FREEDOM OF INFORMATION ANNUAL REPORT -- FY 2009

I. AGENCY: U.S. Department of Health and Human Services

REPORT PREPARED BY: Katherine S. Norris

TITLE: Deputy FOIA Officer/Freedom of Information Act Requester Service Center Public Liaison

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ELECTRONIC ADDRESS FOR THIS REPORT ON THE WORLD WIDE WEB:
http://www.hhs.gov/foia/09anlrpt.html

** Copies of the annual reports of a number of individual HHS Operating Divisions can be found by contacting the responsible component shown in Section II below, or by locating a FOIA link at the following websites:

Administration on Aging (AOA): http://www.aoa.gov/
Centers for Disease Control and Prevention (CDC): http://www.cdc.gov
Food and Drug Administration (FDA): http://www.fda.gov
Health Resources and Services Administration (HRSA): http://www.hrsa.gov/
Indian Health Service (IHS): http://www.ihs.gov
Substance Abuse and Mental Health Services Administration:
www.samhsa.gov/foia/

ADDRESS FOR PAPER COPIES OF THIS REPORT: See Above

II. HOW TO MAKE A FOIA REQUEST: Please see HHS Guide to Information Resources at: www.hhs.gov/about/infoguid.html#foia

1. HHS and OPDIV Freedom of Information Officers/FOIA Requester Service Centers

Health and Human Services (HHS)
Freedom of Information Officer
Mary E. Switzer Building, Room 2221
330 C Street, S.W.
Washington, D.C. 20201
Phone: 202-690-7453

Administration for Children and Families (ACF)
Freedom of Information Officer
901 D Street, S.W.
7th Floor West
Aerospace Building
Washington, D.C. 20447
Phone: 202-401-9215

Administration on Aging (AOA)
Freedom of Information Officer
Washington, D.C. 20201
Phone: 202-357-3540

Centers for Medicare & Medicaid Services (CMS)
Freedom of Information Officer
North Building, Room N2-20-06
7500 Security Boulevard
Baltimore, Maryland 21244
Phone: 410-786-5353

Office of Inspector General (OIG)
Freedom of Information Officer
Cohen Building, Suite 1062
330 Independence Ave, S.W.
Washington, D.C. 20201
Phone: 202-619-2541

Office of Public Health and Science (OPHS)
Freedom of Information Officer
Room 17-66, Parklawn Building
5600 Fishers Lane
Rockville, MD 20857
Phone: 301-443-5252

Agency for Healthcare Research and Quality (AHRQ)
Freedom of Information Officer
540 Gaither Road
The Eisenberg Building, Room 2222
Rockville, Maryland 20850
Phone: 301-427-1866

Centers for Disease Control and Prevention (CDC) and/or
Agency for Toxic Substances and Disease Registry (ATSDR)
Freedom of Information Officer
2. Brief description of why some requests are not granted: Documents requested were protected by an exemption and release would have caused harm to the interest protected by the exemption.

III. ACRONYMS, DEFINITIONS, AND EXEMPTIONS:

1. Agency-specific acronyms or other terms:

HHS - U.S. Department of Health and Human Services
OPDIVs - Operating Divisions of HHS
OS - Office of the Secretary, HHS
OASPA - Office of the Assistant Secretary for Public Affairs, HHS
AoA - Administration on Aging
ACF - Administration for Children and Families
AHRQ - Agency for Healthcare Research and Quality
ATSDR - Agency for Toxic Substances and Disease Registry
CDC - Centers for Disease Control and Prevention
FDA - Food and Drug Administration
HRSA - Health Resources and Services Administration
IHS - Indian Health Service
NIH - National Institutes of Health
OIG – Office of the Inspector General
OPHS - Office of Public Health and Science
PHS - Public Health Service
PRO - Professional Review Organization
PSC - Program Support Center
SAMHSA - Substance Abuse and Mental Health Services Administration

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 entireties 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. 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 (See Chart)

V. FOIA Requests (See Chart)
   A. Numbers of initial requests (line 1 + line 2 - line 3 = line 4): (See chart)

   1. Number of requests pending as of start of fiscal year: 586
2. Number of requests received in fiscal year: 1272

3. Number of requests processed in fiscal year: 1370

4. Number of requests pending as of end of fiscal year: 488

B. (1) Disposition of FOIA Requests: (See chart)

1. Number of full grants: 337

2. Number of partial grants: 250

3. Number of full denials based on Exemptions: 16

4. Number of Full Denials Based on Reasons Other than Exemptions (Total):
   a. No records: 341
   b. Referrals: 23
   c. Request withdrawn: 183
   d. Fee-related reason: 50
   e. Records not reasonably described: 37
   f. Improper FOIA request for some other reason: 15
   g. Not an agency record: 14
   h. Duplicate request: 32
   i. Other (specify): 72
      Not Perfected – 33
      Referred to PHS – 31
      Referred to FDA – 7
      Referred to NIH – 1

B. (2) Disposition of FOIA Requests – Other (See chart)

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

Exemption 1: 0
Exemption 2: 64
Exemption 3: 13
Exemption 4: 122
Exemption 5: 54
Exemption 6: 143
Exemption 7(A): 17
Exemption 7(B): 
Exemption 7(C): 
Exemption 7(D): 
Exemption 7(E):
VI. ADMINISTRATIVE APPEALS OF INITIAL DETERMINATIONS OF FOIA REQUESTS

A. Received, Processed and Pending Administrative Appeals (See chart)
   1. Number of appeals pending as of start of Fiscal Year
   2. Number of appeals received in Fiscal Year:
   3. Number of appeals processed in Fiscal Year:
   4. Number appeals pending as of end of Fiscal Year:

B. Disposition of Administrative Appeals – All Processed Appeals
   (See chart)
   1. Number affirmed on appeal:
   2. Number partially affirmed and partially reversed/remanded on appeal:
   3. Number completely reversed/remanded on appeal:
   4. Number of appeals closed for other reasons:

C. (1) Reasons for denial on Appeal – Number of Times Exemptions applied
   (See chart)
   Exemption 1:
   Exemption 2:
   Exemption 3:
   Exemption 4:
   Exemption 5:
   Exemption 6:
   Exemption 7(A):
   Exemption 7(B):
   Exemption 7(C):
   Exemption 7(D):
   Exemption 7(E):
   Exemption 7(F):
   Exemption 8:
   Exemption 9:

C. (2) Reasons for denial on Appeal – Reasons other than exemptions
   (See chart)
   a. No records:
   b. Referrals:
   c. Request withdrawn:
   d. Fee-related reason:
   e. Records not reasonably described:
   f. Improper request for other reason:
   g. Not an agency record:
   h. Duplicate request:
i. Request in litigation:
j. Appeal based solely on denial of request for expedited processing:
k. Other:

C. (3) Reasons for denial on Appeal – Other:(See chart)
   Administrative closures, records previously released to appellant

C. (4) Response time for administrative appeals (See chart)
   a. Median number of days:
   b. Average number of days:
   c. Lowest Number of days:
   d. Highest number of days:

C. (5) Ten Oldest Pending Appeals (See Chart)

VII. FOIA REQUESTS: RESPONSE TIME FOR PROCESSED AND PENDING REQUESTS
A. Processed Requests – Response Time for All Processed Perfected Requests (See chart)
B. Processed Requests – Response Time for Perfected Requests in Which Information Was Granted (See chart)
C. Processed Requests – Response Time in Day Increments (See chart)
D. Pending Requests – All Pending Perfected Requests (See chart)
E. Pending Requests – Ten Oldest Pending Perfected Requests (See chart)

VIII. REQUESTS FOR EXPEDITED PROCESSING AND REQUESTS FOR FEE WAIVER (See Chart)
A. Requests for Expedited Processing (See chart)
B. Requests for Fee Waiver (See chart)

IX. FOIA PERSONNEL AND COSTS (See Chart)
A. Personnel: Total 12
B. Costs: Total $1,040,856

X. FEES COLLECTED FOR PROCESSING REQUESTS (See Chart)
   Total: $33,433.77

XI. FOIA REGULATIONS

XII. BACKLOGS, CONSULTATIONS, AND COMPARISONS
A. Backlogs of FOIA Requests and Administrative Appeals (See Chart)
   Requests:
   Appeals:
B. Consultations on FOIA Requests – Received, Processed, and Pending
Consultations (See Chart)
Received and Pending at Start of Fiscal Year:
Received During Fiscal Year:
Received and Processed:
Received and Pending:

C. Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency (See Chart)
Total:

D. Comparison of Numbers of Requests from Previous and Current Annual Report – Requests Received, Processed, and Backlogged (See Chart)
Received from Last Year’s Report:
Received from Current Year’s Report:
Processed from Last Year’s Report:
Processed from Current Year’s Report:
Number of Backlogged Requests from Previous Year:
Number of Backlogged Requests from Current Year:

E. Comparison of Numbers of Administrative Appeals from Previous and Current Annual Report – Appeals Received, Processed, and Backlogged (See Chart)
Received from Last Year’s Report:
Received from Current Year’s Report:
Processed from Last Year’s Report:
Processed from Current Year’s Report:
IV. Exemption 3 Statutes

<table>
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<tr>
<th>Statute</th>
<th>Type of Information Withheld</th>
<th>Case Citation</th>
<th>Number of Times Relied upon per Component</th>
<th>Total Number of Times Relied upon by Agency</th>
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<tr>
<td>42 U.S.C. § 242m(d) (Public Health Service Act § 308(d))</td>
<td>Identifiable information for certain research and statistical activities</td>
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<td>42 U.S.C. § 262a(h) Public Health Service Act</td>
<td>Select Agent Information</td>
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Part V A
Received, Processed and Pending FOIA Requests

<table>
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<tr>
<th>Agency</th>
<th>Number of Requests Pending as of Start of Fiscal Year</th>
<th>Number of Requests Received in Fiscal Year</th>
<th>Number of Requests Processed in Fiscal Year</th>
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1 The increase of 50 files (which equates to 0.003% difference) was the result of improved counting through enhanced reporting tools, and re-opening files which had previously been closed. Generally, these re-opened files resulted from late responses to prepayments or letters of interest.

2 Excluding all first party requests per current Dept. of Justice guidance.

3 Excluding all first party requests per current Dept. of Justice guidance.
### V B 1 Disposition of all FOL A Requests – All Processed Requests

<table>
<thead>
<tr>
<th>Component</th>
<th>Number of Full Grants</th>
<th>Number of Partial Grants/Partial Denials</th>
<th>Number of Full Denials Based on Exemptions</th>
<th>Number of Full Denials Based on Reasons Other than Exemptions</th>
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<td>No Records</td>
<td>All Records Referred to Another Component or Agency</td>
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<td>Records not Reasonably Described</td>
<td>Improper FOL A Request for Other Reason</td>
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TOTAL: 1370
V B 2 Disposition of FOIA Requests – “Other” Reasons for “Full Denials Based on Reasons Other than Exemptions” from Section V, B (1) Chart

<table>
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<tr>
<th>Component</th>
<th>Description of “Other” Reasons for Denials from Chart B (1) &amp; Number of Times Those Reasons Were Relied upon</th>
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V. B. (3) Disposition of FOIA Requests – Number of Times Exemptions Applied

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<th>Ex. 1</th>
<th>Ex. 2</th>
<th>Ex. 3</th>
<th>Ex. 4</th>
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<th>Ex. 7(A)</th>
<th>Ex. 7(B)</th>
<th>Ex. 7(C)</th>
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<th>Ex. 7(E)</th>
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### VI.A. Received Processed and Pending Appeals

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VI B. Disposition ofProcessed Appeals

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### Part VI C 1  Reasons for Denial on Appeal – Number of Times Exemptions Applied

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<th>Ex. 5</th>
<th>Ex. 6</th>
<th>Ex. 7(A)</th>
<th>Ex. 7(B)</th>
<th>Ex. 7(C)</th>
<th>Ex. 7(D)</th>
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VI C. (2)  Reasons for Denial on Appeal – Reasons Other than Exemptions

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<th>Records Not Reasonably Described</th>
<th>Improper Request For Other Reasons</th>
<th>Not Agency Record</th>
<th>Duplicate Request Or Appeal</th>
<th>Request In Litigation</th>
<th>Appeal Based Solely on Denial of Request For Expedited Processing</th>
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VI. C. (3) Reasons for Denial on Appeal – “Other” Reasons from Section VI, C (2) Chart

1. If you utilized the “Other” column in Section VI, C (2), provide below descriptions of the “other” reasons and the number of times each reason was relied upon. (The numbers in the “Total” column must match the numbers in the “Other” column from Section VI, C (2).)

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VI C. (4) Response Time for Administrative Appeals 1. Provide the median, average, and range in number of days to respond to administrative appeal

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1 Tracking System does not track by type of request.
VII. B Processed Requests - Response Time for Perfected Requests in Which Information Was Granted

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\(^1\) Tracking System does not track by type of request.
### VII. C Processed Requests – Response Time in Day Increments

#### Simple Requests

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### VII. C Processed Requests – Response Time

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\(^1\) Excluding all first party requests per current Dept. of Justice guidance
### Comparison of Numbers of Backlogged Requests from Previous and Current Annual Report

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<tr>
<th></th>
<th>Column 1 Number of Backlogged Requests as of End of the Fiscal Year from Previous Annual Report</th>
<th>Column 2 Number of Backlogged Requests as of End of the Fiscal Year from Current Annual Report</th>
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XII E 1 Comparison of Numbers of Administrative Appeals from Previous and Current Annual Report – Appeals Received, Processed, and Backlogged

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<th>Number of Appeals Received</th>
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