

## FREEDOM OF INFORMATION ANNUAL REPORT -- FY 2010

I. AGENCY: National Institutes of Health

REPORT PREPARED BY: Susan R. Cornell, J.D.

TITLE: Freedom of Information Officer, National Institutes of Health

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ELECTRONIC ADDRESS FOR THIS REPORT ON THE WORLD WIDE WEB:

<http://www.nih.gov/icd/od/foia/annualreports/index.htm>

ADDRESS FOR PAPER COPIES OF THIS REPORT: Building 31 Room 5B35; 9000 Rockville Pike, Bethesda, MD 20892

II. HOW TO MAKE A FOIA REQUEST:

<http://www.nih.gov/icd/od/foia/index.htm#requests>

1. Names, addresses and telephone numbers of all individual agency components and offices that process FOIA requests:

### NIH FREEDOM OF INFORMATION COORDINATORS

IC	BLDG	ROOM	PHONE
NCI	31 9000 Rockville Pike Bethesda, MD 20892	10A48	301-496-2999
NHGRI	6705 Rockledge Drive Bethesda, MD 20892	6070	301-496-9737
NINR	6705 Rockledge Drive Bethesda, MD 20892	6070	301-496-9737
NCRR	6705 Rockledge Drive Bethesda, MD 20892	6070	301-496-9737
NEI	31 9000 Rockville Pike Bethesda, MD 20892	6A19	301-496-4334
NHLBI	6705 Rockledge Drive Bethesda, MD 20892	6070	301-496-9737
NIA	6705 Rockledge Drive Bethesda, MD 20892	6070	301-496-9737
NIAAA	5635 Fishers Lane Bethesda, MD 20892	3111	301-443-8771

<b>IC</b>	<b>BLDG</b>	<b>ROOM</b>	<b>PHONE</b>
NIAID	6610 Rockledge Drive Bethesda, MD 20817	2600	301-451-5109
NIAMS	6701 Democracy Blvd. Bethesda, MD 20892	854	301-594-3504
NIBIB	6705 Rockledge Drive Bethesda, MD 20892	6070	301-496-9737
NICHD	31 9000 Rockville Pike Bethesda, MD 20892	2A32	301-496-5135
NIDA	6001 Executive Blvd. Rockville, MD 20852	5230	301-443-6036
NIDCD	6120 Executive Blvd. Rockville, MD 20852	516	301-496-3033
NIDDK	6707 Democracy Blvd. Bethesda, MD 20817	652	301-496-2978
NIDCR	6705 Rockledge Drive Bethesda, MD 20892	6070	301-496-9737
NIEHS	Mail Drop k3-16 Box 12233 Research Triangle Pk., NC 27709		919-541-3411
NIGMS	6705 Rockledge Drive Bethesda, MD 20892	6070	301-496-9737
NIMH	6001 Executive Blvd. Rockville, MD 20852	8209	301-443-6130
NINDS	6705 Rockledge Drive Bethesda, MD 20892	6070	301-496-9737
NLM	38A 9000 Rockville Pike Bethesda, MD 20892	2N07	301-402-9705
NCCAM	6705 Rockledge Drive Bethesda, MD 20892	6070	301-496-9737
NCMHD	6705 Rockledge Drive Bethesda, MD 20892	6070	301-496-9737
CC	10 Cloister Court Bethesda, MD 20892	61	301-451-8330

<b>IC</b>	<b>BLDG</b>	<b>ROOM</b>	<b>PHONE</b>
CIT	10401 Fernwood Rd. Bethesda, MD 20817	3NE52D	301-594-9518
OFM	2115 East Jefferson St. Rockville, MD 20892	3C-302A	301-496-9498
OALM	6011 Executive Blvd. Rockville, MD 20852	625J	301-435-0855
CSR	6701 Rockledge Dr. Bethesda, MD 20817	3030	301-435-1856
FIC	6705 Rockledge Dr. Bethesda, MD 20892	6070	301-496-9737
OBA	6705 Rockledge Dr. Rockville, MD 20817	757	301-435-8267
OER	6705 Rockledge Dr. Bethesda, MD 20892	4184	301-402-1058
ORS	31 9000 Rockville Pike Bethesda, MD 20892	2B37	301-402-3570
ORF	31 9000 Rockville Pike Bethesda, MD 20892	4B30	301-402-1661
OTT	6011 Executive Blvd. Rockville, MD 20852	325	301-435-5239

2. Brief description of why some requests are not granted: Requests are not granted if the information requested falls within one of the statute's enumerated exemptions, primarily Exemption 4 because the requested record contains proprietary information, Exemption 5 because the requested record contains information that would reveal internal agency deliberations, or Exemption 6 because the requested record contains personal information such as home address and phone number or medical information.

### III. ACRONYMS, DEFINITIONS, AND EXEMPTIONS:

1. Agency-specific acronyms or other terms:

NCI	National Cancer Institute
NHGRI	National Human Genome Research Institute

NINR	National Institute of Nursing Research
NCRR	National Center for Research Resources
NEI	National Eye Institute
NHLBI	National Heart, Lung, and Blood Institute
NIA	National Institute on Aging
NIAAA	National Institute on Alcohol Abuse and Alcoholism
NIAID	National Institute of Allergy and Infectious Diseases
NIAMS	National Institute on Arthritis and Musculoskeletal and Skin Diseases
NIBIB	National Institute of Biomedical Imaging and Bioengineering
NICHD	National Institute of Child Health and Human Development
NIDA	National Institute on Drug Abuse
NIDCD	National Institute on Deafness and Other Communication Disorders
NIDDK	National Institute of Diabetes and Digestive and Kidney Diseases
NIDCR	National Institute of Dental and Craniofacial Research
NIEHS	National Institute of Environmental Health Sciences
NIGMS	National Institute of General Medical Sciences
NIMH	National Institute of Mental Health
NINDS	National Institute of Neurological Disorders and Stroke
NLM	National Library of Medicine
CC	Warren Grant Magnuson Clinical Center
CIT	Center for Information Technology
NCCAM	National Center for Complementary and Alternative Medicine
NCMHD	National Center on Minority Health and Health Disparities
OFM	Office of Financial Management
OALM	Office of Acquisition and Logistics Management
CSR	Center for Scientific Review
FIC	Fogarty International Center
OBA	Office of Biotechnology Activities
OER	Office of Extramural Research
OMA	Office of Management Assessment
ORF	Office of Research Facilities
ORS	Office of Research Services
OTT	Office of Technology Transfer

2. Basic terms (from FOIA UPDATE, Summer 1997):

- a. **Administrative Appeal** – a request to a federal agency asking that it review at a higher administrative level a FOIA determination made by the agency at the initial request level.
- b. **Average Number** – the number obtained by dividing the sum of a group of numbers by the quantity of numbers in the group. For example, of 3, 7, and 14, the average number is 8.
- c. **Backlog** – the number of requests or administrative appeals that are pending at an agency at the end of the fiscal year that are beyond the statutory time period for a response.
- d. **Component** – for agencies that process requests on a decentralized basis, a “component” is an entity, also sometimes referred to as an Office, Division, Bureau, Center, or Directorate, within the agency that processes FOIA requests. The FOIA now requires that agencies include in their annual report data for both the agency overall and for each principal component of the agency.
- e. **Consultation** – the procedure whereby the agency responding to a FOIA request first forwards a record to another agency for its review because that agency has an interest in the document. Once the agency in receipt of the consultation finishes its review of the record, it responds back to the agency that forwarded it. That agency, in turn, will then respond to the FOIA requester.
- f. **Exemption 3 Statute** – a federal statute that exempts information from disclosure and which the agency relies on to withhold information under subsection (b)(3) of the FOIA.
- g. **FOIA Request** – a FOIA request is generally a request to a federal agency for access to records concerning another person (i.e., a “third-party” request), or concerning an organization, or a particular topic of interest. FOIA requests also include requests made by requesters seeking records concerning themselves (i.e., “first-party” requests) when those requesters are not subject to the Privacy Act, such as non-U.S. citizens. Moreover, because all first-party requesters should be afforded the benefit of both the access provisions of the FOIA as well as those of the Privacy Act, FOIA requests also include any first-party requests where an agency determines that it must search beyond its Privacy Act “systems of records” or where a Privacy Act exemption applies, and the agency looks to FOIA to afford the greatest possible access. All requests which require the agency to utilize the FOIA in responding to the requester are included in this Report. Additionally, a FOIA request includes records referred to the agency for processing and direct response to the requester. It does not, however, include records for which the agency has received a consultation from another agency. (Consultations are reported separately in Section XII of this Report.)
- h. **Full Grant** - an agency decision to disclose all records in full in response to a FOIA request.

- i. **Full Denial** - an agency decision not to release any records in response to a FOIA request because the records are exempt in their entirety under one or more of the FOIA exemptions, or because of a procedural reason, such as when no records could be located.
  - j. **Median Number** - the middle, not average, number. For example, of 3, 7, and 14, the median number is 7.
  - k. **Multi-Track Processing** – a system in which simple requests requiring relatively minimal review are placed in one processing track and more voluminous and complex requests are placed in one or more other tracks. Requests granted expedited processing are placed in yet another track. Requests in each track are processed on a first in/first out basis.
    - i. **Expedited Processing** – an agency will process a FOIA request on an expedited basis when a requester satisfies the requirements for expedited processing as set forth in the statute and in agency regulations.
    - ii. **Simple Request** – a FOIA request that an agency using multi-track processing places in its fastest (non-expedited) track based on the low volume and/or simplicity of the records requested.
    - iii. **Complex Request** – a FOIA request that an agency using multi-track processing places in a slower track based on the high volume and/or complexity of the records requested.
  - l. **Partial Grant/Partial Denial** – in response to a FOIA request, an agency decision to disclose portions of the records and to withhold other portions that are exempt under the FOIA, or to otherwise deny a portion of the request for a procedural reason.
  - m. **Pending Request or Pending Administrative Appeal** – a request or administrative appeal for which an agency has not taken final action in all respects.
  - n. **Perfected Request** – a request for records which reasonably describes such records and is made in accordance with published rules stating the time, place, fees (if any) and procedures to be followed.
  - o. **Processed Request or Processed Administrative Appeal** – a request or administrative appeal for which an agency has taken final action in all respects.
  - p. **Range in Number of Days** – the lowest and highest number of days to process requests or administrative appeals.
  - q. **Time Limits** – the time period in the statute for an agency to respond to a FOIA request (ordinarily twenty working days from receipt of a perfected FOIA request).
3. Include the following concise descriptions of the nine FOIA exemptions:
- a. **Exemption 1:** classified national defense and foreign relations information
  - b. **Exemption 2:** internal agency rules and practices
  - c. **Exemption 3:** information that is prohibited from disclosure by another federal law

- d. **Exemption 4:** trade secrets and other confidential business information
- e. **Exemption 5:** inter-agency or intra-agency communications that are protected by legal privileges
- f. **Exemption 6:** information involving matters of personal privacy
- g. **Exemption 7:** records or information compiled for law enforcement purposes, to the extent that the production of those records (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an 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, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or (F) could reasonably be expected to endanger the life or physical safety of any individual
- h. **Exemption 8:** information relating to the supervision of financial institutions
- i. **Exemption 9:** geological information on wells

#### IV. EXEMPTION 3 STATUTES

Statute	Type of Information Withheld	Case Citation	Total # of Times Relied upon by Agency
5 U.S.C. app. §107(a) (Ethics in Government Act of 1978)	Financial disclosure information pertaining to certain government employees	<u>Meyeroff v. EPA</u> , 948 F.2d 1498, 1500-02 (9 <sup>th</sup> Cir. 1992); <u>Concepcion v. FBI</u> , 606 F.Supp. 2d 14, 33 (D.D.C. 2009)	3
15 U.S.C. §3710a(c) (Federal Technology Transfer Act)	“Trade secrets or commercial or financial information that is privileged or confidential, under the meaning of section 552(b)(4) of Title 5, which is obtained in the conduct of research or as a result of activities under this chapter,” which	<u>Pub. Citizen Health Research Group v. NIH</u> , 209 F.Supp. 2d 37, 43, 51 (DDC 2002); <u>DeLorme Pub. Co., Inc. v. NOAA</u> , 917 F.Supp. 867, 871-72 (D.ME. 1996, appeal dismissed per stipulation, No. 96-1601 (1st Cir. July 8, 1996).	1

	pertains to cooperative research and development agreements for the purpose of technological and industrial innovation.		
41 U.S.C. §253b(m)(1) (National Defense Authorization Act for Fiscal Year 1997)	Contractor proposals that are in the possession or control of an executive agency and that have not been set forth or incorporated by reference into contracts.	<u>Hornbostel v. U.S. Dep't of the Interior</u> , 305 F.Supp. 2d 21, 30 (D.D.C. 2003), <u>summary affirmance granted</u> , No. 03-5257, 2004 WL 1900562 (DC Cir. Aug 25, 2004	3



**V. FOIA Requests**

A. Numbers of initial requests (Col.1 + Col. 2 – Col. 3 = Col. 4):

<b># Requests Pending as of Start of Fiscal Year</b>	<b># of Requests Rec'd During the Fiscal Year</b>	<b># of Requests Processed During the Fiscal Year</b>	<b># of Requests Pending as of the End of the Fiscal Year</b>
114 <sup>1</sup>	1,253	1,282	85

B. (1) Disposition of FOIA Requests:

# of Full Grants	813
# of Partial Grants/Partial Denials	114
# of Full Denials Based on Exemptions	18
# of Full Denials – No Records	141
# of Full Denials – Records Referred to Another Component or Agency	14
# of Full Denials – Request Withdrawn	112
# of Full Denials – Fee Related Reason	23
# of Full Denials – Records not Reasonably Described	20
# of Full Denials – Improper FOIA Request for Other Reason	6
# of Full Denials – Not Agency Record	20
# of Full Denials – Duplicate Request	1
# of Full Denials – Other (see below)	0
<b>Total Requests Processed</b>	<b>1,282</b>

B. (2) Disposition of FOIA Requests – Other N/A

<sup>1</sup> The FY 2009 Annual Report indicated that 115 requests were pending at the end of the fiscal year, however, one inaccuracy was identified.

B. (3) Disposition of FOIA Requests - Number of times exemptions applied

Exemption 1	0
Exemption 2	3
Exemption 3	7
Exemption 4	20
Exemption 5	25
Exemption 6	39
Exemption 7(A)	5
Exemption 7(B)	0
Exemption 7(C)	8
Exemption 7(D)	2
Exemption 7(E)	0
Exemption 7(F)	0
Exemption 8	0
Exemption 9	0

**VI. ADMINISTRATIVE APPEALS OF INITIAL DETERMINATIONS OF FOIA REQUESTS**

*See Department of Health and Human Services Annual Report*

**VII. FOIA REQUESTS: RESPONSE TIME FOR PROCESSED AND PENDING REQUESTS**

A. Processed Requests – Response Time for All Processed Perfected Requests

Perfected Requests				Expedited Processing			
Median # days	Avg # days	Lowest # days	Highest # days	Median # days	Avg # days	Lowest # days	Highest # days
14	27	0	1,127	0	0	0	0

B. Processed Requests – Response Time for Perfected Requests in Which Information Was Granted

Perfected Requests				Expedited Processing			
Median # days	Avg # days	Lowest # days	Highest # days	Median # days	Avg # days	Lowest # days	Highest # days
14	27	0	1,127	0	0	0	0

C. Processed Requests – Response Time in Day Increments

<b>All Requests</b>	<b># of Requests Processed</b>
< 1 day	91
1-20 days	721
21-40 days	269
41-60 days	78
61-80 days	37
81-100 days	27
101-120	17
121-140 days	12
141-160 days	8
161-180 days	3
181-200 days	3
201-300 days	9
301-400 days	2
401+	5
Total	1,282

Expedited Processing

<b>All Requests</b>	<b># of Requests Processed</b>
1-20 days	0
21-40 days	0
41-60 days	0
61-80 days	0
81-120 days	0
121-140 days	0
141-160 days	0
161-180 days	0
181-200 days	0

201-300 days	0
301-400 days	0
401+	0
Total	0

D. Pending Requests – All Pending Perfected Requests

Perfected Requests			Expedited Processing		
# Pending	Median # days	Avg # days	# Pending	Median # days	Avg # days
85	17	42	0	0	0

E. Pending Requests – Ten Oldest Pending Perfected Requests

<b>10<sup>th</sup> Oldest Request</b> <b>Date rec'd / # days pending</b>	<b>5/4/10</b> <b>105</b>
<b>9<sup>th</sup></b>	<b>4/16/10</b> <b>117</b>
<b>8<sup>th</sup></b>	<b>4/15/10</b> <b>118</b>
<b>7<sup>th</sup></b>	<b>4/7/10</b> <b>124</b>
<b>6<sup>th</sup></b>	<b>3/29/10</b> <b>131</b>
<b>5<sup>th</sup></b>	<b>3/15/10</b> <b>141</b>
<b>4<sup>th</sup></b>	<b>2/5/10</b> <b>162</b>
<b>3<sup>rd</sup></b>	<b>1/21/10</b> <b>173</b>
<b>2<sup>nd</sup></b>	<b>11/6/09</b> <b>222</b>
<b>Oldest Request</b> <b>Date Rec'd / # of days pending</b>	<b>8/17/07</b> <b>780</b>

**VIII. REQUESTS FOR EXPEDITED PROCESSING AND REQUESTS FOR FEE WAIVER**

A. Requests for Expedited Processing

# Granted	# Denied	Median # Days to Adjudicate	Avg. # Days to Adjudicate	# Adjudicated w/i 10 calendar days
0	0	NA	NA	NA

B. Requests for Fee Waiver

# Granted	# Denied	Median # Days to Adjudicate	Avg. # Days to Adjudicate
0	1	2	2

**IX. FOIA PERSONNEL AND COSTS**

A. Personnel

Personnel	
Full-time FOIA Employees	15
Equivalent Full-time FOIA Employees	12.14
Total Full-time FOIA staff	27.14

B. Costs

Costs	
Processing Costs	\$ 3,087,919.00
Litigation-related Costs	\$ 2,180.00
Total Costs	\$ 3,090,099.00

**X. FEES COLLECTED FOR PROCESSING REQUESTS**

A. Total Amount of fees collected: \$ 54,484.00

B. Percentage of total cost: 1.76 %



D. Comparison of Numbers of Requests from Previous and Current Annual Report – Requests Received, Processed, and Backlogged

<b>Number of Requests Received</b>		<b>Number of Requests Processed</b>	
<b># Rec'd in FY 2009 (from Annual Rpt)</b>	<b># Rec'd in FY 2010 (from Annual Rpt)</b>	<b># Processed during FY 2009 (from Annual Rpt)</b>	<b># Processed during FY 2010 (from Annual Rpt)</b>
1,269 <sup>2</sup>	1,253	1,306	1,282

<b>Number of Backlogged Requests as of End of the Fiscal Year from Previous Annual Report</b>	<b>Number of Backlogged Requests as of End of the Fiscal Year from Current Annual Report</b>
70	37

E. Comparison of Numbers of Administrative Appeals from Previous and Current Annual Report – Appeals Received, Processed, and Backlogged

***See Department of Health and Human Services Annual Report***

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<sup>2</sup> The NIH FY 2009 Annual Report indicated that NIH received 1,270 requests in FY 2009, however, one inaccuracy was identified.