



U.S. Department of Energy
Office of Inspector General
Office of Audit Services

Special Report

Department's Freedom of Information Act Request Process

OAS-SR-10-03

September 2010



Department of Energy
Washington, DC 20585

September 14, 2010

MEMORANDUM FOR THE DIRECTOR, OFFICE OF MANAGEMENT

Gregory H. Friedman

FROM: Gregory H. Friedman
Inspector General

SUBJECT: INFORMATION: Special Report on the "Department's Freedom of Information Act Request Process" (Audit Report: OAS-SR-10-03)

BACKGROUND

The Freedom of Information Act (FOIA or the Act) (5 U.S.C. 552) specifies the information that all Federal Agencies are required to make available to the public. The Act, as it is applicable to the Department of Energy (Department), is presented in 10 CFR 1004. According to the Department's most recent Annual FOIA Report, in Fiscal Year (FY) 2009, 1,809 FOIA requests were received. Of these, 702 remained at Department Headquarters for processing, with the remainder being processed by various field organizations. In most circumstances, the Act requires that responses be provided within a maximum of 20 days. The Department has established a FOIA Office to effectively respond to information requests received at Headquarters. Once a request has been validated by that Office, it is forwarded to the appropriate program office or field site for fulfillment. The Office of General Counsel reviews all situations in which the processing organization proposes to withhold information.

Recently, Senator Grassley and Congressman Issa requested that the Office of Inspector General (OIG) perform an inquiry to determine the extent of political involvement in the Department's FOIA process. Specifically, we were asked to determine whether political appointees were made aware of information requests and had a role in reviews or decision-making regarding FOIA requests. In response to the Congressional request, we initiated this special inquiry. The results of our inquiry, as reported to Senator Grassley and Congressman Issa, are included as Attachment 1. We also performed a limited review of several efficiency issues that came to our attention during the course of the inquiry, the results of which are described in this report.

OBSERVATIONS AND CONCLUSIONS

We did not identify evidence of political interference or intervention into the FOIA process. While political appointees, in some cases, may have been aware of FOIA requests, we were unable to identify any instances where these individuals had a role in the information release or decision-making processes. Specifically, we observed that FOIA requests are processed as they are received by the Headquarters FOIA Office and the program- and field-level FOIA officers, all career Federal employees.

We did, however, identify several opportunities to improve the efficiency of the Department's FOIA program. In general, we noted that the Department experienced high average response times in fulfilling its information requests. Specifically, during FY 2009, the average time to fulfill FOIA requests at Headquarters was 83 days – well above the statutorily required 20 day response period. The OIG was not immune to this problem. Program officials told us, and based on our experience it is reasonable to conclude, that the complexity and volume of records requested can lead to increased response times. Notwithstanding that, however, we noted areas where improvements in electronic request processing, policy and procedures, and fee determination could help reduce processing times and/or improve the general efficiency of the Department's FOIA process.

Electronic FOIA Request Processing

The Department had not taken full advantage of the electronic tools available for processing FOIA requests. In 2009, the Department began using a web-based electronic application, FOIAXpress™, for tracking its FOIA requests. While the National Nuclear Security Administration also used FOIAXpress to manage its information requests, the system was not electronically linked to the Department's. As a result, requests had to be e-mailed or mailed between the NNSA and Department Headquarters for processing. We also found that even though FOIAXpress is capable of being a complete electronic FOIA management solution, to include request, correspondence, document, and fee management, as well as document redaction and review, the Department was using it primarily for tracking. Specifically, when processing requests, we observed that the majority of programs performed a labor intensive, paper-based process rather than taking advantage of the electronic processing capability. Processors continued to use manual processes whereby responsive records were printed to hard copy, information was redacted by hand based upon applicable FOIA exemptions, and the final version of the documents was copied for release to the requester. Upon release, the documents were scanned into FOIAXpress to become the Department's official electronic file.

At least one organization, the Oak Ridge Office, has demonstrated that the electronic processing capabilities of FOIAXpress can be used to improve the efficiency of the FOIA process and reduce processing times. For example, the Oak Ridge Office, which processed approximately over 250 information requests in FY 2009, routinely imported requested documents into FOIAXpress, performed necessary redactions, and created the final response package entirely within the system. The package was then provided to the requester in either electronic or paper form. We noted that the average response time reported by Oak Ridge during 2009 was 19 days, much shorter than the Headquarters average of 83 days. FOIA officials at the Oak Ridge office stated that this automated process allowed them to quickly respond to requests pertaining to the six offices under their purview.

Policy and Procedures

The Department had not issued official guidance outlining the requirements and process for handling FOIA requests. While a manual had been developed and made available to each of the programs, it had not been vetted through the Department's formal directives process and, therefore, was not considered to be official Department-level direction. In addition, as it was not

considered official guidance, the manual was not available through the Department's directives repository, nor was it available on the FOIA Office's website. If the manual was needed, it had to be requested directly from the Headquarters FOIA Office. Headquarters FOIA officials indicated that they were currently drafting a proposed order, which would provide more guidelines, and are attempting to formalize the existing manual.

In addition to the manual, the FOIA Office had requested that each program draft its own Standard Operating Procedure for internal use when handling FOIA requests. Of the 26 programs reviewed that have cognizance over FOIA requests, we were only able to identify 9 (about one-third) that had developed such a document. Without formalized policy and procedures, it could be difficult for an individual unfamiliar with the process to take an active role in filling FOIA requests, possibly leading to delays or inefficiencies in responding to requests.

Fee Determination and Processing

Program-level FOIA contacts had widely varying understanding of the process for charging requesters fees. Some offices we spoke with noted that the FOIA office was in charge of handling all fee waivers and/or fee collection; while others told us that they do not collect fees. Still others informed us that a cost sheet is filled out and sent to the FOIA office for processing. One office we spoke with noted that they send the bill to the requester in their response letter and collect the fee directly because they returned the collected fees to the Nuclear Waste Fund. Other than the office that billed directly, no others followed up to determine if collection was actually made.

In acknowledgement of the fact that the FOIA process is often labor intensive, the Act provides guidelines for the Department to follow in determining when it is appropriate to charge fees and how the fee should be calculated based upon the category into which the requester falls. Requesters may request fee waivers, which may or may not be granted. According to the 2009 FOIA Annual Report, in FY 2009 total FOIA costs for the Department exceeded \$4.7 million. Only \$14,270.97 (.003%) was collected from requesters. While we understand that requester fees are not intended to provide full cost recovery, this exceptionally low rate may indicate that this aspect of the process needs to be more fully examined.

SUGGESTIONS

To address the issues noted within this report and increase the overall efficiency of the information request process, we suggest that the Director, Office of Management, in conjunction with program officials:

1. Through the forthcoming FOIA Order, require the expanded use of FOIAXpress to take full advantage of the functionality within the system. In addition, require the use of one single FOIAXpress system within the Department;
2. Continue action to formalize policy and procedures related to the FOIA process; and,

3. Evaluate the Department's charging policies for FOIA-related fees and ensure that the process is applied consistently across organizations.

A formal response to this report is not required.

Attachments

cc: Under Secretary of Energy
Under Secretary for Science
Under Secretary for Nuclear Security
Chief of Staff
Chief Financial Officer
Chief Information Officer



Department of Energy
Washington, DC 20585

September 14, 2010

The Honorable Charles E. Grassley
Ranking Member, U.S. Senate Committee on Finance
U.S. Senate
Washington, DC 20510

The Honorable Darrell Issa
Ranking Member, Committee on Government Oversight and Reform
U.S. House of Representatives
Washington, DC 20515

Dear Senator Grassley and Representative Issa:

This is in response to your letter dated August 23, 2010, requesting that the Office of Inspector General (OIG) conduct an inquiry into political involvement in the Department of Energy's Freedom of Information Act (FOIA) process. In response, we initiated an inquiry to determine whether political appointees were made aware of information requests and had a role in reviews or decision-making regarding those requests. Our inquiry into this matter did not reveal evidence of inappropriate involvement or interference in the FOIA process by political appointees.

In reaching our conclusions on this matter, we performed a focused examination of the Department's FOIA process. We reviewed historical information and Department guidance related to FOIA requests and conducted interviews with knowledgeable officials within the Department. Specifically, we reviewed guidance provided by the Headquarters FOIA Office to the Department's programs and field sites. We also reviewed and analyzed prior year FOIA annual reports to obtain historical details related to the average timeframe required to fulfill FOIA requests. This matter, as well as the FOIA process in its entirety, was discussed with senior-level managers and with 29 of the Department's Headquarters-level FOIA officers, all career Federal employees. Finally, our preliminary findings on this matter were discussed with members of your respective staffs.

BACKGROUND

The Freedom of Information Act, 5 U.S.C. 552, requires all Federal agencies to make their information, within certain parameters, available to the public. Regulations establishing the Freedom of Information Act as applicable to the Department are contained in 10 CFR 1004. According to the most recent Annual FOIA Report, in Fiscal Year 2009, the Department received 1,809 FOIA requests, 702 of which were processed at Department Headquarters, with the remainder handled at various field organizations. In June 2009, the Secretary of Energy issued a memorandum to Heads of Departmental Elements in which he reinforced the need for openness in providing requested information to the public.

The Department's FOIA Office at Headquarters served as a focal point for requests for information. Once a FOIA request had been verified and validated, it was forwarded to the appropriate Program office for completion. The Department utilized both centralized and decentralized FOIA systems with its Program offices. Programs which participate in the centralized system sent their responses to information requests to the FOIA Office, which then processed them for transmittal to the requester. Programs in the decentralized system processed their FOIA requests to completion and sent them directly to the requester, with a copy to the FOIA Office for the official record.

OIG OBSERVATIONS

In conducting our inquiry into the specific question you posed, we did not identify evidence of political interference or intervention into the FOIA process. While political appointees, in some cases, may have been aware of FOIA requests, we were unable to identify any instances in which these individuals had a role in the information release or decision-making processes. Although we did not review all FOIA requests, it was our observation that, as a matter of policy and actual practice, FOIA requests were processed as they were received by the Headquarters FOIA Office and the program- and field-level FOIA officers, all career Federal employees.

We also noted that the Department had developed and implemented a control to ensure that a sound basis existed for withholding information. In cases where FOIA officials proposed to withhold information for any reason, we found that the Department had instituted a process intended to ensure that there was a valid legal basis for such action. Specifically, all information that the Department intended to withhold was to be reviewed and concurred on by the Office of General Counsel to ensure that the redaction was based upon a valid FOIA exemption.

During the course of our inquiry, we identified certain opportunities to improve the overall efficiency and management of the FOIA request process. These observations are unrelated to the question of possible political intervention and have been communicated to the Department under separate cover.

Consistent with the provisions of the Inspector General Reform Act of 2008, it is our intention, as discussed with your staff, to make the results of our inquiry publicly available.

We stand ready to discuss this matter further with you or your staff as requested.

Sincerely,



Gregory H. Friedman
Inspector General

OBJECTIVE, SCOPE, AND METHODOLOGY

OBJECTIVE

The objective of this Special Review was to examine the Department of Energy's (Department) process for responding to Freedom of Information Act requests.

SCOPE

The review was performed during August and September 2010 at Department Headquarters in Washington, DC and Germantown, Maryland.

METHODOLOGY

To accomplish our objective, we:

- Reviewed Departmental policies and procedures related to the FOIA process;
- Interviewed officials from the Headquarters FOIA Office and 29 individual program-level FOIA officers at Headquarters;
- Interviewed a sample of field site FOIA officers via conference call; and,
- Reviewed all documentation received from Program Offices and the Department FOIA Office related to the FOIA process.

We discussed the report with officials from the Department's FOIA Office on September 13, 2010.

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