

**FEDERAL COMMUNICATIONS COMMISSION
FREEDOM OF INFORMATION ACT ANNUAL REPORT
FISCAL YEAR 2004
(October 1, 2003 to September 30, 2004)**

I. Basic Information Regarding Report

- A. The Commission's contact person for questions about this report is Shoko B. Hair, Office of the Managing Director, Federal Communications Commission, Room 1-A827, 445 12th Street, S.W., Washington, D.C. 20554; Tel: 202-418-0440, Fax 202-418-0521; e-mail shoko.hair@fcc.gov.
- B. Electronic address for this report on the Commission's World Wide Web site: www.fcc.gov/foia/
- C. Paper copies can be requested from the person/address listed above.

II. How to Make a FOIA Request

- A. To make a FOIA request pursuant to 47 C.F.R. § 0.461, you have several options: you may fill out the Electronic FOIA (E-FOIA) Request Form on the FCC's FOIA homepage, www.fcc.gov/foia/; you may e-mail your FOIA request to us at foia@fcc.gov; you may send your FOIA request by facsimile at (202) 418-0521; or you may mail an original and two copies of your request to Managing Director, Attention: FOIA Officer, Federal Communications Commission, 445 12th Street, SW, Room 1-A834, Washington, D.C. 20554. You should caption your request as "Freedom of Information Request," date your request, give us your telephone number and mailing address, and provide as much information as possible which can assist us in identifying and locating each document you are seeking. It is important that you include your telephone number so that our staff can contact you if they have questions. You are required to specify the maximum search fee that you are prepared to pay for this request. Also, please write "Freedom of Information Request" on the envelope. If you have any questions about how to file a FOIA request, contact us at (202) 418-0212 or fax your inquiry to us at (202) 418-0521.

Appeals should be submitted to Austin Schlick, Acting General Counsel, Office of General Counsel, Room 8-C758, Federal Communications Commission, 445 12th Street, SW, Washington, D.C. 20554. The application for review and the envelope containing it should be captioned "Review of Freedom of Information Action." A copy should also be served on the person (if any) who originally submitted the materials to the Commission.

- B. The average response time range for initial requests in FY-2004 was within 20 days or permissible time extensions thereto. The average response time in FY-2004 for Commission appeals was 198 days.
- C. Requests that are denied or partially denied usually fall under Exemptions 5 and 6. The type of information most often withheld involves certain interagency and intra-agency predecisional deliberative communications (Exemption 5) and information deemed an unwarranted invasion of personal privacy (Exemption 6).

III. *Definitions of Terms and Acronyms Used in this Report*

- A. Agency-specific acronyms or other terms.
- B. Basic terms, expressed in common terminology.
 - 1. FOIA/PA Request – Freedom of Information Act/Privacy Act request. A FOIA request is generally a request for disclosure of records concerning a third party, an organization or particular topic of interest. A Privacy Act request is a request for records covered by that Act concerning oneself; such requests are also treated as FOIA requests. (All requests for records, regardless of which law is cited by the requester, are included in this report).
 - 2. Initial Request – a request to FCC for records under the Freedom of Information Act.
 - 3. Appeal – a request to FCC asking that it review at a higher administrative level a full denial or partial denial of a FOIA request, or any other FOIA determination, such as a matter pertaining to fees.
 - 4. Processed Request or Appeal – a request or appeal for which FCC has taken a final action on the request or the appeal in all respects.
 - 5. Multi-track Processing – the Commission does not utilize this system as the requests are forwarded to the appropriate Bureau or Office within the agency. If a requester has an urgent need for records, he or she may request expedited processing.
 - 6. Expedited Processing – FCC will process a FOIA request on an expedited basis when a requester has shown an exceptional need or urgency for the records which warrants prioritization of his or her request over other requests that were made earlier.
 - 7. Simple Request – N/A, as FCC does not maintain a multi-track processing.

8. Complex Request – N/A, as FCC does not maintain a multi-track processing. We do, however, inform requesters concerning the agency’s progress in locating requested records. Sometimes a requester is asked if the request can be narrowed, or whether additional information can be provided to assist in locating requested records.
9. Grant – FCC decision to disclose all records in full in response to a FOIA request.
10. Partial Grant – FCC decision to disclose a record in part in response to a FOIA request, deleting information determined to be exempt under one or more of the FOIA exemptions; or a decisions to disclose some records in their entirety, but to withhold others in whole or in part.
11. Denial – FCC decision not to release any part of a record or records in response to a FOIA request because all of the information in the requested records is determined by FCC to be exempt under one or more of the FOIA exemptions.
12. Time Limits – the time period in the Freedom of Information Act for a Federal agency to respond to a FOIA request. For an initial FOIA request, an agency has 20 working days from proper receipt of a “perfected” FOIA request. This period may be extended by 10 working days.
13. “Perfected” Request – a FOIA request for records which adequately describes the records sought, which has been received by FCC’s FOIA Office, and for which there is no remaining question about the payment of applicable fees.
14. Exemption 3 Statute – a Federal statute separate from FOIA prohibiting the disclosure of a certain type of information and authorizing its withholding under FOIA subsection (b)(3).
15. Median Number – the middle, not average, number.
16. Average Number – the number of obtained by dividing the sum of a group of numbers by the quantity of numbers in the group.
17. Working Days – days, excepting Saturdays, Sundays and legal public holidays.
18. Records Destroyed – when records are disposed of in accordance with agency’s record retention schedule.
19. Dismissed – application for review dismissed on procedural grounds.

IV. Exemption 3 Statutes

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

- Section 105(b)(2) of the Ethics in Government Act, 5 U.S.C. App. § 105.

1. Brief description of the types of information withheld under each statute:

- Waiver determination of federal conflict of interest rules under 18 U.S.C. §208(b)(1).

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

Church of Scientology v. IRS, 816 F. Supp. 1130, 1152 (W.D. Tex. 1993), appeal dismissed per stipulation, No. 93-8431 (5th Cir. 1993).

V. Initial FOIA/PA Access Requests

- A. **Number of initial requests.**

1. Number of requests pending as of end of preceding fiscal year: 41
2. Number of requests received during current fiscal year: 604
3. Number of requests processed during current fiscal year: 614
4. Number of requests pending as of end of current fiscal year: 31

- B. **Disposition of Initial Requests.**

1. Number of total grants: 256
2. Number of partial grants: 127
3. Number of denials: 8

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

- (1) Exemption 1: 1
- (2) Exemption 2: 10
- (3) Exemption 3: 1

(4) Exemption 4:	13
(5) Exemption 5:	33
(6) Exemption 6:	92
(7) Exemption 7(A):	10
(8) Exemption 7(B):	1
(9) Exemption 7(C):	16
(10) Exemption 7(D):	1
(11) Exemption 7(E):	5
(12) Exemption 7(F):	0
(13) Exemption 8:	0
(14) Exemption 9:	0
4. Other reasons for nondisclosure (total):	223
a. no records:	84
b. referrals:	9
c. request withdrawn:	71
d. fee-related reason:	5
e. records not reasonably described:	6
f. not a proper FOIA request for some other reason:	4
g. not an agency record:	29
h. duplicate request:	0
i. other (records routinely available):	15

VI. Appeals of Initial Denials of FOIA/PA Requests

A. Number of appeals.

1. Number of appeals received during fiscal year:	19
2. Number of appeals processed during fiscal year:	29

B. Disposition of appeals.

1. Number completely upheld:	9
2. Number partially reversed:	4
3. Number completely reversed:	0
a. number of times each FOIA exemption used (counting each exemption once per appeal):	12
(1) Exemption 1:	0
(2) Exemption 2:	0
(3) Exemption 3:	0
(4) Exemption 4:	5

(5) Exemption 5:	3
(6) Exemption 6:	2
(7) Exemption 7(A):	1
(8) Exemption 7(B):	0
(9) Exemption 7(C):	0
(10) Exemption 7(D):	0
(11) Exemption 7(E):	1
(12) Exemption 7(F):	0
(13) Exemption 8:	0
(14) Exemption 9:	0
4. Other reasons for nondisclosure (total):	16
a. no records:	0
b. referrals:	0
c. request withdrawn:	7
d. fee-related reason:	0
e. records not reasonably described:	0
f. not a proper FOIA request for some other reason:	5
g. not an agency record:	0
h. duplicate request:	0
i. other (specify): judicial litigation:	4

VII. Compliance with Time Limits/Status of Pending Requests

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

1. Simple requests (if multiple tracks used).	
a. number of requests processed:	614
b. median number of days to process:	20
2. Complex requests (specify for any and all tracks used).	
a. number of requests processed:	0
b. median number of days to process:	0
3. Requests accorded expedited processing.	
a. number of requests processed:	0
b. median number of days to process:	0

B. Status of pending requests.

1. Number of requests pending as of end of current fiscal year: 31
2. Median number of days that such requests were pending as of that date: 16 days

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

- A. Comparison of number of requests received:
604 in FY-04 vs. 589 in FY-03, a 3% increase.
- B. Comparison of number of requests processed:
614 in FY-04 vs. 597 in FY-03, a 3% increase.
- C. Comparison of median number of days requests were pending as of the end of fiscal year:
16 days in FY-04 vs. 14 days in FY-03, a 14% increase.
- D. Other statistics significant to agency:
Number of requests for expedited processing received: 1
Number of requests for expedited processing granted: 0

IX. Costs/FOIA Staffing

A. Staffing Levels:

1. Number of full-time FOIA personnel: 3
2. Number of personnel with part-time or occasional FOIA duties (in work years): 13.52
3. Total number of personnel (in work years): approx. 16.52

B. Total costs (including staff and all resources)

1. FOIA processing (including appeals): \$1,336,205.91
2. Litigation-related activities (estimated): \$16,516.58
3. Total costs: \$1,352,722.49

4. Comparison with previous year(s) (including percentage of change):
\$1,352,722 in FY-04 vs. \$897,942 in FY-03, a 51% increase.¹

X. Fees.

A. Total amount of fees collected by agency for processing requests:

For FY-2004, the Commission collected:

Search and Review Fees:	\$28,346.40
Copying fees:	<u>\$ 3,527.12</u>
TOTAL:	\$ 31,873.52

B. Percentage of total costs: 2%

XI. FOIA regulations (including Fee Schedule)

See 47 CFR §§ 0.441 – 0.470.

¹ The total cost for FY-2004 is substantially greater than the previous fiscal year due to more accurate accounting, use of full-time personnel and an increase in the number of personnel involved in FOIA activity on a part-time basis.