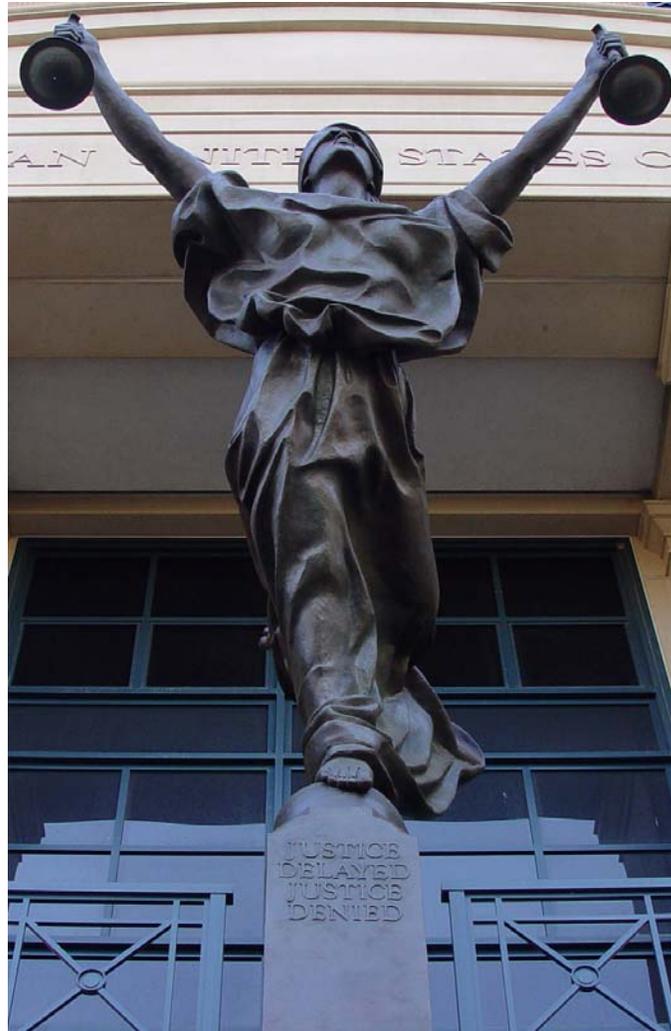


Justice Delayed is Justice Denied



The National Security Archive
The George Washington University

Freedom of Information Act Audit: The Ten Oldest Pending FOIA Requests

Justice Delayed is Justice Denied¹: **The Ten Oldest Pending FOIA Requests**

Some FOIA Requests Wait More Than Ten Years Without Being Processed

**Annual FOIA Reports Do Not Answer Congress's Question:
How Long Does a FOIA Requester Wait?**

The National Security Archive Freedom of Information Act Audit

Phase Two Released November 17, 2003

Thomas Blanton, Director
Meredith Fuchs, General Counsel
Barbara Elias, Freedom of Information Project Coordinator

The National Security Archive
The George Washington University
Gelman Library, Suite 701
2130 H Street, NW
Washington, DC 20037
202-994-7000
www.nsarchive.org

¹ The "Justice Delayed" sculpture (1996) by Raymond Caskey that is reproduced on the cover of this report appears in front of the U.S. District Court for the Eastern District of Virginia, in Alexandria, Virginia. It is inspired by the adage "Justice Delayed is Justice Denied," which generally is attributed to former British Prime Minister William Gladstone (1809-1898). The concept, however, dates back to the Magna Carta (1215) which states: "To none will we sell, to none deny or delay, right or justice."

Justice Delayed is Justice Denied: The Ten Oldest FOIA Requests

Some FOIA Requests Wait More Than Ten Years Without Being Processed

Annual FOIA Reports Do Not Answer Congress's Question: How Long Does a FOIA Requester Wait?

“[I]n the FOIA context, [] the statutory goals--efficient, *prompt*, and full disclosure of information-can be frustrated by agency actions that operate to delay the ultimate resolution of the disclosure request.”

-- *Senate of the Commonwealth of Puerto Rico v. United States Dept. of Justice*, 823 F.2d 574, 580 (D.C. Cir. 1987)

EXECUTIVE SUMMARY

When Congress passed the 1996 Amendments to the Freedom of Information Act, it intended to improve agency administration of FOIA obligations. Congress at the same time imposed new detailed reporting requirements on the agencies to enable effective oversight over FOIA compliance. Yet the National Security Archive FOIA Audit demonstrates that FOIA processing backlogs persist – despite many agencies experiencing the hoped-for reductions in the number of FOIA requests submitted – and the annual FOIA reports submitted by the agencies to the Department of Justice fail to identify the extent of the delays and backlogs.

The oldest Freedom of Information Act requests that are still pending in the federal government date back to the late 1980s, before the collapse of the Soviet Union. A then-graduate student at the University of Southern California filed one of the oldest still-pending requests in 1989, asking the Defense Department for records on the U.S. “freedom of Navigation” program. He is a full professor now and is still interested in the records. Other oldest requests dating to the 1980s came from *San Francisco Chronicle* reporter Seth Rosenfeld, from the Lancaster, *Pennsylvania Intelligencer Journal* newspaper, from *The Nation* magazine, from ABC News, and from the National Security Archive, among others.

In January 2003, the Archive filed FOIA requests with 35 federal agencies asking for copies of their “ten oldest open or pending Freedom of Information Act requests currently being processed or held pending coordination with other agencies.” Six agencies still have not responded in full, more than ten months later and despite repeated telephone and written

contacts, including the Department of Veterans Affairs, which claims some of the shortest response times of any agency (4-24 days reported in its FY 2002 annual report). Other non-responders include the Department of Housing and Urban Development, the Department of Labor, the Department of State, the Department of Transportation, and the Drug Enforcement Administration.

Even many of those agencies that did respond are so decentralized that they cannot actually identify their oldest pending requests, much less know whether the requests have been fulfilled. In many cases, the referral of FOIA requests to components and other agencies for processing or consultation is largely unmonitored, with agencies unable to press for completion of processing.

The Freedom of Information Act gives agencies 20 working days to respond to FOIA requests, with an additional 10-day extension available for "unusual circumstances." The FY 2002 annual FOIA reports to Congress claim median processing times ranging from a low of 2 business days at the Small Business Administration to ranges with a high of 905 business days at the Department of Agriculture and a high of 1113 business days at the Environmental Protection Agency.

These reported statistics, however, mask the true extent of the FOIA backlog problem, which in some cases leaves FOIA requesters waiting for over a decade for substantive responses to FOIA requests. The median processing time statistics provide no means of assessing the outer limits (represented by the oldest requests) or average length of an agency's backlog, both of which are critical to understanding how long a FOIA requester may have to wait for a substantive response. Moreover, the median times reported to Congress do not include the delays associated with referrals or wrangling over fees, which can add months or years to the process, all the while generating more administrative paper than is produced by the ultimate substantive response.

The Archive recommends changes in the annual FOIA reports and the functioning of the interagency referral and consultation system. The Archive also recommends that agencies improve the quality of communications with requesters so that the ordinary FOIA requester has the information needed to help facilitate processing of requests and to rescue requests that have been left behind.

This Freedom of Information Audit was made possible by the generous funding of the John S. and James L. Knight Foundation and the HKH Foundation.

THE TEN OLDEST FOIA REQUESTS IN THE FEDERAL GOVERNMENT

The requests included in this Audit Report are those that the agencies themselves have identified as their ten oldest “currently being processed or held pending coordination with other agencies.”¹

- **November 9, 1987** Request to the Federal Bureau of Investigation (FBI) concerning Seth Rosenfeld’s research into FBI activities at the University of California. Mr. Rosenfeld initiated three lawsuits in support of his FOIA request and ultimately settled with the Bureau in 1996. The Bureau then released approximately 200,000 pages of records, but still refused to release several categories of requested records. The records dramatically chronicle unlawful FBI intelligence activities and the efforts to cover up such conduct. In June 2002, after the *San Francisco Chronicle* ran an extensive story describing the FOIA battle, Senator Diane Feinstein inquired about the Bureau’s failure to complete processing of the FOIA requests. The Bureau has acknowledged that there are at least 17,000 pages of records that still have not been produced.
- **1989** [original date obscured] Request to the Secretary of Defense seeking information regarding the Freedom of Navigation program established in 1975 to protect traditional navigation rights from encroachment. This request was filed by then-graduate student William Aceves, who is periodically contacted by the Department of Defense to determine if he continues to be interested in the records that he requested. Now a full professor at California Western School of Law, Professor Aceves says he remains interested.
- **March 1989** [original date obscured] Request to the Department of State. This request was referred by the Department of State to the Department of Defense, which it provided as one of its Ten Oldest FOIA Requests. Seeks information regarding the Freedom of Navigation program. This request also was filed by Professor Aceves, as noted above.
- **March 23, 1989** Correspondence with the Department of Defense Politico-Military Policy and Current Plans Division. Appears to be follow-up correspondence to a request to the Department of Navy, and appears to have been referred by the Navy to the Department of Defense. Seeks information regarding the Freedom of Navigation program. This request also was filed by Professor Aceves, as noted above.
- **October 5, 1989** Request to the Central Intelligence Agency (CIA). This request apparently was referred to the Department of the Army Intelligence and Security Command and was produced by the Intelligence and Security Command as one of its Ten Oldest FOIA Requests. It is unclear from the

request when it was referred and whether the CIA is responsible for some of the delay associated with completion of a response to the request. Request seeks “any finished intelligence assessments or other documents regarding the political, economic, military, and/or social situation within Iran during the years 1973 through 1978.” The request was filed by the then-Washington Editor of *The Nation*.

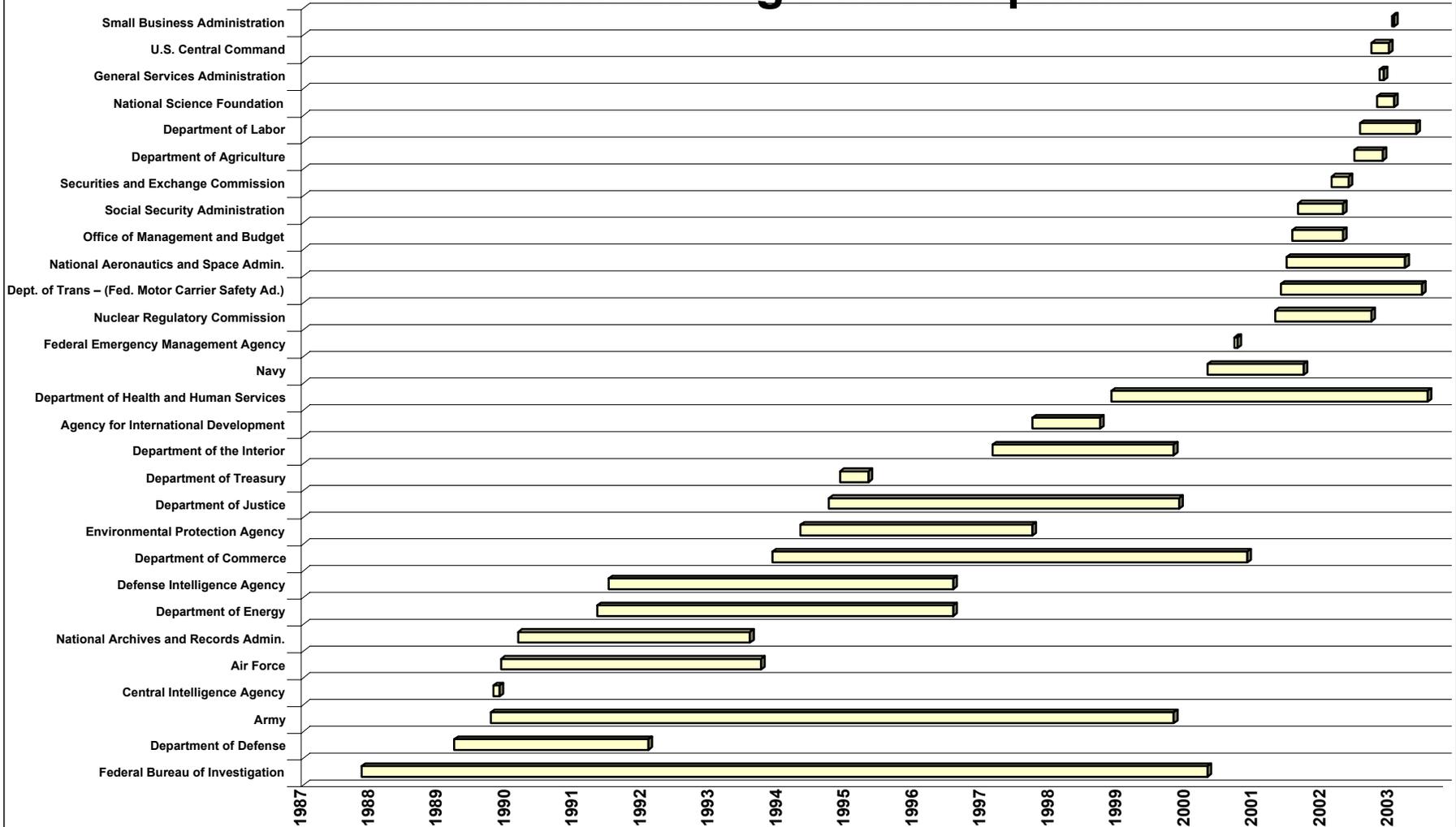
- **October 20, 1989** Request to the Central Intelligence Agency for “records and correspondence pertaining to James Howard Guerin, born 6/9/30 in Morristown, N.J.; his former company, International Signal & Control Corp., London-based Electronics Systems International, known as ESI and any other US or international entities connected with Mr. Geurin.” The request was filed by the *Intelligencer Journal* newspaper, based in Lancaster, Pennsylvania.
- **November 2, 1989** Request to the Central Intelligence Agency for extensive list of materials concerning terrorist attacks at Frankfurt Airport during November and December 1988, including Pan American Flight 103. The request was filed by the American Broadcasting Company, Washington Bureau Investigative Unit.
- **November 3, 1989** Request to the Central Intelligence Agency by a current Agency employee that seeks a copy of the requester’s “Official Security [] & Official Personnel files.”
- **November 22, 1989** Request to the Central Intelligence Agency seeking records pertaining to the bombing of Pan American Flight 103 and terrorist threats at Frankfurt Airport. The request was filed by *The Post Standard* newspaper, based in Syracuse, N.Y.
- **December 5, 1989** Request to the National Archives and Records Administration (NARA). This request was referred by NARA to the Air Force and produced by the Air Force as one of its Ten Oldest FOIA Requests. The request was filed by William Burr of the National Security Archive and seeks records concerning the Berlin Crisis. In particular, request seeks documents from 1961 that were withdrawn from Joint Chiefs of Staff records accessioned to the National Archives and Records Administration (NARA). This request was referred by NARA to a number of agencies, including Department of State, Army, Department of Defense, and Southern Command, which each released records and accepted appeals regarding excisions. Records have not been received from Air Force pursuant to this request.

AGENCY RESPONSE TIMES

NO. BUS. DAYS	AGENCY	DATES OF 10 OLDEST REQUESTS
1	Air Force – Education and Training Command	May 22, 1994 - July 29, 2003
3	Office of Personnel Management	No pending requests
3	National Science Foundation	September 11, 2002 – February 19, 2003
4	Department of Agriculture	July 19, 2002 - December 2, 2002
5	Defense Intelligence Agency	July 8, 1991 – August 1, 1996
6	Army – Criminal Investigation Command	March 22, 2000 - June 26, 2003
6	Navy - Naval Education and Training	July 25, 2003 (1 pending request)
7	Department of Education	No pending requests
10	Air Force – Combat Command	June 6, 1995 - May 6, 2000
10	Securities and Exchange Commission	March 5, 2002 - June 12, 2002
13	Small Business Administration	January 19, 2003 - January 30, 2003
14	Social Security Administration	September 7, 2001 - May 24, 2002
15	Army – Corps of Engineers	June 6, 2002 - June 27, 2003
15	Nuclear Regulatory Commission	May 7, 2001 - October 4, 2002
15	Navy – Naval Facilities Engineering Command	No pending requests
17	DOL – Mine Safety and Health Administration	August 1, 2002 - June 3, 2003
17	Navy - U.S. Pacific Fleet	No pending requests
18	Army – Admin. Assistant to Sec. of the Army	November 27, 2001 - April 29, 2002
18	Army - Total Army Personnel	March 5, 2001 - February 14, 2002
18	Navy - Naval Sea Systems	May 25, 2000 – October 10, 2001
19	Department of Commerce	December 28, 1993 – December 12, 2000
20	Army - Intelligence and Security Command	October 5, 1989 - October 3, 1999
20	National Archives and Records Administration	March 9, 1990 - August 18, 1993
21	Agency for International Development	October 14, 1997 - October 19, 1998
21	Federal Emergency Management Agency	September 24, 2000 - October 10, 2000
21	General Services Administration	September 13, 2002 - December 6, 2002
22	Department of Justice	October 17, 1994 - December 28, 1999
22	Environmental Protection Agency	May 23, 1994 - October 10, 1997
23	Department of the Interior	March 25, 1997 - November 5, 1999
26	Department of Defense	January 31, 1987 - February 3, 1992*
26	Navy- Naval Air Systems	February 13, 2002 - June 12, 2003
27	Air Force – Materiel Command	May 12, 1999 - August 12, 2003
33	DOT - Federal Motor Carrier Safety Admin.	June 4, 2001 - July 28, 2003
35	Department of Treasury	December 9, 1994 - May 24, 1995
38	Central Intelligence Agency	May 29, 1987 - November 22, 1989*
54	Office of Management and Budget	August 15, 2001 - May 31, 2002
89	Air Force - 11 th Wing	December 5, 1989 - December 2, 1993
130	Federal Bureau of Investigation	November 9, 1987 - May 28, 2000
147	Department of Energy	May 14, 1991 - August 7, 1996
150	Department of Health and Human Services	December 30, 1998 – August 29, 2001
178	National Aeronautics and Space Administration	July 12, 2001 - April 3, 2003
184	U.S. Central Command	October 10, 2002 - January 16, 2003
160+	Drug Enforcement Agency	- Request Pending
190+	Department of Housing and Urban Develop.	- Request Pending
190+	Department of Labor	- Request Pending
190+	Department of State	- Request Pending
190+	Department of Transportation	- Request Pending
190+	Department of Veterans Affairs	- Request Pending

* See endnote (i) and individual agency summary for information relevant to dating of ten oldest requests produced by this agency.

Oldest Outstanding FOIA Requests



Justice Delayed is Justice Denied: The Ten Oldest Pending FOIA Requests
 National Security Archive FOIA Audit © 2003, The National Security Archive

METHODOLOGY

The Archive's method for measuring the backlog of Freedom of Information Act ("FOIA") requests submitted to the Federal Government was to file a FOIA request, by fax on January 31, 2003, to each of the 35 agencies that are part of the overall National Security Archive FOIA Audit (the "Audit"), seeking:

Copies of the [Agency's] ten oldest open or pending Freedom of Information Act requests currently being processed or held pending coordination with other agencies.

(the "Ten Oldest FOIA Requests"). The request went to the central FOIA processing office of each agency. For agencies with highly decentralized FOIA programs, the Archive limited the request to the Ten Oldest FOIA Requests pending in the Office of the Secretary, Solicitor, or other principal processing office. The statutory 20-business day time limit for a FOIA response expired on March 3, 2003. Each of 28 agencies with an outstanding Ten Oldest FOIA request was contacted by telephone between February 24, 2003 and March 10, 2003 to ask for an update on the status of the request.

Several agencies, including the Department of State and the Federal Bureau of Investigation explained that their databases were not capable of searching for their oldest pending requests and that locating these aged, open FOIA requests was a burdensome task. Agencies that expressed this difficulty typically were not contacted again until April or May 2003, while other agencies were contacted on average once every four to six weeks.

Several agencies that received the request informed us that their FOIA programs are completely decentralized and that it is virtually impossible to amalgamate their oldest FOIA requests. The main FOIA office refers requests to components that independently process requests and also refer requests to their own components that independently process FOIA requests, and so on. For example, the Occupational Safety and Health Administration (OSHA), as a single component of the Department of Labor, advised that it would have to contact at least 100 separate FOIA officers in order to find its Ten Oldest FOIA Requests. Others, such as the General Services Administration (GSA) and Environmental Protection Agency (EPA), have regional offices that operate independent FOIA programs. At many military agencies, the central FOIA offices serve as mail stops to organize requests, determine which components may maintain responsive documents and forward requests to these components. These central offices typically do not keep track of FOIA requests forwarded to components or requests that were sent directly to components by FOIA requesters. Army, Air Force, Navy, the Department of Labor, and the Department of Transportation are all extremely decentralized, and would have to do a substantial amount of work in order to locate their Ten Oldest FOIA Requests. It was not practicable for the Archive to file the several hundred additional FOIA requests necessary to obtain the actual Ten Oldest FOIA Requests from these agencies. In light of these practical problems, the Archive sent a FOIA request for the Ten Oldest FOIA Requests to the five components at each of these decentralized agencies that received the most FOIA requests for that agency in 2002. If there was an extraordinary degree of decentralization at any of these agency

components, such as OSHA, the Archive further limited the scope of the request. Thus, the number of business days that have passed since the filing of the FOIA request with many of these components is far shorter than with the majority of the agencies.

One additional caveat regarding decentralization is that some of the FOIA requests that the agencies identified as still-pending may have been completed to the satisfaction of the requester by a different component than the one that responded with a copy of the FOIA request. The Archive did not track down all of the individual requesters to determine whether they agree that their request remains pending.

In the time taken to receive responses to the FOIA requests, some agencies may have completed processing of the oldest requests. Such is the case with respect to at least one request made by the Archive to the CIA in 1989; it was responded to on April 22, 2003 after the CIA had identified it as one of the CIA's Ten Oldest FOIA Requests.

Despite persistent inquiries, and after more than 190 business days, the Archive never received a complete, substantive response from the following agencies initially served with the FOIA request:

- The Department of Housing and Urban Development;
- The Department of Labor;
- The Department of State;
- The Department of Transportation;
- The Drug Enforcement Administration; and
- The Department of Veterans Affairs.

The explanations provided by the agencies for their inability to respond are discussed below and in the individual agency summaries. As noted below, in some cases we followed up by making the FOIA request directly to departmental components, some of which have responded. The Archive decided to publish this report even with some agencies' data missing because over nine months have passed since initially submitting the requests on January 31, 2003.

As the Archive received responses to the FOIA requests, we looked at the Ten Oldest FOIA Requests still pending with each of the surveyed agencies and the annual FOIA report statistics reported by the agencies over the last five fiscal years. The Archive supplemented its analysis with a review of official guidance concerning annual reporting requirements and other publicly reported information, as referenced in the Audit Report.

In addition to our findings, this report provide a detailed summary for each agency reviewed regarding: (1) Recordkeeping Issues; (2) the Ten Oldest FOIA Requests; (3) Workload Statistics; (4) Backlog Statistics; and (5) Processing Time. Supporting materials for this report include the [responses to our FOIA requests for the Ten Oldest FOIA Requests](#) and a [chart summarizing the agencies 1998-2002 annual FOIA report statistics](#).ⁱⁱ

FINDINGS REGARDING THE TEN OLDEST FOIA REQUESTS AND FOIA BACKLOGS

In enacting the Electronic Freedom of Information Act Amendments of 1996, Pub. L. No. 104-231, 110 Stat. 3048, Congress made major revisions to the part of the Freedom of Information Act that pertains to the submission of annual reports by federal agencies on their administration of the Act (“annual FOIA reports”).ⁱⁱⁱ In the House Report accompanying the Amendments, the Committee on Government Reform and Oversight explained:

- “For the public, the FOIA reports should answer certain common questions, such as: How does one request documents? How does the Government respond to those requests, including an explanation of the reasons for not honoring a request? And, how long does it usually take for a request to be processed?”
- “For Congress, these reports should furnish a view of the agency workload and any backlog. The reports should identify the progress the agency is making toward eliminating that backlog. They should report on the resources devoted to answering FOIA requests, allowing for meaningful comparisons among agencies about performance.”^{iv}

At the behest of Congress, the General Accounting Office (“GAO”) has completed three studies of a multi-phase evaluation of FOIA processing, including one study analyzing agency annual FOIA reports to examine the issue of agency FOIA processing times.^v The Archive sought to look at the processing time issue from a different perspective – that of the FOIA requester – and determine whether the annual FOIA reports provide a useful basis for assessing the true impact of agencies’ administration of the FOIA on the requester community.

(1) The Annual FOIA Reports Fail To Meet The Goals Set by Congress.

- **The Annual FOIA Reports Mask The Seriousness of the FOIA Backlogs.**

One of the troubling findings of the Audit was that the statistics reported in the annual FOIA reports obscure the excessive delay experienced by some FOIA requesters. Median processing time statistics, which must be included in the reports, describe only the middle number in a series of numbers.^{vi} As the Department of Justice’s Office of Information and Privacy (“OIP”) explains in its guidance on annual FOIA reports, “[g]iven 7 requests completed during the fiscal year, aged 10, 25, 35, 65, 75, 80, and 400 days from date of perfection to date of completion, the total number of requests completed during the fiscal year would be 7 and the median age of the completed requests would be 65 days.” *FOIA Update*, Volume XVIII, No. 3 at 3-7. The average of these numbers would be 98.57 days and the outer limit, of course, would be 400 days. The median processing time statistic provides no means of assessing the outer limits or average length of an agency’s backlog and thus is of limited utility in assessing the period of time that FOIA requesters may actually have to wait for a substantive response.

The Archive found that the Ten Oldest FOIA Requests often were far older than would be imagined from the reported statistic for “Median Days To Process” the requests pending at the end of the fiscal year. For the purposes of this audit, we estimated that there are 250 business days in a calendar year and we calculated the age of the Ten Oldest Requests through October 2003. The Archive found a number of agencies that reported Ten Oldest FOIA Requests with ages that were dramatically larger than the agencies’ 2002 annual FOIA report statistic for “Median Days to Process” requests pending at the end of the fiscal year:

- **AGENCY FOR INTERNATIONAL DEVELOPMENT** (Ten Oldest FOIA Requests pending approximately 1500 to 1250 business days; Median Days To Process requests pending at end of fiscal year 2002 reported as 356);
- **AIR FORCE** (Ten Oldest FOIA Requests pending approximately 3400 to 2300 business days; Median Days To Process requests pending at end of fiscal year 2002 reported as 169);
- **ARMY** (Ten Oldest FOIA Requests pending as long as 3500 business days; Median Days To Process requests pending at end of fiscal year 2002 reported as 25);
- **CENTRAL INTELLIGENCE AGENCY** (Ten Oldest FOIA Requests pending approximately 4090 to 3400 business days; Median Days To Process requests pending at end of fiscal year 2002 reported as 601);
- **DEFENSE INTELLIGENCE AGENCY** (Ten Oldest FOIA Requests pending approximately 3000 to 1300 business days; Median Days To Process requests pending at end of fiscal year 2002 reported as 890);
- **DEPARTMENT OF COMMERCE** (Ten Oldest FOIA Requests pending approximately 2400 to 650 business days; Median Days To Process request pending at the end of fiscal year 2002 reported as 55);
- **DEPARTMENT OF DEFENSE** (Ten Oldest FOIA Requests pending approximately 4170 to 2700 business days; Median Days To Process requests pending at end of fiscal year 2002 reported as 87);
- **DEPARTMENT OF ENERGY** (Ten Oldest FOIA Requests pending approximately 3100 to 1790 business days; Median Days To Process request pending at the end of fiscal year 2002 reported as 97);
- **DEPARTMENT OF JUSTICE, OFFICE OF INFORMATION AND PRIVACY** (Ten Oldest FOIA Requests pending approximately 2250 to 900 business days; Median Days To Process request pending at the end of fiscal year 2002 reported as 2-295);

- **DEPARTMENT OF TREASURY** (Ten Oldest FOIA Requests pending approximately 2130-2010 business days; Median Days To Process request pending at the end of fiscal year 2002 reported as 1-545)
- **ENVIRONMENTAL PROTECTION AGENCY** (Ten Oldest FOIA Requests pending approximately 2250 to 1500 business days; Median Days To Process request pending at the end of fiscal year 2002 reported as 11-483);
- **FEDERAL BUREAU OF INVESTIGATION** (Ten Oldest FOIA Requests pending approximately 3970 to 830 business days; Median Days To Process requests pending at end of fiscal year 2002 reported as 90);
- **NATIONAL ARCHIVES AND RECORDS ADMINISTRATION** (Ten Oldest FOIA Requests pending approximately 3390 to 2540 business days; Median Days To Process request pending at the end of fiscal year 2002 reported as 887).

In addition to the limitations inherent in reporting only medians, and not reporting averages or ranges, the agency-wide median reported for highly decentralized agencies rarely represents a true median processing time for FOIA requests received overall by that agency. In trying to track down accurate information about the Ten Oldest FOIA Requests, the Archive was told that some agencies ask each component for a median response time and subsequently report the median of the medians on the overall agency annual FOIA report. The Department of Justice's OIP, the principal contact point within the executive branch for advice and policy guidance on matters pertaining to the administration of the FOIA, sanctions such estimates. *See FOIA Post 2001* (Supplemental Guidance on Annual FOIA Reports).

Similarly, agencies do not necessarily follow a uniform method of calculating the time spent processing requests. For example, depending on their tracking system, some agencies may count and report business days while others count and report calendar days. These include agencies such as the Department of Education, the Office of Management and Budget and the Department of State. For all of these reasons, the annual FOIA reports do not provide Congress with the intended tool for meaningful comparisons among agencies.

Recommendation: In addition to median processing time statistics, agencies should be required to report average processing time and the range of processing times for requests and backlogged requests in order to provide a more representative picture of agency backlogs for Congress and the public. Reporting these additional statistics should not impose additional burden on the agencies because they already should be gathering the necessary data in order to calculate the reported median processing times.

- **Agencies Exclude from Reported Median Processing Times Long Periods of Delay after Receipt of the FOIA Request.**

The Department of Justice's OIP has advised agencies that the calculation of median processing times should be tied to the agency's determination that it has properly received a "perfected request." A "perfected request" is one that "adequately describes the records sought, which has been received by the FOIA office of the agency or agency component in possession of the records, and for which there is no remaining question about the payment of applicable fees." *FOIA Update*, Spring 1997 (Guidelines for Agency Preparation and Submission of Annual FOIA Reports). These standards are reflected in the FOIA implementing regulations of many agencies. Thus, delays associated with agency routing of requests to components, referring requests to other agencies, fee wrangling, querying about the scope of the request, assigning the request to a FOIA officer, or even just logging in receipt of the request, all offer opportunities for agencies to mask the true time between receipt of a FOIA request and completion of processing of the same request. There is no place on the annual FOIA reports to calculate or catalog the extent of these delays. The Archive's own experience indicates that these sorts of delays can add 3-9 months to the processing of FOIA requests. Thus, the median processing times reported are not an accurate representation of the median number of business days between the submission of a FOIA request and complete processing of the request.

Recommendation: Agencies should be required to report the average, median and range of time for processing a request from the date that the request is received by the agency. By designating a fixed, objective date from which to begin counting processing time, agencies will be better able to identify unnecessary administrative delays and the annual FOIA reports will provide a better tool for comparative analysis by Congress. In addition, FOIA requesters will have a better measure by which to estimate likely response time.

(2) The Referral Of FOIA Requests To Another Agency for Processing or Consultation May Doom The Request to Obscurity.

The FOIA requests that the Archive submitted for each agency's Ten Oldest FOIA Requests included "requests currently being processed or held pending coordination with other agencies." Thus, in several cases the Archive was provided with copies of requests that had been referred to other agencies for processing or consultation regarding specific records or that had been received pursuant to a referral from another agency. One agency explained to us that, although they did not have any overdue FOIA requests awaiting processing by their own agency, they had referrals out to other agencies and had no way of forcing the processing of the requests. One FOIA requester informed the Archive that the Ten Oldest FOIA Requests had led to her receiving the first contact in a couple of years about her pending FOIA request, but the agency explained that the reason it was not completed was because it had been referred to another agency and that there was nothing the originating

agency could do to speed the processing. The Archive was largely unable to determine the nature of the referrals, i.e. whether they were for complete processing or for consultation on specific records.

It is not clear from the annual FOIA reports how extensive a backlog problem is due to these various referrals. In the case of agencies such as the Department of Defense (DOD), however, we noted that their response to the Ten Oldest FOIA request included a number of requests that had been referred to DOD from other agencies, and that in some cases up to four years of delay can be ascribed to the originating agency rather than the one that received the referral. This type of information is simply not captured by the annual FOIA reports. It potentially obscures the experience of the FOIA requester, who often is not informed of the details of referrals or of methods of following up with the agencies that receive the referrals.

Recommendation: An interagency process for tracking, monitoring and following up on referred FOIA requests should be established to prevent referred requests and requests sent for consultation to another agency from getting lost in the system. In addition, agencies should provide full details of referrals to FOIA requesters, including the nature of the records or request referred, the agency it is referred to, and the contact person at the receiving agency, to enable the requester to follow-up on the referrals.

(3) In Larger, Extremely Decentralized Agencies, FOIA Requests Made to Central FOIA Offices May Suffer Extreme Delays.

In larger agencies, search and review generally is, and should be, decentralized in order to permit the most knowledgeable personnel to work on identifying responsive records for release. The Archive's experience indicates that agency components often respond more quickly than central FOIA offices to targeted requests. In many cases, however, the Archive found that agencies lacked tracking systems that are necessary to identify and correct persistent processing problems. Several agencies, including the Agency for International Development, FBI, Department of Health and Human Services, Army and Navy told the Archive that their databases or logs were not useful for identifying the oldest pending requests, or that they did not have any tracking or follow up program in place. From the perspective of the FOIA requester, the system may appear broken even though many FOIA offices within the agency are operating effectively and efficiently. The FOIA requester will view the agency as unable to follow up on delayed FOIA requests and will have difficulty monitoring the progress of a FOIA request.

There are some solutions to this problem that may help educate and inform the FOIA requester so that the requester can play an active role in facilitating the completion of a response to the FOIA request. First, agencies should acknowledge requests when received and provide detailed notice to requesters of referrals to components and to other agencies. The Archive has long supported the inexpensive, quick, postcard acknowledgment used by

the Department of Defense as an effective way to open the channel of communication. Second, all of the initial denial authorities that may receive FOIA requests, along with a description of the office or component, should be published by the Department of Justice as an addendum to its List of Principal FOIA Contacts. The Archive has learned that sending FOIA requests to the Principal FOIA Contacts listed on the Department of Justice Web site may delay and interfere with processing of the request. FOIA requesters will be much more successful if they submit request directly to the component that is likely to maintain the records sought. Many of the agency FOIA Web sites recommend sending requests directly to components. Those that do not already provide information to enable a requester to better target a request should add to their Web sites a list of all of the initial denial authorities within the agency and a description of their function. Finally, all agency annual FOIA reports should include statistics by component as well as the aggregated statistics, to track the way the FOIA requests actually are processed. This practice would make the annual FOIA reports a better means of monitoring the administration of FOIA programs by both the agencies and by Congress.

Recommendation: Agencies should acknowledge all requests when received and provide detailed notice to requesters of referrals to components and to other agencies. All of the initial denial authorities that may receive FOIA requests, along with a description of the office or component, should be assembled and published by the Department of Justice as an addendum to its List of Principal FOIA Contacts. Every agency should include on its FOIA Web site a list of all of its initial denial authorities along with a description of their functions. All agency annual FOIA reports should include statistics by component in addition to its aggregated figures.

(4) The Quality of Tracking and Monitoring FOIA Requests Varies Immensely.

Response times to our Audit varied from 1 day to no response after more than 190 business days. The Archive counted the response times from the day that the FOIA request was faxed to the agency until the date on the cover letter releasing records. In many cases, it took a week beyond the response date for the records to be received by the Archive. Two agencies, the Department of Defense and Naval Air Systems Command, e-mailed their response, along with the records as an attachment to the e-mail. Some agencies, however, informed us that their databases of current requests are accurate, but older requests that were filed before the installation of new database systems are either not included within those databases or are inaccurately included. *Several agencies still have not responded to the request even though over 190 business days have passed since it was submitted, including the following:*

No Explanation For Delay Provided:

- **DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)**
– HUD put the request into its complex queue for processing. When the

Archive questioned the reason for this, the agency did not provide an explanation and indicated that the category would not be changed.

- **DEPARTMENT OF VETERANS AFFAIRS** – VA reports that it has the largest number of FOIA requests (1,496,191 submitted in FY 2002) of any agency and one of the lowest median response times (4-24.6 business days reported in FY 2002). Part of the reason that the VA has such a large number of requests is that they include all Privacy Act requests in their reported numbers, which means that all requests for medical, personnel or benefits records concerning veterans are included in the statistics. Nonetheless, the VA has not responded to the Archive's FOIA request for its Ten Oldest FOIA Requests, which has been pending for over 190 business days.

Explanation for Delay Provided:

- **DEPARTMENT OF STATE (DOS)** – DOS explained that it has embarked on an ambitious backlog reduction program and as a result has dispersed aged requests throughout the Department so as to concentrate on completing responses. The Archive has had a positive experience with DOS in recent years and has begun to see the fruits of the Department's backlog reduction efforts.

Archive Solicited Additional Responses from Components at Suggestion of the Agency:

- **DEPARTMENT OF LABOR (DOL)** – DOL explained that it is extremely decentralized and thus it would be difficult to identify the oldest FOIA requests. The Archive later made separate requests to the five DOL components that receive the greatest number of FOIA requests and has received responses from two (2) out of five (5) of those offices.
- **DEPARTMENT OF TRANSPORTATION (DOT)** – DOT explained that it is extremely decentralized and thus it would be difficult to identify the oldest FOIA requests. The Archive later made separate requests to the five DOT components that receive the greatest number of FOIA requests and has received responses from one (1) out of five (5) of those offices.

Substantive Response Provided, But Request Not Fulfilled:

- **DRUG ENFORCEMENT ADMINISTRATION (DEA)** – DEA responded to the request with a list of pending FOIA requests that all appear to have been filed in 2002. The Archive requested copies of the actual requests on May 2, 2003, but was told that it would take time to open each file and find the original requests.

This broad range of responses suggests that agencies are not making effective use of multi-track systems that could be used to put on a faster track straightforward requests or requests for identified records.

It is possible that the delay in many responses means that some of the requests identified in this Report may have been filed during the Archive's over nine (9) months of fact gathering. In one case, an agency informed us that our request attracted senior management attention and triggered an internal process to complete processing of the old requests. In at least one case, a request filed in 1989 with the CIA was responded to on April 22, 2003, during our fact gathering period and after the CIA had identified the request as one of its Ten Oldest.

Recommendation: Agencies should constantly evaluate their tracking and monitoring systems to take advantage of multi-track processing advantages.

(5) Many Agencies (23 Out Of The 35 For The Time Period From 1998 Through 2002) Appear To Be Experiencing Reductions In The Number Of FOIA Requests Received.

Since at least 1997, OIP has advised agencies to treat all Privacy Act requests – requests by an individual for that individual's own records – as a FOIA request. The rationale behind this policy is to ensure that requests for access to records regarding oneself result in the maximum possible disclosure. Generally speaking, a Privacy Act request is for personnel, medical or other easily identifiable and locatable records. The result of this policy is that some agencies' annual FOIA reports document remarkably high numbers of FOIA requests and, often, remarkably short processing times. This is best illustrated by the Department of Veterans Affairs' reported 1,496,191 FOIA requests for 2002 compared to its 210,371 requests for 1998. Many of these are likely requests from veterans for their medical or benefit records. Similar dramatic increases can be seen in the numbers reported by the Social Security Administration (from 64,857 in 1998 to 268,488 in 2002), which attributes the increase to the popularity of Social Security documents among genealogists, and the Office of Personnel Management (from 1,801 in 1998 to 9,032 in 2002).

Nevertheless, a significant number of agencies (23 out of the 35 surveyed) have been receiving reduced numbers of FOIA requests. Some agencies have concluded that one reason for the reduction is the availability of electronic information via the Internet. Such readily available information thus may be serving the intended purpose of the E-FOIA amendments of 1996 by facilitating information flow and diminishing workload. Some agency FOIA professionals have explained that they reached these conclusions because the type of FOIA requests received has shifted from general requests for the type of information typically now made available by the agencies on their Web sites to narrower, more sophisticated requests.^{vii}

A more cynical interpretation is that many FOIA requesters have given up on the system because of the history of slow responses. The Ten Oldest FOIA requests demonstrated that many media requests are being filled so slowly that the news may lose its currency. Some requests, filed in the 1980s, reflect the news of the 1980s. Delaying release of appropriate information about these matters for 15 years completely undercuts the purpose of the FOIA and makes it impossible for the Act to serve the purpose of informing the electorate and permitting for public debate about the activities and operations of the government. It certainly serves the purpose of discouraging journalists and others working on a deadline from using the FOIA.

Recommendation: Agencies should use technology and electronic dissemination to streamline FOIA processing and reduce the number of FOIA requests.

(6) FOIA Processing Suffers When There Is Little Accountability.

Frequently non-FOIA personnel do the actual search and review part of FOIA processing. Because of the importance of their core responsibilities and because FOIA processing is not a factor upon which their performance is evaluated, reviewers may give FOIA processing an extremely low priority. In some agencies, even where the FOIA office is efficient and responsive, it appears to the outside FOIA requester as if non-FOIA personnel may be lacking in the accountability and effective prioritization that is necessary to reduce the backlog of outstanding FOIA requests. Often, there appears to be little senior management involvement in the FOIA program. The Archive had a difficult time identifying the causes of backlogs because responsibilities are dispersed throughout some agencies with no one taking ultimate responsibility. Thus, even when backlogs develop or litigation ensues, it may be difficult to correct the underlying problems. These problems are reflected in the findings of the EPA's 2001 FOIA Task Force, which issued numerous recommendations for improvement of EPA's FOIA processing.^{viii} The efforts of the taskforce and implementation of its recommendations may account for the reduction in EPA's backlogged requests from 12,790 pending at the end of 2001 to 4,567 pending at the end of 2002.

Recommendation: Agencies should ensure that senior management is supportive of the FOIA program, and that all agencies' staff understands that the FOIA program is an important part of government service to the public. Each agency should initiate a taskforce to assess its individual administration of FOIA, incorporate FOIA goals in the agency's mission, and consider fulfillment of FOIA obligations in performance evaluations.

(7) Tremendous Disparities Exist Between Agencies' Workloads, Backlogs, and Processing Times.

Review of five years of annual FOIA report statistics for the 35 agencies surveyed demonstrated that there is tremendous variation in the number of FOIA requests received and processed, and the length of the backlogs.

It would be valuable to study the resource distribution for FOIA among the agencies. Unfortunately, it appears that any study based on the expenditure numbers included in the agencies annual FOIA reports would not provide accurate results. Our discussions with agency personnel indicate that the figures reported for expenditures on FOIA are broad estimates.

Recommendation: OIP and the Office of Management and Budget should issue additional guidance and conduct training to assist agencies in calculating the cost of FOIA so that it will be possible to determine the connection, if any, between expenditures and backlogs and to assess whether agencies are being provided sufficient support for their FOIA programs.

SUMMARY DISCUSSION OF INDIVIDUAL AGENCIES^{ix}

[Agency for International Development \(AID\)](#)
[Central Command \(CENTCOM\)](#)
[Central Intelligence Agency \(CIA\)](#)
[Defense Intelligence Agency \(DIA\)](#)
[Department of Agriculture \(USDA\)](#)
[Department of Commerce \(DOC\)](#)
[Department of Defense \(DOD\)](#)
[Department of Education \(EDU\)](#)
[Department of Energy \(DOE\)](#)
[Department of Health and Human Services \(HHS\)](#)
[Department of Housing and Urban Development \(HUD\)](#)
[Department of Justice \(DOJ\)](#)
[Department of Labor \(DOL\)](#)
[Department of State \(DOS\)](#)
[Department of the Air Force \(Air Force\)](#)
[Department of the Army \(Army\)](#)
[Department of the Interior \(DOI\)](#)
[Department of the Navy \(Navy\)](#)
[Department of Transportation \(DOT\)](#)
[Department of Treasury \(TRE\)](#)
[Drug Enforcement Administration \(DEA\)](#)
[Environmental Protection Agency \(EPA\)](#)
[Federal Bureau of Investigation \(FBI\)](#)
[Federal Emergency Management Agency \(FEMA\)](#)
[General Services Administration \(GSA\)](#)
[National Aeronautics and Space Administration \(NASA\)](#)
[National Archives and Records Administration \(NARA\)](#)
[National Science Foundation \(NSF\)](#)
[Nuclear Regulatory Commission \(NRC\)](#)
[Office of Management and Budget \(OMB\)](#)
[Office of Personnel Management \(OPM\)](#)
[Securities and Exchange Commission \(SEC\)](#)
[Small Business Administration \(SBA\)](#)
[Social Security Administration \(SSA\)](#)
[Department of Veterans Affairs \(VET\)](#)

U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT (AID)

21 DAYS TO RESPOND TO ARCHIVE; OUTSTANDING REQUESTS AS OLD AS 6 YEARS

Recordkeeping Issues – AID reported that its database was not designed in a manner that permitted it to easily identify its oldest FOIA requests.

Ten Oldest – AID responded approximately 21 business days after the request was made; it reported ten FOIA requests ranging from October 14, 1997 to October 19, 1998. Of these, six were news media requests from the *Chicago Tribune* relating to Save the Children's Mali operations, itemized contracts and records regarding international food programs, and related material, including performance evaluations and financial analyses concerning grants. The remaining four requests are requests for proposals and contracts entered into by AID, and related materials, possibly filed by unsuccessful contract bidders.

Workload Statistics – Although AID's reported statistics from 1998 through 2002 indicate that the agency has received a diminishing number of FOIA requests (down 28% from 294 in 1998 to 212 in 2002), the number processed each year also has decreased (down 16% from 263 processed in 1998 to 222 processed in 2002). AID's processing rate per year – a comparison of the number processed to the number received – dipped from 89.46% in 1998 down to 81.50% in 2001 and then up again to 104.72% in 2002.

Backlog Statistics – AID's backlog of pending FOIA requests has increased (from 99 FOIA requests pending at the end of 1998 to 148 FOIA requests pending at the end of 2002). AID's backlog as a percentage of FOIA requests processed each year has increased from 37.64% in 1998 to 66.67% in 2002. Its backlog rate by year – a comparison of those requests pending at the end of the year to those received during that year – has increased from 31.29% in 1998 to 69.81% in 2002.

Processing Time – While its median days to process has ranged from 36-52 days over the 1998-2002 period, AID reports that the median days that backlogged requests have been pending has increased from 149 to 356 days. The 5-6 year backlog for the Ten Oldest FOIA Requests described above show that some requests suffer a much more extensive wait, as those have been pending between 1250 to 1500 business days. No processing times are reported for expedited requests.

AIR FORCE

89 DAYS TO RESPOND TO ARCHIVE; OUTSTANDING REQUESTS AS OLD AS 13 YEARS

Recordkeeping Issues – The Air Force identified ten requests ranging from 10-13 years old. Notably, some of the Archive requests that are still open with the Air Force have been partially responded to. Because the response received appeared to relate only to the FOIA requests pending with the 11th Communications Squadron, the Archive later sent additional requests to the four other Air Force components that receive the largest number of FOIA requests.

Ten Oldest – The Air Force responded approximately 89 business days after the request was made, reporting ten FOIA requests ranging from December 5, 1989 to December 2, 1993. All ten of the requests were filed by one analyst at the National Security Archive. The requested records concern Germany and the Berlin Crisis, a 1965 study “Air Force Project Blue Lance – Interrelationship Between the Strategic Offensive and Defensive Forces,” Air Force Directorate of Operations Records from the 1960s, and Air Force records from the late 1950s. As noted above, the Archive also sought responses from the four other Air Force components that receive the largest number of FOIA requests. These also demonstrated significant backlogs, although the age of the requests pending with these other four components was not as extreme as with the 11th Communications Squadron: Combat Command (June 6, 1995-May 6, 2000); Education and Training (May 22, 1994-July 29, 2003); Materiel Command (May 12, 1999-August 12, 2003); Mobility Command (No response to date).

Workload Statistics – Although Air Force’s reported statistics from 1998 through 2002 indicate that the agency has experienced a reduction in the number of FOIA requests received (down 42% from 19,280 in 1998 to 11,335 in 2002), the number processed each year also has decreased (down 39% from 18,803 processed in 1998 to 11,480 processed in 2002). Air Force’s processing rate per year -- a comparison of the number of requests processed to the number received -- increased from 97.53% in 1998 to 101.28% in 2002.

Backlog Statistics – Air Force’s backlog has decreased (from 1507 FOIA requests pending at the end of 1998 to 1316 FOIA requests pending at the end of 2002). Its backlog as a percentage of FOIA requests processed each year has increased from 8.01% in 1998 to 11.46% in 2002. Its backlog rate by year – a comparison of those pending at the end of the year to those received during that year – has increased from 7.82% in 1998 to 11.61% in 2002.

Processing Time – Under its two track system, Air Force reports a median processing time for simple requests within the statutory timeframe (16 days in 2002), while complex requests have been reduced from a median of 100 days to 46 days over the 1998-2002 time period. Expedited requests have a median processing time range of 3-21 days over the 1998-2002 time period. The median days that backlogged requests have been pending is reported as 169 for 2002. The 10 to 13-year backlog for the Ten Oldest FOIA Requests described above show that some requests suffer a much more extensive wait, as those have been pending between 3400 to 2300 business days.

DEPARTMENT OF ARMY

18 DAYS TO RESPOND TO ARCHIVE; OUTSTANDING REQUESTS AS OLD AS 2 YEARS INTELLIGENCE AND SECURITY COMMAND REQUESTS AS OLD AS 14 YEARS

Recordkeeping Issues – The Department of Army’s initial response to the FOIA request reported that it maintains no “centralized index of requests under the FOIA.” The Archive was provided with a list of 54 Initial Denial Authorities that potentially could have pending FOIA requests and advised that we would be required to file a FOIA request with each one in order to obtain the agency’s Ten Oldest FOIA Requests. It was not feasible for the Archive to more than double the scope of its FOIA Audit by making an additional 53 requests for the Army’s Ten Oldest FOIA Requests. Accordingly, the Archive made a subsequent request to the Administrative Assistant to the Office of the Army. The Archive later filed additional requests with the five components of the Army that receive the greatest number of FOIA requests.

Ten Oldest – In order to obtain a representation of the Army’s Ten Oldest FOIA Requests, the Archive refiled the request with the Administrative Assistant to the Secretary of the Army. That office is responsible for the administration, operation, and management of a broad range of support systems of the Department of the Army, Office of the Secretary, the Headquarters, Department of the Army and its serviced elements. It responded within 18 business days and provided requests dating from October 18, 2001 to May 1, 2002. Of these FOIA requests, six appear to be commercial requests concerning awarded contracts or task/delivery orders. The other four are news media requests: three from American Lawyer Media and one from the *LA Times*. The media requests concern (1) the Office of General Counsel Suspense Report database; (2) “the backlog of FOIA Administrative appeals in the Office of General Counsel of the Army”; (3) the report of the Institute for Creative Technologies summarizing terrorist scenarios suggested by Hollywood producers and writers; and (4) the administrative tracking file concerning an administrative appeal of an Army field manual. These backlogged requests are not really representative of the Army’s backlog, however. As noted above, the Archive also sought responses from the five Army components that receive the largest number of FOIA requests. These also demonstrated backlogs of various lengths: Corps of Engineers (June 6, 2002-June 27, 2003); Intelligence and Security (October 5, 1989-October 3, 1999); Criminal Investigation Command (March 22, 2000-June 26, 2003); Materiel Command (No response to date); Total Army Personnel (March 5, 2001-February 14, 2002).

Workload Statistics – Although Army’s FOIA reported statistics from 1998 through 2002 indicate that the agency has received a diminishing number of FOIA requests (down 33% from 36,306 in 1998 to 28,084 in 2002), the number processed each year also has decreased (down 37% from 37,842 processed in 1998 to 27,744 processed in 2002). Army’s processing rate per year -- a comparison of the number of requests processed to the number received -- decreased from 104.23% in 1998 to 98.79% in 2002.

Backlog Statistics – The Army’s backlog of pending FOIA requests has increased (from 2,438 FOIA requests pending at the end of 1998 to 3,652 FOIA requests pending at the end of 2002). Its backlog as a percentage of FOIA requests processed each year has increased from 6.44% in 1998 to 13.16% in 2002. Its backlog rate by year – a comparison of those pending at the end of the year to those received

during that year – has increased from 6.72% in 1998 to 13% in 2002.

Processing Time – Under its two track system, Army reports a median processing time for simple requests within the statutory timeframe (20 days in 2002), while complex requests have ranged from a median of 41 days to 27 days over the 1998-2002 time period, with 33 days reported for 2002. Expedited requests have a median processing time range of 5-10 days over the 1998-2002 time period. Although none are recorded for 2001 or 2002. The median days that backlogged requests have been pending is reported as 25 for 2002. As noted above, however, there are requests pending with the five components of the Army that receive the greatest number of FOIA requests that are far older, and even as old as 3500 business days (14 years).

CENTRAL COMMAND – CENTCOM

184 DAYS TO RESPOND TO ARCHIVE; OUTSTANDING REQUESTS AS OLD AS 1 YEAR

Recordkeeping Issues – CENTCOM indicated to the Archive that it has a high staff turnover, including rotating FOIA officers, in its FOIA office and that there are delays in transfers of records.

Ten Oldest – CENTCOM responded approximately 184 business days after the request was made, reporting ten FOIA requests ranging from October 10, 2002 to January 16, 2003. These ten concern records regarding implementation of White House Chief of Staff's Andrew Card's March 19, 2002 memorandum regarding safeguarding information concerning weapons of mass destruction, a news media request for records regarding the investigation into the death of Army Chief Warrant Officer Stanley L. Harriman in Afghanistan, news media requests regarding security breaches at CENTCOM between 1990 and 2002, records regarding inspector general inquiries concerning various personnel, military whistleblowers, details regarding CENTCOM personnel and expenditures by CENTCOM

Workload Statistics – Although CENTCOM's reported statistics from 1998 through 2002 indicate that the agency has received an increasing number of FOIA requests (up 45% from 31 in 1998 to 45 in 2002), the number processed each year also has increased (up 68% from 25 processed in 1998 to 42 processed in 2002). CENTCOM's processing rate per year -- a comparison of the number of requests processed to the number received -- increased from 80.65% in 1998 to 93.33% in 2002.

Backlog Statistics – CENTCOM's backlog of pending FOIA requests has remained stable (12 FOIA requests pending at the end of 1998 and 12 FOIA requests pending at the end of 2002). CENTCOM's backlog as a percentage of FOIA requests processed each year has decreased from 48% in 1998 to 28.57% in 2002. Its backlog rate per year -- a comparison of the number of requests pending at the end of the year to the number received during that year -- has decreased from 38.71% in 1998 to 26.67% in 2002.

Processing Time – CENTCOM reports a median processing time of 52 days for 2002. The median processing time has ranged from a median of 33 days to a median of 52 days over the 1998-2002 period. The median days that backlogged requests have been pending is reported as 45 days for 2002. The FOIA request for the Ten Oldest FOIA Requests, however, was pending more than 180 business days. No processing times are reported for expedited requests.

CENTRAL INTELLIGENCE AGENCY (CIA)

38 DAYS TO RESPOND TO ARCHIVE; OUTSTANDING REQUESTS AS OLD AS 14 YEARS

Recordkeeping Issues – Although the CIA provided ten FOIA requests in response to the Archive’s request, including six filed by the National Security Archive between May 29, 1987 and July 11, 1989 the Agency later denied that the Archive had pending requests filed prior to 1990. The reason for this is that the CIA stayed all pending Archive requests in the late 1980’s pending the resolution of fee status litigation with the Archive. After the court held that the Archive is a representative of the news media for FOIA fee status purposes, the CIA reopened and renumbered several of the outstanding Archive FOIA requests. These requests may appear in the CIA’s database as stemming from 1992 or even more recently.

Ten Oldest – The CIA responded approximately 38 business days after the request was made, reporting ten FOIA requests ranging from May 29, 1987 to November 22, 1989. Nine out of the ten were from media representatives including the National Security Archive, the *Syracuse Post Standard*, the Pennsylvania *Intelligencer Journal*, and American Broadcasting Corporation. The media requests concern topics such as Jonathan Pollard (the Israeli spy arrested in 1985), the Iran-Contra investigations, the bombing of Pan Am Flight 103 (in December 1988), James Howard Guerin, and the Cuban Missile Crisis. The tenth request was from a current CIA employee requesting personnel and security files pertaining to himself. One of the Archive requests in the Ten Oldest group was processed soon after the response was received from the CIA. As noted above, several of the Archive requests to the CIA were suspended by CIA for several years pending resolution of a fee dispute with the Archive. The CIA then reopened most of these requests in 1992.

Workload Statistics – Although CIA’s reported statistics from 1998 through 2002 indicate that the agency has experienced a dramatic reduction in the number of FOIA requests received (down 55% from 6,121 in 1998 to 2,727 in 2002), the number processed each year also has decreased (down 57% from 7,169 processed in 1998 to 3,046 processed in 2002). CIA’s processing rate per year -- a comparison of the number of requests processed to the number received -- decreased from 121.73% in 1998 to 111.70% in 2002.

Backlog Statistics – CIA’s backlog has increased (from 1506 FOIA requests pending at the end of 1998 to 1547 FOIA requests pending at the end of 2002). Its backlog as a percentage of FOIA requests processed each year has increased from 21% in 1998 to 43.2% in 2002. Its backlog rate per year -- a comparison of the number of requests pending at the end of the year to the number received during that year -- has increased from 21.10% in 1998 to 50.79% in 2002.

Processing Time – Under its two track system, CIA reports median response times in 2002 ranging from 7 days for a simple request to 83 days for complex requests. The data over 1998-2002 shows steady improvement in the processing time for complex requests. CIA’s FY 2002 annual FOIA Report indicates that “[f]or those FOIA cases closed in FY 2002, 80% were closed in 1.5 years; median response time was 0.24 years; average response time was 1.06 years.” The over 1500

backlogged requests at the end of fiscal year 2002, however, had a median age of 601 days (over two years). The 15 to 16-year backlog for the Ten Oldest FOIA Requests described above show that some requests suffer a much more extensive wait, as these requests have been pending from 4090 to 3400 business days. No processing times are reported for expedited requests.

DRUG ENFORCEMENT ADMINISTRATION (DEA)

55 DAYS TO RESPOND TO ARCHIVE; OUTSTANDING REQUESTS UP TO 1 YEAR OLD

Recordkeeping Issues – In response to inquiry from the National Security Archive, the DEA informed the Archive that it had not received the January 31, 2003 FOIA request for the Ten Oldest FOIA Requests. Although the Archive verified that it had sent the request to the correct fax number and that the transmission record showed that it had been successfully transmitted, the DEA could not offer an explanation for the problem. The request was resent on February 26, 2003.

Ten Oldest – DEA responded approximately 55 business days after the initial request and 38 business days after the request was resent. The response included a list of pending FOIA requests that all appear to have been filed in 2002. The Archive requested copies of the actual requests on May 2, 2003, but was told that it would take time to open each file and find the original requests. They still have not been received. The Ten Oldest FOIA Requests relate to DEA Contracts, policy and procedures manuals and training materials, Internet and Online Investigations Projects, the number of methamphetamine and GBH laboratories seized nationwide, Latin American Affairs, Drug Trafficking in Burma, Thailand and/or Laos, hemp beers and ales, meetings with the Office of National Drug Control Policy and the State Departments IND Bureau, and proposed legalization of marijuana in Nevada since January 1, 2002.

Workload Statistics – DEA’s FOIA reported statistics from 1998 through 2002 indicate that the number of FOIA requests has gone up and down over the years, from a high of 2,452 in 1999 to a low of 1,765 in 2002. The number processed each year also has gone up and down, sticking close to the number filed each year (from a high of 2,377 processed in 2000 to a low of 1,839 processed in 2002). DEA’s processing rate per year -- a comparison of the number of requests processed to the number received – increased from 98.09% in 1998 to 104.19% in 2002.

Backlog Statistics – DEA’s backlog of pending FOIA requests has increased (from 146 FOIA requests pending at the end of 1998 to 212 FOIA requests pending at the end of 2002). Its backlog as a percentage of FOIA requests processed each year has increased from 7.12% in 1998 to 11.53% in 2002. Its backlog rate per year -- a comparison of the number of requests pending at the end of the year to the number received during that year -- has increased from 6.98% in 1998 to 12.01% in 2002.

Processing Time – DEA reported median processing times from 11-16 days over the 1998-2002 period. Those still pending at the end of 2002 are reported as having a median response time of 15 days. This is in contrast to the 55 days that it took to respond to the request for the Ten Oldest FOIA Requests. No processing times are reported for expedited requests.

DEFENSE INTELLIGENCE AGENCY (DIA)

5 DAYS TO RESPOND TO ARCHIVE; OUTSTANDING REQUESTS UP TO 12 YEARS OLD

Ten Oldest – DIA responded within five business days to the FOIA request with requests dating from July 8, 1991 through August 1, 1996. Eight of the ten requests were from Archive analysts. The requests concerned biographical sketches of identified Guatemalan military officials, identified reports from the mid-1980s that are listed as unclassified in the Air University Library, records from 1983-1985 relating to Iraq and Kurdistan, intelligence reports concerning Chinese military exercises in the Taiwan Strait in September 1995, the assassination of Anwar Sadat, biographical materials on a specified Chinese military officer, identified histories, and Iraqi manuals concerning chemical, biological and/or nuclear warfare. The oldest of these requests was submitted in 1991 to the CIA and appears to have been referred to the DIA in 1996; thus, several years of the delay can be accorded to the CIA.

Workload Statistics – Although DIA’s reported statistics from 1998 through 2002 indicate that the agency has received a decreasing number of FOIA requests (down 29.5% from 1313 in 1998 to 926 in 2002), the number processed each year also has decreased somewhat (down 5% from 861 processed in 1998 to 819 processed in 2002). DIA’s processing rate per year -- a comparison of the number of requests processed to the number received -- increased from 65.58% in 1998 to 88.44% in 2002.

Backlog Statistics – DIA’s backlog of pending FOIA requests has gone up and down over the years and is slightly down (from 1781 FOIA requests pending at the end of 1998 to 1756 FOIA requests pending at the end of 2002). DIA’s backlog as a percentage of FOIA requests processed each year has increased from 206.85% in 1998 to 214.41% in 2002. Its backlog rate per year -- a comparison of the number of requests pending at the end of the year to the number received during that year -- has increased from 135.64% in 1998 to 189.63% in 2002. Thus, DIA’s backlog includes almost twice as many requests as it receives in a year.

Processing Time – Under its two track system, DIA reports a median processing time for 2002 of 35, while complex requests in 2002 had a median of 540 days. Processing times for both simple and complex requests have increased over the 1998-2002 period. Expedited requests have a median processing time range of 5-60 days over the 1998-2002 time period. The median days that backlogged requests have been pending is reported as 890 (3-4 years) for 2002. As noted above, the Ten Oldest FOIA Requests have been pending approximately 3060 to 1300 business days.

DEPARTMENT OF AGRICULTURE (USDA)

4 DAYS TO RESPOND TO ARCHIVE; OUTSTANDING REQUESTS AS OLD AS 1 YEAR

Ten Oldest – USDA responded to the FOIA request within four business days with seventeen requests from July 19, 2002 through December 2, 2002. Ten of the requests were made on the same day by the same journalist and appear on their face to be quite complex requests. They each relate to a different high level government official, including a range of governors, U.S. Senators, U.S. Representatives, and others, several of whom are running for presidential nominations. Each request essentially asks for records of all dealings the agency has had with the individual named in the letter. Other news media requests include ones for any correspondence to or from a limited number of offices within the agency and the U.S. Supreme Court, the Administrative Offices of the US Courts of the Judicial Conference of the United States, and two requests for records from meetings between Anne Veneman and the British Secretary of State for the Environment, Food and Rural Affairs. Request from public interest groups seeks records on agency meetings with the Executive Branch, the Legislative Branch and state governors, and records regarding changes in livestock grazing in response to the 2002 draught in the Tonto National Forest.

Workload Statistics – Although USDA’s reported statistics from 1998 through 2002 indicate that the agency has received a diminishing number of FOIA requests (down 12% from 88,592 in 1998 to 78,293 in 2002), it should be noted that in 2000 the number received skyrocketed to 140, 239. The number processed each year has generally been close to the number received (11.5% change from 88,204 processed in 1998 to 78,062 processed in 2002). For example, 139,503 were processed in 2000. USDA’s processing rate per year – a comparison of the number processed to the number received – increased from 99.56% in 1998 to 99.70% in 2002.

Backlog Statistics – USDA’s backlog of pending FOIA requests has increased (from 1332 FOIA requests pending at the end of 1998 to 2012 FOIA requests pending at the end of 2002). USDA’s backlog as a percentage of FOIA requests processed each year has increased from 1.51% in 1998 to 2.58% in 2002. Its backlog rate per year -- a comparison of the number of requests pending at the end of the year to the number received during that year -- has increased from 1.5% in 1998 to 2.57% in 2002.

Processing Time – Under its two track system, USDA reports a median processing time in 2002 for simple requests of 2-43 days, while complex requests have ranged from a median of 9-905 days (up to 3 ½ years). Expedited requests have a median processing time range of 7-76 days over the 1998-2002 time period, with a range of 3-76 days reported for 2002. The median days that backlogged requests have been pending is reported as 5-661 (up to 2 ½ years) for 2002. The USDA FY 2002 annual FOIA report indicates that increased timeliness and reduced backlogs for some components is due to increased use of Web site postings.

DEPARTMENT OF COMMERCE (DOC)

19 DAYS TO RESPOND TO ARCHIVE; OUTSTANDING REQUESTS AS OLD AS 10 YEARS

Recordkeeping Issues – DOC’s FOIA Office indicated that it had to contact each of the Department’s components in order to assemble the collection of the Ten Oldest FOIA Requests.

Ten Oldest – DOC responded within 19 business days with requests dating from December 28, 1993 to December 12, 2000. Seven of these were from the last quarter of 2000 and were primarily from environmental and public interest organizations. The oldest request relates to records that pertain to export controls on cryptography and includes an extensive list of the issues and types of records encompassed within the request. It appears on its face quite complex. The second oldest request is also quite complex, detailing 22 names, subjects, companies and issues relating to Loral Space and Communications Ltd. (which was the subject of an export violation investigation during the Clinton Administration) about which records are sought. The remaining requests concern the Atlantic Pelagic Fisheries, Ocean Dunes Off Highway Vehicle Area and Pismo State Beach in San Luis Obispo County California, a contract with Allied Signal, the Marble Mountain Ranch and its owners, applications and pre-application communications by Sierra Pacific Industries for a Habitat Conservation Plan, the status and number of bluefin tuna and the number of annual fishing permits issued, and observer data from the 2000 Experimental Scallop Fishery.

Workload Statistics – Although DOC’s reported statistics from 1998 through 2002 indicate that the agency has received a decreasing number of FOIA requests (down 9.5% from 2366 in 1998 to 2142 in 2002), some of the interim years had lower numbers than 1998 or 2002. The number processed each year has remained close to the number received and also has decreased (down 9.6% from 2283 processed in 1998 to 2063 processed in 2002), although some of the interim years had lower numbers than 1998 or 2002. DOC’s processing rate per year – a comparison of the number processed to the number received – decreased from 96.49% in 1998 to 96.31% in 2002.

Backlog Statistics – DOC’s backlog of pending FOIA requests has increased (from 157 FOIA requests pending at the end of 1998 to 298 FOIA requests pending at the end of 2002). DOC’s backlog as a percentage of FOIA requests processed each year has increased from 6.88% in 1998 to 14.44% in 2002. Its backlog rate per year -- a comparison of the number of requests pending at the end of the year to the number received during that year -- has increased from 3.13% in 1998 to 13.91% in 2002.

Processing Time – Under its two track system, DOC reported processing times within the statutory timeframes for simple requests (12 days in 2002). Processing times for complex requests have ranged from 30-54 days in the 1998-2002 period, with 45 days reported for 2002. Expedited requests have a median processing time range of 3-8 days over the 1998-2002 time period, with none reported for 2000 or 2002. The backlogged requests are reported as pending for a median of 55 days. As demonstrated by the Ten Oldest FOIA Requests provided, however, some requests wait far longer; some of the Ten Oldest FOIA Requests have been pending at least 2400 business days.

DEPARTMENT OF DEFENSE (DOD)

**26 DAYS TO RESPOND TO ARCHIVE; OUTSTANDING REQUESTS AS OLD AS 15 YEARS
BELATED REFERRALS OF REQUESTS ACCOUNTS FOR SOME DELAY**

Recordkeeping Issues – DOD provided its response both electronically, as an attachment to an e-mail, and with a hard copy of the records by U.S. mail.

Ten Oldest – DOD responded approximately 26 business days after the request was made; it reported ten FOIA requests ranging from January 31, 1987 to February 3, 1992. The requests concern the activities of National Security Council personnel relating to Vietnam, Laos, China or the USSR in the 1980s, a news media request for Presidential Review Memoranda, several research requests from a graduate student for records regarding the Freedom of Navigation program, a request regarding anti-drug U.S. aid packages granted to Mexico since mid-1990, and records regarding the DOD's reaction to Iraq's efforts to purchase high temperature furnaces in 1990. Among the oldest requests provided by DOD, were ones that had been referred by the National Security Council (NSC) to DOD several years after being initially received by the NSC. From the perspective of the FOIA requester, these requests have been pending for as long as 15 years, although a portion of the delay is not the responsibility of DOD. The request for Presidential Review Memoranda is one of the requests referred by the NSC to DOD. Although DOD views this as an open request and it potentially represents a tasking to DOD personnel, the requester already has obtained these records from a request to the Carter Presidential Library.

Workload Statistics – Although DOD's reported statistics from 1998 through 2002 indicate that the agency has received a decreasing number of FOIA requests (down 29% from 107,627 in 1998 to 76,579 in 2002), the number processed each year also has decreased (down 27.6% from 106,191 processed in 1998 to 76,943 processed in 2002). DOD's processing rate per year -- a comparison of the number of requests processed to the number received -- increased from 98.67% in 1998 to 100.48% in 2002.

Backlog Statistics – DOD's backlog of pending FOIA requests has increased (from 10,240 FOIA requests pending at the end of 1998 to 12,543 FOIA requests pending at the end of 2002). DOD's backlog as a percentage of FOIA requests processed each year has increased from 9.64% in 1998 to 16.30% in 2002. Its backlog rate per year -- a comparison of the number of requests pending at the end of the year to the number received during that year -- has increased from 9.51% in 1998 to 16.38% in 2002.

Processing Time – Under its two track system, DOD reports a median processing time in 2002 for simple requests of 20, while complex requests are reported to have a median processing time of 58 days in 2002. Expedited requests have a median processing time range of 1-7 days over the 1998-2002 time period. The median days that backlogged requests have been pending is reported as 87 for 2002.

DEPARTMENT OF ENERGY (DOE)

147 DAYS TO RESPOND TO ARCHIVE; OUTSTANDING REQUESTS AS OLD AS 12 YEARS

Ten Oldest – DOE responded approximately 147 business days after the request was made; it reported ten FOIA requests ranging from May 14, 1991 to August 7, 1996. The requests seek records related to the Atomic Energy Commission involvement in U.S.-U.K. military nuclear cooperation in 1952-1958, records regarding the operation of the T, B and Redox plants at Hanford from December 1944 to December 1954, human exposure to iodine, ruthenium and/or plutonium at the same location during the same period, and a number of additional specified reports, letters and other documentation from the same period, Atomic Energy Commission document cited in the book “Atoms for Peace and War, 1953-1961,” contract correspondence from 1946-1965, records regarding incidents at the Medina Base Plant in San Antonio, Texas in November 1963, declassification of footnote files from the book “Atoms for Peace and War, 1953-1961,” documents concerning the possibility of nuclear armament of Japan, a report entitled “Nuclear Weapons Surety: Annual Report to the President” from the years 1985 to the present, and intelligence reports that the Atomic Energy Commission may have produced concerning a possible Chinese nuclear weapons test from August to October 1964.

Workload Statistics – DOE’s reported statistics from 1998 through 2002 indicate that the agency has received a growing number of FOIA requests (up 27% from 2288 in 1998 to 2900 in 2002). The number processed each year also has increased (up 43.4% from 2314 processed in 1998 to 3319 processed in 2002). DOE’s processing rate per year -- a comparison of the number of requests processed to the number received – increased from 101.14% in 1998 to 114.45% in 2002.

Backlog Statistics – DOE’s backlog of pending FOIA requests has increased (from 741 FOIA requests pending at the end of 1998 to 1027 FOIA requests pending at the end of 2002). DOE’s backlog as a percentage of FOIA requests processed each year has decreased from 32.02% in 1998 to 30.94% in 2002. Its backlog rate per year -- a comparison of the number of requests pending at the end of the year to the number received during that year -- has increased from 32.39% in 1998 to 35.41% in 2002.

Processing Time – Under its two track system, DOE reports a median processing time in 2002 for simple requests of 75 days, but the processing time has ranged during the 1998-2002 period from 16-211 days. Complex requests during 1998-2002 have ranged from a median of 55-1788 days (up to 7 years), with 238 days reported in 2002. Expedited requests have a median processing time range of 4-118 days over the 1998-2002 time period. The median days that backlogged requests have been pending is reported as 97 for 2002, although it has ranged from 24-2090 (up to eight years) during the 1998-2002 periods.

DEPARTMENT OF INTERIOR (DOI)

23 DAYS TO RESPOND TO ARCHIVE; OUTSTANDING REQUESTS AS OLD AS 6 YEARS

Recordkeeping Issues – The request to DOI was limited to the Office of the Secretary after consulting with DOI regarding the decentralization of the agency. In the cover letter accompanying the release, DOI provided the following caveats: (1) DOI could not confirm that the requesters were still interested in the records requests; (2) other components within DOI may have already responded in whole or in part to some or all of the requests; and (3) the program offices within the Office of Secretary also already may have responded to the requests. The FOIA office also explained that data in its current configuration had not been reconciled since conversion of their computer tracking system in 2002.

Ten Oldest – DOI responded approximately 23 business days after the request was made; it reported ten FOIA requests ranging from March 25, 1997 to November 5, 1999. The requests included one from an environmental organization concerning records from January 1995 to May 1997 relating to the 1997 Interim Trinity River Flows, a public interest legal organization's request for records concerning the Clinton American Heritage Rivers program, records concerning funding provided to the USDOL-OSHA Region IX for the periods 1990-1997, a request from the Arizona Division of Housing for information about property owned by an applicant for Section 8 Housing that was leased to the Bureau of Indian Affairs, an environmental group's request for records concerning the request of the Hopi Tribe to take eagles and hawks at Wupatki, a request for records concerning the Shieldalloy Metallurgical Corporation Site in Cambridge, Ohio, a Congressional Research Service Request for records concerning funds being held to compensate the Paiute Shoshone Indians for past wrongs against them, a request for materials concerning the Bravo thermonuclear test of Operation Castle performed in the Marshall Islands in 1954, a media request for lists of films and videos of the department, and a request for records concerning garment manufacturers or Saipan Garment Manufacturers Association in the Commonwealth of the Northern Mariana Islands.

Workload Statistics – Although DOI's reported statistics from 1998 through 2002 indicate that the agency has received a decreasing number of FOIA requests (down 16% from 5221 in 1998 to 4396 in 2002), the number processed each year also has decreased (down 12% from 5002 processed in 1998 to 4378 processed in 2002). DOI's processing rate per year -- a comparison of the number of requests processed to the number received -- increased from 95.81% in 1998 to 99.59% in 2002.

Backlog Statistics – DOI's backlog of pending FOIA requests has increased (from 545 FOIA requests pending at the end of 1998 to 902 FOIA requests pending at the end of 2002). DOI's backlog as a percentage of FOIA requests processed each year has increased from 10.90% in 1998 to 20.60% in 2002. Its backlog rate per year -- a comparison of the number of requests pending at the end of the year to the number received during that year -- has increased from 9.83% in 1998 to 20.52% in 2002.

Processing Time – DOI reports processing times ranging from 10-58 days for 2002. Expedited requests have a median processing time range of 5-12 days over the 1998-2000 time period, with a range of 9-33 days reported for 2002. For its backlogged requests, however, it reports processing

times in 2002 ranging from 5-1407 days (up to 5 ½ years). DOI's FY 2002 annual FOIA report indicates that DOI is implementing a new electronic FOIA tracking system. It reports that this will improve "the overall efficiency of the FOIA processing in DOI."

DEPARTMENT OF JUSTICE (DOJ)

22 DAYS TO RESPOND TO ARCHIVE; OUTSTANDING REQUESTS AS OLD AS 9 YEARS

Recordkeeping Issues – Because the Archive also sent separate requests to major DOJ components such as the DEA and FBI, the Ten Oldest Request was limited to the Office of Information and Privacy.

Ten Oldest – DOJ responded approximately 22 business days after the request was made; it reported ten FOIA requests ranging from October 17, 1994 to December 28, 1999. These include a requests made the Ronald Reagan Presidential Library for specified boxes and folders of records regarding Mexico, specified National Security Council records regarding counterterrorism and narcotics, records from the William J. Burns Collection and the William P. Clark Collection, records pertaining to the hijacking of TWO Flight 847 in 1985, National Security Staff and Office Files concerning Asia, nuclear arms, export administration, and related materials, materials from the records of Attorney General Edward Levi regarding drug strategy and Mexico, records regarding the August 12-14, 1986 visit of the Mexican President and Attorney General to the United States, records concerning the murder of Michael Vernon DeVine on June 8, 1990, in Guatemala, records concerning the Achille Lauro and Opening to China, and records concerning a meeting between Janet Reno and British officials that took place on October 25, 1999.

Workload Statistics – DOJ’s reported statistics from 1998 through 2002 indicate that the agency has received a varying number of number of FOIA requests over the years, from a high of 235,042 in 2000 to a low of 181,388 in 1998 (up .4% from 181,388 in 1998 to 182,079 in 2002). The number processed each year also has varied from a high of 235,090 in 2000 to a low of 184,928 in 2002 (down 5% from 195,105 processed in 1998 to 184,928 processed in 2002). DOJ’s processing rate per year -- a comparison of the number of requests processed to the number received -- decreased from 107.56% in 1998 to 101.56% in 2002.

Backlog Statistics – DOJ’s backlog of pending FOIA requests has increased (from 25,304 FOIA requests pending at the end of 1998 to 32,545 FOIA requests pending at the end of 2002). DOJ’s backlog as a percentage of FOIA requests processed each year has increased from 12.97% in 1998 to 17.60% in 2002. Its backlog rate per year -- a comparison of the number of requests pending at the end of the year to the number received during that year -- has increased from 14.07% in 1998 to 17.87% in 2002.

Processing Time – Under its two track system, DOJ reports a median processing time in 2002 for simple requests of 1-67 days, while complex requests have ranged from a median of 13-621 days in 2002. Expedited requests are reported in ranges, with processing times as low as 1 day and as high as 190 days over the 1998-2002 time period. The median days that backlogged requests have been pending is reported as 2-295 for 2002.

DEPARTMENT OF LABOR (DOL)
**COMPONENTS WITH OUTSTANDING REQUESTS AS OLD AS ONE YEAR,
BUT UNABLE TO DETERMINE AGENCY BACKLOG**

Recordkeeping Issues – The DOL is a highly decentralized agency for FOIA purposes. DOL advised the Archive that it would be “almost impossible” to process the request for the Ten Oldest FOIA Requests if we wanted information from the components. Accordingly, the Archive initially limited the search to the Office of the Assistant Secretary for Administration and Management. There has still been no response from that office. The Archive later determined to submit FOIA requests to the five DOL components that receive the greatest number of FOIA requests. One of these, the Employment Standards Administration, indicated that it has no fax available to the public. Another of the components, the Occupational Safety and Health Administration advised that it would have to refer the request to over 100 individual people in order to locate the Ten Oldest FOIA requests; accordingly, the Archive limited that request to the oldest requests pending in that particular OSHA component and to any FOIA logs maintained by that component of OSHA.

Ten Oldest – Nothing yet received from the Office of the Assistant Secretary for Administration and Management despite over 190 business days since the submission of the request. Nothing received from the Employee Benefits Security Administration (EBSA), the Employment and Training Administration (ETA), or the Occupational Safety and Health Administration (OSHA), although those requests have been pending for over 65 business days. The Mine Safety and Health Administration reported ten requests pending since August 1, 2002 to June 3, 2003. The Employment Standards Administration (ESA) Office of Workers’ Compensation Programs reported ten requests pending since June 15, 2003 to September 8, 2003.

Workload Statistics – DOL’s reported statistics from 1998 through 2002 indicate that the agency has received a varying number of number of FOIA requests from a high of 22,469 in 2000 to a low of 17,722 in 2002 (down 2.8% from 18,037 in 1998 to 17,722 in 2002). The number processed each year also has varied from a high of 22,505 in 2000 to a low of 17,540 in 1998 (up 3.8% from 17,540 processed in 1998 to 18,201 processed in 2002). DOL’s processing rate per year -- a comparison of the number of requests processed to the number received -- increased from 97.24% in 1998 to 102.70% in 2002.

Backlog Statistics – DOL’s backlog of pending FOIA requests also has varied (from 994 FOIA requests pending at the end of 1998 to 809 FOIA requests pending at the end of 2002). DOL’s backlog as a percentage of FOIA requests processed each year has decreased from 5.67% in 1998 to 4.44% in 2002. Its backlog rate per year -- a comparison of the number of requests pending at the end of the year to the number received during that year -- has decreased from 5.51% in 1998 to 4.56% in 2002.

Processing Time – Under its two track system, DOL reports a median processing time in 2002 for simple requests of 1-109 days, while complex requests have ranged from a median of 7-49 days in 2002. Expedited requests have a median processing time range of 3-6 days over the 1998-2001 time

period, with a range of 2-28 reported for 2002. The median days that backlogged requests have been pending is reported as 8-36 for 2002.

DEPARTMENT OF STATE (DOS)
UNABLE TO DETERMINE AGENCY BACKLOG

Recordkeeping Issues – DOS advised that it has a backlog reduction group working on its backlog. In order to complete processing of old requests, the backlog reduction group had spread the requests to other areas of DOS and thus it would not be easy to identify and organize all the requests by age.

Ten Oldest – Not yet received.

Workload Statistics – DOS's reported statistics from 1998 through 2002 indicate that the agency has received a relatively stable number of FOIA requests (down 7% from 3355 in 1998 to 3134 in 2002). The number processed each year has increased (up 100% from 2317 processed in 1998 to 4636 processed in 2002). DOS's processing rate per year -- a comparison of the number of requests processed to the number received -- increased from 69.06% in 1998 to 147.93% in 2002.

Backlog Statistics – DOS's backlog of pending FOIA requests has decreased a bit (from 5349 FOIA requests pending at the end of 1998 to 5343 FOIA requests pending at the end of 2002). DOS's backlog as a percentage of FOIA requests processed each year has decreased from 230.86% in 1998 to 115.25% in 2002. Its backlog rate per year -- a comparison of the number of requests pending at the end of the year to the number received during that year -- has increased from 159.43% in 1998 to 170.49% in 2002.

Processing Time – Under its two track system, DOS reports a median processing time in 2002 for simple requests of 351 days, while it reports a median processing time in 2002 for complex requests of 431 days. Expedited requests have a median processing time range of 85-518 days over the 1998-2002 time period. The median days that backlogged requests have been pending is reported as 546 for 2002. DOS's FY 2002 annual FOIA report indicates that “[i]n order to improve response times to new and pending requests and reduce the existing FOIA backlog, additional resources were allocated to the Department's [FOIA] program.” Specifically, DOS added “nearly fifty additional retired Senior Foreign Service Officers” as part-time reviewers and approved additional full-time permanent positions for a task force of civil service employees and contractors dedicated to a two-year project to address the existing FOIA backlog.

DEPARTMENT OF TRANSPORTATION (DOT)
**COMPONENTS WITH OUTSTANDING REQUESTS AS OLD AS TWO YEARS,
BUT UNABLE TO DETERMINE AGENCY BACKLOG**

Recordkeeping Issues – When the Archive contacted DOT in April 2003, it was told that the agency still had not begun processing any 2003 FOIA requests because of its backlog from 2002. The Archive was also informed that the agency has decentralized FOIA processing and coordination with the many components would be time-consuming. The Archive limited the search for the initial request to the Office of the Secretary, but has not received anything. The Archive later filed requests with the five DOT components that receive the greatest number of FOIA requests (Federal Aviation Administration, Coast Guard, Federal Motor Carriers Safety Administration, Federal Railroad Administration, and Office of the Secretary of Transportation). It has received acknowledgments from several of those agencies, but has received a response only from the Federal Motor Carrier Safety Administration.

Ten Oldest – Nothing yet received in response to initial FOIA request. Response from Federal Motor Carrier Safety Administration included nine requests dating from June 11, 2001.

Workload Statistics – Although DOT's reported statistics from 1998 through 2002 indicate that the agency has received a decreasing number of FOIA requests (down 13% from 20,476 in 1998 to 17,910 in 2002), the number processed each year rose for several years, but ultimately has remained somewhat steady (up .8% from 17,406 processed in 1998 to 17,540 processed in 2002). DOT's processing rate per year -- a comparison of the number of requests processed to the number received -- increased from 85.01% in 1998 to 97.93% in 2002.

Backlog Statistics – DOT's backlog of pending FOIA requests has decreased (from 4362 FOIA requests pending at the end of 1998 to 3885 FOIA requests pending at the end of 2002). DOT's backlog as a percentage of FOIA requests processed each year has decreased from 25.06% in 1998 to 22.15% in 2002. Its backlog rate per year -- a comparison of the number of requests pending at the end of the year to the number received during that year -- has increased from 13.35% in 1998 to 21.69% in 2002.

Processing Time – Under its two track system, DOT reports a median processing time for simple requests well within the statutory timeframes (8 days in 2002) and a median of 39 days in 2002 for complex requests. The median days that backlogged requests have been pending is reported as 41 for 2002.

DEPARTMENT OF EDUCATION (EDU)

7 DAYS TO RESPOND TO ARCHIVE; NO OLD REQUESTS REPORTED

Ten Oldest – EDU responded within seven business days stating that it has no pending FOIA requests.

Workload Statistics – EDU’s reported statistics from 1998 through 2002 indicate that the agency has received a relatively stable number of FOIA requests (up 1% from 1721 in 1998 to 1744 in 2002). The number processed each year has increased (up 2.3% from 1679 processed in 1998 to 1718 processed in 2002). EDU’s processing rate per year -- a comparison of the number of requests processed to the number received -- increased from 97.56% in 1998 to 98.51% in 2002.

Backlog Statistics – EDU’s backlog of pending FOIA requests has increased (from 137 FOIA requests pending at the end of 1998 to 219 FOIA requests pending at the end of 2002). EDU’s backlog as a percentage of FOIA requests processed each year has increased from 8.16% in 1998 to 12.75% in 2002. Its backlog rate per year -- a comparison of the number of requests pending at the end of the year to the number received during that year -- has decreased from 20.10% in 1998 to 12.56% in 2002.

Processing Time – Under its two track system, EDU reports a median processing time in 2002 for simple requests of 5-35 days, while complex requests in 2002 have ranged from a median of 7-180 days. Expedited requests have a median processing time range of 1-29 days over the 1998-2002 time period. The median days that backlogged requests have been pending is reported as 5-211 for 2002.

ENVIRONMENTAL PROTECTION AGENCY (EPA)

22 DAYS TO RESPOND TO ARCHIVE; OUTSTANDING REQUESTS AS OLD AS 9 YEARS

Ten Oldest – EPA responded within 22 business days after the request was made; it reported ten FOIA requests ranging from May 23, 1994 to October 10, 1997. These included a request from the Arizona Department of Emergency Management regarding air dispersion models, a request for a list of corporate sponsors for the President’s Environmental Awards program, and the winners for 1994, a request for a 1994 memorandum of the EPA Assistant Administrator that states that participants in the EPA’s new common sense Initiative on multimedia regulations will not be targeted for enforcement action, a request for records regarding claims brought by the EPA against any company engaged in the business of metal finishing alleging a violation of the community Right to Know Act, records relating to fill activities involving Carmen Reahard, the official cancer designation of specified chemicals, a transcript of a telephone call between EPA Administrator Carol Browner and the press concerning Hazardous Waste Combustor Regulations, and specified Pesticide Reports for the years 1991-1995.

Workload Statistics – EPA’s reported statistics from 1998 through 2002 indicate that the agency has received a decreasing number of FOIA requests (down 37% from 21,220 in 1998 to 13,443 in 2002). The number processed each year has increased (up 2.18% from 18,848 processed in 1998 to 19,259 processed in 2002). EPA’s processing rate per year -- a comparison of the number of requests processed to the number received -- increased from 97.56% in 1998 to 98.51% in 2002.

Backlog Statistics – EPA’s backlog of pending FOIA requests has recently decreased (from 6,117 FOIA requests pending at the end of 1998 to 4,567 FOIA requests pending at the end of 2002). EPA’s backlog as a percentage of FOIA requests processed each year has increased from 8.16% in 1998 to 12.75% in 2002. Its backlog rate per year -- a comparison of the number of requests pending at the end of the year to the number received during that year -- has decreased from 20.10% in 1998 to 12.56% in 2002.

Processing Time – Under its two track system, EPA reports a median processing time in 2002 for simple requests of 15-1113 days, while complex requests in 2002 have ranged from a median of 31-123 days. Expedited requests have a median processing time range of 7-44 days over the 1998-2000 time period with a range of 8-105 reported for 2001 and a range of 6-75 reported for 2002. The median days that backlogged requests have been pending is reported as 11-438 for 2002.

FEDERAL BUREAU OF INVESTIGATION (FBI)

130 DAYS TO RESPOND TO ARCHIVE; OUTSTANDING REQUESTS AS OLD AS 16 YEARS

Recordkeeping Issues – FBI advised the search would take some time because the Ten Oldest FOIA Requests are older than the database used to search for records.

Ten Oldest – FBI responded approximately 130 business days after the request was made; it reported eight FOIA requests ranging from November 9, 1987 to May 28, 2000. The agency withheld two FOIA requests in their entirety because they were “first party” requests from people asking for information about themselves. This response was appealed on August 26, 2003, but no decision on the appeal has been received. The FOIA requests that were provided concerned a 1987 request that revises an original broader request submitted in 1981 regarding Mr. Seth Rosenfeld’s research into FBI activities in the Berkeley Area and at the University of California, a copy of the FBI headquarters file maintained under the name “Central Intelligence Agency” (file number 62-80750), records concerning a deceased Cuban national Jorge Mas Canosa, the Cuban American National Foundation, investigations into individuals and organizations in the United States concerning actions to harm Cuba, complaints by Cuba concerning U.S. flyovers, and concerning an outbreak of African swine fever in Cuba in 1971, files on specified chapters of the Black Panthers, files relating to Abraham Johannes Muste, files on Leon Hirsch Keyserling, investigation of First Chicago Corp executives taking kickbacks, and information concerning General Jose Pedraza from Cuba.

Workload Statistics – FBI’s reported statistics from 1998 through 2002 indicate that the agency has received a varying number of FOIA requests from a high of 23,889 in 2000 to a low of 15,024 in 2002 (down 4.79% from 15,780 in 1998 to 15,024 in 2002). The number processed each year rose for several years to a high of 27,519 in 2000, but recently decreased (down 26.91% from 20,344 processed in 1998 to 14,869 processed in 2002). FBI’s processing rate per year -- a comparison of the number of requests processed to the number received -- decreased from 128.92% in 1998 to 98.97% in 2002.

Backlog Statistics – FBI’s backlog of pending FOIA requests has decreased (from 10,816 FOIA requests pending at the end of 1998 to 2,633 FOIA requests pending at the end of 2002). FBI’s backlog as a percentage of FOIA requests processed each year has decreased from 53.17% in 1998 to 17.71% in 2002. Its backlog rate per year -- a comparison of the number of requests pending at the end of the year to the number received during that year -- has decreased from 68.54% in 1998 to 17.53% in 2002.

Processing Time – Under its two track system, FBI reports a median processing time in 2002 for simple requests of 67 days, while it reports a median in 2002 for complex requests of 336-447.5 days. Expedited requests have a median processing time of 2337 reported for 1999 and have ranged from 58-118 days over 2000-2002 time period. The median days that backlogged requests have been pending is reported as 90 for 2002.

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)

21 DAYS TO RESPOND TO ARCHIVE; OUTSTANDING REQUESTS AS OLD AS 3 YEARS

Recordkeeping Issues – FEMA initiated telephone contact with the Archive to clarify request and advised that staff shortages could lead to some delay in processing.

Ten Oldest – FEMA responded approximately 21 business days after the request was made; it reported ten FOIA requests ranging from September 24, 2000 to October 10, 2000. The requests included several relating to what appears to be wrongful discharge or employment discrimination litigation against the agency; these include requests for materials used to prepare an Office of Inspector General Response to an inquiry, materials and communications concerning correspondence to an individual that concerned that individual, psychological and psychiatric evaluations of the individual, as well as information about a variety of positions with the agency and the employment history of other individuals.

Workload Statistics –FEMA’s reported statistics from 1998 through 2002 indicate that the agency has received a variable number of FOIA requests from a high of 655 in 2001 to a low of 230 in 2000 (up 26.09% from 289 in 1998 to 377 in 2002). The number processed each year also has varied from a high of 498 in 2001 to a low of 196 in 2000 (up 13.57% from 280 processed in 1998 to 318 processed in 2002). FEMA’s processing rate per year -- a comparison of the number of requests processed to the number received -- decreased from 96.89% in 1998 to 84.35% in 2002.

Backlog Statistics – FEMA’s backlog of pending FOIA requests has increased (from 38 FOIA requests pending at the end of 1998 to 250 FOIA requests pending at the end of 2002). FEMA’s backlog as a percentage of FOIA requests processed each year has increased from 13.57% in 1998 to 78.62% in 2002. Its backlog rate per year -- a comparison of the number of requests pending at the end of the year to the number received during that year -- has increased from 12.46% in 1998 to 66.31% in 2002.

Processing Time – While its median days to process has ranged from 35-107 days over the 1998-2002 period, the median days that backlogged requests have been pending has increased from 71 to 205 days over that period. No processing times are reported for expedited requests.

GENERAL SERVICES ADMINISTRATION (GSA)

21 DAYS TO RESPOND TO ARCHIVE; OUTSTANDING REQUESTS AS OLD AS 1 YEAR

Recordkeeping Issues – GSA’s correspondence indicated that its eleven regional FOIA offices are responsible for administering their own FOIA programs and that their pending requests were not included in the response.

Ten Oldest – GSA responded approximately 21 business days after the request was made; it reported ten FOIA requests ranging from September 24, 2002 to December 6, 2002. The requests included news media requests for materials relating to a security guard service contract in Region 10 and offenses and incidents at government facilities in Region 10, a commercial request for contract materials concerning a security guard service contract in place for the Bureau of Alcohol, Tobacco and Firearms, a commercial request for contact information for project officers of active contracts, a commercial request for documentation regarding the bundling of services under GSA’s national broker contract, a news media report regarding studies of the presence of asbestos and asbestos abatement efforts at federal facilities, a request for documents related to contracts with MCI Worldcom and Verizon, and a contract, schedule and list price relating to a specified contract.

Workload Statistics – Although GSA’s reported statistics from 1998 through 2002 indicate that the agency has received a decreasing number of FOIA requests (down 19.08% from 1798 in 1998 to 1455 in 2002), the number processed each year also has decreased (down 30.62% from 2028 processed in 1998 to 1407 processed in 2002). GSA’s processing rate per year -- a comparison of the number of requests processed to the number received -- increased from 91.15% in 1998 to 96.70% in 2002.

Backlog Statistics – GSA’s backlog of pending FOIA requests has decreased over the five year period, although it has increased for each of the last three reporting years (from 166 FOIA requests pending at the end of 1998 to 141 FOIA requests pending at the end of 2002). GSA’s backlog as a percentage of FOIA requests processed each year has increased from 8.19% in 1998 to 10.02% in 2002. Its backlog rate per year -- a comparison of the number of requests pending at the end of the year to the number received during that year -- has increased from 7.46% in 1998 to 9.69% in 2002.

Processing Time – While its median days to process has ranged from 14-20 days over the 1998-2002 period, the median days that backlogged requests have been pending has ranged from 18-29 days. No processing times are reported for expedited requests.

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

150 DAYS TO RESPOND TO ARCHIVE; OUTSTANDING REQUESTS OVER 4 YEARS OLD

Recordkeeping Issues – When contacted by the Archive to determine the status of the FOIA request, HHS indicated that it could not locate the request in its system. Accordingly, the request was resubmitted on February 26, 2003. HHS advised the Archive that locating its Ten Oldest FOIA Requests might be difficult because their cataloging system was incapable of making such searches.

Ten Oldest – HHS responded approximately 150 business days after the request was submitted with ten FOIA requests dated from December 30, 1998 to August 29, 2001. The cover letter noted that several of the requests are for copies of Office of Inspector General “fraud alerts” which are available on the OIG Web site. Thus, HHS explained, they may be answered even though they are still open in the FOIA case log. The requests concern a list of the e-mail addresses that receive the OIG news announcements, correspondence from Congressman Tom Delay and Dennis Hastert between January 1, 1995 and October 1, 1998, copies of Medicare fraud alerts and related materials concerning Medicare and Medicaid fraud and abuse, records regarding the Review of Office of Community Services’ Discretionary Grants Awarded to Delta Foundation, Inc. by the Office of Inspector General, correspondence regarding Community Housing Services, Inc., New York State’s plans regarding the Adoption and Safe Families Act, compliance reports concerning a Medicaid fraud settlement, lists of persons excluded from participation in Medicaid and Medicare matters, reports from the fraud investigation of the Minneapolis Indian Health Board.

Workload Statistics – HHS’s reported statistics from 1998 through 2002 indicate that the agency has received an increasing number of FOIA requests, but the number jumped most dramatically in the 2002 fiscal year; prior to 2002, the number of FOIA requests ranged from a low of 58,401 to a high of 65,954 (up 59.30% from 65,954 in 1998 to 105,068 in 2002). The number processed each year also has increased, with a notable jump in the 2002 fiscal year (up 53.13% from 67,367 processed in 1998 to 103,163 processed in 2002). HHS’s processing rate per year -- a comparison of the number of requests processed to the number received -- increased from 102.14% in 1998 to 98.19% in 2002.

Backlog Statistics – HHS’s backlog of pending FOIA requests has increased (from 18,739 FOIA requests pending at the end of 1998 to 19,308 FOIA requests pending at the end of 2002). HHS’s backlog as a percentage of FOIA requests processed each year has increased from 8.19% in 1998 to 10.02% in 2002. Its backlog rate per year -- a comparison of the number of requests pending at the end of the year to the number received during that year -- has decreased from 28.19% in 1998 to 18.38% in 2002.

Processing Time – Under its multi-track system, HHS reports median days to process ranging from 10-35 days for simple requests, 60-332 days for complex requests, and 6-342 days for other requests over the 1998-2002 periods. Expedited requests have processing times of 1-135 days with a range of 15.5-27 reported for 2002. The median days that backlogged requests have been pending is reported as 7-206 for 1998.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)
UNABLE TO DETERMINE AGENCY BACKLOG

Recordkeeping Issues – HUD put the request into its complex queue for processing. When the Archive questioned the reason for this, the agency did not provide an explanation and indicated that the category would not be changed.

Ten Oldest – Nothing yet received.

Workload Statistics – HUD's reported statistics from 1998 through 2002 indicate that the agency has received a decreased number of FOIA requests (down 4.29% from 3354 in 1998 to 3210 in 2002). The number processed each year has increased (up 9.27% from 2827 processed in 1998 to 3089 processed in 2002) (note: the number processed for 2002 does not include 1082 requests that were administratively closed in the year because responses had been provided in previous years). HUD's processing rate per year -- a comparison of the number of requests processed to the number received -- increased from 84.29% in 1998 to 129.94% in 2002.

Backlog Statistics – HUD's backlog of pending FOIA requests has decreased (from 1456 FOIA requests pending at the end of 1998 to 671 FOIA requests pending at the end of 2002). HUD's backlog as a percentage of FOIA requests processed each year has decreased/increased from 51.50% in 1998 to 16.09% in 2002. Its backlog rate per year -- a comparison of the number of requests pending at the end of the year to the number received during that year -- has decreased from 129.58% in 1998 to 20.90% in 2002.

Processing Time – HUD reports that its median days to process have ranged from 22-266 days over the 1998-2002 period. In FY 2002, simple requests have had a median processing time of 15-59 business days; complex requests have had a median processing time of 34-83 business days; and the expedited processing range for 2002 is reported as 5-27 days. HUD did not report a number for the median days that backlogged requests have been pending as of the end of FY 2002; instead it provided medians by components (headquarters, field offices, and Office of Inspector General) and by expedited, simple and complex, and this ranged from 18-68 days.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA)
20 DAYS TO RESPOND TO ARCHIVE; OUTSTANDING REQUESTS AS OLD AS 13 YEARS

Recordkeeping Issues – NARA’s FY 2002 annual FOIA report says that its FOIA responses are delayed as a result of referrals to other agencies and because it must permit review of releases of presidential papers.

Ten Oldest – NARA responded approximately 20 business days after the request was made; it reported ten FOIA requests ranging from March 9, 1990 to August 18, 1993. These requests included one from an Archive analyst seeking classified records regarding Berlin, French-United States military relations, and several specified files, a request for cable files of the Assistant Chief of Staff G-2(Intelligence) 1961-1965 relating to Laos, records of the Physical Security Equipment Agency, specified records of General Wheeler, an Archive request for specified documents from the White House Office of Science and Technology, and Archive request for specified files from the State Department from 1955-1959, a request referred by the Department of Defense for records of the Chairmen of the Joint Chiefs of Staff from 1960-1970, records regarding Chinese and Korea in the 1950s, specified files of the Officer in Charge of Politico-Military Affairs, Office of European Regional Affairs 1950-57, and other specified files relating to Algerian terrorist activity in France and the French intelligence services.

Workload Statistics – NARA’s reported statistics from 1998 through 2002 indicate that the agency has received an increasing number of FOIA requests (up 51.16% from 6606 in 1998 to 9986 in 2002). The number of requests processed each year also has increased (up 48.84% from 5930 processed in 1998 to 8826 processed in 2002). NARA’s processing rate per year -- a comparison of the number of requests processed to the number received – rose for a few years from 89.77% in 1998 to 101.35% in 2000, but then fell again to 88.38% in 2002.

Backlog Statistics – NARA’s backlog of pending FOIA requests has increased (from 1520 FOIA requests pending at the end of 1998 to 2430 FOIA requests pending at the end of 2002). NARA’s backlog as a percentage of FOIA requests processed each year has increased from 18.74% in 1998 to 40.68% in 2002. Its backlog rate per year -- a comparison of the number of requests pending at the end of the year to the number received during that year -- has increased from 16.82% in 1998 to 35.95% in 2002.

Processing Time – While its median days to process has ranged from 7-140 days for simple requests and 20-541 days for complex requests over the 1998-2002 period, with improvement in the last year, the median days that backlogged requests have been pending is reported as 887 days for 2002. NARA’s FY 2002 annual FOIA report indicates two reasons for its excessive response times. First, NARA must inform current and former presidents of records in presidential libraries that NARA proposes to release and allow at least a 90-day review period prior to any release. Second, when NARA receives a request for classified materials, it must await a release decision from the originating agency; in such cases, NARA contends that its own processing of the request is within the 20-business

day statutory timeframe and that the rest of the delay is due to the originating agencies. No processing times are reported for expedited requests.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (NASA)
178 DAYS TO RESPOND TO ARCHIVE; OUTSTANDING REQUESTS AS OLD AS 2 YEARS

Recordkeeping Issues – NASA informed the Archive that it had recently been inundated with FOIA requests due to the Space Shuttle tragedy and that it would take some time to process the request.

Ten Oldest – NASA responded 178 days after the initial FOIA request. It provided ten requests dating from July 12, 2001 - April 3, 2003. These requests concerned shipments of big leafed mahogany detained by U.S. authorities upon entry into the United States from Latin America from January 2002 to present (a referral of one document from the Department of Interior, and a referral of a request submitted to the U.S. Fish and Wildlife Service), correspondence and records of Ted Kassinger, General Counsel of the Commerce Department (a referral from the Department of Commerce), NRO Directive NROD 82-6 “NRO Space Debris Mitigation Policy,” and several referrals of records that other agencies, including NRO, Department of Commerce and Department of State, determined contained NASA equities.

Workload Statistics – Although NASA’s reported statistics from 1998 through 2002 indicate that the agency has received a decreasing number of FOIA requests (down 20.10% from 2144 in 1998 to 1713 in 2002), the number processed each year also has decreased (down 18.50% from 2114 processed in 1998 to 1723 processed in 2002). NASA’s processing rate per year -- a comparison of the number of requests processed to the number received – increased from 98.60% in 1998 to 100.58% in 2002.

Backlog Statistics – NASA’s backlog of pending FOIA requests has decreased (from 230 FOIA requests pending at the end of 1998 to 137 FOIA requests pending at the end of 2002). NASA’s backlog as a percentage of FOIA requests processed each year has decreased from 10.88% in 1998 to 7.95% in 2002. Its backlog rate per year -- a comparison of the number of requests pending at the end of the year to the number received during that year -- has increased from 7.70% in 1998 to 8.00% in 2002.

Processing Time – While its median days to process simple requests has ranged from 15-24 days over the 1998-2002 period, the median days to process complex requests has ranged from 27-45 days over the 1998-2002 period. Expedited requests have been processed in 3-20 days over the 1998-2002 time period. The median days that backlogged requests have been pending has 31 to 78 days over the 1998-2002 period, with 44 days reported for 2002.

UNITED STATES NAVY (NAVY)
**COMPONENTS WITH OUTSTANDING REQUESTS AS OLD AS 3 YEARS,
BUT UNABLE TO DETERMINE AGENCY BACKLOG**

Recordkeeping Issues – NAVY informed the Archive that it maintains a highly decentralized system. In the Archive’s experience, NAVY is generally one of the more responsive FOIA offices, but it indicated that the agency maintains no central or consolidated database that lists all FOIA requests received by NAVY or at what stage they are in their processing. Accordingly, the original request was limited to the Navy Chief of Naval Operations. Requests were later submitted to the five NAVY components that receive the greatest number of FOIA requests.

Ten Oldest – The initial request to the Navy, as amended to be limited to the Navy Chief of Naval Operations has received no response. The Naval Facilities Engineering Command and U.S. Pacific Fleet reported no pending FOIA requests. Naval Sea Systems reported ten requests from May 25, 2000 to July 27, 2001. Naval Education and Training reported one request from July 25, 2003. Naval Air Systems reported ten requests from January 13, 2003 through June 12, 2003.

Workload Statistics – NAVY’s reported statistics from 1998 through 2002 indicate that the agency has received a decreasing number of FOIA requests (down 10.15% from 23,066 in 1998 to 20,725 in 2002). The number processed each year also has decreased (down 17.38% from 24,895 processed in 1998 to 20,567 processed in 2002). NAVY’s processing rate per year -- a comparison of the number of requests processed to the number received -- decreased from 107.93% in 1998 to 99.24% in 2002.

Backlog Statistics – NAVY’s backlog of pending FOIA requests has increased (from 1054 FOIA requests pending at the end of 1998 to 1665 FOIA requests pending at the end of 2002). NAVY’s backlog as a percentage of FOIA requests processed each year has increased from 4.23% in 1998 to 8.10% in 2002. Its backlog rate per year -- a comparison of the number of requests pending at the end of the year to the number received during that year -- has increased from 4.57% in 1998 to 8.03% in 2002.

Processing Time – While its median days to process simple requests has ranged from 10-19 days over the 1998-2002 period, the median days to process complex requests has ranged from 37-89 days over the 1998-2002 period. The median days that backlogged requests have been pending has ranged from 21-68 days over the 1998-2002 period. Expedited requests have a median processing time range of 2-12 days over the 1998-2002 time period.

NUCLEAR REGULATORY COMMISSION (NRC)

20 DAYS TO RESPOND TO ARCHIVE; OUTSTANDING REQUESTS AS OLD AS 1 YEAR

Ten Oldest – NRC responded approximately 20 business days after the request was made; it reported ten FOIA requests ranging from May 7, 2002 to October 17, 2002. The requests included ones for records pertaining to the removal of information from Web sites, reading rooms or other repositories after the September 11 attacks, environmental complaints and conservation actions at addresses in Hicksville, New York, records concerning the Modular High-Temperature Gas Cooled Reactor (HNTGR) and the Gas Turbine-Modular Helium Reactor (GT-MFR), the NRC commissioners' travel and telephone logs, calendars, and meetings with representatives of industry, a contract with Sylvania Corning Nuclear Corporation to produce uranium fuel and nuclear materials licenses issued to the same company, records regarding the research and production facility at Hicksville, New York owned and operated by Sylvania Corning Nuclear Corporation and others including documents from 1948 to the present, all correspondence and communications between the agency and a list of current and past high level government officials and presidential candidates, information about several employment discrimination cases, and records regarding the significance determination process for the reactor vessel head degradation at Davis Besse.

Workload Statistics –NRC's reported statistics from 1998 through 2002 indicate that the agency saw a reduction in FOIA request for 1999-2001, but recently received an increase in the number of FOIA requests (down 5.86% from 461 in 1998 to 434 in 2002). The number processed each year has followed a similar pattern (down 4.91% from 448 processed in 1998 to 426 processed in 2002). NRC's processing rate per year -- a comparison of the number of requests processed to the number received -- increased from 97.18% in 1998 to 98.16% in 2002.

Backlog Statistics – NRC's backlog of pending FOIA requests has remained relatively stable (from 53 FOIA requests pending at the end of 1998 to 55 FOIA requests pending at the end of 2002). NRC's backlog as a percentage of FOIA requests processed each year has increased from 11.83% in 1998 to 12.91% in 2002. Its backlog rate per year -- a comparison of the number of requests pending at the end of the year to the number received during that year -- has remained relatively stable from 12.15% in 1998 to 12.67% in 2002.

Processing Time – While its median days to process simple requests has ranged from 14-19 days over the 1998-2002 period, its median days to process complex requests has ranged from 15-75 days over the 1998-2002 period. The median days that backlogged requests have been pending has is reported as 22-218 days for 2002. Expedited requests have a median processing time range of 16-203 days over the 2000-2002 time period. NRC's FY 2002 annual FOIA report indicates that it has increased internal reporting to heighten management awareness of pending cases and added records to its publicly accessible electronic reading room in an effort to improve its timeliness and reduce its backlog.

NATIONAL SCIENCE FOUNDATION (NSF)

22 DAYS TO RESPOND TO ARCHIVE; OUTSTANDING REQUESTS AS OLD AS 1 YEAR

Recordkeeping Issues – NSF initially interpreted the request to concern only those FOIA requests pending with other agencies, and responded with a “no documents” response. After the scope of the request was clarified, it was resubmitted to NSF and processed.

Ten Oldest – NSF responded approximately 22 business days after the request was made; it reported ten FOIA requests ranging from September 11, 2002 to January 20, 2003. The requests sought materials including records of grants related to females and science and math education, copies of awarded proposals for aquarium and conservation organizations, proposals for projects, copies of waivers of Bayh-Dole restrictions on overseas production of patented technology funded by the U.S. Government by a list of institutions, as well as instances when a third party licensee requested the waiver but the listed institutions have been assigned the technology, documents involving scientific misconduct by NSF employees or cases involving patent, intellectual property or Bayh-Dole Act issues, a report entitled “International Comparisons of Innovation Indicator Development,” and documents regarding Dr. Henry J. Heimlich and Dr. Edward Alfred Patrick.

Workload Statistics – NSF’s reported statistics from 1998 through 2002 indicate that the agency has received a slightly higher number of FOIA requests (up 14.03% from 221 in 1998 to 252 in 2002). The number processed each year also has increased (up 19.25% from 213 processed in 1998 to 254 processed in 2002). NSF’s processing rate per year -- a comparison of the number of requests processed to the number received -- increased from 96.38% in 1998 to 100.79% in 2002.

Backlog Statistics – NSF’s backlog of pending FOIA requests has decreased (from 15 FOIA requests pending at the end of 1998 to 2 FOIA requests pending at the end of 2002). NSF’s backlog as a percentage of FOIA requests processed each year has decreased from 7.04% in 1998 to 0.79% in 2002. Its backlog rate per year -- a comparison of the number of requests pending at the end of the year to the number received during that year -- decreased from 6.33% in 1998 to 0.79% in 2002.

Processing Time – While its median days to process has ranged from 10-14 days over the 1998-2002 period, the median days that backlogged requests have been pending has ranged from 3-25 days over the 1998-2002 period. No processing times are reported for expedited requests.

OFFICE OF MANAGEMENT AND BUDGET (OMB)

54 DAYS TO RESPOND TO ARCHIVE; OUTSTANDING REQUESTS AS OLD AS 2 YEARS

Ten Oldest – OMB responded approximately 54 business days after the request was made; it reported ten FOIA requests ranging from August 15, 2001 to May 31, 2002. The requests concern records regarding the 60 embryonic stem cell lines that NIH has deemed suitable for study by federally funded scientists, records from rulemaking dockets maintained by OIRA, referrals from the Office of Science and Technology Policy and the Department of Energy, records regarding the Hudson River Superfund Site, correspondence with Halliburton and its subsidiaries, records regarding the September 11th Victims Compensation Fund, regulatory history records for two OMB Standard Forms, and a litigation settlement of a case involving Destin Dome 56 unit leases.

Workload Statistics – OMB's reported statistics from 1998 through 2002 indicate that the agency received an increasing number of FOIA requests over the 1998-2001 period, with a dramatic reduction in 2002 (down 48.07% from 156 in 1998 to 87 in 2002). The number processed each year shows a similar pattern (down 51.76% from 170 processed in 1998 to 82 processed in 2002). OMB's processing rate per year -- a comparison of the number of requests processed to the number received -- often surpassed 100 but has decreased from 108.97% in 1998 to 94.25% in 2002.

Backlog Statistics – OMB's backlog of pending FOIA requests has increased (from 10 FOIA requests pending at the end of 1998 to 23 FOIA requests pending at the end of 2002). OMB's backlog as a percentage of FOIA requests processed each year has increased from 5.88% in 1998 to 28.05% in 2002. Its backlog rate per year -- a comparison of the number of requests pending at the end of the year to the number received during that year -- has decreased from 6.41% in 1998 to 0% in 1999, but is back up to 26.44 % in 2002.

Processing Time – OMB's single track system from 1998 to 2000 resulted in median days to process ranging from 40-52 days. Although apparently structured as two-track in 2001 and 2002, there are no complex requests reported for those years and the median days to process the simple requests are reported as 36-44 days. The median days that backlogged requests have been pending has ranged from a median of 17 to 203 days over the 1998-2002 period. No processing times are reported for expedited requests.

OFFICE OF PERSONNEL MANAGEMENT (OPM)
3 DAYS TO RESPOND TO ARCHIVE; BUT RESPONSE INACCURATE

Recordkeeping Issues – At the time OPM responded that it had no pending FOIA requests, the Archive’s request for records regarding implementation of White House Chief of Staff Andrew Card’s March 19, 2002 memorandum regarding safeguarding weapons of mass destruction was pending at the agency.

Ten Oldest – OPM responded approximately to the FOIA request via e-mail within three days and indicated that it primarily receives FOIA requests, and that it had no pending FOIA requests.

Workload Statistics –OPM’s reported statistics from 1998 through 2002 indicate that the agency has received an increasing number of FOIA requests (up 401.50% from 1801 in 1998 to 9032 in 2002). The number processed each year also has increased (up 389.09% from 1796 processed in 1998 to 8784 processed in 2002). OPM’s processing rate per year -- a comparison of the number of requests processed to the number received – rose for a few years and then decreased from 99.72% in 1998 to 97.25% in 2002.

Backlog Statistics – OPM’s backlog of pending FOIA requests has increased (from 10 FOIA requests pending at the end of 1998 to 520 FOIA requests pending at the end of 2002). OPM’s backlog as a percentage of FOIA requests processed each year has increased from 0.56% in 1998 to 5.92% in 2002. Its backlog rate per year -- a comparison of the number of requests pending at the end of the year to the number received during that year -- has increased from 0.83% in 1998 to 5.76% in 2002.

Processing Time – OPM’s median days to process has ranged from 7-18 days over the 1998-2002 period, and the median days that backlogged requests have been pending has ranged from 6-23 days over the 1998-2002 period. Expedited requests have a median processing time range of 1-15 days over the 1998-2002 time period, with none reported for 2000.

SMALL BUSINESS ADMINISTRATION (SBA)

13 DAYS TO RESPOND TO ARCHIVE; ONLY RECENT REQUESTS PENDING

Ten Oldest – SBA responded approximately 13 business days after the request was made; it reported ten FOIA requests ranging from January 19, 2003 to January 30, 2003. The requests concerned records regarding SBA's cooperative agreements with organizations in establishing a SNDC Lead Center and responses to proposals for the Lead Center, records concerning the written determination of Flathead Contractors LLC and records concerning the Contracting Officer's request for Certification of Competency to SBA, records of Ted Kassinger, General Counsel of the Office of the Secretary of Commerce, contract with CPA firms performing financial statement audits of entities listed in OMB Bulletin 10-12, prices and quantity for a specified solicitation, a request from a victim of identity theft for assistance dealing with credit agencies, records regarding federal funds awarded to Nipon's Conservatory of Music, lists of buyers or cardholders requested by a GSA Contracted Vendor, records on the program used by SBA loan personnel to evaluate the amount to be granted for Economic Injury Disaster Loans, and a request for guidance on information to obtain a business loan.

Workload Statistics – SBA's reported statistics from 1998 through 2002 indicate that the agency received an increasing number of FOIA requests through 2000 with decreases in 2001 and 2002 (down 13.43% from 2368 in 1998 to 2050 in 2002). The number processed each year also rose and then decreased (down 7.68% from 2293 processed in 1998 to 2117 processed in 2002). SBA's processing rate per year -- a comparison of the number of requests processed to the number received -- increased from 96.83% in 1998 to 103.27% in 2002.

Backlog Statistics – SBA's backlog of pending FOIA requests increased through 2001 and then decreased in 2002 (from 72 FOIA requests pending at the end of 1998 to 65 FOIA requests pending at the end of 2002). SBA's backlog as a percentage of FOIA requests processed each year has decreased from 3.14% in 1998 to 3.07% in 2002. Its backlog rate per year -- a comparison of the number of requests pending at the end of the year to the number received during that year -- has decreased from 3.04% in 1998 to 3.17% in 2002.

Processing Time – SBA's median days to process has ranged from 2-12 days over the 1998-2002 period. In 1998 and 1999, the median days that backlogged requests have been pending is reported as 10 and 8 days respectively. Expedited requests have a median processing time range of 1-9 days over the 1998-2002 time period, with none reported for 1999, 2000 or 2002.

SECURITIES AND EXCHANGE COMMISSION (SEC)

10 DAYS TO RESPOND TO ARCHIVE; OUTSTANDING REQUESTS AS OLD AS 1 YEAR

Ten Oldest – SEC responded approximately 10 business days after the request was made; it reported ten FOIA requests ranging from March 1, 2002 to June 12, 2002. SEC indicated that it has no pending cases with other government agencies. The requests concern materials about PeopleSoft, Inc., The Stanley Works, Cisco Systems, USA Networks, Inc., Darden Restaurants, Inc., Bed Bath & Beyond, Inc., Vito Michael Randazzo, Harris Corporation, Compuware Corporation, and MeadWestvaco Corporation.

Workload Statistics – SEC’s reported statistics from 1998 through 2002 indicate that the agency received a decreasing number of FOIA requests through 2001, and an increase in 2002 (up 12.50% from 3176 in 1998 to 3573 in 2002). The number processed each year has decreased (down 9.47% from 3190 processed in 1998 to 2888 processed in 2002). SEC’s processing rate per year -- a comparison of the number of requests processed to the number received -- decreased from 100.44% in 1998 to 80.83% in 2002.

Backlog Statistics – SEC’s backlog of pending FOIA requests has increased (from 114 FOIA requests pending at the end of 1998 to 821 FOIA requests pending at the end of 2002). SEC’s backlog as a percentage of FOIA requests processed each year has increased from 3.57% in 1998 to 28.43% in 2002. Its backlog rate per year -- a comparison of the number of requests pending at the end of the year to the number received during that year -- has increased from 3.59% in 1998 to 22.98% in 2002.

Processing Time – Under its two track system, SEC reports that its median days to process simple requests has ranged from 7-16 days over the 1998-2002 period, and its median days to process complex requests has ranged from 82-151 days over the 1998-2002 period. The median days that backlogged requests have been pending ranged from 16-137 in 2002. SEC reports a median processing time for expedited requests of five days in 2002, but does not report processing times for expedited requests for any other year.

SOCIAL SECURITY ADMINISTRATION (SSA)

14 DAYS TO RESPOND TO ARCHIVE; OUTSTANDING REQUESTS UP TO 2 YEARS OLD

Ten Oldest – SSA responded approximately 14 business days after the request was made; it reported ten FOIA requests ranging from September 7, 2001 to May 24, 2002. The requests concerned employers' verification of employees' social security numbers, the Delegations of Authority manual, Inspector General "Access to Information" reports, the log of Inspector General investigations, and each close-out or summary memo for completed investigations, information about the award of disability payments to a minor, information about a fraud investigation by the agency, employment history information about an individual employee of the agency, information about the "SSI Demonstration Project" or "direct certification" project, "Process Review Recommendations," the city and state of birth for individual children in the Essex County Division of Welfare Office of Child Support ACSES computer database, and limited payability cancellation reports for checks.

Workload Statistics – SSA's reported statistics from 1998 through 2002 indicate that the agency has received an increasing number of FOIA requests (up 313.78% from 64,887 in 1998 to 268,488 in 2002). The number processed each year also has increased (up 424.07% from 55,886 processed in 1998 to 292,884 processed in 2002). SSA's processing rate per year -- a comparison of the number of requests processed to the number received -- increased from 86.17% in 1998 to 109.09% in 2002. SSA's FY 2002 annual FOIA report indicates that the increase in reported processed requests may be attributed to better reporting practices within the agency.

Backlog Statistics – SSA's backlog of pending FOIA requests rose through 2001 and then decreased in 2002 (from 18,559 FOIA requests pending at the end of 1998 to 27,087 FOIA requests pending at the end of 2000 to 2393 FOIA requests pending at the end of 2002). SSA's backlog as a percentage of FOIA requests processed each year has decreased from 33.21% in 1998 to 0.82% in 2002. Its backlog rate per year -- a comparison of the number of requests pending at the end of the year to the number received during that year -- has decreased from 28.62% in 1998 to 0.89% in 2002. SSA's FY 2002 annual FOIA report indicates that the reduction in pending requests at the end of FY 2002 compared to the end of FY 2001 is attributed to changes in the fee policies for copies of social security number applications for deceased individuals.

Processing Time – Under its multi-track system, SSA reports its median days to process simple requests has ranged from 13-45 days over the 1998-2002 period. SSA's median days to process complex requests has ranged from 42-97 days over the 1998-2002 period. The median days that backlogged requests have been pending has ranged from 50-158 days over the 1998-2002 period. No processing times are reported for expedited requests.

DEPARTMENT OF TREASURY (TRE)

135 DAYS TO RESPOND TO ARCHIVE; OUTSTANDING REQUESTS UP TO 9 YEARS OLD

Recordkeeping Issues – When the Archive sought to assess the status of the FOIA request 19 business days after it had been transmitted, TRE informed the Archive that it does not start the clock on its processing time for FOIA requests until it acknowledges the request. The request was then acknowledged on March 26, 2003, 34 business days after it had been submitted. TRE advised that it could not distinguish whether a request was pending coordination with another agency or if it was limited to action within TRE. On April 22, 2003, the Archive limited the request to those pending completion at TRE without the need for coordination to other agencies.

Ten Oldest – TRE responded approximately 135 business days after the request was made; it reported ten FOIA requests ranging from December 9, 1994 to May 24, 1995. The requests concerned records related to wine label rulemaking that imposed limitations to prevent the impression that the wine is a distilled spirits product, records of communications in 1993 between Roger Altman and Harold Ickes, records from the Office of Foreign Assets Control (OFAC) regarding the handling of attorney Monroe Leigh's FOIA requests concerning the Texaco/Haiti matter, records relating to official government trips to the People's Republic of China by Secretary Michael Blumenthal and Secretary Donald Regan, records in connection with the meeting of the Joint U.S.-Japan Committee on Trade and Economic Affairs held in Tokyo on July 15-17, 1973, records from the Office of Foreign Assets Control regarding work by former OFAC employee Frankie Foer concerning the Texaco/Haiti matter, records in connection with the visit of Japanese Foreign Minister Shintaro Abe to Washington, D.C. on January 27-28, 1984, records generated or received in connection with the White House Security Review led by Ronald Noble, application to and licenses from OFAC for subsidiary trade and/or sales of medicine, pharmaceuticals and medical supplies to Cuba from 1990-1992, and records regarding the system used to give credit ratings and related materials for Mexico, Brazil and Argentina.

Workload Statistics – TRE's reported statistics from 1998 through 2002 indicate that the agency has received a varying number of FOIA requests with a decrease in 2002 (down 18.60% from 57,589 in 1998 to 46,879 in 2002). The number processed each year also has varied and ultimately decreased (down 14.90% from 56,184 processed in 1998 to 47,812 processed in 2002). TRE's processing rate per year -- a comparison of the number of requests processed to the number received -- increased from 97.56% in 1998 to 101.99% in 2002.

Backlog Statistics – TRE's backlog of pending FOIA requests has varied over the years, but ultimately increased since 1998 (from 7014 FOIA requests pending at the end of 1998 to 7681 FOIA requests pending at the end of 2002). TRE's backlog as a percentage of FOIA requests processed each year has increased from 12.48% in 1998 to 16.07% in 2002. Its backlog rate per year -- a comparison of the number of requests pending at the end of the year to the number received during that year -- has increased from 11.53% in 1998 to 16.38% in 2002.

Processing Time – Under its multi track system, TRE reports its median days to process simple

requests has ranged from 1-22 days over the 1998-2002 period. TRE reports its median days to process complex requests has ranged from 5-1000 days over the 1998-2002 period. The median days that backlogged requests have been pending ranges from 1-545 days for 2002. Expedited requests have a median processing time range of 3-20 days over the 1998-2001 time period, with a range of 1-78 reported for 2002.

DEPARTMENT OF VETERANS AFFAIRS (VET)
UNABLE TO DETERMINE AGENCY BACKLOG

Recordkeeping Issues – At the request of VET, the Archive limited the FOIA request to the Central Office at the Department and limited the search of documents to only those older than 30 days. The VA sent an acknowledgment letter on March 13, 2003, which recognized the limited search and also advised that the request was being forwarded to VET components.

Ten Oldest – Nothing yet received.

Workload Statistics – VET's reported statistics from 1998 through 2002 indicate that the agency has received an increasing number of FOIA requests (up 611.22% from 210,371 in 1998 to 1,496,191 in 2002). The number processed each year also has increased (up 613.67% from 208,740 processed in 1998 to 1,489,724 processed in 2002). VET's processing rate per year -- a comparison of the number of requests processed to the number received -- increased from 99.22% in 1998 to 99.57% in 2002.

Backlog Statistics – VET's backlog of pending FOIA requests has increased (from 12,361 FOIA requests pending at the end of 1998 to 42,666 FOIA requests pending at the end of 2002). VET's backlog as a percentage of FOIA requests processed each year has decreased from 5.92% in 1998 to 2.86% in 2002. Its backlog rate per year -- a comparison of the number of requests pending at the end of the year to the number received during that year -- has decreased from 10.23% in 1998 to 2.85% in 2002.

Processing Time – VET reports that its median days to process has ranged from 10-25 days over the 1998-2002 period. The median days that backlogged requests have been pending has ranged from 3-36 days in 2002. Expedited requests have a median processing time range of 2-3 days over the 1998-2001 time period, with a range of 1-7 reported for 2002.

UPDATE ON PHASE ONE: THE ASHCROFT MEMORANDUM

As of the date of publication of [Phase One of the Archive Audit](#), on March 14, 2003, the Social Security Administration and the Department of Veterans Affairs had failed to provide documentation regarding the implementation of Attorney General Ashcroft's October 12, 2001 memorandum on the Freedom of Information Act. Each agency subsequently provided responses. In addition, the Archive received a response from the Department of Justice concerning its appeal of that agency's use of Exemption (b)(5) to withhold records regarding implementation of the Ashcroft Memorandum. These responses are summarized below.

In addition, in September 2003, the General Accounting Office ("GAO") released a [report assessing the impact of new administration FOIA policy on the processing of FOIA requests](#). GAO was asked to determine (1) to what extent, if any, Department of Justice guidance for agencies on FOIA implementation has changed as a result of the new policy; (2) the views of FOIA officers at 25 agencies regarding the new policy and its effects, if any; and (3) the views of FOIA officers at 25 agencies regarding available FOIA guidance. GAO found that following the issuance of the Ashcroft memorandum, The Department of Justice changed its guidance for agencies on FOIA implementation to refer to and reflect the two primary policy changes in the memorandum. First, under the Ashcroft memorandum, agencies making decisions on discretionary disclosure are directed to carefully consider such fundamental values as national security, effective law enforcement, and personal privacy; the Reno memorandum had established an overall "presumption of disclosure" and promoted discretionary disclosures to achieve "maximum responsible disclosure." Second, according to the Ashcroft memorandum, DOJ will defend an agency's withholding information if the agency has a "sound legal basis" for such withholding under FOIA; under the Reno policy, DOJ would defend an agency's withholding information only when the agency reasonably foresaw that disclosure would harm an interest protected by an exemption. Regarding effects of the new policy, GAO found that FOIA officers most frequently reported that they did not notice changes in their agencies' responses to FOIA requests compared to previous years. About one third of the FOIA officers, however, reported a decreased likelihood in their agency making discretionary releases; of these FOIA officers, 75 percent cited the new policy as a top factor influencing the change.

Social Security Administration. In addition to the Ashcroft Memorandum itself, SSA released "SSR Policy Interpretation Ruling: Request under the Privacy Act or Freedom of Information Act for Access to Records and for Disclosure of Materials Maintained by the Office of Hearings and Appeals," and the materials used to train staff persons who handle requests for Appeals Council Working Papers. Although the Policy Interpretation Ruling does not appear to specifically reference the Ashcroft Memorandum, it does discuss the use of Exemptions (b)(2) and (b)(5) and indicate that it is SSA policy to withhold Administrative Law Judge and Appeals Council working papers. The training materials refer to the new "sound legal basis" standard set by the Ashcroft Memorandum and specifically describe the scope of Exemptions (b)(2) and (b)(5). Two e-mails were released in part, with the excisions

based on Exemption 5. The released portion explains “[t]he only thing different is that we don’t have to describe the particular harm that we anticipate from disclosure.” Three other records (one memorandum and two e-mails) were denied in their entirety under Exemption (b)(5). A third e-mail was withheld under Exemption (b)(2) because it contained internal personnel communications including a list of personnel who attended training.

SSA released three documents in their entirety, denied two documents in part and denied four documents in their entirety. The denials were based on Exemptions (b)(2) and (b)(5).

Department of Veterans Affairs. The VA initially responded to the Archive’s request for records concerning implementation of Attorney General Ashcroft’s October 12, 2001 memorandum on the Freedom of Information Act with a “no records” response. Approximately two months later, the VA revised its response “after considering alternate sources” and found three records. One was an e-mail that described the FOIA Officers Conference organized by the Department of Justice’s Office of Information and Privacy in October 2001. It explains:

The new policy will make it easier for agencies to withhold trivial information and information covered by the various privileges, such as the deliberative process privilege, the attorney-client privilege, etc., since agencies will no longer be required to make the additional determination that disclosure would be harmful. The AG acknowledges that that discretionary disclosures may still be made, but they are no longer actively encouraged as they were under the previous administration.

The other two records are a copy of the Ashcroft memorandum that was posted on an internal VA Office of General Counsel Web site and an advisory informing staff of the posting. The advisory states:

Under the new standard, agencies should reach the judgment that their use of a FOIA exemption is on sound footing, both factually and legally, whenever they withhold requested information.[] DOJ also states that the Memorandum “also recognizes the continued agency practice of considering whether to make discretionary disclosures of information that is exempt under the Act, subject to statutory prohibitions and other applicable limitations.

Department of Justice. The Archive appealed DOJ’s withholding of three documents in full based on Exemption (b)(5). In its appeal, the Archive noted that the Ashcroft Memorandum had been issued, and that there was no remaining deliberative basis for withholding the records. It further asked for reconsideration in light of the central role that DOJ played in formulating and disseminating the policy, noting that the Ashcroft Memorandum permits discretionary releases. DOJ’s decision on the appeal fully upheld the withholdings without any additional justification.

SUPPORTING MATERIALS

[Copies of the Ten Oldest FOIA Requests Identified by Agencies](#)

[Summary of 1998-2002 Annual FOIA Report Statistics](#)

ENDNOTES

- i A number of factors related to agency processing, recordkeeping and reporting make it difficult to determine the Ten Oldest FOIA Requests pending throughout the entire Federal Government. This Audit is limited to 35 agencies that account for over 97% of all FOIA requests received, but some agencies are not represented. Further, decentralization within agencies, the virtually unmonitored referral system, and recordkeeping limitations made it difficult for each of those agencies to determine with complete accuracy their own Ten Oldest FOIA Requests. The requests included in this Audit Report are those that the agencies themselves have identified as their ten oldest “currently being processed or held pending coordination with other agencies.” The Archive has excluded from this list of the oldest of the oldest those requests that it has learned already have been filled. In addition, where apparent from the request, the Archive has calculated the age of the requests on this list of the oldest of the oldest from the date the request was referred to the agency that produced the request, which in some cases is several years after the date the request was originally submitted by the requester.
- ii Individual FOIA annual reports are required by E-FOIA to be available on each agency’s own Web site. See 5 U.S.C. Sec. 552(e)(2). Alternatively, the annual reports are all collected on the DOJ Web site at http://www.usdoj.gov/04foia/04_6.html and in a database assembled by the Public Citizen Litigation Group at http://www.citizen.org/litigation/free_info/foic_aids/articles.cfm?ID=6347.
- iii See 5 U.S.C. § 552(e), as amended by Electronic Freedom of Information Act Amendments of 1996, 5 U.S.C.A. § 552(e) (West Supp. 1997).
- iv H.R. Rep. No. 104-795, at 27-29 (1996) (emphasis added).
- v The first of these GAO studies primarily focused on (1) the E-FOIA requirement to make certain categories of information available to the public electronically, and (2) the quality of the annual FOIA reports that are required to be prepared after the end of each fiscal year by all agencies. [Progress in Implementing the 1996 Electronic Freedom of Information Act Amendments](#) (March 2001). The second report focused more heavily on processing times and the quality of the annual FOIA reports prepared by each agency and department. [Update on the Implementation of the 1996 Electronic Freedom of Information Act Amendments](#) (August 2002). The third report focused on the impact of Attorney General’s October 12, 2001 Memorandum on FOIA processing. [Agency Views on Changes Resulting from New Administration Policy](#) (September 2003). Among GAO’s findings after review of the agency statutorily-mandated annual reports of FOIA statistics was that they suffer from poor data quality and other reporting discrepancies. 2002 GAO Report at 59
- vi The House Report accompanying the 1996 Amendments to the FOIA explains “[t]he Committee elected to use medians as a statistical measure because of their appropriateness when the measure being summarized does not have a normal distribution, or when a few cases of extreme value would skew an average. For example, a few requests for excessively large numbers of documents could artificially inflate the average time taken to fill a request.” H.R. Rep. No. 104-795, at 29 (1996).
- vii Efforts at reducing the burden of responding to FOIA requests are becoming more common in the Federal Government. For example, the Office of Foreign Asset Control of the Department of Treasury has decided to routinely publish information about civil penalties and informal settlements. In response to comments that the information is available under FOIA, OFAC stated that it “has found, however, that processing FOIA requests for this type of information on an ad hoc basis is not the most efficient use of its limited resources.” 68 Fed. Reg. 6820, 6821 (Feb. 11, 2003).
- viii The EPA FOIA Taskforce Report is available at <http://www.epa.gov/foia/docs/Finaltaskforce.pdf> (reviewed on September 22, 2003).
- ix As noted in endnote i, the requests included in this Audit Report are those that the agencies themselves have identified as their ten oldest “currently being processed or held pending coordination with other agencies.”

Please see the individual agency summaries for additional information concerning the scope of the search and limitations placed on the request by the Archive and/or individual agencies.