA requests, but does not really distinguish between which types of records will be provided as a non-FOIA request and which will be provided only by making a formal FOIA request. The Handbook identifies the "most requested records" as concerning "...awards made by the agency for research in the sciences, mathematics and engineering. These records are maintained by the relevant program offices within the Directorate. Requests can be made directly to the appropriate Directorate, or to the Freedom of Information Act Officer. Information on funded applications is releasable to the public upon removal of personal and/or proprietary information. An index of FOIA Frequently Requested Records will be published, if applicable, on the Home Page under "Public Information - FOIA and Privacy Act Requests." Where possible, this will include an electronic version of the actual records released." Apparently, creating an index has never been "applicable," as there is no index or any page titled "Public Information - FOIA and Privacy Act Requests." According to the Report, about 90% of FOIA requests are for funded grant applications. Yet none of these are available on the NSF website. Improving the FOIA Information Handbook (identified as the "Public Information Handbook" on the web site) is a goal identified in the NSF's Report; the goal is to be accomplished by December 31, 2007.

OMB - Just a general reference to updating FOIA handbook with better explanations of exemptions and FOIA liaison.

SBA - Plans to update its reference guide. Target date for final update is 11.15.07. Timeline is a little long.

5) Automated Tracking Capabilities.

USDA - Some have. Others will explore.

DOD - Budget issues.

ED - Improve the use of FOIAXpress- for example, use FOIAXpress to deliver emails to requesters, make use of FOIAXpress status capability.

HHS - CMS to establish an electronic tracking system; FDA to implement web-based tracking system.

DOJ - Many components mentioned this. One component discovered it couldn't manage its caseload to address backlogs because its automated backlog tracking system required another office to run queries. The office decided to inquire about getting permission to run its own queries on the system so it can better track caseloads among FOIA staff.

DOL - Most DOL agencies use computer tracking and control tools. They have developed a computerized FOIA tracking/control tool. But, only 1/3 of FOIA requests are actually tracked. Plan to establish a working group to study the problem. By the close of 2006, the working group will review FOIA tracking systems and identify improvements. By close of 2007's first quarter, working group will have a report ready. By close of 2007, Chief FOIA officer will implement the plan across agencies.

DOS - Examining technical solutions for upgrade.

DOT - A) Improvement needed. Two departments were in need of new tracking systems. The first department, PHMSA will have a new system implemented by 9.30.06. Implementation date for the second department, OST, is uncertain. No mention of current practices of other departments.

- B) DOT reports that PHMSA and OST both need to install new FOIA tracking systems. Although it provides dates for implementation of PHMSA's system, it reports that, due to the budget-planning cycle, the "implementation data is uncertain" for OST's system.

Treasury - Not specifically addressed, but concerned about aging backlog.

EPA - EPA is proud of its FOIAXpress system, which replaced an outdated system in 2005.

NARA - NARA has several automated systems that have made processing FOIA requests faster and more efficient.

NSF - The agency addressed this issue, and identified it as an area for improvement. There does not appear to be any automated tracking system, but the NSF identified, as an area for review, "review the processes of recording, tracking, and processing requests.: NSF currently uses an Excel document to log and track FOIA request. The agency will investigate the purchase of a "state of the art FOIA logging and tracking system." The agency will identify an electronic logging and tracking system and explore funding possibilities, and complete the review by December 31, 2007.

SBA - No improvement needed. SBA already uses an electronic request tracking system. See below for additional training of Public Liaisons and Service Center Representatives.

6) Electronic FOIA—automated processing.

USDA - Several of its agencies now use an automated redaction system called Redax and that it will look at expanding Redax department-wide.

DOD - Education and advice about FOIA software and redaction programs. Recognizes budget concerns. Assessing feasibility of DOD-wide tracking and communications network, including one that enables transfer of classified material.

DOE - Electronic FOIA application forms are to be developed this October. This standard FOIA web form is supposed to be on line in December.

HHS - OS to consider redaction software; FDA to continue examining electronic redaction tools, complete pilot study of software system – will share results with all HHS agencies.

DOJ - Most who mentioned it said they would look into it but seemed skeptical given available resources, a relatively low number of requests and more immediate priorities for improvement. Components' response was probably an adequate response to the executive order. More

importantly, the executive order is not adequate to establish automated processing systems were it may be most needed (for example, by not providing resources for this).

DOL - By end of 2006, agencies are to assess principle areas that may benefit from automation. By end of 2007, agencies will consider whether available funding and agency priorities permit the acquisition of necessary resources.

DOS - System already exists, but agency recognizes, and is examining solutions to, classified vs. unclassified environment problem in order to be able to more easily post docs and website and provide electronic copies to requesters.

DOT - A) Improvement needed. Some departments allow for electronic payment of fees currently. Goal is to apply this practice to all departments. Goal set is 6.30.07, which is less than ambitious, but adequate if achieved.

- B) DOT states that it needs to provide greater ability for electronic payment of FOIA fees, but does not identify a need for improvement in the other areas of automated processing identified in the Department of Justice's implementation guidance, such as automated scanning and redacting of records.

Treasury - Not specifically addressed, but concerned about cutting new request time.

CEQ - Said they'd post online frequently requested docs to dismiss the need for FOIA requests, but made no mention of a methodology or specific upgrades.

EPA - Much processing is automated under FOIAXpress. Upgrade to online payment being pursued.

NSF - The agency addressed this issue, and identified it as an area for improvement. The NSF currently receives most FOIA requests by email, and often responds by email. To the extent that the NSF provides electronic responses, it does so by using resources of other agency elements. The NSF wants to upgrade by buying a copier/scanner to transform paper records to .PDF files, so that the agency can produce electronic files in the FOIA office (Report). This is expected to be completed by December 31, 2006, and will "enhance electronic processing."

NRC - NRC needs to improve using electronic processing tools.

SEC - In 2004, the SEC adopted an internal electronic FOIA program. They now wish to investigate expanding it into a public Web access module. Seems simple but sufficient.

SSA - conversion to a fully automated e-FOIA system by year end that provides workflow and document management and allows the public to make electronic requests.

7) Electronic FOIA—receiving /responding to requests electronically?

USDA - Several component agencies already have e-foia and several more are developing e-request/response systems. Six put it on their list of improvements.

HHS - FDA to examine email for sending acknowledgment letters; FDA to examine email/internet to receive new requests; SAMHSA to assess purchase of software/equipment to forward acknowledgment letters by email; OS to accept Web-based requests.

DOJ - Some components have email address to receive requests. Others are establishing them. Some are concerned that e-mail requests are less specific, but e-mail communications are faster and allow for better honing requests and therefore better responses to requests.

DOS - Requests can be filed through website.

DOT - A) Improvement needed. All primary FOIA offices within the Department already allow this, but the goal is to extend this to all field offices by 6.30.07. Year-long implementation process makes this adequate, but not good.

- B) DOT intends to extend the ability to file FOIA requests electronically to the OAs for which FOIA responsibilities are decentralized, but the improvement plan does not discuss ways to respond to FOIA requests electronically.

EPA - Online forms-based FOIA requests possible -- although form needs work. Large amounts of EPA data available electronically even without FOIA.

NSF - Purchasing a scanner, and revising NSF's form letters and email correspondence by December 31, 2006 seems to be the entire program for enhancing electronic responses.

NRC - NRC needs to improve using electronic responses to requests.

8) Multi-track Processing.

USDA - Some components now using multi-track systems. Others will make it a goal. The Department says it will set up a 4-track system.

Commerce - Some bureaus already use multi-track processing, depending upon need. Seems like a sensible process is in place.

ED - Will develop a 3-track system by March 2007.

HHS- System already established. Not addressed: sufficiency of existing # of tracks.

DOJ - See next question.

DOL - Most agencies do not use a multi-tracking process. Those that do receive a lot of requests. By end of 2006, agencies will complete a review of multi-track issues and develop appropriate changes in processes. By end of 2007, agencies should implement necessary changes.

DOS - System established, but plan to establish SOPs to ensure consistency in application of criteria.

DOT - A) Goal is to conduct an in-depth review of the current processes and come up with best

practices to implement. A pilot test of the best practices will be implemented by 3.31.07, with final expansion by 3.31.08. This review should have been conducted prior to issuing the plan, and the long-term implementation of the best practices makes this part of the plan disappointing.

- B) Once again, DOT recognizes a need for improvement and sets dates by which to conduct a review and implement best practices, but offers no specifics about what those best practices might include.

CEQ - Said they'd update website to include information on status of request, but mentioned nothing about multi-track processing.

EPA - EPA has multi-tracking and is satisfied with its own performance.

NARA - NARA intends to add a third track to its current simple/difficult system that would track frequent requests made to presidential libraries.

NSF - The Report does not list this as an area that needs to be addressed. The existing Handbook and the Report do not address a system of multi-track processing. The NSF currently maintains a single-track system. According to the Report, the NSF receives 250 to 300 requests a year, and that number may be small enough to obviate multi-track processing. The Handbook does address requests for expedited processing.

NRC - NRC admitted that it doesn't always assign requests to the correct track.

OMB - Plan references "simple requests" but the section describes a general commitment to identifying requested records that have become or likely to become the subject to additional FOIA requests so they can be posted online. No real different treatment for simple requests.

9) Troubleshooting of Existing Problems with Existent Tracking

USDA - The Farm Service Agency, which processes about 80 percent of USDA's requests, said it's measurement of success would be a decrease in appeals. That would be real progress.

HHS - Group I FRSCs will review of all requests to analyze tracking to improve system; FDA to develop checklist to ensure proper routing; FDA to standardize procedures with its multi-track system.

DOJ - Reviews identified more discrete, fixable problems with the management of multi-track processing (this question) than with the system of multi-track processing itself (area #8). One component could not directly obtain a list of pending requests in each track and the personnel assigned to them to better manage caseloads.

CEQ - No problems with a seemingly non-existent tracking system.

EPA - EPA is satisfied with its own performance and does not acknowledge any problems in the plan.

NRC - Stated that more accurate placement would reduce length of time to process requests.

10) Case-by-case Problem Identification

USDA - Not a mandatory review item. Several will address it in periodic meetings or conference calls.

HHS - FDA rectifying individually the system errors that resulted when it centralized its tracking system.

EPA - Perhaps addressed indirectly under training.

11) Expedited Processing Decision within 10 days. Full compliance with law & sound policy

USDA - The solution is a procedural desk guide.

Commerce - The Department only received two such requests last year, and both were granted. Based on the information provided, expedition does not seem to be a major problem.

DOI - We suspect that the Department's failures to provide expedited review as it is required by the 1996 Electronic Freedom of Information Act seriously affects the ability of journalists to convey information from Interior that is immediately important to public discussion and understanding of issues faced by the Department. We found no mention of expedited review in this plan even though the Justice Department guidance on implementation of the Executive Order suggests agencies could make improvements here. As we read the Interior plan, if requesters hope to remind the Department of its need to comply with the law on expedited review, their comments would probably only be considered after August 2008 and then it is not clear who would consider them or how change could come about.

DOS - Plan to establish criteria and SOPs for EP decisions and designate supervisors to weekly monitor expedited processing requests.

DOT - A) Departmental FOIA Officer will hold a meeting to discuss requirements and create best practices. He/She will follow up with guidance and will begin measuring the number of days it takes to process expedited requests, then implement by 10/1/07.

- B) DOT plans to host a meeting to discuss requirements and best practices related to expedited processing, to collect data from all of the OAs on the amount of time they take to process requests that have been granted expedited processing, and to set improvement goals. DOT's announcement that it needs to collect data on the amount of time it takes the OAs to process expedited requests is surprising given that its annual report states the median amount of time it takes each agency to respond to such requests. This raises doubts about the extent to which the agency thoroughly reviewed its practices and the information it possessed in setting its goals in this area.

CEQ - Acknowledge that requests average 40 days per request and only make general references to lowering that number, not specific tactics to do so.

EPA - EPA claims to be performing adequately; data to support claim lacking.

NARA - NARA has been unable to make much use of expedited processing because so much of the information it processes is under the legal control of others.

NSF - This is not addressed in detail in the current Handbook. After explaining that most request can be filled within 20 days, the Handbook informs requesters that they can ask for expedited handling by showing a compelling need (imminent threat to life or safety or urgent need to inform public of government activity). There is no mention of the time period within which a determination that a requestor is entitled to expedited processing. This section of the Handbook needs to be revised. Following are the NSF's 2005 statistics on request for expedited processing: Expedited Process: During FY 2005, NSF received 4 requests for expedited access. The requests were denied. One request was processed and documents were released within 20 working days. Three requests were denied in full – records not reasonably described.

NRC - Only granted 14 times and 42% of those expedited requests took over 20 days to respond.

SBA - No improvement needed. SBA implemented regulations applicable to expedited review processing following the 1996 amendments. Since that time, it has received "a negligible number of expedited processing requests and no subsequent appeals." Median response time for regular requests is 7 working days.

12) Backlog Reduction/Elimination.

USDA - The identified solutions are a single point of contact in each program area, coordinators sending out regular reminders, and FOIA officers negotiating with volume requesters to cut down the work load. The first two steps could help if others in the agencies get the message.

Commerce - Some bureaus had no backlog, while the other had a backlog of between 9-13% per year. Officers have pledged to reduce the backlog, using the average backlog from past years as a ceiling. They will have quarterly meetings to address how to address the backlog better. Backlog does not seem to be a major issue at DOC and they are handling the agencies that have them.

DOD - Staffing, technology, but budget concerns.

ED - Analyze open cases to find commonalities (identify why they are delayed). Will send status letters to people with cases over 30 days old. But they don't identify steps to decrease the backlog.

DOE - The section addressing backlog of FOIA cases is the only one setting a target. It calls for an initiative that reduces by half the number of FOIA cases over one year old by June 2007. However, nothing is said about verification, whether speed gets precedent over requesters' satisfaction, or if there will be consequences for failing to meet the goal. Steps to meet the 50 percent backlog reduction goal, include the issuance of monthly reports "to ensure greater accountability for case management," and issuance of status reports every two weeks. Presumably, the specifics are to be laid out in the initiative.

It states that the new procedures are in response to findings by the DOE FOIA Task Force, which concluded the program "could be improved by increasing awareness and knowledge of FOIA requirements among DOE program and contractors personnel..." Some time in July 2006, there is supposed to be a conference call with the department FOIA officers to discuss the "program and procedures and issues." In November, the first annual training conference call for DOE

FOIA officers is supposed to occur.

HHS - Increase/Reorganize staffing resources; Verification of older FOIA requests.

DOI - The immediate attention to backlog reduction cited in this plan, the initiation of quarterly reviews of remedial actions and the agreement by at least some bureaus within the Department to assign additional support to Freedom of Information processing is laudatory and we are hopeful that these measures will successfully reduce the backlogs Interior is experiencing, and help to achieve the goal of backlog reduction.

DOJ - At least two components within DOJ commit to reducing backlogs by target percentages each year and are establishing a "10 oldest cases" system to regularly eliminate the ten oldest pending requests. Timelines for fulfilling each set of 10 requests differ but are no greater than once per year. This could be a one good way to reduce backlogs in conjunction with other efforts to reduce backlogs.

DOL - While some agencies do have a backlog, backlogs are primarily a problem at the administrative appellate level. They have recently hired additional staff to deal with the appeal backlog. By end of 2006, agencies will develop system to monitor backlogs. Plan to increase the number of appeals responded to.

DOS - plan to reduce current backlog 35% by end of FY 2006; plan to determine by March 2007 a reasonable backlog level and the resources necessary to maintain that level.

DOT - A) Did not identify any ways of reducing significant backlogs. It does however, recognize that these backlogs are a problem and sets forth a schedule for closing out requests from previous fiscal years. The schedule is not promising, though. For example, the DOT plans to close out between 10-20 FY 2005 pending requests per quarter through 9.30.07. This does not take into account the potential for backlog emerging from new requests. DOT also points out that FAA has 324 pending requests from 2005, but that priority will be given to closing out requests pending from 2004.

- B) DOT recognized a need for improvement in this area and set forth a schedule for closing out existing requests, but has not provided any details of how it intends to address its backlog or work to ensure it does not develop new backlogs in the future.

Treasury - Main concern addressed in report: focusing on addressing both oldest incoming requests.

CEQ - Acknowledged backlog, but don't identify specific tactics to reduce it. 'Streamlining process' is too vague to call a plan. Did say that they reduced average number of days to process request (40 days in FY05 versus 67 days in FY04).

CIA - Contact with other agencies who are being consulted, tickler system, better tracking to identify problems.

EPA - EPA claims 90% reduction since 2001; plans further reduction efforts.

NARA - NARA is aware that it has a backlog problem and notes that new requests to the Clinton library will increase rather than decrease the backlog. Staff levels are decreasing while more staff is moved to systematic processing. No new funding is expected. NARA hopes to be able to hold its own with the resources it currently has.

NSF - The NSF does not admit to having a backlog, and may not have one. The Report states that 250 to 300 requests are received each year, and that the "vast majority" are answered within 20 working days. Response times of more than 20 days are "generally the result of contacting the submitter for clearance, need to track and retrieve documents from off-site storage at the Federal Records Center, voluminous number of potentially responsive documents, or need to consult among agency components." Notwithstanding these identified areas of delay, the median response time in 2005 was 14.26 days.

NRC - Only 58 cases at the end of FY 2005.

OMB - Mentioned but not listed as area needing improvement. The report makes reference to improvements made in 2004 & 2005 to reduce backlog, which appears to have worked. Unfortunately, the report skimps on details of the improvements. The plan does lay out the improved accountability and tracking measures as the continuation of getting fast response to program offices and avoiding backlogs.

SEC - A serious backlog developed in 2003, when the number of requests greatly increased, partly due to two commercial companies requesting thousands of documents each that they intended to resell to the public. The SEC had already begun uploading its FOIA correspondence online, which has helped to reduce its load. The SEC has begun to study how it might improve its internal processes in terms of fees, appeals, etc. to increase efficiency. It intends to expand its FOIA staff by hiring additional attorneys and filling vacancies, insofar as its budget permits. The SEC will also be issuing guidelines to improve the timeliness of responses. SEC seems to be taking their backlog seriously with goals to improve.

SBA - No improvement needed. No backlog reported for over 10 years. But, SBA designated as Area of Improvement a "Review of Disclosure Determinations", which would include a random audit of three high-volume audit to test for proper disclosure and/or improper withholding.

SSA - Primarily through closer management oversight of workload and weekly management meetings.

13) Politeness/Courtesy

USDA - Letting requesters know the status of requests is listed as a goal. That's a very small step for kind man.

DOJ - This was a popular area to address. Several offices mentioned they were reviewing the need to be courteous and polite with requesters, reflecting either the perceived ease of the exercise required to address this area or the possible magnitude of the problem, or both. Among those who selected this as a goal, some saw this as a issue for their office while others thought they were doing very well but re-emphasized the importance of courtesy. Interestingly, the Civil Rights Division made a point of noting that it resisted a Justice initiative to have incoming calls

answered by voice-mail and will continue the practice of having an individual staff member answer all telephone calls.

DOS - Many initiatives already in place.

DOT - B) DOT addresses this as part of its overall need for improved training.

CEQ - State that they intend to be polite and courteous.

14) Communications with Requesters

USDA - There seems to be a commitment to provide multiple means of access to the FOIA officer. And to review form letters, etc to ensure clarity.

DOJ - Again, this area was addressed by several components within DOJ. Some sought more up-front communication (e.g., via e-mail). One office currently mails a CD with responsive files to the requester but sees e-mail delivery of electronic records as a faster alternative. This office questioned whether fulfilling a request for electronic documents via e-mail would be acceptable.

DOE - The plan states there will be "dialogues with frequent requesters" on how to improve the program. No specifics are given as to how often, when and where these dialogues will be held, who will determine who the frequent requesters are, or the means of the communication - phone, in person, web...

DOI - We are pleased that the plan for conducting agency-wide training in Freedom of Information procedures includes a session on improving customer service. We might suggest that multiple sessions address the improvement of customer service since that is the rationale behind these plans. We also notice that there is no plan for the training faculty to include requesters as well as processors. We believe that requesters can make a valuable contribution to the understanding of how a successful FOIA program can work.

DOL - Planning for presentation of views by requester community on DOL FOIA program. Also develop other means to hear from requester community.

DOT - A) DOT routinely communicates with requesters by telephone. No problems were identified with this method, nor were improvements suggested.

- B) DOT has combined these two [14 and 15] potential improvement areas and has recognized that it needs to improve them. Unlike in most of the other areas addressed, DOT actually proposes a specific improvement with regard to acknowledgment letters – providing a telephone contact number on all acknowledgment letters.

CEQ - Identify deficiencies. "Within existing staffing levels, CEQ FOIA officers and staff identified a need for improving our communication with the public regarding the nature of CEQ's work and availability of documents."

CIA - Unclear whether adequate.

NARA - NARA believes it does a good job currently communicating with requesters but hopes to improve. The designation of FOIA Service Centers and Public Liaisons will help this process, but NARA will also try to improve its correspondence.

NSF - The agency addressed this issue, and identified it as an area for improvement. The NSF's goal is: "Review and revise the Foundation's form letters and email correspondence for possible improvement." I have not seen copies of existing form letters or email correspondence, so cannot comment on the severity of the need for revision. There is no specific identified improvement process for this area.

NRC - NRC only occasionally uses IT to communicate with requesters and doesn't provide final response via email.

15) Acknowledgment Letters

USDA - It will be studied.

Commerce - The report gives a long discussion of how the Department handles requests in such a way as to be considerate to citizens and comply with the intent of FOIA. For the most part, the report is satisfied with the Department's FOIA process in this area. However, it determined that establishing a listserv to exchange ideas and develop best practices would be a good idea. Most bureaus already send acknowledgment letters upon receiving a request, but now all departments will use them. A listserv is a good idea, but its value really depends more upon how it is used than its mere existence. It's hard to evaluate all of the platitudes used about the Department's performance.

HHS - OS to develop form letters, share with other FRSCs; Group II FRSCs to simplify review and approval process of acknowledgment letters.

DOJ - Not cited often but some smaller offices indicated their increasing caseload or backlog may force them to improve their use of such letters. Several offices indicated customers would benefit if all correspondence included a phone number for the requester to use to follow up.

DOL - All DOL agencies will send acknowledgment letters to requesters within a week.

DOS - Establish standards for the acknowledgment process and formalize them in SOPs.

DOT - A) DOT acknowledges receipt of request using the form in which the request was made. Effective 6.30.06, all letters will include a telephone contact number, though some offices already do this. DOT will also hold a meeting to discuss and implement best practices for acknowledgment and communication with requesters. No immediate problems were identified, with the exception of providing telephone contact numbers with acknowledgment letters.

- B) See above.

NARA - NARA acknowledgment letters currently are often not as timely as they should be and plan hopes to improve timeliness of such communication.

16) System of Handling Referrals.

USDA - Will be reviewed and improved if needed.

DOD - Found inadequate and plan includes ideas to improve, but budget concerns.

HHS - Group II FRSCs to simplify review and approval process of referral letters.

DOT - A) Vague attention given to this item. Office of the Secretary will call departments to confirm proper routing and forwarding “if not based on established precedent”. No indication that this was a problem in the first place.

- B) DOT has combined these two [16 and 17] areas and recognized that they both need improvement. In addition, it has identified some very simple, but potentially useful, means of addressing problems in these areas. In particular, with regard to referrals, it plans on calling OAs before forwarding requests to them and, with regard to consultations, it plans to set deadline dates for the return of reviewed documents.

NARA - NARA has no control over handling of referrals by other agencies, but plans to improve its own ability to get such referrals out to the appropriate agencies in electronic format.

NSF - The NSF Report lists this as an area that needs to be addressed: “Review and revise the agency’s referral and consultation procedures, as appropriate.” There is no specific identified improvement process for this area. The Handbook does not address any current system of making referrals or consultations, so the severity of the problem can’t be identified.

17) System of Handling Consultations

USDA - Same.

DOD - Found inadequate and plan includes ideas to improve, but budget concerns.

HHS - Component offices of all Group I FRSCs keep quarterly reports; OS to have regular meetings with OS FOIA coordinators; CMS to monitor productivity.

DOJ - The goals in this area focused on what the FOIA offices in each component could do, such as add staffing or increase regular communication with program staff and other agencies to encourage responses. This does not address major problems outside the FOIA office, e.g., delays by program staff in searching for and making publicly available requested information. Note that some components have attempted to address this issue, but the plans do not go far enough to incorporate non-FOIA personnel in improvements in this area.

DOT - A) To improve consultation process, OIG will provide a deadline date for return and will follow up with departments when consulting.

- B) See above.

EPA - EPA expressed satisfaction with its system of consultation, but we think there is room for improvement of both system and implementation.

18) Process for Obtaining Necessary Cooperation from Program Personnel.

USDA - The report suggests this may be a problem in some of the component agencies. Seven are tasked to improve “methods and timeliness” of communication with program officers and to try to establish new priorities.

DOJ - Like above, this is under-emphasized. The general approach to consultations with

program personnel remains on the activities of the FOIA offices, not the program office. Some offices seek to dedicate staff to the problem and/or to regularly communicate reminders to program staff. This should be the job of the chief FOIA officer within an agency. This is a large weakness of the executive order; it doesn't require the agency's chief FOIA officer to report on their activities in this area.

DOT - A) Very vague and preliminary attention to this issue. DOT plans on holding a department-wide meeting by 1.31.07 to discuss best practices.. More thorough review should have been done in preparation for report.

- B) DOT has recognized that this area needs improvement and set forth dates for holding a brainstorming meeting on the issue, implementing best practices, determining if implemented improvements are effective, and holding a follow-up meeting to discuss implemented practices. As with many of the other potential improvement areas, it offers no specifics of what improvements it might implement.

Treasury - Establishing FOIA councils and new chief coordinating FOIA official.

CEQ - Assigned new positions - CEQ Director's Chief of Staff as the Chief FOIA Officer; Assigned the Deputy General Council as: 1) FOIA Public Liaison; 2) appeals officer; and 3) responsible for overseeing processing of all FOIA requests. Seems like a lot of additional responsibility.

OMB - Discusses assigning lead office responsibility, use of reminder emails to prompt action, inclusion of senior management on reminder and status messages, gathering feedback from program offices.

19) Improvement Ideas from Field Office Personnel.

ED - Will pilot the FOIAXpress tracking system in two regional offices by July 2006, and have in place at all regional offices by May 2007.

HHS - All FRSCs to hold meetings with FOIA Officers to discuss issues and problems.

SBA - No improvement needed. Response from field offices was for more training. SBA is simulcasting DOJ training sessions in August.

20) Additional Training Needed.

USDA - The department will consider a FOIA component in overall department training. That could be quite helpful if they do it and do it well.

Commerce - The report indicates that many employees will have to deal with FOIA requests, and most have little or no FOIA training. The solution, according to the report, will be to develop make available an in-house, Web-based FOIA training course. The report indicated that this was the area with the greatest room for improvement. If many employees must deal with FOIA but are unfamiliar with it, then it is good to see the issue of training addressed. However, depending on a Web-based training course that is apparently not mandatory may be of only limited value.

DOD - Planning to create resident training programs and FOIA certification program. Planning

to develop online training for incoming personnel.

ED - Develop a Standard Operating Procedure, conduct trainings develop performance standards.

DOE - The second goal is the standardization of procedures for consistency and timeliness of processing. The plan's answer: development of templates and a procedures manual. The manual, to be out in Dec. 2006, will discuss procedures for processing requests, fee waivers, expedited processing and records management requirements. No priorities are given. The Procedures Manual for FOIA officers should be tracked, as should the follow-up plan on processing FOIA requests. (Seems like overkill - the following up of a manual with a plan.)

HHS - NIH to develop online training module for its staff; all FRSCs to look for more opportunities to increase staff training on specific FOIA topics.

DOI - We are pleased that the plan for conducting agency-wide training in Freedom of Information procedures includes a session on improving customer service. We might suggest that multiple sessions address the improvement of customer service since that is the rationale behind these plans. We also notice that there is no plan for the training faculty to include requesters as well as processors. We believe that requesters can make a valuable contribution to the understanding of how a successful FOIA program can work.

DOJ - Sporadically mentioned, especially in the context of courtesy/politeness.

DOL - Every 6 months FOIA chief will meet with FOIA agency heads to discuss best practices/lessons learned. FOIA chief will share a catalogue of training options by end of 2006.

DOT - B) DOT has recognized that this area needs improvement and has set target dates for holding eleven specific training sessions over the next two and a half years. However, the agency does not address on-the-job training, nor will it make the training sessions mandatory for FOIA and/or program staff. In addition, although Exemption 6 is the exemption most often used by DOT to withhold records, the training on Exemption 6 is scheduled to be the last training.

CEQ - "Goal: Develop a CEQ Handbook on FOIA and Records Management for training CEQ staff."

NARA - NARA does not have its own training program and depends on training offered by the Justice Department or the American Society of Access Professionals. Would like to find way of developing systematic method of training.

NRC - Stated that it can "enhance train for initial determinations."

SEC - They are developing in-house training plans for each liaison department. They are requesting more FOIA staff attorneys and series upgrades for certain FOIA positions. They also plan to schedule further in-house training and revise the in-house training manual. Besides asking for more money and employees, there did not seem to be much of substance – the plans to improve training were very ambiguous.

SBA - SBA recognizes that the majority of Public Liaisons are recent political appointees, so it is conducting training on its electronic case tracking system. SBA has also set up in-house training session from DOJ's Deputy Director for Information Policy to occur 8.15.06. It will also make CDs of the session available to employees. SBA will also require mandatory online FOIA training for employees and contractors to assist in processing basic requests.

SSA - Increased training, and, most importantly, budgeting for this, although the report gives no indication of the adequacy of the amounts being set aside.

21) In-house training on "safeguarding label"/FOIA exemption distinctions

USDA - department does not generally process safeguarded documents. Several components that do have already set up training.

DOJ - Of the 34 components creating improvement plans, only a single office mentioned this area, and it addresses this area with a single effort to train staff on the "importance of using appropriate 'safeguarding labels,' as distinct from FOIA exemptions," suggesting the use of SBU labels will likely continue. In contrast, this area has been the subject of several recent reports, a congressional hearing, congressional legislation, and numerous expressions of concern by advocacy organizations. Clearly this process is absurdly inadequate to address the problem of "pseudo-classifications."

EPA - No discussion of adequacy of staffing levels. EPA budget is being cut drastically.

NSF - The Report does not list this as an area that needs to be addressed. However, it should be addressed. Despite the frequent use of exemptions, training on the use or abuse of exemptions is not identified as an area for review in the Report. This should be addressed by NSF.

SBA - No improvement needed. See above.

22) Increased Staffing

USDA - Several components will be requesting additional personnel. As noted above, Department as a whole seems to have improved its operational efficiency without a loss in service.

DOD - Plan to concentrate on the offices and components with significant backlogs.

HHS - OS already increased; Group I FRSCs try to get other staff to help with FRSC workload.

DOJ - Largely, staffing levels are addressed by offices hoping to dedicate staff to confront specific problems, such as consultations with program staff or backlog reduction. Little credence is given to any effort to request additional staff for the FOIA offices.

CEQ - Quite the contrary: assigned existing employees new FOIA rolls and had the caveat "as our budget allows."

NRC - Stated that one additional FOIA specialist is needed to meet the intent of the EO.

SSA - The agency says it anticipates losing large numbers of experienced personnel in the next several years, which will create challenges in maintaining its current level of service.

23) Changes to personnel practice. Grade level of FOIA staff

DOD - Reviewing grades and position descriptions with a goal of establishing standardized descriptions and a career track.

DOJ - A few offices are looking into changing professional grade level for staff. More offices should look at this as an improvement area.

24) Contracting Out/Hiring of Contract Employees

Commerce - Contract workers have performed FOIA tasks before and will begin again in June. The Department is developing plans to implement a blanket purchase agreement. After three months, the department will evaluate the use of contract personnel.

DOD - Determining what tasks are inherently governmental and what can be contracted out.

DOS - Plan to determine necessary contractor resources needed to help reduce backlog.

EPA - Despite EPA's use of contractors and contract employees to handle some FOIA tasks, the plan includes no discussion of contracting.

NRC - One contractor employee working full-time on activities.

25) Purchase of New Equipment Needed

USDA - Two agencies are going to seek new scanning equipment to deal with large files.

Commerce - The Department will investigate technology available for high-speed scanning and redacting, to speed the redaction process. Technology that makes redaction easier probably makes it more common.

DOD - Mainly technology, budget concerns.

HHS - OS to consider a document scanner; SAMHSA to assess purchase of software/equipment to forward email.

DOJ - Several components will be purchasing new equipment such as redaction software or photocopiers after reviewing FOIA operations with staff.

NSF - NSF proposes purchasing a copier/scanner to transform paper records to .PDF files; to become more efficient by producing electronic files in the FOIA office. NSF needs to determine the availability of funds, defend the need for agency purchase; and obligate funds. Proposed purchase date: before 12/31/2006.

26) Centralization/decentralization

HHS - Decentralized system already established; suits nature of HHS.

DOD - Reviewing optimal placement of FOIA offices.

DOJ - DOJ is largely decentralized for implementing FOIA and will likely remain so. However, the Office of Information and Privacy, to its credit, did hold a department-wide meeting to review the requirements of the executive order. In addition, the individual plans submitted by the components within DOJ had a consistent format, easing review of the lengthy document.

DOL - Discusses how DOL is highly decentralized but fails to discuss problems associated with it or solutions.

DOS - The decentralized bureaus at DOS have been asked to conduct their own internal reviews of their FOIA operations. The final analysis of their reviews is one of the milestones in the improvement plan.

DOT - A) Only brief mention here. FOIA officer determined that two departments will conduct a review of their organizational structures. No mention of whether consolidation will be recommended. Due to decentralized nature of DOT, lack of more attention to this area is disappointing.

- B) DOT had determined that two of its OAs – FHWA and PHMSA – need to reexamine their FOIA organizational structures and has set target dates for the Departmental FOIA officer to meet with the administrations, for the administrations to conduct reviews of their FOIA programs, and for improvements to be implemented. The review does not say what the improvements might look like.

CEQ - Centralization giving a lot of discretion to CEQ Chair and Council.

OMB - The report mentions during the performance assessment that OMB administration of FOIA is decentralized and details the steps of responding to a request. However, the plan never discusses why this works or doesn't work. No serious review of the issue.

NRC - Has 5 full-time FOIA officers and 25 part-time FOIA coordinators located in headquarters offices and regions.

27) Recycling of Improvement Info Gleaned from FOIA Requester Service Centers/FOIA Public Liaisons

USDA - The Department said it will increase FOIA officer meetings and discussions of improvement methods.

DOJ - Usually mentioned as part of customer relations and communications when mentioned at all.

DOT - A) FOIA officer will meet with Service centers to determine what potential improvements are needed and will implement by 5/31/07. This is reasonable.

- B) Once again, the agency has recognized a need for improvement and set dates for reviews, meetings, and implementation of suggested improvements, but has provided no specifics of what improvements it might implement.

CEQ - Gleaned constructive suggestions from public comments received from a May 10, 2006

open meeting on FOIA agencies in the Executive Office of the President.

Appendix One

Executive Order: Improving Agency Disclosure of Information

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to ensure appropriate agency disclosure of information, and consistent with the goals of section 552 of title 5, United States Code, it is hereby ordered as follows:

President George W. Bush is joined in the Oval Office, from left to right, by U.S. Rep. Todd Platts, R-Pa., U.S. Rep. Brad Sherman, D-Calif., U.S. Senator John Cornyn, R-Texas, and U.S. Rep. Lamar Smith, R-Texas, at the signing Wednesday, Dec. 14, 2005 of the Executive Order Improving Agency Disclosure of Information. White House photo by Paul Morse Section 1. Policy.

(a) The effective functioning of our constitutional democracy depends upon the participation in public life of a citizenry that is well informed. For nearly four decades, the Freedom of Information Act (FOIA) has provided an important means through which the public can obtain information regarding the activities of Federal agencies. Under the FOIA, the public can obtain records from any Federal agency, subject to the exemptions enacted by the Congress to protect information that must be held in confidence for the Government to function effectively or for other purposes.

(b) FOIA requesters are seeking a service from the Federal Government and should be treated as such. Accordingly, in responding to a FOIA request, agencies shall respond courteously and appropriately. Moreover, agencies shall provide FOIA requesters, and the public in general, with citizen-centered ways to learn about the FOIA process, about agency records that are publicly available (e.g., on the agency's website), and about the status of a person's FOIA request and appropriate information about the agency's response.

(c) Agency FOIA operations shall be both results-oriented and produce results. Accordingly, agencies shall process requests under the FOIA in an efficient and appropriate manner and achieve tangible, measurable improvements in FOIA processing. When an agency's FOIA program does not produce such results, it should be reformed, consistent with available resources appropriated by the Congress and applicable law, to increase efficiency and better reflect the policy goals and objectives of this order.

(d) A citizen-centered and results-oriented approach will improve service and performance, thereby strengthening compliance with the FOIA, and will help avoid disputes and related litigation.

Sec. 2. Agency Chief FOIA Officers.

(a) Designation. The head of each agency shall designate within 30 days of the date of this order a senior official of such agency (at the Assistant Secretary or equivalent level), to serve as the Chief FOIA Officer of that agency. The head of the agency shall promptly notify the Director of the Office of Management and Budget (OMB Director) and the Attorney General of such designation and of any changes thereafter in such designation.

(b) General Duties. The Chief FOIA Officer of each agency shall, subject to the authority of the head of the agency:

(I) have agency-wide responsibility for efficient and appropriate compliance with the FOIA;

(ii) monitor FOIA implementation throughout the agency, including through the use of meetings with the public to the extent deemed appropriate by the agency's Chief FOIA Officer, and keep the head of the agency, the chief legal officer of the agency, and the Attorney General appropriately informed of the agency's performance in implementing the FOIA, including the extent to which the agency meets the milestones in the agency's plan under section 3(b) of this order and training and reporting standards established consistent with applicable law and this order;

(iii) recommend to the head of the agency such adjustments to agency practices, policies, personnel, and funding as may be necessary to carry out the policy set forth in section 1 of this order;

(iv) review and report, through the head of the agency, at such times and in such formats as the Attorney General may direct, on the agency's performance in implementing the FOIA; and

(v) facilitate public understanding of the purposes of the FOIA's statutory exemptions by including concise descriptions of the exemptions in both the agency's FOIAS handbook issued under section 552(g) of title 5, United States Code, and the agency's annual FOIAS report, and by providing an overview, where appropriate, of certain general categories of agency records to which those exemptions apply.

(c) FOIA Requester Service Center and FOIA Public Liaisons. In order to ensure appropriate communication with FOIA requesters:

(I) Each agency shall establish one or more FOIA Requester Service Centers (Center), as appropriate, which shall serve as the first place that a FOIA requester can contact to seek information concerning the status of the person's FOIA request and appropriate information about the agency's FOIA response. The Center shall include appropriate staff to receive and respond to inquiries from FOIA requesters;

(ii) The agency Chief FOIA Officer shall designate one or more agency officials, as appropriate, as FOIA Public Liaisons, who may serve in the Center or who may serve in a separate office. FOIA Public Liaisons shall serve as supervisory officials to whom a FOIA requester can raise concerns about the service the FOIA requester has received from the Center, following an initial response from the Center staff. FOIA Public Liaisons shall seek to ensure a service-oriented response to FOIA requests and FOIA-related inquiries. For example, the FOIA Public Liaison shall assist, as appropriate, in reducing delays, increasing transparency and understanding of the status of requests, and resolving disputes. FOIA Public Liaisons shall report to the agency Chief FOIA Officer on their activities and shall perform their duties consistent with applicable law and agency regulations;

(iii) In addition to the services to FOIA requesters provided by the Center and FOIA Public Liaisons, the agency Chief FOIA Officer shall also consider what other FOIA-related assistance to the public should appropriately be provided by the agency;

(iv) In establishing the Centers and designating FOIA Public Liaisons, the agency shall use, as appropriate, existing agency staff and resources. A Center shall have appropriate staff to receive and respond to inquiries from FOIA requesters;

(v) As determined by the agency Chief FOIA Officer, in consultation with the FOIA Public Liaisons, each agency shall post appropriate information about its Center or Centers on the agency's website, including contact information for its FOIA Public Liaisons. In the case of an agency without a website, the agency shall publish the information on the Firstgov.gov website or, in the case of any agency with neither a website nor the capability to post on the Firstgov.gov website, in the Federal Register; and

(vi) The agency Chief FOIA Officer shall ensure that the agency has in place a method (or methods), including through the use of the Center, to receive and respond promptly and appropriately to inquiries from FOIA requesters about the status of their requests. The Chief FOIA Officer shall also consider, in consultation with the FOIA Public Liaisons, as appropriate, whether the agency's implementation of other means (such as tracking numbers for requests, or an agency telephone or Internet hotline) would be appropriate for responding to status inquiries.

Sec. 3. Review, Plan, and Report.

(a) Review. Each agency's Chief FOIA Officer shall conduct a review of the agency's FOIA operations to determine whether agency practices are consistent with the policies set forth in section 1 of this order. In conducting this review, the Chief FOIA Officer shall:

(I) evaluate, with reference to numerical and statistical benchmarks where appropriate, the agency's administration of the FOIA, including the agency's expenditure of resources on FOIA compliance and the extent to which, if any, requests for records have not been responded to within the statutory time limit (backlog);

(ii) review the processes and practices by which the agency assists and informs the public regarding the FOIA process;

(iii) examine the agency's:

(A) use of information technology in responding to FOIA requests, including without limitation the tracking of FOIA requests and communication with requesters;

(B) practices with respect to requests for expedited processing; and

(c) implementation of multi-track processing if used by such agency;

(iv) review the agency's policies and practices relating to the availability of public information through websites and other means, including the use of websites to make available the records described in section 552(a)(2) of title 5, United States Code; and

(v) identify ways to eliminate or reduce its FOIA backlog, consistent with available resources and taking into consideration the volume and complexity of the FOIA requests pending with the agency.

(b) Plan.

(I) Each agency's Chief FOIA Officer shall develop, in consultation as appropriate with the staff of the agency (including the FOIA Public Liaisons), the Attorney General, and the OMB Director, an agency-specific plan to ensure that the agency's administration of the FOIA is in accordance with applicable law and the policies set forth in section 1 of this order. The plan, which shall be submitted to the head of the agency for approval, shall address the agency's implementation of the FOIA during fiscal years 2006 and 2007.

(ii) The plan shall include specific activities that the agency will implement to eliminate or reduce the agency's FOIA backlog, including (as applicable) changes that will make the processing of FOIA requests more streamlined and effective, as well as increased reliance on the dissemination of records that can be made available to the public through a website or other means that do not require the public to make a request for the records under the FOIA.

(iii) The plan shall also include activities to increase public awareness of FOIA processing, including as appropriate, expanded use of the agency's Center and its FOIA Public Liaisons.

(iv) The plan shall also include, taking appropriate account of the resources available to the agency and the mission of the agency, concrete milestones, with specific timetables and outcomes to be achieved, by which the head of the agency, after consultation with the OMB Director, shall measure and evaluate the agency's success in the implementation of the plan.

(c) Agency Reports to the Attorney General and OMB Director.

(I) The head of each agency shall submit a report, no later than 6 months from the date of this order, to the Attorney General and the OMB Director that summarizes the results of the review under section 3(a) of this order and encloses a copy of the agency's plan under section 3(b) of this order. The agency shall publish a copy of the agency's report on the agency's website or, in the case of an agency without a website, on the Firstgov.gov website, or, in the case of any agency with neither a website nor the capability to publish on the Firstgov.gov website, in the Federal Register.

(ii) The head of each agency shall include in the agency's annual FOIA reports for fiscal years 2006 and 2007 a report on the agency's development and implementation of its plan under section 3(b) of this order and on the agency's performance in meeting the milestones set forth in that plan, consistent with any related guidelines the Attorney General may issue under section 552(e) of title 5, United States Code.

(iii) If the agency does not meet a milestone in its plan, the head of the agency shall:

(A) identify this deficiency in the annual FOIA report to the Attorney General;

(B) explain in the annual report the reasons for the agency's failure to meet the milestone;

(c) outline in the annual report the steps that the agency has already taken, and will be taking, to address the deficiency; and

(D) report this deficiency to the President's Management Council.

Sec. 4. Attorney General.

(a) Report. The Attorney General, using the reports submitted by the agencies under subsection 3(c)(I) of this order and the information submitted by agencies in their annual FOIA reports for fiscal year 2005, shall submit to the President, no later than 10 months from the date of this order, a report on agency FOIA implementation. The Attorney General shall consult the OMB Director in the preparation of the report and shall include in the report appropriate recommendations on administrative or other agency actions for continued agency dissemination and release of public information. The Attorney General shall thereafter submit two further annual reports, by June 1, 2007, and June 1, 2008, that provide the President with an update on the agencies' implementation of the FOIA and of their plans under section 3(b) of this order.

(b) Guidance. The Attorney General shall issue such instructions and guidance to the heads of departments and agencies as may be appropriate to implement sections 3(b) and 3(c) of this order.

Sec. 5. OMB Director. The OMB Director may issue such instructions to the heads of agencies as are necessary to implement this order, other than sections 3(b) and 3(c) of this order.

Sec. 6. Definitions. As used in this order:

(a) the term "agency" has the same meaning as the term "agency" under section 552(f)(1) of title 5, United States Code; and

(b) the term "record" has the same meaning as the term "record" under section 552(f)(2) of title 5, United States Code.

Sec. 7. General Provisions.

(a) The agency reviews under section 3(a) of this order and agency plans under section 3(b) of this order shall be conducted and developed in accordance with applicable law and applicable guidance issued by the President, the Attorney General, and the OMB Director, including the laws and guidance regarding information technology and the dissemination of information.

(b) This order:

(I) shall be implemented in a manner consistent with applicable law and subject to the availability of appropriations;

(ii) shall not be construed to impair or otherwise affect the functions of the OMB Director relating to budget, legislative, or administrative proposals; and

(iii) is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

GEORGE W. BUSH

THE WHITE HOUSE,

December 14, 2005.

###

Appendix Two

Agency Plans Related to Executive Order 13392 – Improvement Areas to be addressed

1) **Affirmative Disclosure** Sec 3(a)(iv))

- Up-to-date
- Frequently-requested
- Policy Statements
- Staff Manuals
- Final Agency Opinions

2) **Proactive Disclosure on Web** (Sec 3(a)(iv))

3) **Overall FOIA Web site Improvement**

- User-friendliness
- Ease of navigation

4) **Improvement of FOIA Reference Guide** (Sec 2(b)(v))

- Comprehensiveness
- Up-to-date
- Activities to increase public awareness of FOIA processing

5) **Automated Tracking Capabilities** (Sec 1(b))

- Need for new/upgrade

6) **Electronic FOIA—automated processing** (Sec 2(B)(I); Sec 3(a)(iii)(A))

- Need to install/upgrade

7) **Electronic FOIA—receiving/responding to requests electronically**

8) **Multi-track Processing** (Sec. 3(a)(iii)(c))

- Should a system be established? Are existing # of tracks sufficient? Are existing contours/lines to delineate tracks appropriate (re backlog improvement, operations)?

9) **Troubleshooting of Existing Problems with Existent Tracking** (Sec 2(c)(I)-(ii))

10) **Case-by-case Problem Identification**

- Lessons learned
- Generic solutions

11) **Expedited Processing** (Sec 3(a)(iii)(B))

- Decision within 10 days
- Full compliance with law & sound policy

12) **Backlog Reduction/Elimination** (Sec 3(a)(v); 3(b)(iii))

- Identification of ways to reduce/eliminate

- 13) Politeness/Courtesy (Sec 1(b))**
- 14) Forms of Communications with Requesters (Sec 1(b); Sec 2(c)(iii))**
Clarity of communications/needed improvements
- 15) Acknowledgment Letters**
- 16) System of Handling Referrals**
Improvements needed in making/responding
- 17) System of Handling Consultations**
Need for new protocols/practices for timely attention
- 18) Process for Obtaining Necessary Cooperation from Program Personnel**
Agency Directives
Protocols for escalating demands
Intra-agency meetings, etc.
- 19) Improvement Ideas from Field Office Personnel (where applicable)**
- 20) Additional Training Needed**
Taking full advantage of governmentwide FOIA training
Conducting own training with sufficient regularity
Using on-the-job training with sufficient effectiveness
- 21) In-house training on “safeguarding label”/FOIA exemption distinctions**
“Safeguarding/document control labels – e.g., FOUO, SBU
- 22) Increased Staffing (where applicable) (Sec 2(b)(iii); 3(a)(I))**
Consideration of propriety of reallocation of staffing resources
- 23) Changes to personnel practice**
Grade level of FOIA staff
Need for job series
- 24) Contracting Out/Hiring of Contract Employees**
- 25) Purchase of New Equipment Needed (other than listed above)**
- 26) Centralization/decentralization**
Review of overall FOIA-administration structure
- 27) Recycling of Improvement Info Gleaned from FOIA Requester Service Centers/FOIA Public Liaisons**
Formal process for information to be tapped

Endnotes

1. As of mid-afternoon, Friday, June 30, according to DOJ's OIP, DHS and DOS were still not in, but there are several of the non-cabinet agencies that were in but not yet posted.
2. <http://www.whitehouse.gov/news/releases/2005/12/print/20051214-4.html>
3. This report does not specifically look at the fulfillment of this requirement. Interested readers can go to <http://www.usdoj.gov/04foia/chieffoiaofficers.html> for that information. It might be read as indicative of the seriousness of the agency's response to the Executive Order.
4. Harry Hammitt, "FOIA Commentary by Access Reports: History," Access Reports 2000. <http://www.accessreports.com/statutes/commentary/HISTORY.htm> Hammitt provides an extensive and detailed history and analysis of the FOIA.
5. "A Citizen's Guide on Using the Freedom of Information Act and the Privacy Act of 1974 to Request Government Records." (Report 108-172). Committee on Government Reform. Published by the Government Printing Office, p. 9.
6. Electronic Freedom of Information Act Amendments of 1996, Pub. L. No. 104-231, §1-12, 110 Stat. 3048 (codified as amended in 5 U.S.C. §552) (1996).
7. General Accounting Office. "December 19, 2000, Briefing on Implementation of e-FOIA Amendments." GAO-01-378 e-FOIA Amendments. <http://www.gao.gov/new.items/d01378.pdf> Appendix to <http://www.gao.gov/new.items/d01378.pdf>
8. General Accounting Office. "Update on Implementation of the 1996 Electronic Freedom of Information Act Amendments." GAO-02-493 August 30, 2002 <http://www.gao.gov/new.items/d02493.pdf>
9. Before the Subcommittee on Government Management, Finance, and Accountability, Committee on Government Reform, House of Representatives. Government Accountability Office (GAO). "Implementation of the Freedom of Information Act." GAO-05-648T, May 11, 2005. <http://www.gao.gov/new.items/d05648t.pdf>
10. Rick Blum. "Secrecy Report Card: Quantitative Indicators of Secrecy in the Federal Government," OpenTheGovernment.org. August 26, 2004. http://www.openthegovernment.org/otg/secracy_reportcard.pdf ; "Secrecy Report Card 2005," September 4, 2005. <http://www.openthegovernment.org/otg/SRC2005.pdf> .
11. Coalition of Journalists for Open Government, "A Review of the Federal Government's FOI Act Performance, 2004." http://www.cjog.net/documents/2004_FOIA_Performance.pdf
12. Associated Press. "Agencies missing FOIA deadlines, AP finds." March 13, 2006. <http://www.firstamendmentcenter.org/news.aspx?id=16627>
13. Paul McMasters, in Associated Press, op. cit.
14. Not every reviewer submitted an overall evaluation.
15. If no commentary is noted, the agency either did not address the area or said (without further elaboration) that no improvement was needed. The responses from DOT were reviewed by 2 separate submitters, designated by A) and B).

