THE KNIGHT OPEN GOVERNMENT SURVEY 2007

File Not Found:

10 Years After E-FOIA, Most Federal Agencies Are Delinquent

CONDUCTED BY

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SUMMARY

In 1996, Congress sought to revolutionize disclosure of government information to the public by directing federal agencies to use the Internet to make more information publicly available. Congress saw on the horizon huge returns: more public access to important government information and less time and money spent at agencies to process Freedom of Information Act (FOIA) requests.

Ten years after the provisions of the Electronic Freedom of Information Act Amendments (E-FOIA) came into force, the Executive Branch still has not obeyed Congress's mandate for change. The National Security Archive's Knight Open Government Survey of 149 federal agency and component Web sites found massive non-compliance with E-FOIA. The poor state of agencies' FOIA Web sites forces the conclusion that not only did the agencies ignore Congress, but lack of interest in FOIA programs is so high that many agencies have failed even to keep their FOIA Web sites on par with their general agency Web sites. Congress's best intentions have not had the desired impact.

Key findings of the Knight Open Government Survey are:

- **Only about one in five (21%) of the agencies reviewed had on its FOIA site all four categories of records that Congress explicitly required agencies to post.** (See Figure 1.) This audit found 41% of the agencies had not even posted frequently requested records. (See Figure 2.) Agencies have generally failed to use the Internet as a means to reduce the FOIA burden by posting as a matter of course records related to matters of strong public interest or categories of records generally requested by the public.

WHAT CONGRESS INTENDED: TRANSFORMING FOIA
Revolution in Web access. Most government documents available on the Web as a matter of course. When agencies anticipate significant public interest in a topic or event, they post key records before FOIA requests are received.
Fewer FOIA requests. Public has immediate access to vital records online without adding another FOIA request into the backlogged system.
Valuable FOIA tools. Agencies provide FOIA requesters with information they need to make a request and comprehensive guides to agency records, reducing the administrative burden.

THE REALITY: 10 YEARS LATER
Agencies have not obeyed the law.   o Only 1 in 5 posts all required records.   o Only 1 in 16 provides complete guidance for requesters.   o FOIA Web sites are poorly organized, difficult to use.

- **Only one in sixteen agencies (6%) had on its Web site all ten elements of essential FOIA guidance that the Archive's audit identified based on the E-FOIA statute, legislative history, and DOJ guidance.** (See Figures 3 and 4.) These include basic information on: (1) where to send a FOIA request (by mail and by fax or electronically), (2) fee status, (3) fee waivers, (4) expedited processing, (5) reply time, (6) exemptions, (7) administrative appeal rights, (8) where to send an administrative appeal, (9) judicial review rights, and (10) an index of records or major information systems.

- **Only about one in three agencies (36%) provided required indexes and guides to agency records, and many of those are incomprehensible or unhelpful.** The guidelines for major information system indexes and the related Government Information Locator Service (GILS) program need a major overhaul.

- Agencies have not incorporated many useful online tools that could ease their processing burden. **Only about one in four agencies (26%) has developed a Web-based FOIA submission form.**

- **Many agency FOIA Web sites are poorly organized and difficult to navigate.** Even on sites that provide some or all of the required materials, users may be unable to find the information they are seeking because agencies have not made an effort to design user-friendly FOIA sites. The organization of decentralized agency Web sites in particular is more likely to confuse FOIA requesters than help them. These agencies must establish agency-wide policies and exercise direction and oversight over their components' FOIA programs, particularly in the area of E-FOIA compliance.

Agencies clearly have failed to keep pace with the revolution in access to information. Today, nearly three-quarters of the adult public has Internet access, and the Web has become a principal means of conducting a broad range of personal and business communications. Yet the Knight Open Government Survey showed extremely disparate levels of effort by agencies to use FOIA Web sites as a means to communicate with the public.

There are several outstanding agencies whose efforts in complying with E-FOIA demonstrate that the burden of the law is not too high. For example, the National Aeronautics & Space Administration has **proactively posted records of great interest to the public,** such as those related to the Space Shuttle Columbia disaster. Also, the Department of Education **provides excellent guidance and tools such as online forms for FOIA requesters**. However, this audit identified a much larger number of agencies that are delinquent in complying with E-FOIA. For example, Immigration and Customs Enforcement (a Department of Homeland Security component) **has no dedicated FOIA page** at all; and the Air Force has **not posted any of the required records**. The Archive has sent letters to the Chief FOIA Officer or other FOIA administrator at each of the worst agencies, laying out the deficiencies found in their FOIA Web sites and recommending improvements.

No authority has compelled federal agencies to comply with the E-FOIA Amendments. This dearth of Executive Branch leadership and Congressional oversight on E-FOIA matters has allowed many agencies to remain far out of compliance for far too long. It is time for FOIA finally to catch up with the information revolution.

FIGURES

Figure 1

**Agency compliance with E-FOIA requirement
to post four categories of records**
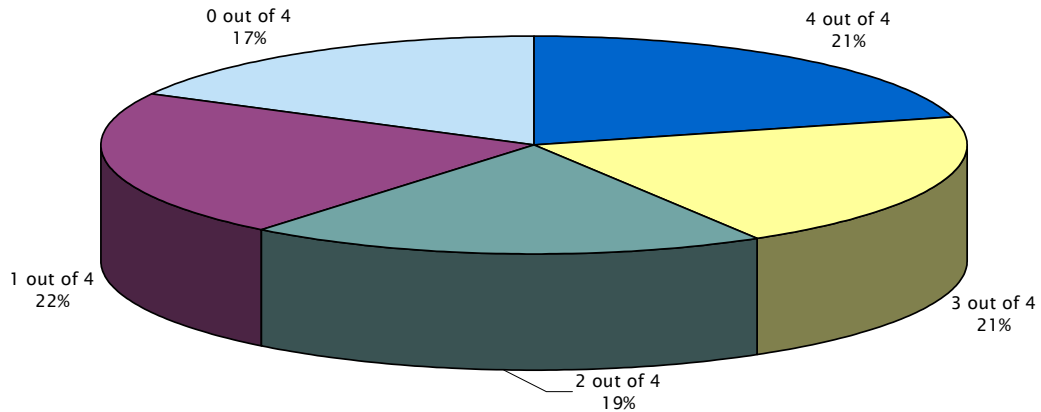
Four categories of required records:

Agency opinions and orders   Statements of agency policy
Frequently requested records   Guidance to agency staff

Figure 2

**Percentages of agencies that have posted
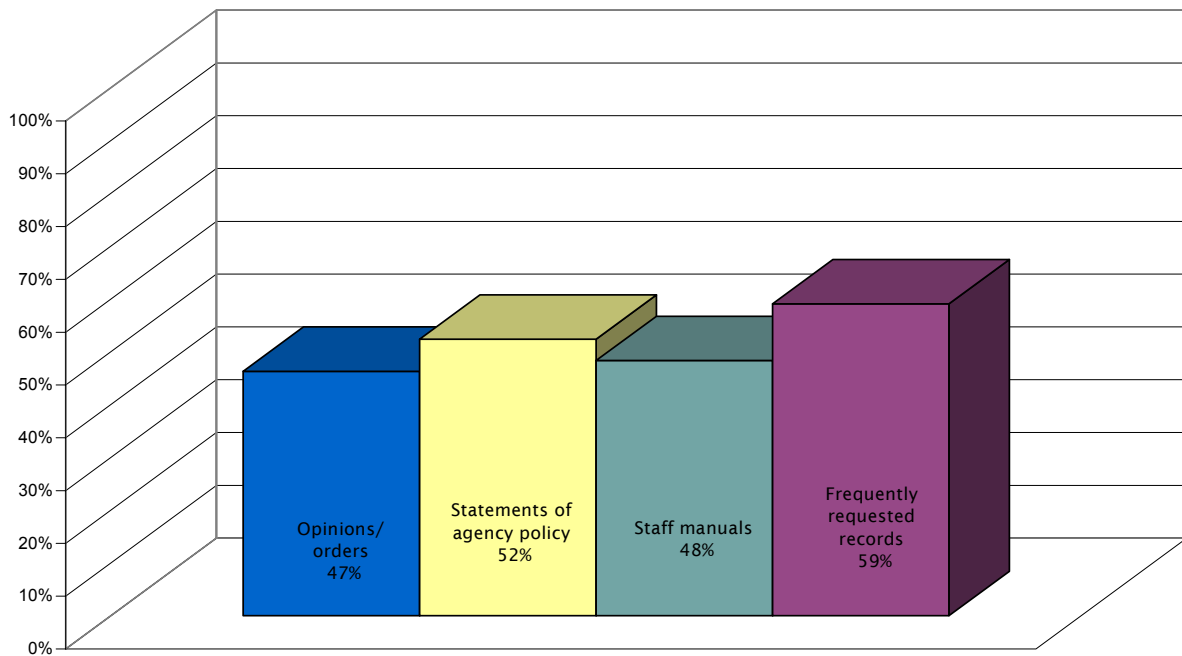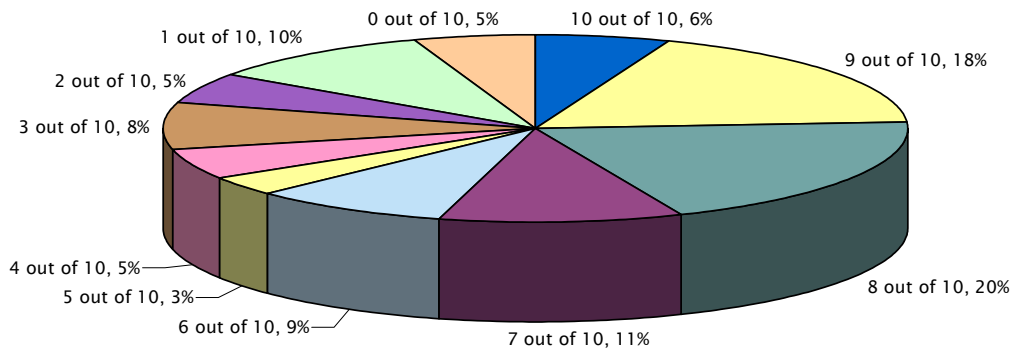each of four categories of E-FOIA required records**

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Figure 3

### Agency posting of ten categories of essential FOIA guidance

Ten categories considered:

Fax or e-mail address to submit a FOIA request
Information on FOIA fee status
Information on the possibility of a fee waiver
Information on how long it might take the agency to reply
Information on how to request expedited processing

Explanation of exemptions used to deny a request
Information on the existence of appeal rights
Information on how to make an appeal
Information on judicial review rights
Index or description of agency major information systems

Figure 4

Percentages of agencies that have posted each of ten categories of essential FOIA guidance
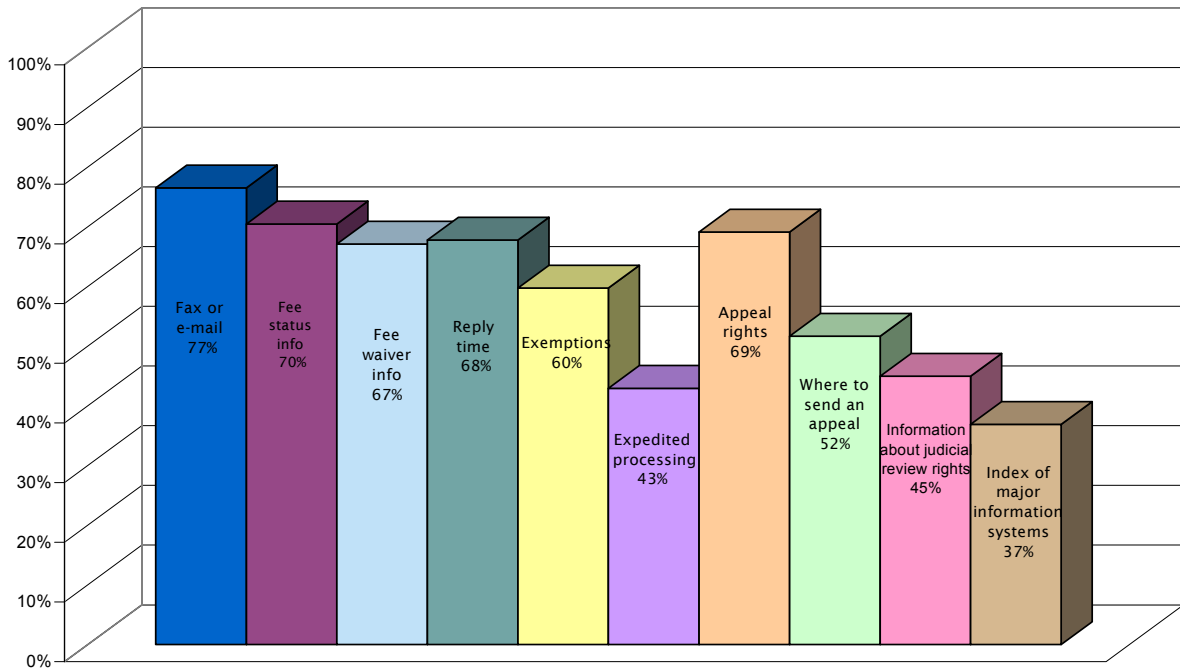
★ THE E-STARS: BEST OVERALL AGENCIES ★

In alphabetical order

Department of Education
★ Goes above and beyond what is required with guidance and tools for requesters ★ Good guide, FAQs, FOIA request and appeal checklist ★ Excellent online FOIA appeal and request forms ★ Most of the required documents are available ★ http://www.ed.gov/policy/gen/leg/foia/foiatoc.html

Department of Justice
★ Portal scheme links component FOIA sites and reading rooms ★ Excellent FOIA Reference Guide ★ Comprehensive index of major information systems ★ Well-organized electronic reading room ★ http://www.usdoj.gov/oip/

Federal Trade Commission
★ Well-organized electronic reading room with extensive records ★ Good guidance ★ FOIA request checklist ★ http://www.ftc.gov/foia/
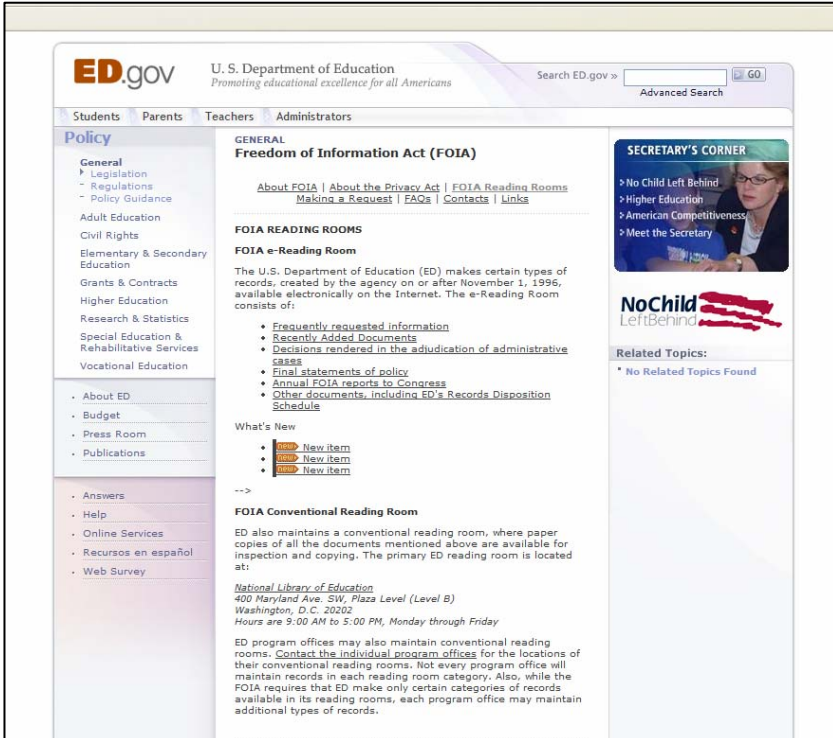
National Aeronautics & Space Administration
★ Uses portal scheme to link all component FOIA Web sites ★ Good proactive disclosure (posted materials related to Space Shuttle Columbia) ★ Comprehensive guidance ★ http://www.hq.nasa.gov/office/pao/FOIA/agency/

National Labor Relations Board
★ Excellent navigation scheme ★ Site is well organized and very easy to follow ★ Good guidance ★ Electronic reading room with a lot of available information ★ http://www.nlrb.gov/FOIA/

An example of an E-Star electronic reading room.

☟ THE E-DELINQUENTS: WORST OVERALL AGENCIES ☟

In alphabetical order

Air Force (Department of Defense)
✖ Two distinct FOIA sites, one hidden from main agency home page ✖ Minimal guidance ✖ No required records ✖ Several broken links ✖ Inaccurate information for some sub-components ✖ http://www.af.mil/foia.asp and http://www.foia.af.mil/

Department of Defense
✖ Poor site structure and design ✖ Disorganized, unsearchable electronic reading room ✖ Many required documents could not be located ✖ http://www.dod.mil/pubs/foi/

Department of Interior
✖ No guidance currently available ✖ Poor organization and badly-identified links ✖ Difficult to navigate ✖ One large component, Bureau of Indian Affairs, has no FOIA site ✖ http://www.doi.gov/foia/

Department of Labor
✖ No central reading room and no required documents available ✖ Several components (ETA and EBSA) lack FOIA sites ✖ http://www.dol.gov/dol/foia/main.htm

Federal Labor Relations Authority
✖ Two distinct FOIA pages, each very difficult to find from main site ✖ Poor guidance ✖ No required records available ✖ http://www.flra.gov/hdbook4.html

Immigration & Customs Enforcement (Department of Homeland Security)
✖ No dedicated FOIA page ✖ Very limited guidance ✖ No required documents ✖ http://www.ice.gov/about/legal.htm#foia

Office of the Director of National Intelligence
✖ No guidance for requesters, only contact information provided ✖ Limited electronic reading room ✖ http://www.dni.gov/foia.htm

Office of National Drug Control Policy
✖ No substantive guidance ✖ No required documents except annual reports ✖ Poor navigation ✖ http://www.whitehousedrugpolicy.gov/about/foia.html

Small Business Administration
✖ Very poorly organized site, particularly guidance materials ✖ Few required documents available ✖ Documents and information very difficult to locate ✖ http://www.sba.gov/aboutsba/sbaprograms/foia/index.html

Transportation Security Administration (Department of Homeland Security)
✖ Limited guidance for requesters ✖ Few, poorly-identified records in electronic reading room ✖ Difficult to navigate ✖ http://www.tsa.gov/research/foia/index.shtm

U.S. Trade Representative
✖ No FOIA link on agency home page ✖ No required documents identified on FOIA site ✖ Guidance scattered and incomprehensible ✖ http://www.ustr.gov/Legal/Reading_Room/FOIA/Section_Index.html

Department of Veterans Affairs
✖ Very limited guidance ✖ Site is poorly organized ✖ Information is difficult to locate ✖ Several broken links to required documents ✖ http://www.va.gov/oit/egov/rms/foia.asp

METHODOLOGY

The National Security Archive has conducted four previous audits of federal government FOIA administration. For each audit, the Archive submitted FOIA requests to federal agencies requesting policies or data for analysis and cross-agency comparison. The Archive set out to conduct this audit in the same manner. After submitting 46 FOIA requests to the largest agencies and components regarding their policies for posting information in their electronic reading rooms, and another 46 requests for policies on the length of time the agencies maintain the records in their reading room, the Archive received an overwhelming number of "no records" responses and concluded that most agencies do not have policies in place for populating and maintaining their electronic reading rooms. The Archive then designed a comprehensive methodology to review each agency's Web site and assess compliance with E-FOIA based on that review.

The National Security Archive's government-wide audit of E-FOIA compliance covered 149 agencies and agency components, including:
- All 91 independent agencies that are subject to FOIA and that designated a Chief FOIA Officer under Executive Order 13,392;
- Of those agencies with decentralized FOIA processing, 58 components (bureaus, offices, divisions, or other sub-agencies) that received more than 500 FOIA requests during fiscal year 2005.

The Archive utilized three Web site reviewers who followed a standard methodology designed to examine compliance with legal requirements and DOJ and OMB guidance. The reviews, which were conducted during January and February 2007, focused on three key areas:
- Online availability of four specific categories of records required by the statute;
- Guidance for FOIA requesters, as required by E-FOIA and outlined in the legislative history; and
- Basic elements of a good FOIA Web site, suggested by DOJ guidance and common Web design practice.

Reviewers additionally made a subjective assessment of each site based on the data gathered and their overall impression and experience as to the organization and usability of the site.

In reviewing the Web sites for basic elements, agencies were found out of compliance if specific features were not properly designated. Poor labeling of Web site features can hinder public access. With respect to guidance information, reviewers looked for the elements throughout the FOIA sites. In assessing whether required categories of documents were posted—including agency final opinions and orders, statements of policy and interpretations, administrative staff manuals, frequently requested records previously released, annual FOIA reports, and the agency's current FOIA regulations—the reviewers looked to see whether they could identify some records which clearly fell into one of these required categories. If records in a required category were not posted or linked from the FOIA site, but available in another location on the larger agency Web site, we only found the agency in compliance when the link to the records was unambiguous and could be located directly from the FOIA site.

ACKNOWLEDGEMENTS

Previous National Security Archive audits include:
- Pseudo-Secrets: A Freedom of Information Audit of the U.S. Government's Policies on Sensitive Unclassified Information (March 14, 2006).
  http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB183/press.htm
- A FOIA Request Celebrates Its 17th Birthday: A Report on Federal Agency FOIA Backlog (March 12, 2006). http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB182/press.htm
- Justice Delayed is Justice Denied: The Ten Oldest Pending FOIA Requests (November 17, 2003). http://www.gwu.edu/%7Ensarchiv/NSAEBB/NSAEBB102/press.htm
- The Ashcroft Memo: "Drastic" Change or "More Thunder Than Lightning"? (March 14, 2003). http://www.gwu.edu/%7Ensarchiv/NSAEBB/NSAEBB84/press.htm