

**GAO**

Testimony before the Subcommittee on  
Information Policy, Census, and National  
Archives, House Committee on Oversight  
and Government Reform

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# FREEDOM OF INFORMATION ACT

## Processing Trends Show Importance of Improvement Plans





Highlights of [GAO-07-491T](#), a testimony before the Subcommittee on Information Policy, Census, and National Archives, House Committee on Oversight and Government Reform

## Why GAO Did This Study

The Freedom of Information Act (FOIA) establishes that federal agencies must provide the public with access to government information, enabling them to learn about government operations and decisions. To help ensure proper implementation, the act requires that agencies annually report specific information about their FOIA operations, such as numbers of requests received and processed and median processing times. In addition, a recent Executive Order directs agencies to develop plans to improve their FOIA operations, including decreasing backlogs.

GAO was asked to testify on the results of its study on FOIA processing and agencies' improvement plans. The draft report on the study is currently out for comment at the agencies involved (and is thus subject to change). For the study, GAO reviewed status and trends of FOIA processing at 25 major agencies as reflected in annual reports, as well as the extent to which improvement plans contain the elements emphasized by the Executive Order. To do so, GAO analyzed the 25 agencies' annual reports and improvement plans.

## What GAO Recommends

In its draft report, GAO suggests that the Congress consider additions to the annual reporting requirements and makes recommendations to enhance selected agency improvement plans, among other things.

[www.gao.gov/cgi-bin/getrpt?GAO-07-491T](http://www.gao.gov/cgi-bin/getrpt?GAO-07-491T).

To view the full product, including the scope and methodology, click on the link above. For more information, contact Linda Koontz at (202) 512-6240 or [koontzl@gao.gov](mailto:koontzl@gao.gov).

# FREEDOM OF INFORMATION ACT

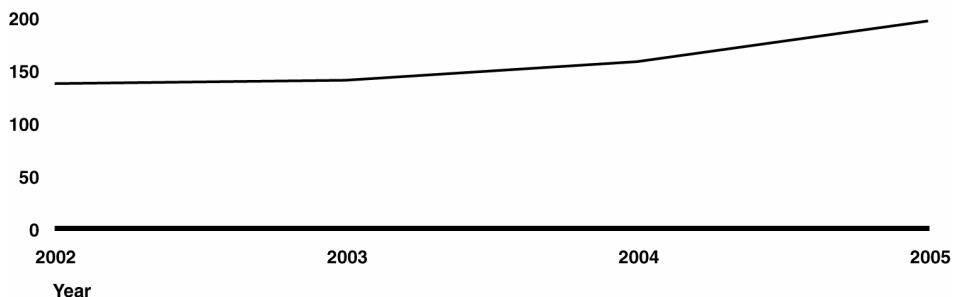
## Processing Trends Show Importance of Improvement Plans

### What GAO Found

Based on data in annual reports from 2002 to 2005, the public continued to submit more requests for information from the federal government through FOIA. Despite increasing the numbers of requests processed, many agencies did not keep pace with the volume of requests that they received. As a result, the number of pending requests carried over from year to year has been steadily increasing (see figure). Agency reports also show great variations in the median times to process requests (less than 10 days for some agency components to more than 100 days at others). However, the ability to determine trends in processing times is limited by the form in which these times are reported: that is, in medians only, without averages (that is, arithmetical means) or ranges. Although medians have the advantage of providing representative numbers that are not skewed by a few outliers, it is not statistically possible to combine several medians to develop broader generalizations (as can be done with arithmetical means). This limitation on aggregating data impedes the development of broader pictures of FOIA operations, which could be useful in monitoring efforts to improve processing and reduce the increasing backlog of requests, as intended by the Executive Order.

The improvement plans submitted by the 25 agencies mostly included goals and timetables addressing the four areas of improvement emphasized by the Executive Order: eliminating or reducing any backlog of FOIA requests; increasing reliance on dissemination of records that can be made available to the public without the need for a FOIA request, such as through posting on Web sites; improving communications with requesters about the status of their requests; and increasing public awareness of FOIA processing. Most of the plans (20 of 25) provided goals and timetables in all four areas; some agencies omitted goals in areas where they considered they were already strong. Although details of a few plans could be improved (for example, one agency did not explicitly address areas of improvement other than backlog), all the plans focus on making measurable improvements and form a reasonable basis for carrying out the goals of the Executive Order.

**Total FOIA Requests Pending at End of Year, 2002–2005**  
Requests pending in thousands



Sources: GAO analysis; FOIA annual reports for fiscal years 2002-2005 (self-reported data).

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Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to participate in the Subcommittee's hearing on the implementation of the Freedom of Information Act (FOIA) and agency efforts to comply with this important legislation. Generally speaking, FOIA<sup>1</sup> establishes that federal agencies must provide the public with access to government information, thus enabling them to learn about government operations and decisions. Specific requests by the public for information through the act have led to disclosure of waste, fraud, abuse, and wrongdoing in the government, as well as the identification of unsafe consumer products, harmful drugs, and serious health hazards.

To help ensure appropriate implementation, the act requires that agencies provide annual reports on their FOIA operations to the Attorney General; these reports include information as specified in the act, such as how many requests were received and processed in the previous fiscal year, how many requests were pending at the end of the year, and the median times that agencies or their components took to process requests.<sup>2</sup> In addition, the President issued an Executive Order in December 2005 that is aimed at improving agencies' disclosure of information consistent with FOIA.<sup>3</sup> Among other things, this order required each agency to review its FOIA operations and develop improvement plans;<sup>4</sup> by June 14, 2006, each agency was to submit a report to the Attorney General and the Director of the Office of Management and Budget (OMB) summarizing the results of the agency's review and including a copy of its improvement plan. These plans were to include specific outcome-oriented goals and timetables, by which the agency head is to evaluate the agency's success in implementing the plan.

The Executive Order directs agencies in their FOIA improvement plans to focus on ways to

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<sup>1</sup> 5 U.S.C. § 552.

<sup>2</sup> In an ordered set of values, the median is a value below and above which there is an equal number of values; if there is no one middle number, it is the arithmetic mean (average) of the two middle values.

<sup>3</sup> Executive Order 13392, *Improving Agency Disclosure of Information* (Washington, D.C.: Dec. 14, 2005).

<sup>4</sup> More information on the Executive Order's requirements is provided in the section on Background.

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- eliminate or reduce any backlog of requests;
  - increase reliance on public dissemination of records including through Web sites;
  - improve communications with requesters about the status of their requests; and
  - increase public awareness of FOIA processing.

As requested, in my remarks today, I will discuss two topics: (1) the status of agencies' processing of FOIA requests as reflected in their annual reports for fiscal years 2002 through 2005, highlighting any trends in these reports since 2002, and (2) to what extent the agency FOIA improvement plans contain the elements emphasized by the Executive Order.

My discussion is based on ongoing work that we performed in response to a request from the former chairman of the Subcommittee on Government Management, Finance, and Accountability (House Committee on Government Reform), for which you are now a co-requester. The draft report on this work is currently out for comment; accordingly, some of the information may be revised before the report is finalized.

For the review described in the draft report, we described statistics on the processing of FOIA requests based on our analysis of annual report data for fiscal years 2002 through 2005 from 25 major agencies (herein we refer to this scope as governmentwide). We examined data from the 24 agencies covered by the Chief Financial Officers Act, plus the Central Intelligence Agency. However, we eliminated one of the 25 agencies—the Department of Agriculture—from our analysis because one of its major components reported that not all its data were reliable. As a result, our statistical analysis for this report was based on data from a total of 24 agencies' annual reports.<sup>5</sup>

To determine to what extent the agency plans contain the elements emphasized by the order, we analyzed the plans for all 25 agencies to determine whether they addressed each area of improvement that

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<sup>5</sup> We assessed the reliability of the information contained in the annual reports of selected agencies. See attachment I for more discussion of data reliability.

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was emphasized and contained goals and timetables for each.<sup>6</sup> We evaluated the versions of plans submitted as of December 15, 2006. We also reviewed the Executive Order itself, implementing guidance issued by OMB and the Department of Justice, other FOIA guidance issued by Justice, and our past work in this area. A more detailed description of our scope and methodology is provided in attachment 1.

All work on which this testimony was based was conducted in accordance with generally accepted government auditing standards.

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## Results in Brief

Based on data reported by 24 major agencies in annual FOIA reports from 2002 to 2005,<sup>7</sup> the public continued to submit more requests for information from the federal government through FOIA. Despite increasing the numbers of requests processed, many agencies did not keep pace with the volume of requests that they received. As a result, the number of pending requests carried over from year to year has been steadily increasing; further, the rate of increase is growing. Agency reports also show great variations in the median times to process requests (less than 10 days for some agency components to more than 100 days at others). However, the ability to determine trends in processing times is limited by the form in which these times are reported: that is, in medians only, without averages (that is, arithmetical means)<sup>8</sup> or ranges. Although medians have the advantage of providing representative numbers that are not skewed by a few outliers, it is not statistically possible to combine several medians to develop broader generalizations (as can be done

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<sup>6</sup> Two GAO analysts independently analyzed each agency's plan to determine if it contained objective goals and timetables for each of the four elements. When the analysts disagreed, they discussed the reasons for their differences and arrived at a consensus.

<sup>7</sup> Data from the Department of Agriculture were omitted because data from a major component were not reliable.

<sup>8</sup> The arithmetic mean is the sum of all the members of a list of numbers divided by the number of items in the list. In contrast, a median is a number dividing the higher half of a population from the lower half. (The median of a finite list of numbers can be found by arranging all the values from lowest to highest and finding the middle one.)

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with arithmetical means).<sup>9</sup> This limitation on aggregating data impedes the development of broader pictures of FOIA operations, which could be useful in monitoring efforts to improve processing and reduce the increasing backlog of requests, as intended by the Executive Order. Finally, in the absence of a requirement that data from the annual reports be summarized or aggregated (a function that the Department of Justice, in its FOIA oversight role, has performed in the past), the public and the Congress have no consistent means of obtaining a governmentwide picture of FOIA processing.

The 25 agencies submitted improvement plans that mostly included goals and timetables addressing the four areas of improvement emphasized by the Executive Order. Based on the results of agencies' reviews of their FOIA operations, the plans also included other improvement activities (such as improving automation and increasing staff training) that are expected to contribute to achieving the goals of the Executive Order. Out of 25 plans, 20 provided goals and timetables in all four areas. In some cases, agencies did not set goals for a given area because they determined that they were already strong in that area. For the first area of improvement, reducing backlog, all agencies with reported backlog planned activities aimed at such reduction, and (with minor exceptions)<sup>10</sup> all included both measurable goals and milestones. Except for one department, agencies also generally set milestones for the other areas of improvement emphasized by the Executive Order (that is, increasing public dissemination, improving status communications, and increasing public awareness of FOIA processing); for example, to increase public awareness, agencies generally planned to ensure that their FOIA reference guides were comprehensive and up to date. The exception was the Department of the Treasury, whose review and plan addressed only activities to reduce backlog, omitting the other three areas of improvement.

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<sup>9</sup> Unlike means, medians cannot be added and averaged. Deriving a median for two sets of numbers, for example, requires knowing each number in both sets. The medians of the original sets are not relevant, as only the source data can be used to derive a new median.

<sup>10</sup> One agency had minimal backlog; another set no target date for its goal, but it met the goal the end of 2006.

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In our draft report, we suggest that the Congress consider improving the usefulness of the agency annual FOIA reports by requiring agencies to report additional statistics. We are also recommending that Justice provide aggregated statistics and summaries of the annual reports and that selected agencies enhance their improvement plans.

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## Background

FOIA establishes a legal right of access to government records and information, on the basis of the principles of openness and accountability in government. Before the act (originally enacted in 1966), an individual seeking access to federal records had faced the burden of establishing a right to examine them. FOIA established a “right to know” standard for access, instead of a “need to know,” and shifted the burden of proof from the individual to the government agency seeking to deny access.

FOIA provides the public with access to government information either through “affirmative agency disclosure”—publishing information in the *Federal Register* or the Internet, or making it available in reading rooms—or in response to public requests for disclosure. Public requests for disclosure of records are the best known type of FOIA disclosure. Any member of the public may request access to information held by federal agencies, without showing a need or reason for seeking the information.

Not all information held by the government is subject to FOIA. The act prescribes nine specific categories of information that are exempt from disclosure: for example, trade secrets and certain privileged commercial or financial information, certain personnel and medical files, and certain law enforcement records or information (attachment II provides the complete list). In denying access to material, agencies may cite these exemptions. The act requires agencies to notify requesters of the reasons for any adverse determination (that is, a determination not to provide records) and grants requesters the right to appeal agency decisions to deny access.

In addition, agencies are required to meet certain time frames for making key determinations: whether to comply with requests (20

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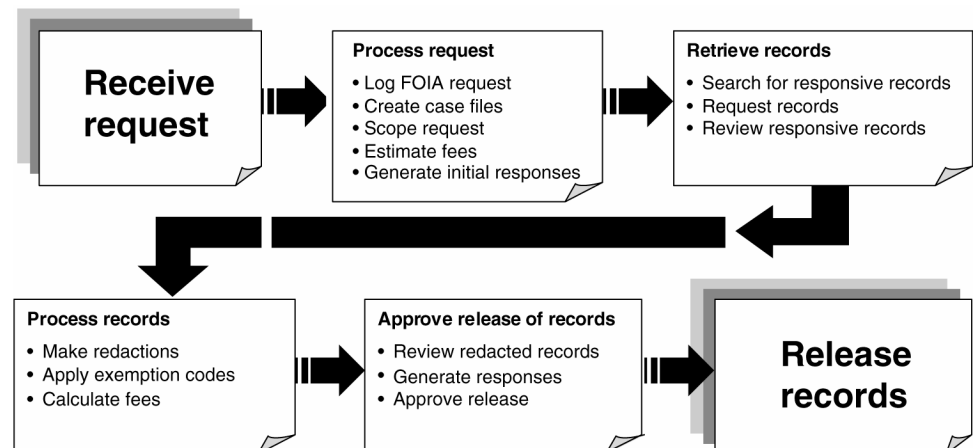
business days from receipt of the request), responses to appeals of adverse determinations (20 business days from receipt of the appeal), and whether to provide expedited processing of requests (10 calendar days from receipt of the request). Congress did not establish a statutory deadline for making releasable records available, but instead required agencies to make them available promptly.

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## The FOIA Process at Federal Agencies

Although the specific details of processes for handling FOIA requests vary among agencies, the major steps in handling a request are similar across the government. Agencies receive requests, usually in writing (although they may accept requests by telephone or electronically), which can come from any organization or member of the public. Once received, the request goes through several phases, which include initial processing, searching for and retrieving responsive records, preparing responsive records for release, approving the release of the records, and releasing the records to the requester. Figure 1 is an overview of the process, from the receipt of a request to the release of records.

**Figure 1: Overview of Generic FOIA Process**



Source: GAO analysis of agency information.

During the initial processing phase, a request is logged into the agency's FOIA system, and a case file is started. The request is then reviewed to determine its scope, estimate fees, and provide an initial



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response to the requester (in general, this simply acknowledges receipt of the request). After this point, the FOIA staff begins its search to retrieve responsive records. This step may include searching for records from multiple locations and program offices. After potentially responsive records are located, the documents are reviewed to ensure that they are within the scope of the request.

During the next two phases, the agency ensures that appropriate information is to be released under the provisions of the act. First, the agency reviews the responsive records to make any redactions based on the statutory exemptions. Once the exemption review is complete, the final set of responsive records is turned over to the FOIA office, which calculates appropriate fees, if applicable. Before release, the redacted responsive records are then given a final review, possibly by the agency's general counsel, and then a response letter is generated, summarizing the agency's actions regarding the request. Finally, the responsive records are released to the requester.

Some requests are relatively simple to process, such as requests for specific pieces of information that the requester sends directly to the appropriate office. Other requests may require more extensive processing, depending on their complexity, the volume of information involved, the need for the agency FOIA office to work with offices that have relevant subject-matter expertise to find and obtain information, the need for a FOIA officer to review and redact information in the responsive material, the need to communicate with the requester about the scope of the request, and the need to communicate with the requester about the fees that will be charged for fulfilling the request (or whether fees will be waived).<sup>11</sup>

Specific details of agency processes for handling requests vary, depending on the agency's organizational structure and the complexity of the requests received. While some agencies centralize processing in one main office, other agencies have separate FOIA offices for each agency component and field office. Agencies also vary in how they allow requests to be made. Depending on the

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<sup>11</sup> Fees may be waived when disclosure of the information requested is determined to be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

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agency, requesters can submit requests by telephone, fax, letter, or e-mail or through the Web. In addition, agencies may process requests in two ways, known as “multitrack” and “single track.” Multitrack processing involves dividing requests into two groups: (1) simple requests requiring relatively minimal review, which are placed in one processing track, and (2) more voluminous and complex requests, which are placed in another track. In contrast, single-track processing does not distinguish between simple and complex requests. With single-track processing, agencies process all requests on a first-in/first-out basis. Agencies can also process FOIA requests on an expedited basis when a requester has shown a compelling need or urgency for the information.

As agencies process FOIA requests, they generally place them in one of four possible disposition categories: grants, partial grants, denials, and “not disclosed for other reasons.” These categories are defined as follows:

- *Grants*: Agency decisions to disclose all requested records in full.
- *Partial grants*: Agency decisions to withhold some records in whole or in part, because such information was determined to fall within one or more exemptions.
- *Denials*: Agency decisions not to release any part of the requested records because all information in the records is determined to be exempt under one or more statutory exemptions.
- *Not disclosed for other reasons*: Agency decisions not to release requested information for any of a variety of reasons other than statutory exemptions from disclosing records. The categories and definitions of these “other” reasons for nondisclosure are shown in table 1.

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**Table 1: “Other” Reasons for Nondisclosure**

<b>Category</b>	<b>Definition</b>
No records	The agency searched and found no record responsive to the request.
Referrals	The agency referred records responsive to the request to another agency.
Request withdrawn	The requester withdrew the request.
Fee-related reasons	The requester refused to commit to pay fees (or other reasons related to fees).
Records not reasonably described	The requester did not describe the records sought with sufficient specificity to allow them to be located with a reasonable amount of effort.
Not a proper FOIA request	The request was not a FOIA request for one of several procedural reasons.
Not an agency record	The requested record was not within the agency’s control.
Duplicate request	The request was submitted more than once by the same requester.

Source: Department of Justice.

When a FOIA request is denied in full or in part, or the requested records are not disclosed for other reasons, the requester is entitled to be told the reason for the denial, to appeal the denial, and to challenge it in court.

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## The Privacy Act Also Provides Individuals with Access Rights

In addition to FOIA, the Privacy Act of 1974<sup>12</sup> includes provisions granting individuals the right to gain access to and correct information about themselves held by federal agencies. Thus the Privacy Act serves as a second major legal basis, in addition to FOIA, for the public to use in obtaining government information. The Privacy Act also places limitations on agencies’ collection, disclosure, and use of personal information.

Although the two laws differ in scope, procedures in both FOIA and the Privacy Act permit individuals to seek access to records about themselves—known as “first-party” access. Depending on the individual circumstances, one law may allow broader access or more extensive procedural rights than the other, or access may be denied under one act and allowed under the other. Consequently, the Department of Justice’s Office of Information and Privacy issued guidance that it is “good policy for agencies to treat all first-party access requests as FOIA requests (as well as possibly Privacy Act

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<sup>12</sup> 5 U.S.C. § 552a.

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requests), regardless of whether the FOIA is cited in a requester's letter." This guidance was intended to help ensure that requesters receive the fullest possible response to their inquiries, regardless of which law they cite.

In addition, Justice guidance for the annual FOIA report directs agencies to include Privacy Act requests (that is, first-party requests) in the statistics reported. According to the guidance, "A Privacy Act request is a request for records concerning oneself; such requests are also treated as FOIA requests. (All requests for access to records, regardless of which law is cited by the requester, are included in this report.)"

Although FOIA and the Privacy Act can both apply to first-party requests, these may not always be processed in the same way as described earlier for FOIA requests. In some cases, little review and redaction (see fig. 1) is required, for example, for a request for one's own Social Security benefits records. In contrast, various degrees of review and redaction could be required for other types of first-party requests: for example, files on security background checks would need review and redaction before being provided to the person who was the subject of the investigation.

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## Roles of OMB and Justice in FOIA Implementation

OMB and the Department of Justice both have roles in the implementation of FOIA. Under various statutes, including the Paperwork Reduction Act,<sup>13</sup> OMB exercises broad authority for coordinating and administering various aspects of governmentwide information policy. FOIA specifically requires OMB to issue guidelines to "provide for a uniform schedule of fees for all agencies."<sup>14</sup> OMB issued this guidance in April 1987.<sup>15</sup>

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<sup>13</sup> 44 U.S.C. §§ 3501–3521.

<sup>14</sup> This provision was added by the Freedom of Information Reform Act of 1986 (Pub. L. 99-570).

<sup>15</sup> See OMB, *Uniform Freedom of Information Act Fee Schedule and Guidelines*, 52 FR 10011 (Mar. 27, 1987), effective April 27, 1987. Also in 1987, the Department of Justice issued guidelines on waiving fees when requests are determined to be in the public interest. Under the guidelines, requests for waivers or reduction of fees are to be considered on a case-by-case basis, taking into account both the public interest and the requester's commercial interests.

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The Department of Justice oversees agencies' compliance with FOIA and is the primary source of policy guidance for agencies. Specifically, Justice's requirements under the act are to

- make agencies' annual FOIA reports available through a single electronic access point and notify Congress as to their availability;
- in consultation with OMB, develop guidelines for the required annual agency reports, so that all reports use common terminology and follow a similar format; and
- submit an annual report on FOIA litigation and the efforts undertaken by Justice to encourage agency compliance.

Within the Department of Justice, the Office of Information and Privacy has lead responsibility for providing guidance and support to federal agencies on FOIA issues. This office first issued guidelines for agency preparation and submission of annual reports in the spring of 1997. It also periodically issues additional guidance on annual reports as well as on compliance, provides training, and maintains a counselors service to provide expert, one-on-one assistance to agency FOIA staff. Further, the Office of Information and Privacy also makes a variety of FOIA and Privacy Act resources available to agencies and the public via the Justice Web site and on-line bulletins (available at [www.usdoj.gov/oip/index.html](http://www.usdoj.gov/oip/index.html)).

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## Annual FOIA Reports Were Established by 1996 Amendments

In 1996, the Congress amended FOIA to provide for public access to information in an electronic format (among other purposes). These amendments, referred to as e-FOIA, also required that agencies submit a report to the Attorney General on or before February 1 of each year that covers the preceding fiscal year and includes information about agencies' FOIA operations.<sup>16</sup> The following are examples of information that is to be included in these reports:

- number of requests received, processed, and pending;
- median number of days taken by the agency to process different types of requests;

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<sup>16</sup> 5 U.S.C. § 552(e).

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- determinations made by the agency not to disclose information and the reasons for not disclosing the information;
  - disposition of administrative appeals by requesters;
  - information on the costs associated with handling of FOIA requests; and
  - full-time-equivalent staffing information.

In addition to providing their annual reports to the Attorney General, agencies are to make them available to the public in electronic form. The Attorney General is required to make all agency reports available on line at a single electronic access point and report to Congress no later than April 1 of each year that these reports are available in electronic form. (This electronic access point is [www.usdoj.gov/oip/04\\_6.html](http://www.usdoj.gov/oip/04_6.html).)

In 2001, in response to a congressional request, we prepared the first in a series of reports on the implementation of the 1996 amendments to FOIA, starting from fiscal year 1999.<sup>17</sup> In these reviews, we examined the contents of the annual reports for 25 major agencies (shown in table 2).<sup>18</sup> They include the 24 major agencies covered by the Chief Financial Officers Act, as well as the Central Intelligence Agency and, until 2003, the Federal Emergency Management Agency (FEMA). In 2003, the creation of the Department of Homeland Security (DHS), which incorporated FEMA, led to a shift in some FOIA requests from agencies affected by the creation of the new department, but the same major component entities are reflected in all the years reviewed.

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<sup>17</sup> GAO, *Information Management: Progress in Implementing the 1996 Electronic Freedom of Information Act Amendments*, [GAO-01-378](#) (Washington, D.C.: Mar. 16, 2001).

<sup>18</sup> GAO, *Information Management: Update on Implementation of the 1996 Electronic Freedom of Information Act Amendments*, [GAO-02-493](#) (Washington, D.C.: Aug. 30, 2002); *Information Management: Update on Freedom of Information Act Implementation Status*, [GAO-04-257](#) (Washington, D.C.: Feb. 18, 2004); and *Information Management: Implementation of the Freedom of Information Act*, [GAO-05-648T](#) (Washington, D.C.: May 11, 2005).

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**Table 2: Agencies Reviewed**

<b>Agency</b>	<b>Abbreviation</b>
Agency for International Development	AID
Central Intelligence Agency	CIA
Department of Agriculture <sup>a</sup>	USDA
Department of Commerce	DOC
Department of Defense	DOD
Department of Education	ED
Department of Energy	DOE
Department of Health and Human Services	HHS
Department of Homeland Security <sup>b</sup>	DHS
Federal Emergency Management Agency <sup>b</sup>	FEMA
Department of Housing and Urban Development	HUD
Department of Interior	DOI
Department of Justice	DOJ
Department of Labor	DOL
Department of State	State
Department of the Treasury	Treas
Department of Transportation	DOT
Department of Veterans Affairs	VA
Environmental Protection Agency	EPA
General Services Administration	GSA
National Aeronautics and Space Administration	NASA
National Science Foundation	NSF
Nuclear Regulatory Commission	NRC
Office of Personnel Management	OPM
Small Business Administration	SBA
Social Security Administration	SSA

Source: GAO.

<sup>a</sup> USDA was not included in our statistical analysis for this report because data from one of its major components were found to be unreliable.

<sup>b</sup> FEMA information was reported separately in fiscal year 2002. In fiscal years 2003, 2004, and 2005, FEMA was part of DHS.

Our previous reports included descriptions of the status of reported FOIA implementation, including any trends revealed by comparison with earlier years. We noted general increases in requests received

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and processed, as well as growing numbers of pending requests carried over from year to year.

In addition, our 2001 report disclosed that data quality issues limited the usefulness of agencies' annual FOIA reports and that agencies had not provided online access to all the information required by the act as amended in 1996. We therefore recommended that the Attorney General direct the Department of Justice to improve the reliability of data in the agencies' annual reports by providing guidance addressing the data quality issues we identified and by reviewing agencies' report data for completeness and consistency. We further recommended that the Attorney General direct the department to enhance the public's access to government records and information by encouraging agencies to make all required materials available electronically. In response, the Department of Justice issued supplemental guidance, addressed reporting requirements in its training programs, and continued reviewing agencies' annual reports for data quality. Justice also worked with agencies to improve the quality of data in FOIA annual reports.

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## Executive Order Required Agencies to Take Several Actions to Improve FOIA Operations

On December 14, 2005, the President issued an Executive Order setting forth a policy of citizen-centered and results-oriented FOIA administration.<sup>19</sup> Briefly, FOIA requesters are to receive courteous and appropriate services, including ways to learn about the status of their requests and the agency's response, and agencies are to provide ways for requesters and the public to learn about the FOIA process and publicly available agency records (such as those on Web sites). In addition, agency FOIA operations are to be results oriented: agencies are to process requests efficiently, achieve measurable improvements in FOIA processing, and reform programs that do not produce appropriate results.

To carry out this policy, the order required, among other things, that agency heads designate Chief FOIA Officers to oversee their FOIA programs, and that agencies establish Requester Service Centers

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<sup>19</sup> Executive Order 13392.



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and Public Liaisons to ensure appropriate communication with requesters. The Chief FOIA Officers were directed to conduct reviews of the agencies' FOIA operations and develop improvement plans to ensure that FOIA administration was in accordance with applicable law as well as with the policy set forth in the order. By June 2006, agencies were to submit reports that included the results of their reviews and copies of their improvement plans. The order also instructed the Attorney General to issue guidance on implementation of the order's requirements for agencies to conduct reviews and develop plans. Finally, the order instructed agencies to report on their progress in implementing their plans and meeting milestones as part of their annual reports for fiscal years 2006 and 2007, and required agencies to account for any milestones missed.

In April 2006, the Department of Justice posted guidance on implementation of the order's requirements for FOIA reviews and improvement plans.<sup>20</sup> This guidance suggested a number of areas of FOIA administration that agencies might consider in conducting their reviews and developing improvement plans. (Examples of some of these areas are automated tracking capabilities, automated processing, receiving/responding to requests electronically, forms of communication with requesters, and systems for handling referrals to other agencies.) To encourage consistency, the guidance also included a template for agencies to use to structure the plans and to report on their reviews and plans.<sup>21</sup> The improvement plans are posted on the Justice Web site at [www.usdoj.gov/oip/agency\\_improvement.html](http://www.usdoj.gov/oip/agency_improvement.html).

In a July 2006 testimony, we provided preliminary results of our analyses of the improvement plans for the 25 agencies in our review that were submitted as of the end of June; in our testimony we focused on how the plans addressed reducing or eliminating

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<sup>20</sup> Department of Justice, *Executive Order 13,392 Implementation Guidance* (posted Apr. 27, 2006). [www.usdoj.gov/oip/foiapost/2006foiapost6.htm](http://www.usdoj.gov/oip/foiapost/2006foiapost6.htm)

<sup>21</sup> Also included in this guidance was a set of questions and answers on implementing the order, as well as supplemental guidance on preparing the annual FOIA reports for fiscal years 2006 and 2007. These are to include reports on agencies' progress in implementing their plans and improving their FOIA activities.

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backlog.<sup>22</sup> We testified that a substantial number of plans did not include measurable goals and timetables that would allow agencies to measure and evaluate the success of their plans. Several of the plans were revised in light of our testimony, as well as in response to feedback to agencies from the Department of Justice in its FOIA oversight role.

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## Status of FOIA Processing Appears Similar to Previous Years, but Limitations in Annual Report Data Present Challenges

The data reported by 24 major agencies in annual FOIA reports from 2002 to 2005 reveal a number of general trends. (Data from USDA are omitted from our statistical analysis, because we determined that data from a major USDA component were not reliable.)<sup>23</sup> For example, the public continued to submit more requests for information from the federal government through FOIA, but many agencies, despite increasing the numbers of requests processed, did not keep pace with this increased volume. As a result, the number of pending requests carried over from year to year has been steadily increasing. However, our ability to make generalizations about processing time is limited by the type of statistic reported (that is, the median). Taking steps to improve the accuracy and form of annual report data could provide more insight into FOIA processing.

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## Not All Data from USDA's Farm Service Agency Are Reliable, but Its Improvement Plan Provides Opportunity to Address This Weakness

We omitted data from USDA's annual FOIA report because we determined that not all these data were reliable. Although some USDA components expressed confidence in their data, one component, the Farm Service Agency, did not. According to this agency's FOIA Officer, portions of the agency's data in annual reports were not accurate or complete. This is a significant

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<sup>22</sup> GAO, *Freedom of Information Act: Preliminary Analysis of Processing Trends Shows Importance of Improvement Plans*, [GAO-06-1022T](#) (Washington, D.C.: July 26, 2006).

<sup>23</sup> These data were presented in our testimony on our preliminary analysis, [GAO-06-1022T](#).

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deficiency, because the Farm Service Agency reportedly processes over 80 percent of the department's total FOIA requests. Currently, FOIA processing for the Farm Service Agency is highly decentralized, taking place in staff offices in Washington, D.C., and Kansas City, 50 state offices, and about 2,350 county offices. The agency FOIA officer told us that she questioned the completeness and accuracy of data supplied by the county offices. This official stated that some of the field office data supplied for the annual report were clearly wrong, leading her to question the systems used to record workload data at field offices and the field office staff's understanding of FOIA requirements. She attributed this condition to the agency's decentralized organization and to lack of management attention, resources, and training. Lacking accurate data hinders the Farm Service Agency from effectively monitoring and managing its FOIA program.

The Executive Order's requirement to develop an improvement plan provides an opportunity for the Farm Service Agency to address its data reliability problems. More specifically, Justice's guidance on implementing the Executive Order refers to the need for agencies to explore improvements in their monitoring and tracking systems and staff training. USDA has developed an improvement plan that includes activities to improve FOIA processing at the Farm Service Agency that are relevant to the issues raised by the Farm Service Agency's FOIA Officer, including both automation and training. The plan sets goals for ensuring that all agency employees who process or retrieve responsive records are trained in the necessary FOIA duties, as well as for determining the type of automated tracking to be implemented. According to the plan, an electronic tracking system is needed to track requests, handle public inquiries regarding request status, and prepare a more accurate annual FOIA report. In addition, the Farm Service Agency plans to determine the benefit of increased centralization of FOIA request processing.

However, the plan does not directly address improvements to data reliability. If USDA does not also plan for activities, measures, and milestones to improve data reliability, it increases the risk that the Farm Service Agency will not produce reliable FOIA statistics, which are important for program oversight and meeting the act's goal of providing visibility into government FOIA operations.

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## Except for SSA, Increases in Requests Received and Processed Are Generally Slowing

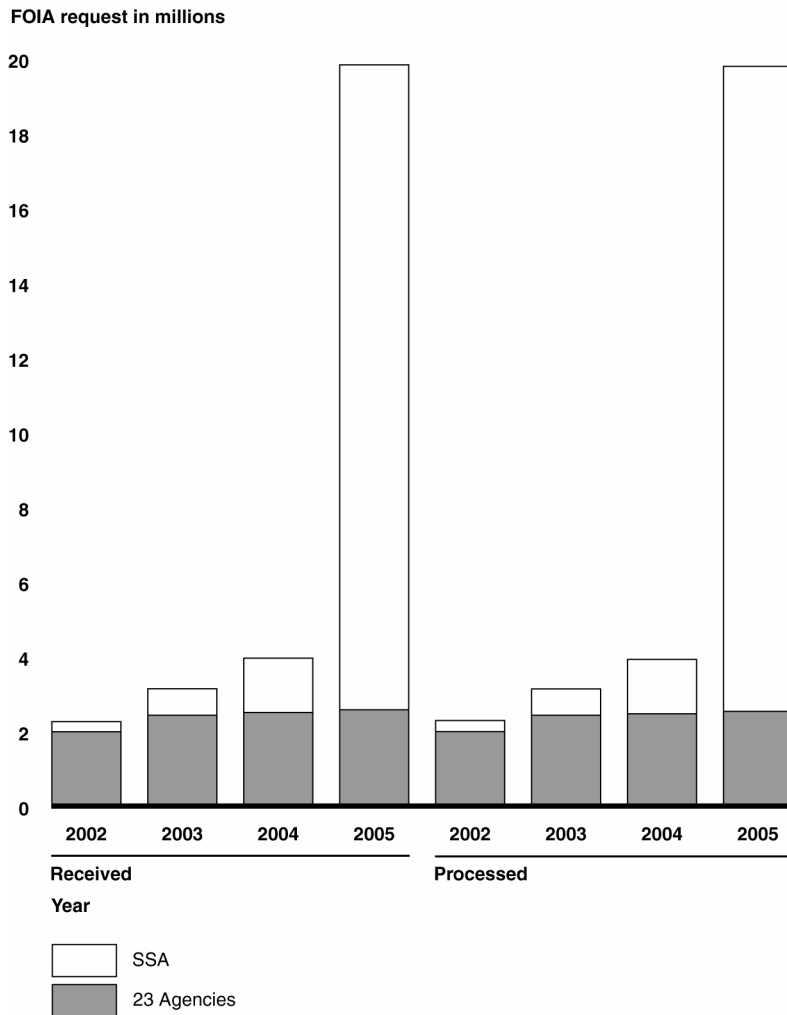
The numbers of FOIA requests received and processed continue to rise, but except for one case—SSA—the rate of increase has flattened in recent years. For SSA, we present statistics separately because the agency reported an additional 16 million requests in 2005, dwarfing those for all other agencies combined, which together total about 2.6 million. SSA attributed this rise to an improvement in its method of counting requests and stated that in previous years, these requests were undercounted. Further, all but about 38,000 of SSA's over 17 million requests are simple requests for personal information by or on behalf of individuals.

Figure 2 shows total requests reported governmentwide for fiscal years 2002 through 2005, with SSA's share shown separately.<sup>24</sup> This figure shows the magnitude of SSA's contribution to the whole FOIA picture, as well as the scale of the jump from 2004 to 2005.

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<sup>24</sup> Because of the undercount in previous years, including SSA's statistics in governmentwide data obscures year-to-year comparisons.

**Figure 2: Total FOIA Requests with SSA Shown Separately, Fiscal Years 2002–2005**

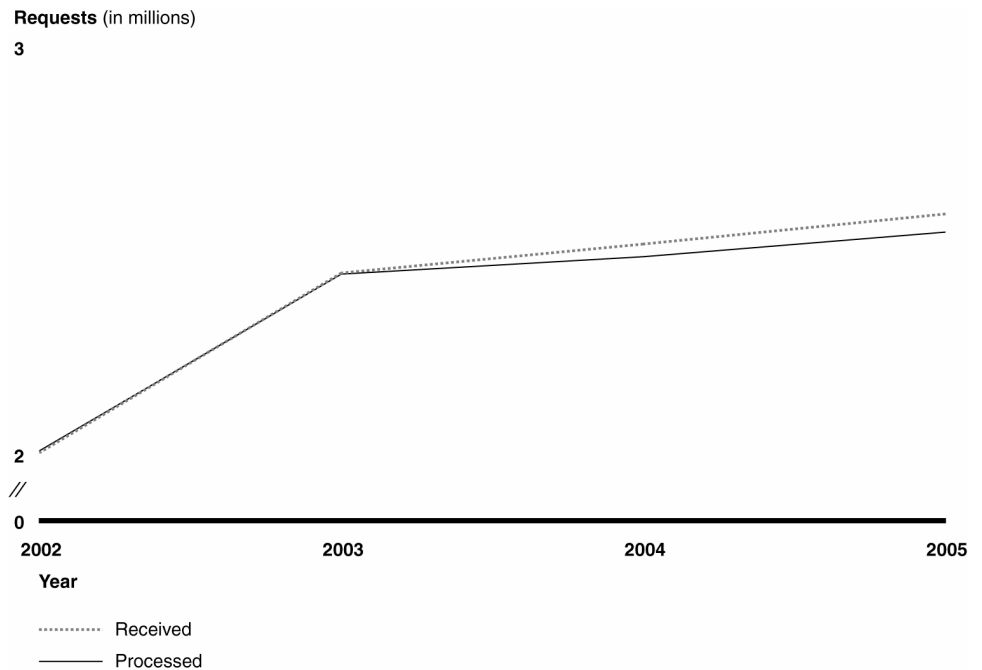


Source: GAO analysis, FOIA annual reports for fiscal years 2002-2005 (self-reported data).

Figure 3 presents statistics omitting SSA on a scale that allows a clearer view of the rate of increase in FOIA requests received and processed in the rest of the government. As this figure shows, when SSA’s numbers are excluded, the rate of increase is modest and has been flattening: For the whole period (fiscal years 2002 to 2005), requests received increased by about 29 percent, and requests processed increased by about 27 percent. Most of this rise occurred from fiscal years 2002 to 2003: about 28 percent for requests received, and about 27 percent for requests processed. In contrast,

from fiscal year 2004 to 2005, the rise was much less: about 3 percent for requests received, and about 2 percent for requests processed.

**Figure 3: Total FOIA Requests and FOIA Requests Processed, Omitting SSA, Fiscal Years 2002–2005**



Source: GAO analysis, FOIA annual reports for fiscal years 2002-2005 (self-reported data).

According to SSA, the increases that the agency reported in fiscal year 2005 can be attributed to an improvement in its method of counting a category of requests it calls “simple requests handled by non-FOIA staff.” From fiscal year 2002 to 2005, SSA’s FOIA reports have consistently shown significant growth in this category, which has accounted for the major portion of all SSA requests reported (see table 3). In each of these years, SSA has attributed the increases in this category largely to better reporting, as well as actual increases in requests.

**Table 3: Comparison of SSA’s Simple Requests Handled by Non-FOIA Staff to Totals, Fiscal Years 2002 to 2005**

Fiscal year	Total requests received	Total requests processed	Simple requests handled by non-FOIA staff	Percentage of total processed
2005	17,257,886	17,262,315	17,223,713	99.8
2004	1,453,619	1,450,493	1,270,512	87.6
2003	705,280	704,941	678,849	96.3
2002	268,488	292,884	245,877	84.0

Sources: SSA FOIA reports (self-reported data), GAO analysis.

SSA describes requests in this category as typically being requests by individuals for access to their own records, as well as requests in which individuals consent for SSA to supply information about themselves to third parties (such as insurance and mortgage companies) so that they can receive housing assistance, mortgages, disability insurance, and so on.<sup>25</sup> According to SSA’s FOIA report, these requests are handled by personnel in about 1,500 locations in SSA, including field and district offices and teleservice centers.<sup>26</sup> Such requests are almost always granted,<sup>27</sup> according to SSA, and most receive immediate responses. SSA has stated that it does not keep processing statistics (such as median days to process) on these requests, which it reports separately from other FOIA requests (for which processing statistics are kept). However, officials say that these are typically processed in a day or less.

According to SSA officials, they included information on these requests in their annual reports because Justice guidance instructs agencies to treat Privacy Act requests (requests for records concerning oneself) as FOIA requests and report them in their

<sup>25</sup> According to SSA officials, most of these simple requests are for essentially the same types of information, such as copies of earnings records and verifications of monthly benefit amounts or Social Security numbers.

<sup>26</sup> According to SSA, its field organization is decentralized to provide services at the local level, and includes 10 regional offices, 6 processing centers, and approximately 1500 field offices.

<sup>27</sup> Denials can occur in the case of discrepancies in the requests, such as incorrect Social Security numbers, for example.

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annual reports.<sup>28</sup> In addition, SSA officials said that their automated systems make it straightforward to capture and report on these simple requests. According to SSA, in fiscal year 2005, the agency began to use automated systems to capture the numbers of requests processed by non-FOIA staff, generating statistics automatically as requests were processed; the result, according to SSA, is a much more accurate count.

Besides SSA, agencies reporting large numbers of requests received were the Departments of Defense, Health and Human Services, Homeland Security, Justice, the Treasury, and Veterans Affairs, as shown in table 4. The rest of agencies combined account for only about 5 percent of the total requests received (if SSA's simple requests handled by non-FOIA staff are excluded). Table 4 presents, in descending order of request totals, the numbers of requests received and percentages of the total (calculated with and without SSA's statistics on simple requests handled by non-FOIA staff).

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<sup>28</sup> Justice's guidance defines the requests covered by the annual FOIA reports as follows: "FOIA/PA request—Freedom of Information Act/Privacy Act request. A FOIA request is generally a request for access to records concerning a third party, an organization, or a particular topic of interest. A Privacy Act request is a request for records concerning oneself; such requests are also treated as FOIA requests. (All requests for access to records, regardless of which law is cited by the requester, are included in this report.)"



**Table 4: Requests Received, Fiscal Year 2005**

<b>Agency</b>	<b>Total</b>	<b>Percentage of total including SSA line 1</b>	<b>Percentage of total including SSA line 2</b>
SSA (all)	17,257,886	87.00	—
SSA (excluding simple requests handled by non-FOIA staff)	38,602	—	1.48
VA	1,914,395	9.65	73.17
HHS	222,372	1.12	8.50
DHS	163,016	0.82	6.23
DOD	81,304	0.41	3.11
Treas	53,330	0.27	2.04
DOJ	52,010	0.26	1.99
DOL	23,505	0.12	0.90
EPA	12,201	0.06	0.47
OPM	12,085	0.06	0.46
DOT	9,597	0.05	0.37
DOI	6,749	0.03	0.26
State	4,602	0.02	0.18
HUD	4,227	0.02	0.16
SBA	3,739	0.02	0.14
DOE	3,729	0.02	0.14
CIA	2,935	0.01	0.11
ED	2,416	0.01	0.09
DOC	1,804	0.01	0.07
GSA	1,416	0.01	0.05
NASA	1,229	0.01	0.05
NRC	371	0.00	0.01
AID	369	0.00	0.01
NSF	273	0.00	0.01
<b>Total including SSA line 1</b>	<b>19,835,560</b>	<b>—</b>	<b>—</b>
<b>Total including SSA line 2</b>	<b>2,616,276</b>	<b>—</b>	<b>—</b>

Source: FOIA annual reports for 2005 (self-reported data).

Note: Abbreviations are as in table 2. USDA data have been omitted, as data from a major USDA component were determined to be unreliable.

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## Most Requests Are Granted in Full

Most FOIA requests in 2005 were granted in full, with relatively few being partially granted, denied, or not disclosed for other reasons (statistics are shown in table 5). This generalization holds with or without SSA's inclusion. The percentage of requests granted in full was about 87 percent, which is about the same as in previous years. However, if SSA's numbers are included, the proportion of grants dominates the other categories—raising this number from 87 percent of the total to 98 percent. This is to be expected, since SSA reports that it grants the great majority of its simple requests handled by non-FOIA staff, which make up the bulk of SSA's statistics.

**Table 5: Disposition of Processed Requests for Fiscal Year 2005**

Disposition	Statistics excluding SSA <sup>a</sup>		Statistics including SSA	
	Number	Percentage	Number	Percentage
Full grants	2,206,515	87.1	19,466,907	98.3
Partial grants	102,079	4.0	102,354	0.5
Denial	19,864	0.8	20,318	0.1
Not disclosed for other reasons	204,491	8.1	205,685	1.0
<b>Total</b>	<b>2,532,949</b>		<b>19,795,264</b>	

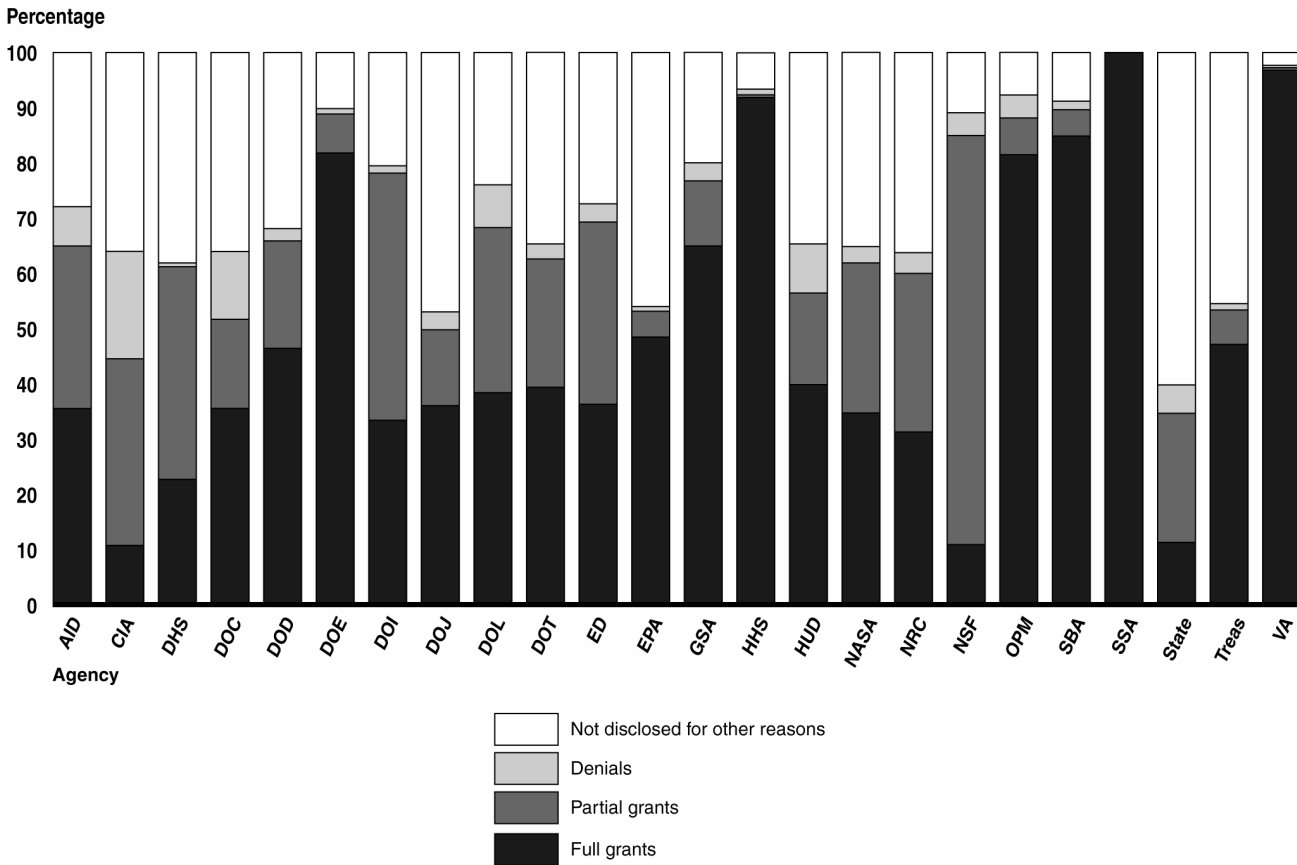
Source: FOIA annual reports for 2005 (self-reported data).

<sup>a</sup>We exclude all SSA statistics for this comparison rather than omitting only simple requests handled by non-FOIA staff, because SSA's report does not break out this category in its statistics on disposition.

Note: USDA data have been omitted, as data from a major USDA component were determined to be unreliable. Percentages do not add up to 100 percent because of rounding.

Three of the seven agencies that handled the largest numbers of requests (HHS, SSA, and VA; see table 4) also granted the largest percentages of requests in full, as shown in figure 4. Figure 4 shows, by agency, the disposition of requests processed: that is, whether granted in full, partially granted, denied, or “not disclosed for other reasons” (see table 1 for a list of these reasons).

**Figure 4: Disposition of Processed Requests, by Agency (Fiscal Year 2005)**



Source: GAO analysis, FOIA annual reports for fiscal year 2005 (self-reported data).

Note: Abbreviations are shown in table 2. USDA data have been omitted, as data from a major USDA component were determined to be unreliable.

As the figure shows, the numbers of fully granted requests varied widely among agencies in fiscal year 2005. Six agencies made full grants of requested records in over 80 percent of the cases they processed (besides the three already mentioned, these include Energy, OPM, and SBA). In contrast, 13 of 24 made full grants of requested records in less than 40 percent of their cases, including 3 agencies (CIA, NSF, and State) that made full grants in less than 20 percent of cases processed.

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This variance among agencies in the disposition of requests has been evident in prior years as well.<sup>29</sup> In many cases, the variance can be accounted for by the types of requests that different agencies process. For example, as discussed earlier, SSA grants a very high proportion of requests because they are requests for personal information about individuals that are routinely made available to or for the individuals concerned. Similarly, VA routinely makes medical records available to individual veterans, and HHS also handles large numbers of Privacy Act requests. Such requests are generally granted in full. Other agencies, on the other hand, receive numerous requests whose responses must routinely be redacted. For example, NSF reported in its annual report that most of its requests (an estimated 90 percent) are for copies of funded grant proposals. The responsive documents are routinely redacted to remove personal information on individual principal investigators (such as salaries, home addresses, and so on), which results in high numbers of “partial grants” compared to “full grants.”

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## Processing Times Vary, but Broad Generalizations Are Limited

For 2005, the reported time required to process requests (by track) varied considerably among agencies. Table 6 presents data on median processing times for fiscal year 2005. For agencies that reported processing times by component rather than for the agency as a whole, the table indicates the range of median times reported by the agency’s components.

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<sup>29</sup> See GAO, *Information Management: Progress in Implementing the 1996 Electronic Freedom of Information Act Amendments*, [GAO-01-378](#) (Washington, D.C.: Mar. 16, 2001), and *Information Management: Update on Freedom of Information Act Implementation Status*, [GAO-04-257](#) (Washington, D.C.: Feb. 18, 2004).

**Table 6: Median Days to Process Requests for Fiscal Year 2005, by Track**

Agency	Type of request processing track			
	Simple	Complex	Single	Expedited
AID	—	—	55	34
CIA	7	68	—	—
DHS	16–61	3–242	—	2–45
DOC	12	40	—	8
DOD	16	85	—	—
DOE	5–106	10–170	—	1–12
DOI	2–43	28–89	—	1–15
DOJ	0–139	12–863	—	2–185
DOL	6–30	14–60	—	2–18
DOT	1–30	20–134	—	5–30
ED	35	66	—	24
EPA	13–32	4–166	—	8–109
GSA	—	14	—	—
HHS	10–26	60–370	5–173	14–158
HUD	21–65	35–160	—	9–70
NASA	19	49	—	15
NRC	12	75	—	20
NSF	—	—	14	—
OPM	—	—	14	1
SBA	—	—	7	—
SSA	15	39	10	17
State	14	142	—	136
Treas	2–86	3–251	—	1
VA	—	1–60	—	1–10

Source: FOIA annual reports for fiscal year 2005 (self-reported data).

Note: For agencies that reported processing times by component, the table indicates the range of reported component median times. A dash indicates that the agency did not report any median time for a given track in a given year. USDA data have been omitted, as data from a major USDA component were determined to be unreliable.

As the table shows, seven agencies had components that reported processing simple requests in less than 10 days (these components are parts of the CIA, Energy, the Interior, Justice, Labor, Transportation, and the Treasury); for each of these agencies, the lower value of the reported ranges is less than 10. On the other

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hand, median time to process simple requests is relatively long at some organizations (for example, components of Energy and Justice, as shown by median ranges whose upper end values are greater than 100 days).

For complex requests, the picture is similarly mixed. Components of four agencies (EPA, DHS, the Treasury, and VA) reported processing complex requests quickly—with a median of less than 10 days. In contrast, other components of several agencies (DHS, Energy, EPA, HHS, HUD, Justice, State, Transportation, and the Treasury) reported relatively long median times to process complex requests, with median days greater than 100.

Six agencies (AID, HHS, NSF, OPM, SBA, and SSA) reported using single-track processing. The median processing times for single-track processing varied from 5 days (at an HHS component) to 173 days (at another HHS component).

Our ability to make further generalizations about FOIA processing times is limited by the fact that, as required by the act, agencies report median processing times only and not, for example, arithmetic means (the usual meaning of “average” in everyday language). To find an arithmetic mean, one adds all the members of a list of numbers and divides the result by the number of items in the list. To find the median, one arranges all the values in the list from lowest to highest and finds the middle one (or the average of the middle two if there is no one middle number). Thus, although using medians provides representative numbers that are not skewed by a few outliers, they cannot be summed. Deriving a median for two sets of numbers, for example, requires knowing all numbers in both sets. Only the source data for the medians can be used to derive a new median, not the medians themselves.

As a result, with only medians it is not statistically possible to combine results from different agencies to develop broader generalizations, such as a governmentwide statistic based on all agency reports, statistics from sets of comparable agencies, or an agencywide statistic based on separate reports from all components of the agency.

In rewriting the FOIA reporting requirements in 1996, legislators declared an interest in making them “more useful to the public and to Congress, and [making] the information in them more

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accessible.”<sup>30</sup> However, the limitation on aggregating data imposed by the use of medians alone impedes the development of broader pictures of FOIA operations. A more complete picture would be given by the inclusion of other statistics based on the same data that are used to derive medians, such as means and ranges. Providing means along with the median would allow more generalizations to be drawn, and providing ranges would complete the picture by adding information on the outliers in agency statistics. More complete information would be useful for public accountability and for effectively managing agency FOIA programs, as well as for meeting the act’s goal of providing visibility into government FOIA operations.

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## Agency Pending Cases Continue to Increase

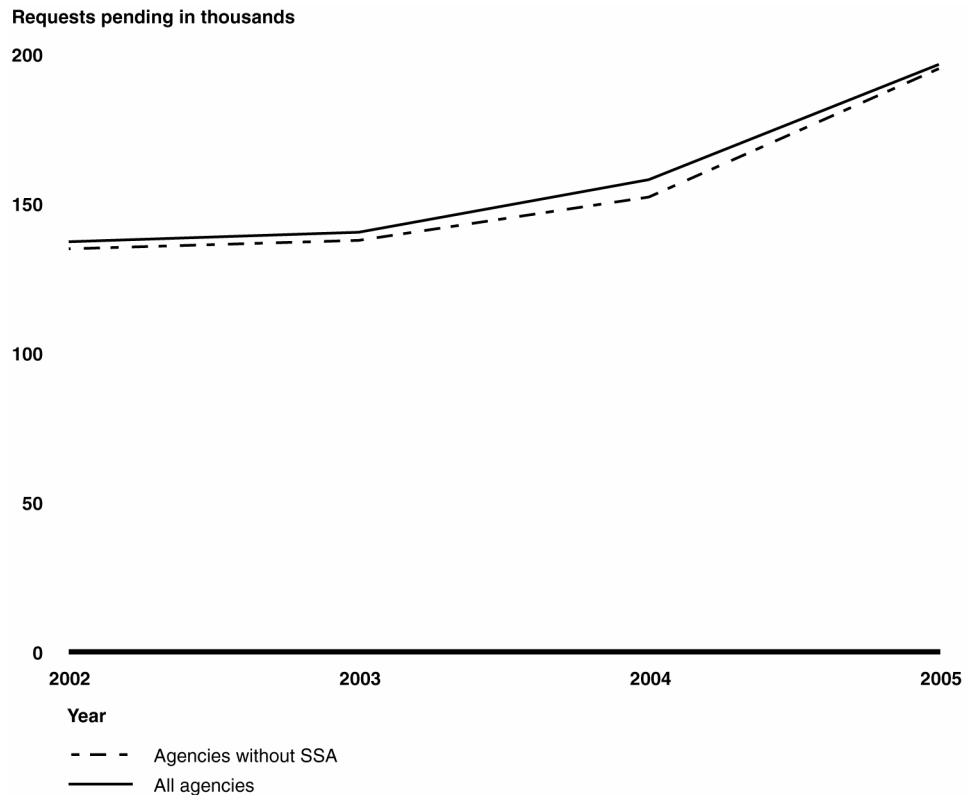
In addition to processing greater numbers of requests, many agencies (10 of 24) also reported that their numbers of pending cases—requests carried over from one year to the next—have increased since 2002. In 2002, pending requests governmentwide were reported to number about 138,000, whereas in 2005, about 200,000—45 percent more—were reported. In addition, the rate of increase grew in fiscal year 2005, rising 24 percent from fiscal year 2004, compared to 13 percent from 2003 to 2004. Figure 5 shows these results, illustrating the accelerating rate at which pending cases have been increasing.

These statistics include pending cases reported by SSA, because SSA’s pending cases do not include simple requests handled by non-FOIA staff (for which SSA does not track pending cases). As the figure shows, these pending cases do not change the governmentwide picture significantly.

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<sup>30</sup> Committee on Government Reform and Oversight, House of Representatives, *Report to accompany H.R. 3802, Electronic Freedom of Information Amendments of 1996*, H.R. 104-795 (Washington, D.C.: Sept. 17, 1996).

**Figure 5: Total FOIA Requests Pending at End of Year, 2002–2005**



Source: GAO analysis, FOIA annual reports for fiscal years 2002-2005 (self-reported data).

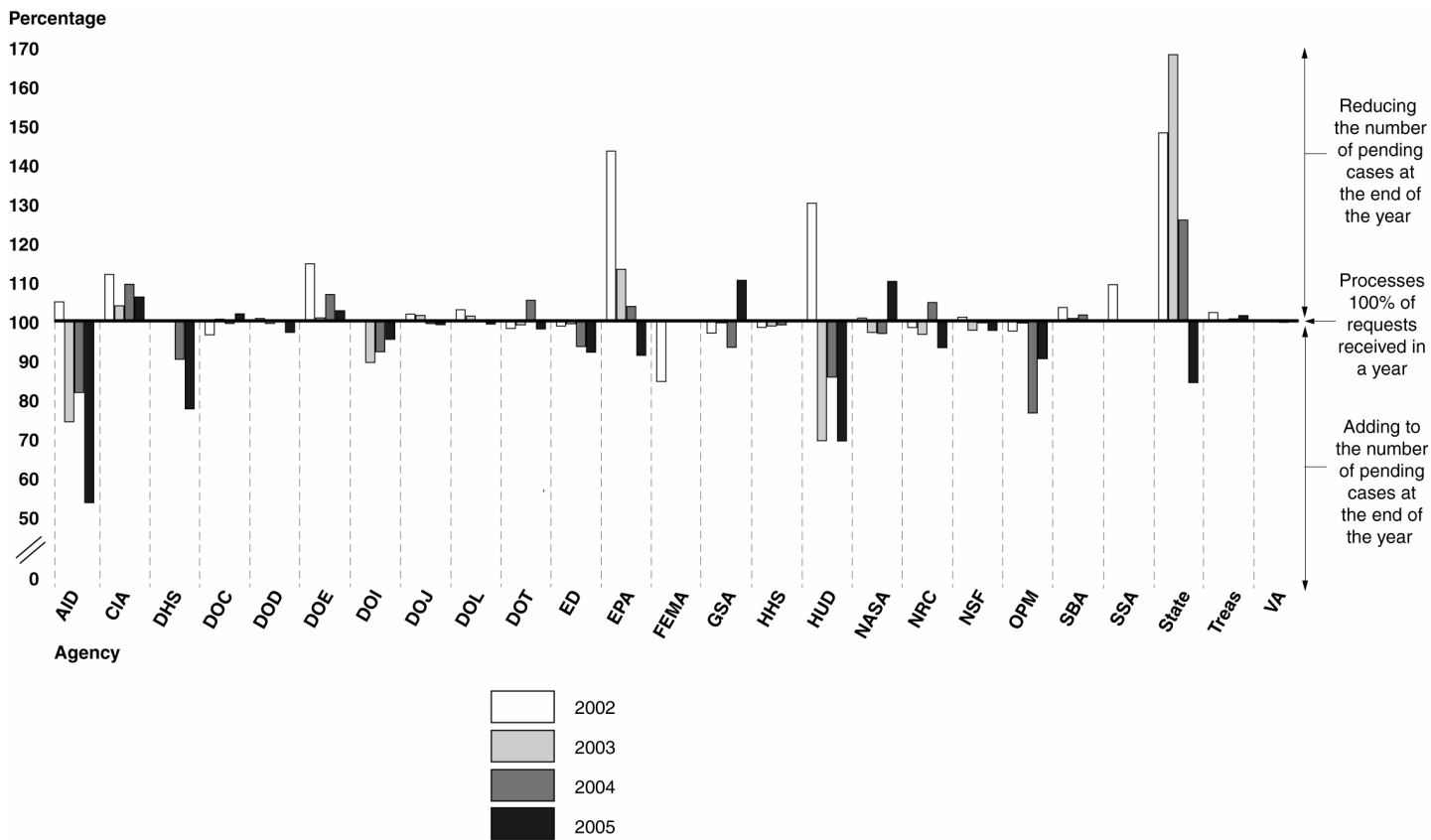
Trends for individual agencies show mixed progress in reducing the number of pending requests reported from 2002 to 2005—some agencies have decreased numbers of pending cases, while others' numbers have increased. Figure 6 shows processing rates at the 24 agencies (that is, the number of requests that an agency processes relative to the number it receives). Eight of the 24 agencies (AID, DHS, the Interior, Education, HHS, HUD, NSF, and OPM) reported processing fewer requests than they received each year for fiscal years 2003, 2004, and 2005; 8 additional agencies processed less than they received in two of these three years (Defense, Justice, Transportation, GSA, NASA, NRC, SSA, and VA).

In contrast, two agencies (CIA and Energy) had processing rates above 100 percent in all 3 years, meaning that each made continued progress in reducing their numbers of pending cases. Fourteen additional agencies were able to make at least a small reduction in



their numbers of pending requests in 1 or more years between fiscal years 2003 and 2005.

**Figure 6: Agency Processing Rate for 25 Agencies**



Source: GAO analysis of FOIA annual reports for fiscal years 2002-2005 (self-reported data).

Notes: Abbreviations are as in table 2.

The agency processing rate is defined as the number of requests processed in a given year compared with the requests received, expressed as a percentage.

In 2002, FEMA data were used, and for 2003, 2004, and 2005, DHS data were used.

## No Regular Mechanism Is in Place for Aggregating Annual Report Data

Legislators noted in 1996 that the FOIA reporting requirements were rewritten “to make them more useful to the public and to Congress, and to make the information in them more accessible.” The Congress also gave the Department of Justice the responsibility to

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provide policy guidance and oversee agencies' compliance with FOIA.

In its oversight and guidance role, Justice's Office of Information and Privacy (OIP) created summaries of the annual FOIA reports and made these available through its FOIA Post Web page ([www.usdoj.gov/oip/foiapost/mainpage.htm](http://www.usdoj.gov/oip/foiapost/mainpage.htm)). In 2003, Justice described its summary as "a major guidance tool."<sup>31</sup> It pointed out that although it was not required to do so under the law, the office had initiated the practice of compiling aggregate summaries of all agencies' annual FOIA report data as soon as these were filed by all agencies. These summaries did not contain aggregated statistical tables, but they did provide prose descriptions that included statistics on major governmentwide results. However, the most recent of these summaries is for fiscal year 2003.<sup>32</sup> According to the Acting Director of OIP, she was not certain why such summaries had not been made available since then. According to this official, internally the agency found the summaries useful and was considering making them available again. She also stated that these summaries gave a good overall picture of governmentwide processing.

Aggregating and summarizing the information in the annual reports serves to maximize their usefulness and accessibility, in accordance with congressional intent, as well as potentially providing Justice with insight into FOIA implementation governmentwide and valuable benchmarks for use in overseeing the FOIA program. Such information would also be valuable for others interested in gauging governmentwide performance. The absence of such summaries reduces the ability of the public and the Congress to consistently obtain a governmentwide picture of FOIA processing.

In providing agency views for this testimony, the Acting Director of OIP told us that the department would resume providing summaries, and that these would generally be available by the summer following the issuance of the annual reports.

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<sup>31</sup> Department of Justice, 2003 Litigation and Compliance Report, [www.usdoj.gov/oip/03introduction.htm](http://www.usdoj.gov/oip/03introduction.htm).

<sup>32</sup> *Summary of Annual FOIA Reports for Fiscal Year 2003*, [www.usdoj.gov/oip/foiapost/2004foiapost22.htm](http://www.usdoj.gov/oip/foiapost/2004foiapost22.htm).

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## Agency Improvement Plans Generally Included Areas of Improvement Emphasized by the Executive Order

As required by the Executive Order, all the 25 agencies submitted improvement plans based on the results of reviews of their respective FOIA operations, as well as on the areas emphasized by the order. The plans generally addressed these four areas, with 20 of 25 plans addressing all four. In particular, for all but 2 agencies with reported backlog, plans included both measurable goals and timetables for backlog reduction. Further, to increase reliance on dissemination, improve communications on the status of requests, and increase public awareness of FOIA processing, agencies generally set milestones to accomplish activities promoting these aims. In some cases, agencies did not set goals for a given area because they determined that they were already strong in that area.

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## All Agencies Addressed Reducing Backlog, and Most Set Measurable Goals and Milestones

The Executive Order states that improvement plans shall include “specific activities that the agency will implement to eliminate or reduce the agency’s FOIA backlog, including (as applicable) changes that will make the processing of FOIA requests more streamlined and effective.” It further states that plans were to include “concrete milestones, with specific timetables and outcomes to be achieved,” to allow the plan’s success to be measured and evaluated. In addition, the Justice guidance suggested a number of process improvement areas for agencies to consider, such as receiving or responding to requests electronically, automated FOIA processing, automated tracking capabilities, and multitrack processing. It also gave agencies considerable leeway in choosing “means of measurement of success” for improving timeliness and thus reducing backlog.<sup>33</sup>

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<sup>33</sup> For example, Justice’s guidance states that “Agencies should consider a number of measures of timeliness, including number of pending requests, median processing times, average processing times (in addition, if that is feasible), number of requests processed in a year, duration of oldest pending requests, etc.” “In determining such appropriate measurements, agencies should be able to

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All agency plans discussed avoiding or reducing backlog, and most (22 out of 25) established measurable goals and timetables for this area of focus. One agency, SBA, reported that it had no backlog, so it set no goals. A second agency, NSF, set no specific numerical goals for backlog reduction, but in fiscal year 2005 its backlog was minimal,<sup>34</sup> and its median processing time was 14.26 days.<sup>35</sup> In addition, its plan includes activities to increase efficiency and to monitor and analyze backlogged requests to determine whether systemic changes are warranted in its processes. A third agency, HUD, set a measurable goal for reducing backlog, but did not include a date by which it planned to achieve this goal. However, it achieved this goal, according to agency officials, by November 2006.<sup>36</sup>

The goals chosen by the 22 remaining agencies varied considerably (which is consistent with the flexibility in choosing measures that Justice provided in its implementation guidance). Some agencies linked backlog reduction to various different measures. For example, EPA's goal was to reduce its response backlog to less than 10 percent of the number of new FOIA requests received each year. Energy set a goal of achieving a 50 percent reduction by June 2007

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carefully determine which ones best fit their individual circumstances, which can vary greatly from one agency to another.”

<sup>34</sup> In fiscal year 2005, NSF reported 273 requests received and 17 pending at the end of the reporting period. Note that pending cases are not technically the same as the “backlog” referred to in the Executive Order, which refers to “requests ... that have not been responded to within the statutory time limit.” Pending cases reported in the annual reports are those FOIA cases open at the end of the reporting period. Although in previous reports, we have used the term “backlog” to refer to these pending cases, they may or may not constitute backlog in the sense of the Executive Order, primarily because some requests may have arrived in the last 20 days of the reporting period. If so, they would not exceed the statutory limit. Thus, backlogged cases in the sense of the Executive Order are a subset of pending cases.

<sup>35</sup> NSF's plan stated that the vast majority of its FOIA requests are answered within 20 working days, which is consistent with the median processing time it reported.

<sup>36</sup> HUD set a goal of fewer than 400 pending requests at its Headquarters FOIA Division, at which HUD states it typically has a backlog of between 400 and 500. The HUD plan did not set backlog reduction goals for its field operations, stating that “the field offices appear to process FOIA requests more efficiently” than the headquarters, based on median processing times. HUD officials also told us that HUD field offices (which number about 80) typically receive routine requests that can be processed quickly, such as requests for information on grants and mortgages.

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in the number of pending FOIA cases that were over 1 year old. NRC chose to focus on improving processing times, setting percentage goals for completion of different types of requests (for example, completing 75 percent of simple requests within 20 days). Labor's plan sets goals that aim for larger percentages of reduction for the oldest categories of pending requests (75 percent reduction for the oldest, 50 percent reduction for the next oldest, and so on). A number of agencies included goals to close their oldest 5 to 10 requests (Justice, the Treasury, Education, Commerce, Defense, GSA, NASA, SSA, and VA).

Other agencies planned to eliminate their backlogs (for example, OPM and DHS) or to eliminate fiscal year 2005 backlog (Transportation), and several agencies chose goals based on a percentage of reduction of existing backlog (for example, CIA, Commerce, Education, Defense, the Interior, Justice, SSA, the Treasury, and USDA). Some agencies also described plans to perform analyses that would measure their backlogs so that they could then establish the necessary baselines against which to measure progress.

In addition to setting backlog targets, agencies also describe activities that contribute to reducing backlog. For example, the Treasury plan, which states that backlog reduction is the main challenge facing the department and the focus of its plan, includes such activities (with associated milestones) as reengineering its multitrack FOIA process, monitoring monthly reports, and establishing a FOIA council.

The agency plans thus provide a variety of activities and measures of improvement that should permit agency heads, the Congress, and the public to assess the agencies' success in implementing their plans to reduce backlog.

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## Most Agencies Plan to Increase Public Dissemination of Records through Web Sites

The Executive Order calls for "increased reliance on the dissemination of records that can be made available to the public" without the necessity of a FOIA request, such as through posting on Web sites. In its guidance, Justice notes that agencies are required by FOIA to post frequently requested records, policy statements, staff manuals and instructions to staff, and final agency opinions. It

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encourages agencies not only to review their activities to meet this requirement, but also to make other public information available that might reduce the need to make FOIA requests. It also suggests that agencies consider improving FOIA Web sites to ensure that they are user friendly and up to date.

Agency plans generally established goals and timetables for increasing reliance on public dissemination of records, including through Web sites. Of 25 agencies, 24 included plans to revise agency Web sites and add information to them, and 12 of these are making additional efforts to ensure that frequently requested documents are posted on their Web sites. For example, Defense is planning to increase the number of its components that have Web sites as well as posting frequently requested documents. Interior is planning to facilitate the posting of frequently requested documents by using scanning and redaction equipment to make electronic versions readily available.

Agencies planned other related activities, such as making posted documents easier to find, improving navigation, and adding other helpful information. For example, AID plans to establish an “information/searching decision tree” to assist Web site visitors by directing them to agency public affairs staff who may be able to locate information and avoid the need for visitors to file FOIA requests. HUD plans activities to anticipate topics that may produce numerous FOIA requests (“hot button” issues) and post relevant documents. Education is planning to use its automated tracking technology to determine when it is receiving multiple requests for similar information and then post such information on its Web site.<sup>37</sup>

The Treasury plan does not address increasing public dissemination of records. The Treasury’s plan, as mentioned earlier, is focused on backlog reduction. It does not mention the other areas emphasized in the Executive Order, list them among the areas it selected for review, or explain the decision to omit them from the review and plan. Treasury officials told us that they concentrated in their plan on areas where they determined the department had a deficiency: namely, a backlog consisting of numerous requests, some of which

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<sup>37</sup> This is distinct from multiple requests for the same document, which is already covered by the FOIA provision that directs agencies to post frequently requested documents.

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were very old (dating as far back as 1991). By comparison, they did not consider they had deficiencies in the other areas. They also stated that neither Justice nor OMB had suggested that they revise the plan to include these areas. With regard to dissemination, they told us that they did not consider increasing dissemination to be mandatory, and they noted that their Web sites currently provide frequently requested records and other public documents, as required by the act. However, without a careful review of the department's current dissemination practices or a plan to take actions to increase dissemination, the Treasury does not have assurance that it has identified and exploited available opportunities to increase dissemination of records in such a way as to reduce the need for the public to make FOIA requests, as stressed by the Executive Order.

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### Most Agency Plans Included Improving Status Communications with FOIA Requesters

The Executive Order sets as policy that agencies shall provide FOIA requesters ways to learn about the status of their FOIA requests and states that agency improvement plans shall ensure that FOIA administration is in accordance with this policy. In its implementation guidance, Justice reiterated the order's emphasis on providing status information to requesters and discussed the need for agencies to examine, among other things, their capabilities for tracking status and the forms of communication used with requesters.

Most agencies (22 of 25) established goals and timetables for improving communications with FOIA requesters about the status of their requests. Goals set by these agencies included planned changes to communications, including sending acknowledgement letters, standardizing letters to requesters, including information on elements of a proper FOIA request in response letters, and posting contact information on Web pages. Other activities included establishing toll free numbers for requesters to obtain status information, acquiring software to allow requesters to track the status of their requests, and holding public forums.

Three agencies did not include improvement goals because they considered them unnecessary. In two cases (Defense and EPA), agencies considered that status communications were already an area of strength.

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- Defense considered that it was strong in both customer responsiveness and communications.<sup>38</sup> Defense’s Web site provides instructions for requesters on how to get information about the status of requests, as well as information on Requester Service Centers and Public Liaisons. Officials also told us that this information is included in acknowledgement letters to requesters, and that the department is working to implement an Interactive Customer Collection tool that would enable requesters to provide feedback.
  - Similarly, EPA officials told us that they considered the agency’s activities to communicate with requesters on the status of their requests to be already effective, noting that many of the improvements planned by other agencies were already in effect at EPA.<sup>39</sup> Officials also stated that EPA holds regular FOIA requester forums (the last in November 2006), and that EPA’s requester community had expressed satisfaction with EPA’s responsiveness. EPA’s response to the Executive Order describes its FOIA hotline for requesters and its enterprise FOIA management system, deployed in 2005, that provides “cradle to grave” tracking of incoming requests and responses.

The third agency, the Treasury, did not address improving status communications, as its plan is focused on backlog reduction. As required by the Executive Order, the Treasury did set up Requester Service Centers and Public Liaisons, which are among the mechanisms envisioned to improve status communications. However, because the Treasury omitted status communications from the areas of improvement that it selected for review, it is not clear that this area received attention commensurate with the emphasis it was given in the Executive Order. Without attention to communication with requesters, the Treasury increases the risk that

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<sup>38</sup> Defense performed extensive surveys of the opinions and practices of its FOIA staff and Public Liaisons and concluded that “FOIA personnel routinely contact requesters to try to resolve problems and to better define requests.” Department officials also told us that Defense is in the process of collecting feedback from the requester community.

<sup>39</sup> For example, EPA sends out an acknowledgment letter within a day of the request that includes a tracking number, the department that will be involved, and a contact name and telephone number.



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its FOIA operations will not be responsive and citizen centered, as envisioned by the Executive Order.

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## Agencies Generally Plan to Rely on FOIA Reference Guides to Increase Public Awareness of FOIA Processing

The Executive Order states that improvement plans shall include activities to increase public awareness of FOIA processing, including (as appropriate) expanded use of Requester Service Centers and FOIA Public Liaisons, which agencies were required to establish by the order. In Justice's guidance, it linked this requirement to the FOIA Reference Guide that agencies are required to maintain as an aid to potential FOIA requesters, because such guides can be an effective means for increasing public awareness. Accordingly, the Justice guidance advised agencies to double-check these guides to ensure that they remain comprehensive and up to date.

Most agencies (23 of 25) defined goals and timetables for increasing public awareness of FOIA processing, generally including ensuring that FOIA reference guides were up to date. In addition, all 25 agencies established requester service centers and public liaisons as required by the Executive Order. Besides these activities, certain agencies planned other types of outreach: for example, the Department of State reported taking steps to obtain feedback from the public on how to improve FOIA processes; the Department of the Interior plans to initiate feedback surveys on requesters' FOIA experience; and the Department of Labor is planning to hold public forums and solicit suggestions from the requester community. Defense did not set specific goals and milestones in this area; according to Defense, it did not do so because its FOIA handbook had already been updated in the fall of 2005. Department officials told us that in meeting their goals and milestones for revising FOIA Web sites, they expect to improve awareness of Defense's FOIA process, as well as improving public access and other objectives.

As mentioned earlier, the Treasury did not address this area in its review or plan. However, Treasury has established Requester Service Centers and FOIA Public Liaisons, as required. The

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Treasury's Director of Disclosure Services<sup>40</sup> also told us that the Treasury provides on its Web site a FOIA handbook, a Privacy Act handbook, and a citizen's guide for requesters. In addition, this official told us that the Treasury had updated its FOIA handbook in 2005 and conducted staff training based on the update. However, at the time of our review, the FOIA handbook on the Web site was a version dated January 2000. When we pointed out that this earlier version was posted, the official indicated that he would arrange for the most recent version to be posted.

Because the Treasury did not review its efforts to increase public awareness, it missed an opportunity to discover that the handbook on the Web site was outdated and thus had reduced effectiveness as a tool to explain the agency's FOIA processing to the public. Without further attention to increasing public awareness, the Treasury lacks assurance that it has taken all appropriate steps to ensure that the public has the means of understanding the agency's FOIA processing.

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## Annual Reporting and Selected Improvement Plans Could Be Further Enhanced

The annual FOIA reports continue to provide valuable information about citizens' use of this important tool for obtaining information about government operation and decisions. The value of this information is enhanced when it can be used to reveal trends and support generalizations, but our ability to generalize about processing times—whether from agency to agency or year to year—is limited because only median times are reported. Given that processing times are an important gauge of government responsiveness to citizen inquiries, this limitation impedes the development of broader pictures of FOIA operations, which could be useful in monitoring efforts to improve processing and reduce the increasing backlog of requests, as intended by the Executive Order. Finally, having aggregated statistics and summaries could

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<sup>40</sup> This official is also the FOIA public liaison for all Treasury components except the Office of Thrift Supervision, the Inspector General for Tax Administration, and the Internal Revenue Service.

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increase the value of the annual reporting process for assessing the performance of the FOIA program as a whole.

In the draft report on which my statement today is based, we suggest that the Congress consider amending the act to require agencies to report additional statistics on processing time, which at a minimum should include average times and ranges. We also recommend that Justice provide aggregated statistics and summaries of the annual reports.

The Executive Order provided a useful impetus for agencies to review their FOIA operations and ensure that they are appropriately responsive to the public generally and requesters specifically. Our draft report makes recommendations aimed at improving selected agency improvement plans. Nonetheless, all the plans show a commendable focus on making measurable improvements and form a reasonable basis for carrying out the order's goals.

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In summary, increasing the requirements for annual reporting would further improve the public visibility of the government's implementation of FOIA. In addition, implementing the improvement plans and reporting on their progress should serve to keep management attention on FOIA and its role in keeping citizens well informed about the operations of their government. However, to realize the goals of the Executive Order, it will be important for Justice and the agencies to continue to refine the improvement plans and monitor progress in their implementation.

Mr. Chairman, this completes my statement. I would be happy to respond to any questions you or other Members of the Subcommittee may have at this time.

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## Contact and Acknowledgments

If you should have questions about this testimony, please contact me at (202) 512-6240 or [koontzl@gao.gov](mailto:koontzl@gao.gov). Other major contributors included Barbara Collier, Kelly Shaw, and Elizabeth Zhao.

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## Attachment I: Scope and Methodology

For the draft report on which this testimony is based, we gauged agencies' progress in processing requests by analyzing the workload data (from fiscal year 2002 through 2005) included in the 25 agencies' annual FOIA reports to assess trends in volume of requests received and processed, median processing times, and the number of pending cases. All agency workload data were self-reported in annual reports submitted to the Attorney General.

To assess the reliability of the information contained in agency annual reports, we interviewed officials from selected agencies and assessed quality control processes agencies had in place. We selected 10 agencies to assess data reliability: the Departments of Agriculture (USDA), Defense, Education, the Interior, Labor, and Veterans Affairs, as well as the National Aeronautics and Space Administration, National Science Foundation, Small Business Administration, and Social Security Administration. We chose the Social Security Administration and Veterans Affairs because they processed a majority of the requests. To ensure that we selected agencies of varying size, we chose the remaining 8 agencies by ordering them according to the number of requests they received, from smallest to largest, and choosing every third agency. These 10 agencies account for 97 percent of the received requests that were reported in the 25 agencies' annual reports.

Of the 10 agencies that were assessed for data reliability, we determined that the data for USDA's Farm Service Agency were not reliable; these data account for over 80 percent of the reported USDA data. We therefore eliminated USDA's data from our analysis. Because of this elimination, our analysis was of 24 major agencies<sup>41</sup> (herein we refer to this scope as governmentwide). Table 7 shows the 25 agencies and their reliability assessment status.

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<sup>41</sup> The agencies included are listed in table 2; these agencies are the 24 agencies covered by the Chief Financial Officers Act, plus the Central Intelligence Agency.

**Table 7: Agencies Reviewed**

<b>Agency</b>	<b>Abbreviation</b>	<b>Data reliability assessment</b>
Agency for International Development	AID	Not assessed
Central Intelligence Agency	CIA	Not assessed
Department of Agriculture	USDA	Not reliable
Department of Commerce	DOC	Not assessed
Department of Defense	DOD	Reliable
Department of Education	ED	Reliable
Department of Energy	DOE	Not assessed
Department of Health and Human Services	HHS	Not assessed
Department of Homeland Security <sup>a</sup>	DHS	Not assessed
Federal Emergency Management Agency <sup>a</sup>	FEMA	Not applicable
Department of Housing and Urban Development	HUD	Not assessed
Department of the Interior	DOI	Reliable
Department of Justice	DOJ	Not assessed
Department of Labor	DOL	Reliable
Department of State	State	Not assessed
Department of the Treasury	Treas	Not assessed
Department of Transportation	DOT	Not assessed
Department of Veterans Affairs	VA	Reliable
Environmental Protection Agency	EPA	Not assessed
General Services Administration	GSA	Not assessed
National Aeronautics and Space Administration	NASA	Reliable
National Science Foundation	NSF	Reliable
Nuclear Regulatory Commission	NRC	Not assessed
Office of Personnel Management	OPM	Not assessed
Small Business Administration	SBA	Reliable
Social Security Administration	SSA	Reliable

Source: GAO.

<sup>a</sup>FEMA information was reported separately in fiscal year 2002. In fiscal years 2003, 2004, and 2005, FEMA was part of DHS.

To determine to what extent the agency improvement plans contain the elements emphasized by the order, we first analyzed the Executive Order to determine how it described the contents of the

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improvement plans. We determined that the order emphasized the following areas to be addressed by the plans: (1) reducing the backlog of FOIA requests, (2) increasing reliance on public dissemination of records (affirmative and proactive) including through Web sites, (3) improving communications with FOIA requesters about the status of their requests, and (4) increasing public awareness of FOIA processing including updating an agency's FOIA Reference Guide. We also analyzed the improvement plans to determine if they contained specific outcome-oriented goals and timetables for each of the criteria. We then analyzed the 25 agencies' (including USDA) plans to determine whether they contained goals and timetables for each of these four elements.<sup>42</sup> We evaluated the versions of agency plans available as of December 15, 2006.

We also reviewed the Executive Order itself, implementing guidance issued by OMB and the Department of Justice, other FOIA guidance issued by Justice, and our past work in this area.

We conducted our review in accordance with generally accepted government auditing standards. We performed our work from May 2006 to February 2007 in Washington, D.C.

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<sup>42</sup> Two GAO analysts independently analyzed each agency's plan to determine if it contained objective goals and timetables for each of the four elements we identified. When the analysts disagreed, they discussed the reasons for their differences and arrived at a consensus.

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## Attachment II: Freedom of Information Act Exemptions

The act prescribes nine specific categories of information that is exempt from disclosure:

Exemption number	Matters that are exempt from FOIA
(1)	(A) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive Order.
(2)	Related solely to the internal personnel rules and practices of an agency.
(3)	Specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld.
(4)	Trade secrets and commercial or financial information obtained from a person and privileged or confidential.
(5)	Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.
(6)	Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
(7)	Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information
(A)	could reasonably be expected to interfere with enforcement proceedings;
(B)	would deprive a person of a right to a fair trial or impartial adjudication;
(C)	could reasonably be expected to constitute an unwarranted invasion of personal privacy;
(D)	could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by confidential source;
(E)	would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or
(F)	could reasonably be expected to endanger the life or physical safety of an individual.
(8)	Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.
(9)	Geological and geophysical information and data, including maps, concerning wells.

Source: 5 U.S.C. § 552(b)(1) through (b)(9).

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