

**FEDERAL COMMUNICATIONS COMMISSION  
FREEDOM OF INFORMATION ACT ANNUAL REPORT  
FISCAL YEAR 2006  
(October 1, 2005 to September 30, 2006)**

***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 12<sup>th</sup> Street, S.W., Washington, D.C. 20554; Tel: 202-418-0440, Fax 202-418-0521; e-mail [shoko.hair@fcc.gov](mailto:shoko.hair@fcc.gov).
- B. Electronic address for this report on the Commission's World Wide Web site: [www.fcc.gov/foia/](http://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/](http://www.fcc.gov/foia/); you may e-mail your FOIA request to us at [foia@fcc.gov](mailto: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 12<sup>th</sup> 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 Sam Feder, General Counsel, Office of General Counsel, Room 8-C750, Federal Communications Commission, 445 12<sup>th</sup> 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-2006 was within 20 days or permissible time extensions thereto. The average response time in FY-2006 for Commission appeals was 338 days.

- C. Requests that are denied or partially denied usually fall under Exemptions 5, 6 and 7. The type of information most often withheld involves certain interagency and intra-agency predecisional deliberative communications (Exemption 5), information deemed an unwarranted invasion of personal privacy (Exemption 6) and law enforcement type records (Exemption 7).

### **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: None.

**V. Initial FOIA/PA Access Requests.**

**A. Number of initial requests.**

1. Number of requests pending as of end of preceding fiscal year: 32
2. Number of requests received during current fiscal year: 549
3. Number of requests processed during current fiscal year: 530
4. Number of requests pending as of end of current fiscal year: 51

**B. Disposition of Initial Requests.**

1. Number of total grants: 187
2. Number of partial grants: 122
3. Number of denials: 28
  - a. number of times each FOIA exemption used (counting each exemption once per request):
    - (1) Exemption 1: 1
    - (2) Exemption 2: 8
    - (3) Exemption 3: 0
    - (4) Exemption 4: 12
    - (5) Exemption 5: 30
    - (6) Exemption 6: 95
    - (7) Exemption 7(A): 22
    - (8) Exemption 7(B): 0
    - (9) Exemption 7(C): 59
    - (10) Exemption 7(D): 2
    - (11) Exemption 7(E): 12
    - (12) Exemption 7(F): 0
    - (13) Exemption 8: 0
    - (14) Exemption 9: 0
4. Other reasons for nondisclosure (total): 193
  - a. no records: 58
  - b. referrals: 2
  - c. request withdrawn: 61
  - d. fee-related reason: 5

e. records not reasonably described:	27
f. not a proper FOIA request for some other reason:	7
g. not an agency record:	32
h. duplicate request:	0
i. other (records routinely available):	1

**VI. Appeals of Initial Denials of FOIA/PA Requests.**

**A. Number of appeals:**

1. Number of appeals received during fiscal year:	16
2. Number of appeals processed during fiscal year:	15

**B. Disposition of appeals:**

1. Number completely upheld:	3
2. Number partially reversed:	4
3. Number completely reversed:	0

**a.** number of times each FOIA exemption used (counting each exemption once per appeal): 7

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

**4.** Other reasons for nondisclosure (total): 8

a. no records:	1
b. referrals:	0
c. request withdrawn:	6
d. fee-related reason:	1
e. records not reasonably described:	0

- f. not a proper FOIA request for some other reason: 0
- g. not an agency record: 0
- h. duplicate request: 0
- i. other (specify): judicial litigation: 0

**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: 529
  - 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: 1
  - b. median number of days to process: 10

**B. Status of pending requests:**

- 1. Number of requests pending as of end of current fiscal year: 51
- 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:**

549 in FY-06 vs. 609 in FY-05, a 10% decrease.

**B. Comparison of number of requests processed:**

530 in FY-06 vs. 608 in FY-05, a 13% decrease.

**C. Comparison of median number of days requests were pending as of the end of fiscal year:**

16 days in FY-06 vs. 10 days in FY-05, a 60% increase.

**D. Other statistics significant to agency:**

Number of requests for expedited processing received: 4  
Number of requests for expedited processing granted: 1  
Number of requests for expedited processing w/drawn: 3

**E. Other agency efforts to improve timeliness of FOIA performance and to make records available to the public:**

Provides reports to management on the status of requests in an effort to heighten management awareness of pending cases.

Updated list of FCC credit card holders on internet.

Enhanced accessibility of FOIA information to staff to assist in the processing of FOIAs.

**IX. Costs/FOIA Staffing.**

**A. Staffing Levels:**

1. Number of full-time FOIA personnel: 6
2. Number of personnel with part-time or occasional FOIA duties (in work years): 12.67
3. Total number of personnel (in work years): approx. 18.67

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

1. FOIA processing (including appeals): \$1,911,378
2. Litigation-related activities (estimated): \$0
3. Total costs: \$1,911,378
4. Comparison with previous year(s) (including percentage of change):  
\$1,911,378 in FY 06 vs. 1,270,635 in FY-05, a 50% increase.<sup>1</sup>

**X. Fees:**

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

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<sup>1</sup> The total cost for FY-2006 is significantly higher than the previous fiscal year because the Commission converted former part-time positions to full-time use for FOIA matters and increased the number of part-time personnel in FOIA activities.

For FY-2006, the Commission collected:

Search and Review Fees:	\$ 12,562.66
Copying fees:	<u>\$ 1,317.22</u>
TOTAL:	\$ 13,879.88

**B. Percentage of total costs: 0.72%**

**XI. FOIA regulations (including Fee Schedule).**

See 47 CFR §§ 0.441 – 0.470.

**XII. Report on FOIA Executive Order Implementation.**

- A. Description of supplementation/modification of agency improvement plan (if applicable). Not applicable.
- B. Report on agency implementation of its plan, including its performance in meeting milestones, with respect to each improvement area.

The FCC committed to five areas of improvement in its Report on the FOIA Executive Order.

1. Reduction of the number of initial FOIAs not handled within the statutory time limit or extended time limit.

In the FCC's Report under the Executive Order, the Commission stated that it would reduce the number of initial FOIAs not handled within the statutory time limit or extended time limit. The Commission stated that it would ensure that 85% of the FOIAs filed with the agency are processed within the statutory time permitted, the permitted extensions under the statute or by a time agreed to by the requesters. The Commission stated that it would review the processing times for initial FOIAs at the end of FY-2006 and again at the end of FY-2007. At the end of FY-2006, the Commission accomplished its goals by completing 85% of the 530 FOIAs processed within the statutory time limit or extended time limit.

2. Reduce the backlog of administrative applications for review. The FCC committed to dispose of pending applications for review that were filed before December 31, 2005.

In the FCC's Report under the Executive Order, the Commission stated that it would attempt to resolve all pending FOIA applications for review that were more than one year old by December 31, 2006. The Commission continues to work to resolve these pending matters. See Section XII.C., *infra.*, discussing applications for review.

3. Develop an acknowledgment process for FOIA requests.

The Commission stated in the Report under the Executive Order that it would develop an acknowledgement process for FOIA requests. The acknowledgement process was implemented late October 2006. After a FOIA is logged into the Commission's FOIA database, an acknowledgement notice is sent to the requester. The acknowledgement notice contains the FOIA control number assigned to the request and indicates the date the requester can expect a reply from the Commission.

4. Develop a FOIA Quick Fact Sheet.

In the FCC's Report under the Executive Order, the Commission stated that it would develop a FOIA Quick Fact Sheet and post it on its website. The FOIA Quick Fact Sheet has been developed and is on the Commission's webpage. See: <http://www.fcc.gov/foia/quickfactsheet.pdf>.

5. Revise the FCC FOIA Directive.

Pursuant to FCC's Report under the Executive Order, the Commission stated that it would revise its internal FOIA Directive. The FOIA Directive has been revised and is available for internal staff use.

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

The Commission was successful in fully accomplishing four of the five goals it set. In the FCC's Report under the Executive Order, the Commission indicated it would attempt to resolve all pending FOIA applications for review that were more than one year old by December 31, 2006. Decisions on applications for review must be presented to the full multi-member Commission for a vote. The Commission has resolved all but two FOIA proceedings that were filed more than one year before December 31, 2006. One involves three applications for review filed by the same requester, consolidated into one proceeding for disposition. The other involves two applications for review consolidated into one proceeding for disposition, and one of the FOIA requesters has filed a complaint in court for release of the records. The Commission is diligently working to resolve these pending matters.

- D.** Additional narrative statement regarding other executive order-related activities (optional). Not applicable.

- E.** Concise descriptions of FOIA exemptions.

Exemption 1, 5 U.S.C. § 552(b)(1) – Under this exemption, documents classified pursuant to Executive Order are exempt from disclosure under the FOIA. The FCC does not have direct classification authority. However, the FCC may have classified records that would be withheld under this exemption.

Exemption 2, 5 U.S.C. § 552(b)(2) – Under this exemption, internal matters of a relatively trivial nature, or more substantial internal matters that, if disclosed, would risk circumvention of a legal requirement, are exempt from disclosure under the FOIA.

Exemption 3, 5 U.S.C. § 552(b)(3) – This FOIA exemption permits the withholding of records that the FCC is specifically prohibited by other statutes from disclosing.

Exemption 4, 5 U.S.C. § 552(b)(4) – FOIA Exemption 4 permits the withholding of trade secrets and commercial or confidential information that is privileged or confidential. If a FOIA request is filed for such records, the submitter of the records will be given the opportunity to explain how it would be competitively harmed if the records were released. A corollary statute is the Trade Secrets Act, 18 U.S.C. § 1905, which prohibits unauthorized disclosure of all data protected by Exemption 4.

Exemption 5, 5 U.S.C. § 552(b)(5) – Under this exemption, inter-agency or intra-agency records, such as e-mail communications and drafts, may be withheld from the public. Exemption 5 includes such privileges and doctrines as the deliberative process privilege, the attorney-client privilege, and the attorney work product privilege.

Exemption 6, 5 U.S.C. § 552(b)(6) – This exemption protects the personal privacy of individuals. The personal privacy rights are weighed against the public's right to know the activities of the government when we make a determination whether to release such records.

Exemption 7, 5 U.S.C. § 552(b)(7) – This exemption protects six categories of law enforcement records. Subsection (A) protects from release records that could reasonably be expected to interfere with pending enforcement proceedings. Subsection (B) exempts from release records that would deprive a person of a right to a fair trial or impartial adjudication. Subsection (C), much like Exemption 6, protects from release records that could constitute an unwarranted invasion of personal privacy. Subsection (D) protects confidential sources. Subsection (E) protects records that would disclose law enforcement techniques and procedures. Subsection (F) protects from release records that could reasonably be expected to endanger the life or physical safety of an individual.

Exemption 8, 5 U.S.C. § 552(b)(8) – This exemption involves records pertaining to financial institutions.

Exemption 9, 5 U.S.C. § 552(b)(9) – This exemption involves geological and geophysical information.

**F. Additional statistics:**

1. Time range of requests pending, by date of request (or, where applicable, by date of referral from another agency).

May 2, 2006 to January 30, 2007

2. Time range of consultations pending with other agencies, by date of initial interagency communication. None.

**G. Attachment: Agency improvement plan (in current form).**

FCC's improvement plan is located at:

[http://www.fcc.gov/foia/2006improv\\_disclosure\\_report.pdf](http://www.fcc.gov/foia/2006improv_disclosure_report.pdf)

