U.S. Department of Health and Human Services (HHS)
Chief Freedom of Information Act (FOIA) Officer Report
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Executive Summary

Since the President first issued his FOIA Memorandum in January of 2009, HHS has embarked on a significant effort to examine and improve FOIA staffing, processes, and technologies in order to not only reduce our backlog but also to redesign our FOIA system to make it more accountable, transparent, and consumer-friendly.

Even before the Open Government directive was issued in late 2009, HHS had begun commissioning a study of our FOIA program. We also worked in our operating division to put together some small successes in reducing our current backlog. HHS is making some incremental progress but the backlog cannot be diminished unless we make significant changes in how we do business. This Chief FOIA Officer's Report and the 2009 HHS Annual FOIA Report demonstrate that much work remains to be done.

After identifying a special project manager last fall to lead our efforts, HHS officially launched our FOIA Project in January 2010. Early findings and recommendations from this project will be highlighted in our Open Government plan that will be released in the beginning of April, and in a formal presentation of the project will happen in late spring or early summer.

The Department's Open Government plan will be available on our new Open Government Web site (www.hhs.gov/open) starting on April 7; this site will be continually updated moving forward with more information on our FOIA improvements and related areas.

Even as our special study moves forward, we are working to improve some of the tracking and processing of FOIA requests by making short-term fixes that are highlighted in the sections below. HHS looks forward to reporting on significant change and progress this time next year.

Agencies were asked to report in five different areas; brief summaries of those reports are provided below:

Presumption of Openness

The HHS FOIA offices have a legacy of applying openness routinely and consistently to the fullest extent of the law. HHS has long had a FOIA policy of denying only that information which is both exempt from release and necessary to protect from release. The HHS FOIA offices also demonstrate a commitment to communicating and training staff so that FOIA is openly applied wherever possible. This is one area that HHS will building upon over the course of the next year – an effort that will include scheduling HHS and Op-Div FOIA coordinator trainings.

Effective System for Responding to Requests

Within the decentralized HHS FOIA structure, there have been a variety of steps taken to ensure that the systems in place are effective and continue to improve. Over the last several years, improved tracking, status, and redaction systems have been implemented, although more work needs to be done in these areas. In addition, the HHS FOIA offices have established mechanisms, processes, and ways of working with program offices to ensure smooth processing of requests. Increased staffing and other investments have also been made in several Op-Div FOIA offices as well.

Increasing Proactive Disclosure

There are numerous activities and examples of proactive disclosure across HHS. The Department's recently released Open Government site includes two unique pages for sharing and discovering department datasets and online tools. Several other examples in this document are significant, such as NIH's release of more detailed grant information and FDA proactive release of drug approval letters. FDA has also developed a Transparency Task force to address the issue directly. This year, CMS has linked 62 raw datasets and 15 tools into data.gov. More details about HHS's plans to identify and disclose widely requested data sets will be released as part of HHS's Open Government plan.

Greater Utilization of Technology

As noted above, within the last several years, improved tracking, status, and redaction systems have been implemented at multiple HHS FOIA offices. Most HHS FOIA offices can receive requests electronically, and each has some level of IT system in place to track requests. Despite the remarkable progress and important milestones achieved at different FOIA offices in recent years, it is apparent that use of technology to support FOIA operations has not been coordinated or made a priority when viewed across the Department. Opportunities to use technology to improve responsiveness and efficiency, as well as to create reliable and frequent management reporting, have not yet been fully exploited at the Department level.

Reduce Backlogs and Improve Timeliness

The Department has reduced its backlog in 2009 (from 19,249 to 17,571). While this is progress, the backlog remains unacceptably high. As to be expected, the largest backlogs are found along with the largest FOIA Operations. Within HHS, CMS and FDA dwarf other FOIA offices in terms of volume of requests. Fortunately, there are some trends of improvement over the past several years, and both components have made investments that should be helpful. However, there is no data that shows that these trends and investments will do enough to even meet just a 10% reduction. Additional activities will be needed in order to achieve additional progress. All HHS FOIA offices, even those with a smaller volume of requests, will need to be strengthened.

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Background

On January 21, 2009, President Obama, in his FOIA Memorandum, instructed agencies to administer FOIA with a presumption of openness. On March 19, 2009, Attorney General Holder informed Executive Departments and Agencies that they would be accountable for reporting to DOJ on "steps that have been taken to improve FOIA operations and facilitate information disclosure at their agencies." The Justice Department, in September of 2009, provided the specific details that the "The Chief FOIA Officer's Report" must contain. Later DOJ guidance instructed Departments that have a decentralized FOIA structure to provide details from each component in this report.

The HHS has a decentralized FOIA program, with nearly 200 employees distributed across 13 Operating Division FOIA Offices. In addition, NIH, FDA, and CMS have dozens of local sub-component FOIA offices within their organizations.

The 2009 Annual HHS FOIA Report demonstrates that the Department is meeting the Attorney General's stated goals for FOIA: a presumption of openness, making FOIA everyone's responsibility, and working proactively and promptly to respond to requests, as well as to release information. However the HHS 2009 Annual Report also demonstrates that there is still much room for improvement and much work remains to be done: the backlog of requests, while smaller than in 2008, is still over 17,000 requests.

The Open Government Directive, issued by the Office of Management and Budget on December 9, 2009, also includes several requirements for Agency's FOIA operations. Significantly, agencies must perform an assessment of their FOIA operations, and develop and implement a plan to reduce their FOIA backlogs by 10%. Therefore, this report references recent initiatives HHS has underway in response to the Open Government Directive. The most significant of these is the launching of the HHS Open Government FOIA Project in January 2010, with a dedicated project manager reporting to the Assistant Secretary for Public Affairs and the Chief Technology Officer. In addition, numerous other HHS Open Government activities are facilitating the release of datasets and information consistent with the President's and Attorney General's goals of proactively releasing information, using modern technology, and to provide more information online that may help reduce backlogs.

The upcoming HHS Open Government Plan, which be released on April 7, will provide more details on the Department's plans, not only for FOIA operations, but on transparency, specific data sets, new processes to support proactive release, etc. The plan will be available on the Department's new Open Government Web site (www.hhs.gov/open); this site will be continually updated moving forward with more information on our FOIA improvements and these related areas.

In late spring/early summer, the Department will update the HHS Open Government Plan upon completion of the FOIA Project and the presentation of the report with

recommendations for steps that can be taken to improve FOIA operations in the short term, medium term and long term at HHS.

I. Steps Taken to Apply the Presumption of Openness

Department Overview of Section I

Across the Department, there is a good indication that OpDiv FOIA Offices are applying the presumption of openness routinely and consistently. Even prior to the most recent guidance from the Attorney General, this has traditionally been a priority for HHS's FOIA operations.

OpDiv FOIA Offices have also demonstrated a commitment to communicating and training FOIA staff and relevant program staff on the most recent guidance from the Justice Department regarding the presumption of openness through numerous activities and materials.

Specifically, AHRQ has developed a training video, CDC conducted training for subject matter experts, FDA conducted a teleconference and nine training sessions reaching 425 staff, OIG conducted training classes. NIH also conducted training and coordinated messaging with senior leadership. Currently efforts are underway to conduct special trainings for HHS staff divisions as well over the next few months.

CMS has classified a large number of its requests as "direct reply" allowing divisions or offices to directly reply to requests 80% of the time.

HHS has experienced an overall decrease in the number of "full grants", from 46,818 to 36,879 from FY 2008 to FY 2009; and, a decrease from 1,824 to 1,159 in the number of "partial grants/partial denials" from FY 2008 to FY 2009. This is likely due in good part, to the major decrease in FOIA requests experienced in one major component.

Individual Major Organizational Component Reports:

Office of the Secretary (OS)

The OS Freedom of Information/Privacy Acts (FOI/PA) Division distributed/issued President Obama's memoranda on FOIA and openness, as well as that of Attorney General Holder, throughout the organizational components of the Office of the Secretary HHS major operating divisions for further distribution and for immediate implementation throughout HHS. This included fielding questions about the new policy from various OS and other HHS organizational components. The OS FOI/PA Division ensure the distribution of DOJ's guidance on the new memoranda throughout HHS, including a cautionary about the use of FOIA exemption (b)(2) to withhold what might have been previously thought of as less important, or trivial information.

The OS FOI/PA Division held an HHS FOIA Officer's Meeting, at which the new guidance was discussed and ideas shared about the new policies, as well as suggestions to

further implement the new policy both in the various serviced HHS organizations as well as in the everyday processing of FOIA requests in the HHS FOIA Requester Service Centers (FRSCs).

The OS FOI/PA Division, in its dual operational role as the OS FRSC, immediately began a practice of reviewing records responsive to FOIA requests and appeals, and assessing and providing feedback to serviced organizations and to the Assistant Secretary for Public Affairs, or her designee for FOIA appeals purposes, as to records that may contain material that might be released without harm. The primary example of such documents that were released, that might otherwise have been previously withheld, are those which document the deliberative process (FOIA exemption (b)(5), especially draft materials.

The OS FOI/PA Division, whenever briefings or training sessions were presented to OS staff members, presented the content of the new policies, and provided instructions on the procedures to identify and communicate material that may be exempt from release, and at the same time to provide feedback to the OS FRSC to allow the consideration of the discretionary release of materials that may otherwise be exempt from release.

Further trainings are being planned in the Office of the Secretary for new staff and for new FOIA coordinators. In addition, as part of the FOIA project, HHS ASPA has designated a senior project manager to oversee the FOIA reform process and is working on providing some short-term resources in terms of FOIA staff.

The OS FRSC has encouraged OS Staff Divisions to proactively release material. Such organizations routinely post information on their Web Sites. When comparing the number of full grants and partial grants the OS FRSC had mixed results when comparing Fiscal Year (FY) 2009 with FY 2008 figures, in that OS experienced a decrease in the Number of Full Grants, from 202 to 119; and, an increase in the number of Partial Denials, from 92 to 109. This may be due to the fact that OS does not receive repetitive requests for the same materials.

Administration on Aging (AoA)

The AoA works under the presumption of openness and releases as much information as possible. In the instances where AoA was unable to provide with information requested it was because there either were no records or the request was referred to another OpDIV or agency. Other partial denials of disclosure were based on personal private information being redacted, and the remaining information was provided to the requestor.

The AoA experienced an increase in the number of full grants from two in FY 2008 to six in FY 2009; and a decrease in the number of partial grants/partial denials from five in FY 2008 to one in FY 2009.

Administration for Children and Families (ACF)

The ACF is reviewing all records with the goal of making more discretionary releases. A statement that the material was reviewed for discretionary release is included in the response letter to the requester. In FY 2009, ACF reports zero full denials based on exemptions.

The ACF experienced a decrease in the number of full grants, from 51 to three from FY 2008 to FY 2009; and an increase of from 95 to 116 in the number of partial grants/partial denials from FY 2008 to FY 2009.

Agency for Healthcare Research and Quality (AHRQ)

The Agency for Healthcare Research and Quality (AHRQ) posted the March 19, 2009, Attorney General's FOIA Guidelines on the presumption of openness on its web site at http://www.ahrq.gov/news/foia.htm. A training video was developed and will be posted on the AHRQ intranet, and shared with new and existing project and contracting officers to explain their role in the FOIA process.

The majority of AHRQ FOIA requests pertain to information about awarded grant applications and contracts. The AHRQ processed 68 of 72 requests in 2009. The AHRQ The AHRQ experienced a decrease in the number of full grants, from 36 to 22 from FY 2008 to FY 2009; and, an increase from four to 20 in the number of partial grants/partial denials from FY 2008 to FY 2009. The AHRQ only issued 1 full denial in FY 2009.

Centers for Disease Control and Prevention (CDC)

On April 13, 2009, then Acting CDC Director, Rich Besser, issued a memo to all CDC/ATSDR staff on April 13, 2009. He reiterated the information in the Holder Memo on openness/transparency and initiated subject-matter expert (SME) reviews for "foreseeable harm" by program office SMEs before response packages are returned to the FOIA Office for a final release determination. The FOIA office conducted training for agency SMEs.

The CDC experienced an increase in the number of full grants, from 304 to 337 from FY 2008 to FY 2009; and, an increase from 101 to 250 in the number of partial grants/partial denials from FY 2008 to FY 2009.

Centers for Medicare & Medicaid Services (CMS)

The CMS administers FOIA to afford requesters all of the rights accorded to them by law, including the right of access to any non-privileged agency record, and to protect from inappropriate disclosure any agency record that may and should be withheld under the statute.   For information that has been previously approved for release, the appropriate CMS division or office can respond directly to the requestor. This is known as a "Direct Reply" case. Direct reply cases account for 80% (or 26,390 of 32,706) of requests processed in CY 2009.

The CMS experienced a decrease in the number of full grants, from 33,669 to 26,390 from FY 2008 to FY 2009; and, a decrease from 63 to 55 in the number of partial grants/partial denials from FY 2008 to FY 2009.

Food and Drug Administration (FDA)

The FDA has made extensive efforts to raise awareness of new Administration policies and to provide training in the requirements of the President's and Attorney General's memos within the agency.

The FDA's FOI Council (which is made up of representatives from each of the 6 centers, the Office of Regulatory Affairs, and the Agency's Division of FOI) conducted a teleconference, to discuss application of the two memos issued by President Obama and Attorney General Holder. Copies were distributed as part of this review process. Multiple FDA FOIA staff attended the DOJ training on the OPEN Government Act, the two memos referenced above, and other related DOJ training.

The FDA purchased and distributed 120 Copies of the DOJ FOIA Guide, which contains the above-referenced memos, to FDA FOIA contacts.

The FDA's intra-net FOIA page, which contains resources and reference materials for in-house FOIA staff, has posted copies of the memos available for review.

FDA/DFOI has conducted nine (9) training workshops and seminars in Fiscal Year 2009. The policy memos issued by President. Obama and Attorney General Holder were included in each presentation, both as part of the handouts, and in PowerPoint presentations. A total of approximately 425 persons attended these workshops. All of the training emphasized discretionary disclosure when an exemption did not prohibit release of certain information (for example, Exemption 4, which is the most frequently used exemption in FDA, does not permit discretionary release).

Two additional FDA component offices also provided in-service training for their own program staff, including the memos (the Center for Biologics Evaluation & Research; and the Center for Devices & Radiological Health).

The FDA has emphasized the application of the "reasonable segregation" policy since 1975. Essentially, the agency's FOI officers have always redacted portions of records when appropriate or required, and released the remainder of the record. This approach recognizes that between 90 and 95% of the FDA's records are releasable, after redaction, as appropriate. For example, adverse event reports may be released, after redaction of information subject to (b)(6), such as patient identity. Inspection reports of regulated industry facilities are generally releasable, after redaction of information subject to (b)(4), for trade secret and/or confidential, commercial information. As a result, the FDA has not experienced a substantive increase in discretionary release, because this has been the Agency's historical policy.

In addition, the two centers responsible for implementation of the FDAAA (Food and Drug Administration Amendments Act of 2007), note that the agency is required to post new approval packages on the internet, and that these are now routinely including minority views which would formerly have been withheld subject to FOI Exemption 5, as deliberative and predecisional information.

a. With regard to the application of FOIA exemption 5, the FDA has only utilized this exemption for denials (in whole or in part), in a limited number of instances:

b. 2009: Exemption 5 was cited 15 times (6%), out of 246 partial/full denials

c. 2008: Exemption 5 was cited 20 times (12%), out of 170 denials

d. 2007: Exemption 5 was cited 15 out of 101 (15%)

e. 2006: Exemption 5 was cited 11 out of 101 (11%)

f. 2005: Exemption 5 was cited 8 out of 76 (11%)

The FDA experienced a decrease in the number of full grants, from 11,373 to 8,592 from FY 2008 to FY 2009; and, an increase from 91 to 135 in partial grants/partial denials from FY 2008 to FY 2009.

Health Resources and Services Administration (HRSA)

Each FOIA staff member has attended DOJ and American Society for Access Professionals (ASAP) training sessions on the implementation of the President's FOIA Memorandum and the Attorney General's FOIA guidelines.

On a day-to-day basis, the HRSA FOIA Officer tries to "presume to disclose" whenever possible. This is more readily achieved when reviewing internal documents and records for disclosure under FOIA exemption (b)(5). It is more difficult to apply this standard when reviewing external documents such as grant applications from HRSA grantees because of the confidentiality of proprietary business information protected under Exemption (b)(4).

The number of documents released in full actually declined from 294 in 2008 to 265 in 2009, a decrease of 29. This may be due to a discrepancy in how the annual report statistics were compiled in previous years at HRSA, as the previous FOIA Officer reported no full denials in FY 2008 for reasons other than exemptions, whereas in 2009 29 were reported. It may be the previous incumbent counted full denials for reasons other than exemptions as "releases in full". On the other hand, the number of requests released in part increased from 11 to 27, an increase of 16.

Indian Health Service (IHS)

The Indian Health Service FOIA staff responded to the Attorney General's FOIA Guidelines by:

a) posting the President's Memorandum on the IHS FOIA website;

b) posting all information relating to the Open Government Act of 2007;

c) providing more specific information on the website in order to educate the public on the FOIA process;

d) maintianing a working relationship with the PHS FOIA Officer and the FOIA hotline, and using those two resources, when needed; and

e) informing Area FOIA staff of case status and keeping them abreast of current FOIA issues in order to maintain good working relationships and keep communication lines open.

IHS has seen a drop in the number of cases where we would normally apply FOIA exemption 6 as partial denials or as denials, in their entirety. After a comparison of the IHS' 2009 Annual FOIA report from previous years, we see that less exemptions were used; where the nature of the information being requested has not.

In response to openness in government, we have worked hard to ensure that we are making responsible disclosures while weighing "foreseeable harm" and providing the requester with the most information allowable under the FOIA.   If comparing information from past annual reports to this FY 2009, there is a drop in the number of exemptions used and the nature of the exemptions applied. We believe that those requesting records from IHS are educating themselves about those records they know will be released (with possible redactions) and which records will be withheld based on privacy redactions.

This drop could also be related to the updating of the FOIA website because of the additional information that pertained to FOIA exemptions and procedures. We are also seeing more specific information being requested with the addition of the online form, which requires less research by FOIA staff members to locate responsive records because the requests are less broad than in years past. Also, as compared to past annual reporting years, the FY2008 and FY2009 annual FOIA reports allowed for the inclusion of those requests where the requester didn't respond, those requests that were not valid FOIA requests, and those for which the requested records could not be located.

The IHS experienced an increase in the number of full grants, from three to seven from FY 2008 in FY 2009; and, a decrease from 38 to 32 in the number of partial grants/partial denials from FY 2008 to FY 2009.

National Institutes of Health (NIH)

The NIH never retreated from the presumption of openness reflected in Attorney General Reno's FOIA Memorandum.   Since assuming her position in December 1997, the NIH

FOIA Officer has continually, in formal training sessions, informal settings, and especially when issuing denials, applied that standard.

Upon receipt of the President Obama's FOIA Memorandum, the NIH FOIA Officer took several actions to inform the NIH community. First, the NIH FOIA Officer asked her supervisor to notify the NIH Director as well as the small group of NIH senior staff members who advise the NIH Director. The NIH FOIA Officer also issued an e-mail to the NIH FOIA Coordinators summarizing both President Obama's FOIA Memorandum as well as the President's Memorandum on Transparency. Both memos were attached to the e-mail. The NIH FOIA Officer also informed each Institute or Center (IC) FOIA Public Liaison of both memoranda by copy of her email to the FOIA Coordinators. The content of the President's FOIA Memorandum was discussed in detail at the regularly scheduled quarterly meeting the NIH FOIA Officer held with the NIH FOIA Coordinators on February 10, 2009.

Dr. Francis Collins, the NIH Director, shares and supports openness in government. On August 17, 2009, his first day in office, in an all-hands address to the NIH staff, Dr. Collins stated, "I'll promote an atmosphere of trust and openness in all that NIH does. . . . The default ought to be openness. Unless there's a strong reason that particular information cannot be shared, it should be." Shortly after his arrival, Dr. Collins, his Chief of Staff, Kathy Hudson and Dr. Raynard Kington, the NIH Principal Deputy Director, met with the NIH FOIA Officer for a briefing on the FOIA, which included a discussion of and commitment to the presumption of openness.

Other steps have been taken to apply the presumption of openness. The FOIA Officer gives numerous formal presentations, talks and training sessions throughout each year. At each, the FOIA Officer stresses that the FOIA is a disclosure statute and that records will be released unless the responsible NIH program can demonstrate that release would result in a type of harm protected by one or more of the FOIA exemptions. Each formal presentation and training session includes the caveat that there is no exemption for "Embarrassing or Stupid."

All pending FOIA requests, pending denials and pending appeals were reviewed. Although, as noted above, the NIH never retreated from the releasability standard established by the Reno Memo, the FY 2009 FOIA Annual Report reveals an increase in Full and Partial Grants from 795 in FY 2008 to 934 in FY 2009.

The NIH experienced an increase in the number of full grants, from 738 to 831 from FY 2008 to FY 2009; and, an increase from 38 to 32 in the number of partial grants/partial denials from FY 2008 to FY 2009.

Office of Inspector General (OIG)

In order to ensure that a presumption of openness is being applied, the OIG FOIA office held meetings and training sessions with all FOIA liaisons in order to brainstorm areas

for additional proactive disclosures. The OIG also conducted training sessions on potential harm vs. actual harm.

The OIG experienced an increase in the number of full grants, from 21 to 111 from FY 2008 to FY 2009; and, and increase in the number of an increase from nine to 66 in the number of partial grants/partial denials from FY 2008 to FY 2009.

Public Health Service (PHS)/Program Support Center (PSC)

To ensure that a presumption of openness is being applied, the PHS/PSC FOIA office is closely examining any initial request and appeal that involves information that could be withheld pursuant to FOIA exemption 5, and re-reviewing it with an eye toward partial or full release. In FY09 there was an overall increase in full and partial releases over what was produced in FY08. Additionally, we are educating FOIA staff about the new openness policy and emphasizing the value of discretionary disclosures.

The PHS/PSC experienced an increase in the number of full grants, from 132 to 180 from FY 2008 to FY 2009; and, and increase in the number of an increase from 48 to 146 in the number of partial grants/partial denials from FY 2008 to FY 2009.

Substance Abuse and Mental Health Services Administration (SAMHSA)

The SAMHSA experienced a decrease in the number of full grants, from 15 to five from FY 2008 to FY 2009; and, and increase in the number of an increase from 82 to 99 in the number of partial grants/partial denials from FY 2008 to FY 2009.

II. Steps Taken to Ensure that HHS has an Effective System for Responding to Requests

Department Overview of Section II

The Department has an established legacy of a decentralized FOIA program structure for responding to FOIA requests. There have been a variety of steps taken to ensure that the systems in place within this structure are effective and continue to improve.

Within the last several years, improved tracking, status and redaction systems have been implemented to better support request processing at multiple FOIA offices. Details for these systems are discussed further in Section IV. In addition, HHS FOIA offices have established mechanisms, processes, and ways of working with program offices to ensure smooth processing and to explore improvements around specific categories of information. Increased staffing and other investments have also been made in several OpDIVS as well.

Specifically, the ACF hired its first full-time FOIA Officer, and will be adding additional staff. The FDA increased its FOIA staff by sixteen positions (108 to 124). The NIH and

FDA have established a FOIA Coordinators Group, and a FOIA Council, respectively, in order to ensure good communication and smooth working relationships between their components and headquarters FOIA offices. The NIH, SAMHSA, and other OpDIVs have also established processes to provide faster and more efficient access to predictable requests for things such as grant information.

The Department has also demonstrated a commitment to improved compliance and reform of FOIA as we develop our Open Government plans. In January of 2010, HHS launched a Department-wide assessment of the FOIA process to identify new tools, technologies, and possible systems changes that need to be made across the Department to improve our FOIA process. The effort, which will include senior operating division leadership, will contribute to and be coordinated with our Open Government Plan.

Individual Major Organizational Component Reports:

Office of the Secretary (OS)

As mentioned, the Department is demonstrating a commitment to improved compliance and reform of the HHS FOIA program as we develop our Open Government plans. In January of 2010, HHS launched a Department-wide assessment of the FOIA process to identify new tools, technologies, and possible systems changes that need to be made across the Department to improve our FOIA process. The effort, which includes senior operating division leadership, will contribute to and be coordinated with our Open Government Plan.

The HHS FOIA Project is being run out of the office of the Assistant Secretary for Public Affairs within the Office of the Secretary. This project is being supervised by a dedicated senior project manager who reporters directly to the ASPA and HHS's new Chief Technology Officer. OS and ASPA are currently working on dedicating new resources to the OS FOIA office to address backlog issues and modernize technology, including the creation of a new tracking system.

There are several key policy changes that are being proposed as part of both HHS's Open Government and FOIA plan that will be unveiled later in 2010;

The HHS FOIA Officer has, since President Obama's new policies became known, provided information to the Acting HHS Chief FOIA Officer, the Acting Assistant Secretary for Public Affairs, as to the state of the HHS and OS FOIA program, insofar as its structure, functions, operations, and history, as well as the needs of the FOIA program in terms of leadership and resources.

The OS FOI/PA Division continues to advise and work cooperatively with HHS offices to implement steps to improve the processing of FOIA requests. During FY 2008, the OIG, heretofore serviced by the OS FOI/Privacy Acts Division, established its own FRSC in order to coordinate and respond directly to FOIA requests for its own records. This

was in an effort to provide more responsive service to FOIA requesters, and ultimately to help reduce the backlog of OS FOIA requests. In effect, this allowed for an increase in FOIA resources handling OS FOIA requests, that OIG has added two (2) positions that otherwise may not have been added. The OS FOI/PA Division retained its existing caseload of OIG FOIA requests, and continues to work cooperatively with the OIG FRSC to address processing issues as they arise.

Administration on Aging (AoA)

The AoA has an efficient and effective system to respond to FOIA requests. Upon receipt requests are entered into the tasking database and assigned to the appropriate staff member (with a short deadline) to collect all responsive materials and provide them to the AoA FOIA Liaison. The AoA FOIA staff then review the materials to identify information that should be redacted (typically personal information from resumes) and prepare the response for the signature of the FOIA Liaison. In FY 2009 the average number of days for processing and mailing out responses was five (5).

Administration for Children and Families (ACF)

In 2009, ACF hired its first full-time FOIA Officer. One of the first duties of the FOIA Officer was to review resources, work processes and the FOIA Data Tracking System (FDTS) to ensure the ACF has an effective system in place to respond to requests. A written report was submitted to the Acting Assistant Secretary that included numerous recommendations for improvement. As a result, the FOIA office was granted authority for one additional outside hire. Many other recommendations are being reviewed and under consideration by ACF management.

Agency for Healthcare Research and Quality (AHRQ)

The AHRQ installed a new FOIA tracking system in 2007 to replace its 1996 tracking system. The tracking system can generate various management reports so that the FOIA Service Center can track the status of all pending FOIA requests. While the new system is an improvement, in order to comply with the new requirements for the annual FOIA reports, there are still portions of the report that have to be performed manually.

The AHRQ FOIA office is working with AHRQ information technology staff to enhance its database. The FOIA requesters also may submit requests to the AHRQ Info Mailbox at http://info.ahrq.gov/cgi-bin/ahrq.cfg/php/enduser/site_fdbck.php?p_sid=ddF2CESj. The requests are forwarded to the FOIA officer's inbox for entry into the FOIA tracking system. Each request is given an AHRQ FOIA case number, and an interim response is sent to acknowledge receipt of the FOIA request. The system tracks when FOIA requests are due for response and sends reminders to AHRQ offices which may have responsive records. The system can generate reports with due dates for pending requests to enable a response in a timely manner.

Centers for Disease Control and Prevention (CDC)

The CDC FOIA office purchased a new FOIA database in 2007, which has been updated annually. It provides electronic distribution of all new requests.

Centers for Medicare & Medicaid Services (CMS)

In 2009, CMS implemented an electronic FOIA request management and tracking system in its headquarters and ten (10) regional offices to track all new FOIA requests from receipt to final disposition. The tracking system is linked to the CMS FOIA Public Web Application server to so that CMS FOIA requesters can obtain up-to-date status information for FOIA requests received after January 1, 2009.

Food and Drug Administration (FDA)

The FDA utilizes a decentralized response system, grounded in the belief that the component offices are in the best position to search for responsive records, and to advise on availability and redaction. There are eight (8) centers; 20 field offices; and 12 smaller components in the Office of the Commissioner, which each have direct response authority.

In FY 2009, FDA increased the dedicated resources assigned to the FOIA program to a total of 124.4 FTEs (up from FY 2008, when FDA spent 108.3 FTEs in responding to FOIA requests).

The FDA is in the process of creating a new Center for Tobacco Products, to regulate tobacco under the "Family Smoking Prevention and Tobacco Control Act of 2009." This new center has already begun to proactively post information to the internet, as part of the agency's transparency efforts.

While the response system is decentralized, the administrative tracking, assignment and billing functions are centralized at the agency level, as are replies to denials and appeals. This ensures better monitoring of the workloads, and consistency in the application of policy, the FOIA statute, and the Agency's implementing regulations.

Components triage FOIA requests on receipt into the appropriate queue, and generally use multi-track processing which capitalizes on the efficiencies of responding to simple requests quickly, while larger, more complex requests (which require more search and review time) are answered in turn.

Requests are only processed on a "first in, first out" basis within the queue, to ensure that requests are processed in order of receipt.

In FY 09, there have been multiple revisions to the in-house electronic tracking system, and additional revisions are in the planning stages. Among the changes proposed for for FY10, are creating additional reporting mechanisms, and developing an on-line method for requesters to submit new FOI requests, via the internet web page.

All component FOIA offices participate in the agency's computer "refresh" which ensures that updated PCs and related equipment are available for FOI processing. This includes electronic redaction (generally using Adobe 8.1.3).

The FDA has a substantial internet presence. For example, the FDA's Division of Dockets Management has posted more than 6,000 Dockets to www.regulations.gov, which include more than 75,000 records which are available for public viewing.

In addition, the FDA currently has nearly 120,000 individual records and databases posted and available on the inter-net website.

The FDA's website figures for CY 2009 follow:

Month	# Visits	# Page views	# Page views per Visit
1/2009	13294770	92882180	6.99
2/2009	15353885	103641638	6.75
3/2009	12368184	90444756	7.31
4/2009	9737276	74792236	7.68
5/2009	8810895	71534256	8.12
6/2009	7499277	75476939	10.06
7/2009	7204187	79366883	11.02
8/2009	6916107	72397567	10.47
9/2009	5994818	65513374	10.93
10/2009	7735211	89345573	11.55
11/2009	7638982	89078944	11.66

Definitions:

- Visits: Visits occur when a request is made for a page on the FDA site for the first time from a given Internet address. As long as the same address keeps making requests within a given timeout period, they will all be considered part of the same Visit. If the site makes a request to the FDA site, and the length of time since the last request is greater than the specified timeout period, a new Visit is started and counted, and the sequence repeats.

- Page views: A page is defined as any file or content delivered by a web server that would generally be considered a web document. This includes HTML pages (.html, .htm, .shtml), script-generated pages (.cgi, .asp, .cfm, etc.), PDF and plain-text pages. Files such as image files (.jpeg, .gif, .png), javascript (.js) and style sheets (.css) are excluded from this definition. Each time a file defined as a page is served, a page view is registered. Another way of counting is "Hits" but this counts all of the page elements which go to make up a single page and can be misleading.

- The FDA continues to consider options for electronic redaction software. At this time, FDA is testing Adobe's version 8.1.3, as a possible replacement for the "Agency standard" use of Redax ™. An additional review is planned for an alternative software program, in the near future.

- The FDA has been using an electronic repository for storage of those records which have been redacted and publicly released, since January 2006. This facilitates both long term storage and retrieval, when such records are requested by subsequent requesters.

Health Resources and Services Administration (HRSA)

The HRSA allocated $100,000 in the IT budget to implement a "SWIFT"-based FOIA document management system, which is also the document management system used by HRSA. Currently the HRSA FOIA office is in the early stages of design. Many of the "screens" being developed for our use are adaptations of those developed for the CMS FOIA Office. The FOIA software is Applient Redax. It will be late summer or early fall before the new system is fully operational.

In terms of addressing the broad spectrum of agency personnel, this year HRSA is planning a series of 15-minute presentations about the "New FOIA" at all HRSA bureau and office staff meetings, in order to increase awareness of the transparency in government initiative.

Indian Health Service (IHS)

The IHS FOIA staff continues to maintain an effective system for responding to FOIA requests by:

a) Training non-FOIA staff to assist with the processing of FOIA requests by utilizing other staff (staff not directly primarily performing FOIA duties or having a previous extensive FOIA background);

b) training and educating those program employees that work closely with FOIA staff in order to provide responsive information in a timely manner;

c) providing Area FOIA Coordinators with up to date information on open and closed cases so they can track cases on which they assist headquarters FOIA staff;

d) establishing and maintaining effective working relationships with one IT person in order to make necessary timely updates to the FOIA website; and,

e)   educating program staff on the newer FOIA regulations (Open
Government Act of 2007, President Obama's memorandum, and
Attorney General Holder's memorandum which outline the responsibility
of all federal employees to assist the FOIA program staff with timely
FOIA request processing.

National Institutes of Health (NIH)

The NIH has a very effective system for responding to requests. As described above,
FOIA processing at NIH is decentralized. In addition to the central NIH FOIA Office,
each NIH IC and several NIH Office of the Director components each have its own FOIA
Requester Service Center staffed by a FOIA Coordinator with release authority. By
having the FOIA processing function located directly in the IC, the FOIA Coordinators
have greater knowledge of the location of requested records, which decreases search
time. Because the FOIA Coordinators and the program staff are colleagues within the
same organization, there is greater cooperation regarding reviewing proposed redactions
which decreases review time.

To assist with this effort, in addition to processing records that fall within the Office of
the Director, the NIH FOIA Officer and her staff have prepared model letters for
acknowledging requests and conducting submitter notice, model guidance documents for
submitter notice, and model final response letters. This saves processing time for FOIA
Coordinators who do not have to "re-invent the wheel" with each request. Redaction
guides for frequently requested documents such as awarded research grant applications
and contract documents also have been developed and provided by the NIH FOIA office.
Both the model letters and the processing guides are available for download from the
NIH FOIA office intranet accessible by all NIH staff and can be accessed from the NIH
FOIA Tracking System, which is also maintained by the NIH FOIA Office.

In addition, the NIH FOIA Office provides regular updates regarding processing to the
FOIA Coordinators through e-mails, quarterly meetings and postings to the
Announcement Page of the NIH FOIA Tracking System.

With respect to IT support, as noted above, the NIH FOIA Office, under the direction of
the NIH FOIA Officer, maintains an electronic NIH-wide Tracking System for all NIH
requests. This Tracking System was substantially upgraded to meet the new reporting
requirements of the OPEN Government Act of 2007 and to provide enhancements for
processing requests, from creating file labels to tracking status and progress.

Another step using IT that resulted in a more effective system for responding to requests
involves the processing of requests for funded research grants. The NIH receives a
significant number of FOIA requests each year for copies of awarded research grants.
The majority of grant applications must be submitted electronically and most older grants
have been converted to an electronic format. The NIH FOIA Coordinators can
electronically retrieve the requested grant application, use commercially available
software to make any necessary and supported redactions, and then release the record to

the requester in electronic format. In addition, requests for research data maintained by NIH and for procurement statistics are routinely processed entirely electronically.

Office of Inspector General (OIG)

To ensure that the OIG FOIA system for responding to requests is effective and efficient, the OIG FOIA office created a database which provides a "countdown" to the due date, which provides better tracking. Additional practices include weekly reviews of all open FOIA requests, and the practice of sending 20/60/90 day status letters until FOIA request completion is achieved.

Public Health Service (PHS)/Program Support Center (PSC)

To ensure that the FOIA office's system for responding to requests is effective and efficient the PHS/PSC FOIA office has educated and trained program staff in conducting adequate and proper searches, and is communicating with program offices to ensure complete understanding of the request to conduct more accurate records searches.

A FOIA tracking system has been implemented for incoming FOIA requests and FOIA appeals. This system allows users to input important information for each file, including the FOIA response due date.

Redaction software is utilized to efficiently and accurately prepare documents for release to the requester.

Substance Abuse and Mental Health Services Administration (SAMHSA)

The SAMHSA FOIA Officer is working to establish two new processes for handling requests in 2010-- the tracking of requests and the response time for FOIA requests.

The tracking of requests and the turn around time for completing the requests are both tantamount. Although the major focus is the total processing time, an efficient tracking system is very vital to this work.

Currently, FOIA requesters may send FOIA requests using the SAMHSA FOIA Officer's e-mail address, the SAMHSA FOIA webpage e-mail/site, the fax machine, or regular mail. For every request received by e-mail in 2010, SAMHSA is plans to send an acknowledgement letter within 24 hours.

III. Steps Taken To Increase Proactive Disclosures

Department Overview of Section III

There are numerous activities and examples of proactive disclosure across HHS. The Department's recently released Open Government site includes two unique pages for sharing and discovering department datasets (http://www.hhs.gov/open/datasets/) and online tools (http://www.hhs.gov/open/tools/) as they are released.

Several other examples in this document are significant, such as NIH's Research Portfolio Online Reporting Tool Expenditure and Results (RePorter) Module, which creatively adds new information (some based on understanding of FOIA requests for Grant information) and value such as links to related NIH resources. The FDA has several successes, including proactive release of approval letters for pediatric drugs and new drugs. And FDA has developed a Transparency Task force to address the issue directly and systematically: http://www.fda.gov/AboutFDA/WhatWeDo/FDATransparencyTaskForce/. This year, CMS has linked 62 raw datasets and 15 tools into data.gov.

The Department's upcoming Open Government Plan will also describe a more complete set of data, high-value datasets and tools, as well as new process for prioritization and release of data. One goal is to further integrate FOIA operations into these processes.

Individual Major Organizational Component Reports:

Office of the Secretary (OS)

HHS's ASPA along with the HHS Chief Technology Officer are the co-leads for HHS's Open Government Plan in the Office of the Secretary and across the Department. ASPA designed the new Open Government website and is working closely with the CIO and others to increase data sets via the page and a new Council.

HHS ASPA is also implementing a standard practice of webcasting key Departmental events whenever possible and posting transcripts of interviews, speeches and press conferences as soon as they are available. This is not only making HHS operations and messaging more transparent but allowing Americans to have accesss to much of the information that they had to FOIA previously.

Administration on Aging (AoA)

The AoA is proactive in posting materials on the AoA website, (and links to the materials via the AoA FOIA Reading Room) including agency reports, speeches by the Assistant Secretary, program instructions and information memorandums.

Administration for Children and Families (ACF)

The ACF FOIA office developed a presentation for outlining FOIA requirements, and stressing the importance of proactive disclosure for Office Directors and other senior leadership staff.

A significant number of ACF's FOIA requests are for copies of funded granted applications. In this regard, the FOIA Officer has met several times with ACF's Grants Management to seek their support to proactively post frequently requested grants on its website. ACF is working toward achieving this for FY 2010.

Agency for Healthcare Research and Quality (AHRQ)

The majority of information pertaining to AHRQ's programs, products, meetings, research findings, and reports is available on the AHRQ Web Site. The AHRQ provides copies of final grant reports to the National Technical Information Service, Library of Congress, and the NIH Library of Medicine. Archived information is made available through the National Archives. Frequently requested information is made available in the AHRQ FOIA Reading Room. A list of the documents is available at http://www.ahrq.gov/news/foiaindx.htm.

Centers for Disease Control and Prevention (CDC)

Management encouraged programs to post more information on their websites. This was particularly helpful during the initial H1N1 outbreak.

Centers for Medicare & Medicaid Services (CMS)

In 2009, CMS linked 62 raw datasets and 15 tools to the website: www.data.gov to increase the ability of the public to access, download, and use datasets that are generated by CMS.

Food and Drug Administration (FDA)

One FDA component, the Center for Drug Evaluation and Research (CDER), doubled the size of the team responsible for proactive posting, going beyond the statutory requirements to post approval letters for pediatric drugs and New Drug Approvals. This approach is consistent with the FDA's posting obligations under FDAAA (the Food and Drug Administration Amendments Act of 2007) and the Pediatric Exclusivity Act, which impacts two centers (CDER and the Center for Biologics Evaluation and Research).

Agency components, including the Press Office, continue to post information to the web on specific issues of heightened consumer or media interest in order to better inform the Agency's constituency without requiring the submission of a FOIA request. FDA works closely with HHS to publish information on one-stop departmental consumer websites like flu.gov and foodsafety.gov.

FDA has prepared, and posted information and special websites on topics such as:

- o Counterfeiting drugs
- o Warning letters and related compliance correspondence
- o In addition, the FDA has conducted two public hearings on transparency. The Transparency website, at http://www.fda.gov/AboutFDA/WhatWeDo/FDATransparencyTaskForce/default.htm, contains transcripts of the meetings, along with links to a docket, which is used by the public, to submit comments on how the agency might enhance availability of information.

The FDA continues to provide the public with the ability to sign up to receive automatic email, whenever certain web pages are updated. For example, at this time there are more than 47,000 persons who have requested auto-notifications whenever a new Warning Letter is posted to the website. There are 20 such mailing lists, which can be viewed at http://www.fda.gov/AboutFDA/ContactFDA/StayInformed/GetEmailUpdates/default.htm.

The new Center for Tobacco Products recently created after the passage of the Family Smoking Prevention and Tobacco Control Act has already established a webpage, and has begun to pro-actively post information. That Center is planning to make additional information available to the public, on such issues as registration, ingredient listing, etc.

Health Resources and Services Administration (HRSA)

The entire HRSA website is in the process of redesign and revision, so there have been no significant increases in available documents. However, we recently had a request for all reports that HRSA made to Congress in the last two years. Twenty reports were assembled and 14 of them are sufficiently broad in scope to merit posting.

Indian Health Service (IHS)

We continue to post widely-requested information on the IHS FOIA website and provide the most up to date information to the public. One example of a proactive disclosure for the agency is one request the FOIA staff received in FY 2009 where a requester had asked for copies of architectural and as-built plans, for a water pipeline construction project in Chichiltah, from the Navajo Area Indian Health Service. In the past after careful review, those documents were withheld.

More recently with the above-referenced case, after review of FOIA staff, it was determined that the maps could be released as long as the residents' names were removed.

National Institutes of Health (NIH)

In addition to the education efforts described above, NIH has taken several steps to increase proactive disclosures. For example, the NIH FOIA Officer's direct supervisor is the NIH Associate Director for Communications and Public Liaison. In that capacity he meets bi-monthly with the Communication Directors and other communication professionals throughout the NIH. He knows what initiatives are being launched and identifies those that may be appropriate for proactive disclosures.

However, the most significant step taken by NIH was the launch of the Research Portfolio Online Reporting Tool Expenditures and Results (RePorter) Module. As previously noted, the NIH awards thousands of research grants each year. There has always been great interest in various types of information regarding these awards including the amount of the award, how many awards have been made to a specific research institution or a specific state, what diseases are being studied, how much is funded per disease, and similar topics. For years, the NIH made available to the public an online database called Computer Retrieval of Information on Scientific Projects (CRISP). While CRISP contained a great deal of information, largely because of the types of additional data requests NIH received, it became apparent that CRISP was not providing all the information the public desired. As a consequence, the agency was processing FOIA requests for the additional information. One particular area of interest was the amount of each grant award, information unavailable through CRISP and which resulted in many FOIA requests.

The NIH Office of Extramural Research, which collects and maintains data on NIH grant awards, created RePORTER, which retained all the search capabilities of the CRISP system, but provided additional query fields, hit lists that can be sorted and downloaded to Excel, funding amount for each project, and information regarding the publications and patents that have acknowledged support from each project. RePORTER also provides links to PubMed Central, PubMed, and the US Patent & Trademark Office Patent Full Text and Image Database for more information on research results. Finally, additional data tables and pre-programmed reports are now available to the public via RePORTER that previously had to be requested under the FOIA.

Office of Inspector General (OIG)

The OIG currently has over 5,000 documents available for review on our website; and is actively working with its components on increasing that number.

Public Health Service (PHS)/Program Support Center (PSC)

The PHS/PSC FOIA office does not typically have repetitive FOIA requests such that it is effective to post such materials on its website.

Substance Abuse and Mental Health Services Administration (SAMHSA)

IV. Steps Taken To Greater Utilize Technology

Department Overview of Section IV

As noted in Section II, within the last several years, improved tracking, status, and redaction systems have been implemented to better support request processing at multiple HHS FOIA offices.

All HHS FOIA offices can receive requests electronically, and all offices have some type of automated system in place to track requests. Specifically, AHRQ installed a new tracking system in 2007. CMS took a great step forward in 2009 with a new system that supports the headquarters FOIA office as well as its ten regional offices. The FDA has added online payment for invoices. The HRSA's new automated system is being implemented. The NIH updated its institute-wide system in 2007. The CDC supports online status checking via its Web Site.

Despite the remarkable progress and important milestones achieved at various HHS FOIA offices in recent years, it is apparent that the use of technology to support FOIA operations has not been coordinated or made a priority when viewed across the Department. Opportunities to use technology to improve responsiveness and efficiency, as well as to create reliable and frequent management reporting, have not yet been fully exploited at the Department level. The Department's Open Government FOIA project, launched in January 2010, has already begun researching solutions in this area, both near- and long-term.

Individual HHS Major Organizational Component Reports:

Office of the Secretary (OS)

HHS will be working over the course of the next year and as part of the Department's FOIA Project to improve the use of technology in the Office of the Secretary's FOIA operations. There is much room for improvement. A historic lack of both funding and training over the years has hampered progress.

The Office of the Secretary (OS) uses its web request function, e-mail, fax equipment, as well as mail and special delivery to receive FOIA requests.
The OS FOI/PA Division utilizes a "web request" or automated FOIA request functionality on its Web Site to allow FOIA requesters to submit FOIA requests for OS and other HHS records. This web page serves as a focal point for FOIA requesters, as it provides a location for electronic submission of requests when the requester does not know the organizational location of the requested records. The FOI/PA Division receives many FOIA requests electronically, and distributes them to both OS, and other HHS organizational components, for searches for responsive records.

The FOI/PA Division has, in recent years, been continuing to transition to the use of redaction software for the processing of FOIA requests, so that reviews for potentially exempt material may be performed with the aid of automated systems. There is more work to be done on this front.

The FOI/PA Division has also recently initiated the practice of more fully utilizing scanning equipment, and e-mail distribution methods, to forward new FOIA requests for searches, thus decreasing problems inherent in interoffice mail distribution, and increasing the speed with which such distribution occurs.

When it comes to the preparation of Annual Reports such as the Annual FOIA Report and the Chief FOIA Officer's Report, OS utilizes a basic logging system, but also utilizes a paper-based logging system to maintain information needed for the compilation of the annual FOIA report.   The OS FOI/PA Division also compiles, coordinates, and submits the HHS Annual FOIA Report to DOJ each year. Most of the work done by the FOI/PA Division on this work is done manually.

This is because the current automated system developed by OS over the past few years lacks functionalities to provide reporting information needed for the annual report as well as other data needs. This is highly inefficient and is a top priority for reform as part of the new project.

Administration on Aging (AoA)

The AoA utilizes e-mail and the fax machine. Every FOIA request is entered into our correspondence tracking system.

The AoA receives such a small number of FOIA requests (typically well under 20 per year, such that it can nearly always process its FOIA requests very efficiently and effectively, within the statutory time restraints, using primarily paper-based methods.

AoA uses existing systems to prepare their Annual FOIA Report

Administration for Children and Families (ACF)

The ACF FOIA Officer has developed numerous recommendations to upgrade the current FDTS.   With support from ACF's Office of Information Services, a proposal was solicited and a request for funding was submitted to ACF management. These recommendations are currently being reviewed and under consideration by ACF leadership.

Agency for Healthcare Research and Quality (AHRQ)

Electronic receipt of requests

Any FOIA requesters may submit requests to the AHRQ Info Mailbox at
http://info.ahrq.gov/cgi-bin/ahrq.cfg/php/enduser/site_fdbck.php?p_sid=ddF2CESj. The
requests are forwarded to the FOIA officer's inbox for logging in the FOIA tracking
system. Each request is assigned a FOIA case number, and an interim response is sent to
acknowledge receipt of the FOIA request.

Electronic tracking of requests

Again, upon receipt of a FOIA request sent to the AHRQ Info Mailbox at
http://info.ahrq.gov/cgi-bin/ahrq.cfg/php/enduser/site_fdbck.php?p_sid=ddF2CESj and
forwarded to the FOIA Officer's e-mail inbox, the request is entered into the AHRQ
FOIA tracking system and given a FOIA case number. The tracking system can generate
various management reports, including status of requests, volume of requests, and history
of requests, as well as customized reports.

Electronic processing of requests

The AHRQ installed a new FOIA tracking system in 2007 to replace its 1996 tracking
system. The tracking system assigns a case number to the requests, tracks status of
requests, generates reports, logs responses, and has the capability of redacting documents
for release.

Electronic Preparation of Annual FOIA Report

The AHRQ FOIA tracking system can generate the Annual FOIA Report. In order to
comply with the new FOIA requirements for annual FOIA reports, there are still portions
of the report that must be completed manually.

Centers for Disease Control and Prevention (CDC)

The CDC FOIA office maintains an interactive status check for FOIA requesters on the
FOIA website. The CDC is now using electronic redaction for all responses, which
provides better document quality for requesters.

Centers for Medicare & Medicaid Services (CMS)

The CMS receives FOIA requests electronically via e-mail and facsimile, as well as in
through postal and/or express delivery. In 2009, CMS implemented an electronic FOIA
request tracking system throughout headquarters and the 10 regional offices utilizing a
module associated with the previously established SWIFT correspondence tracking
system.   Additionally, CMS procured electronic redaction software to begin electronic
review and redaction of FOIA-requested records as well as the collection of metadata to
be utilized during the compilation of statistics for the Annual FOIA Report. Contained

within the SWIFT FOIA Request Tracking module is a tool for the electronic compilation of statistics required to prepare the Annual FOIA Report.

Food and Drug Administration (FDA)

The FOI/Privacy Acts Division, Office of the Secretary (OS) accepts new FOIA requests on its FOIA web page/web request form. When OS receives an e-request for the records maintained within the FDA, that FOIA request is e-mailed to the FDA FOIA office.

The FDA is currently working to make this same service available to the public, in the near future. The process should result in any individual being able to submit, through the FDA.Gov website. At this time, the issues which have delayed the availability of the on-line submission form are based in both resources, and IT security issues.

Yes. The FDA tracks FOIA requests electronically using a system which was developed in house, that is accessible by all component FOI offices, throughout the agency.

FDA FOIA staff offices use technology to:

- Route new, incoming requests electronically, to components around the country.

- Redact responsive records electronically (primarily through Adobe 8.1.3.)

- Store released copies of responses issued by agency offices.

- Release large databases on CDs (rather than hard copy).

- Upon request, and as technologically feasible or appropriate, FDA component FOI offices will e-mail responsive records to FOIA requesters. This approach depends on the recipient's capability to receive certain software programs, or voluminous materials (when, for example, databases or larger records are being transmitted).

- The FDA continues to pro-actively post agency records to the internet

- The FDA uses an internal tracking system for the issuing and posting of Warning letters, which are frequently requested records under the FOIA (this system facilitates tracking, to ensure posting).

- In addition, the FDA has created subscription mailing lists, which enable an individual to add his/her name to the lists of persons receiving automatic email notifications, for certain categories of records are posted to the internet. For example, an individual may sign-up to receive auto-notification when new warning letters are posted. At this time, more than 47,000 persons have added their name to the warning letter list, and other such lists are available (new product approvals, recalls, etc.). Providing records in this manner decreases the number of new, incoming requests that the agency receives.

- The FDA is now offering requesters the option of paying an invoice, issued after a FOIA request has been completed, via credit card, on-line.

The FDA's tracking system automatically generates numbers, and charts as required for the Annual FOIA Report. However, the process still requires input from component offices for such information as Full-Time Equivalent (FTE) and cost data. The FOIA Annual Reports are available on the internet website, since 1996, and the posting is in compliance with section 508 of the Americans with Disabilities Act.

Health Resources and Services Administration (HRSA)

The HRSA receives FOIA requests via e-mail, and sends acknowledgements both via e-mail and mail. Occasionally, a response is released with a PDF document if the requester has an immediate need, but with a "hard copy."

With the anticipated installation of its FOIA processing software and document management system, HRSA will be able to respond to FOIA requesters in an electronic format much more readily.

HRSA does not currently track requests electronically.The HRSA has obtained funding for an electronic tracking system, and plans to implement it soon. HRSA anticipates using technology for the FY 2011 report.

Indian Health Service (IHS)

The IHS has updated its website to adhere to President Obama's directive of openness, and have made the following changes to the website:

a)   Made it possible for the public to make a request using a form on the website which is automatically sent to three FOIA staff members to ensure it is received in a timely manner;

b)   Created a Frequently Requested Records section on the FOIA website so that the public can access the information that is widely requested. As of now, there is only one document that is most requested for and that is a listing of our IMPAC cardholders. Vendors are interested in the cardholder listing in order to solicit services and supplies.

c)   An entire redesign of the IHS FOIA website, which made it more user-friendly to the public. The updated site allows for greater ease of use because of the table of contents, the addition of training materials, and links to other agency websites which have already proved to be beneficial to the general user.

The agency tracks requests utilizing MS Word, maintains three lists of requests, and makes updates manually.

The IHS uses only manual means to make the necessary redactions to responsive records. Once manual redactions are made, a copy is sent to the requester. Tracking software and/or redaction software (usually both in the same package) would assist the FOIA staff to work in a more efficient manner. Tracking and redaction software would open up more time to work on other cases and therefore reduce the yearly projected backlog as referenced each year in the FOIA annual report.

IHS FOIA staff members do not use technology to prepare their Annual FOIA Report. They review each file in order to find the necessary information for inclusion in the annual report. The IHS FOIA office currently maintains three tracking databases in MS Word and every change must be manually made to those databases. Unlike status tracking software/programs, this requires the FOIA staff members to manually go through each case file to see which exemptions were applied (if any), and then documenting those cases on the annual report.

National Institutes of Health (NIH)

> NIH receives requests via email, web-based submission form (some ICs), fax, U.S. postal service, and other commercial delivery methods. NIH utilizes and NIH-wide, web-based NIH Tracking System to logging and tracking requests.
>
> NIH uses technology to process many requests, especially requests for funded grant applications and requests for data regarding procurement activity. Nearly all NIH-awarded grant applications are submitted electronically, and most older grant applications have been converted to electronic form. The FOIA Coordinators are able to retrieve and save an electronic version of the application, use commercially available software to make any necessary redactions, and then release the document electronically to the requester. Many requests for data, especially procurement related data are downloaded from the relevant NIH database, saved electronically and then released to the requester.
>
> The NIH electronic Tracking System was updated with enhancements following the enactment of the OPEN Government Act of 2007, to enable the agency to comply with the additional reporting requirements. At that time, existing reports were enhanced and new reports were created that produce the data required for the Annual FOIA Report. Preparation of the Annual Report is now a simple matter of running a few reports for the applicable fiscal year.

Office of Inspector General (OIG)

The OIG receives FOIA requests through its website as well as an e-mail account. All requests are processed and redacted electronically, no hard copy records are processed. All information for the Annual FOIA Report is gleaned electronically from our FOIA tracking system

Public Health Service (PHS)/ Program Support Center (PSC)

The PHS/PSC FOIA office currently receives requests electronically via the PSC web FOIA page and a Division email account. The PHS/PSC FOIA office tracks requests electronically in an access-based database.The PHS/PSC FOIA office uses Adobe 9 and Redax to process requests and appeals. The PHS/PSC FOIA office currently uses technology to prepare our Annual Report.

Substance Abuse and Mental Health Services Administration (SAMHSA)

The SAMHSA IT staff is currently working to develop a new FOIA tracking system to maintain the 2010 FOIA request data. A review was made of the system on January 13, 2010, and found that great progress is being made. This new system will allow response an electronic acknowledgement of new requests. The SAMHSA FOIA Officer will continue to work with the Executive Secretariat Office to ensure the electronic transfer of FOIA requests to the designated offices through the SWIFT system.

V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests

Department Overview of Section V

The Department has reduced its backlog in 2009 (from 19,249 to 17,571). While this is progress, it is not acceptable.

Several HHS major organizational components have no significant backlog, and most HHS FOIA offices have clearly documented the steps they have taken to either reduce their backlogs or improve timeliness. These steps include investments in training, increased staff, or upgraded IT systems, as well as improved fundamentals such as active management oversight at NIH and better customer communications at FDA.

As to be expected, the largest backlogs are found among those organizations with the largest FOIA Operations. Within HHS, CMS and FDA dwarf other FOIA offices in terms of volume of requests. Fortunately, there are some trends of improvement over the past several years, and both components have made investments that should be helpful. Additional activities will be needed for additional progress. All HHS FOIA offices, even those with a smaller volume of requests, will need to be strengthened.

A critical element of the Department's open government FOIA project is to analyze and understand the specific nature of these backlogs, and to propose and implement both near- and long-term solutions that directly address the causes of these backlogs. The project will also address the need for more frequent reporting of relevant metrics, as well as the management oversight needed to quickly address issues in a timely fashion before backlogs grow again.

In 2009, the Department has reduced its appeals backlog from 463 to 449. In addition, the PHS/PSC FOIA office, where most Department FOIA appeals are initially processed, has reduced processing time through increased staff, increased training, and improved communications with requests.

Individual HHS Major Organizational Component Reports:

Office of the Secretary (OS)

The HHS FOI/PA Division has traditionally had a dual role: to provide information to the Acting HHS Chief FOIA Officer, the Acting Assistant Secretary for Public Affairs, as to the state of the HHS and OS FOIA program, insofar as its structure, functions, operations, and history, as well as the needs of the FOIA program in terms of leadership and resources. In addition HHS FOI/PA division serves the HHS Office of the Secretary.

The OS FOI/Privacy Acts Division backlog, from FY 2008 to FY 2009, reflects a slight to somewhat modest increase in the amount of backlogged FOIA requests and FOIA appeals. The majority of these requests date back years and as part of the Department FOIA's Project, plans and strategies are being developed to reduce or address cases that have been sitting ignored for years.. Reducing this backlog is a priority for the Department.

One reason for the increase is that the number of OS intial FOIA requests increased from 882 to 1,118. There have also been a shortage of personnel in the HHS FOIA due to the extended absence of an employee in a critical FOI/PA support position. These issues are being addressed as part of FY 2010 efforts where resources have been dedicated to management and employee training and funding new personnel in the office.

The OS FOI/PA Division continues to advise and work with HHS FOIA and program offices to implement steps to improve the processing of FOIA requests. During FY 2008, the OIG, heretofore serviced by the OS FOI/Privacy Acts Division, established its own FRSC. This has allowed for more responsive service to both FOI/PA Division and OIG FOIA requesters, and we anticipate that this will ultimately help reduce the backlog of FOIA requests. In effect, this allowed for an increase in FOIA resources handling OS FOIA requests, that OIG has added two (2) positions that otherwise may not have been added. The OS FOI/PA Division retained its existing caseload of OIG FOIA requests, and continues to work cooperatively with the OIG FRSC to address processing issues as they arise.

The FOI/PA Division has played an important role in the development of the HHS Open Government plans relative to its review of overall HHS FOIA operations, and, continues to provide needed information and advisory assistance in the Departmentwide assessment of the FOIA process to identify new tools, technologies, and possible systems changes that need to be made across the Department to improve our FOIA process. The effort,

which includes senior operating division leadership, will contribute to and is being coordinated with our Open Government Plan.

Administration on Aging (AoA)

The AoA does not maintain a backlog of FOIA requests.The AoA maintains a sound record of timeliness in FOIA responses, with a median response time of 4 days, and an average of 5 days in 2009.

Administration for Children and Families (ACF)

The ACF's FOIA office was granted authority for one outside hire in FY 2009.   The new hire was selected during FY 2009, but will report in FY 2010. The addition of one FTE will have a significant impact on the backlog and improve timeliness in the following fiscal year.

Agency for Healthcare Research and Quality (AHRQ)

The AHRQ does not have a backlog of old FOIA cases. At the end of each year, AHRQ has had no more than five cases pending from that reporting year. This year, AHRQ reported a total of 11 cases pending. At the time of this report, AHRQ has only two FY 2009 cases pending. The AHRQ makes a point to work on those cases first, in order to get the information released in part or whole. The reason AHRQ had more cases pending at the end of the reporting period was due to the fact that each of several requests sought as many as 10 to 15 copies of grants or contracts. This was in response to announcements AHRQ issued regarding the availability of funds under the Recovery Act.

Centers for Disease Control and Prevention (CDC)

The CDC FOIA office continued training four junior FOIA analysts and initiated overtime for the FOIA Office analysts in order to address its FOIA case workload.

Note: The CDC FOIA office reports that CDC's H1N1 program, and other public health emergency activities, has impacted backlog reduction because of competing priorities for staff and resources.

Centers for Medicare & Medicaid Services (CMS)

The CMS achieved minor backlog reduction in FOIA requests in FY 2009. The implementation of the automated tracking system has been set up to streamline or eliminate administrative aspects involved in disclosure analysis and request management. The utilization of correspondence templates, automated fee calculation, and electronic transmission of cases throughout the CMS FOIA network contribute to the reduction in processing time, thereby improving timeliness in responding to requests.

Food and Drug Administration (FDA)

o The FDA's backlog has continued to decrease, over the past three years:

FY	# rec'd	# pending At close of FYI	backlog decrease
2009	10,337	4,818	1,750 (-26.6%)
2008	9,432	6,568	10,890 (-62.4%)
2007	12,320	17,458	2,490 requests (-12.4%)
2006	19,797	19,948	--

At this time, some FDA component offices do not have backlogs at all. At least five components have increased the number of staff dedicated to the FOIA process over the past year. In addition, some FDA field offices have used contractors to assist with redaction, thereby further reducing component office backlogs. See the above reference to expanded FTEs dedicated to FOIA processing ("II, Steps Taken to Ensure that Your Agency has an Effective System for Responding to Requests").

There has been enhanced FOIA reporting within components for management tracking, enabling component offices to better monitor their progress in backlog reduction.

The FDA's Division of FOI (DFOI) is taking a more pro-active role, and routinely contacting requesters who submit vague or overly-broad requests, attempting to better focus requests and thereby potentially move the file to the "simple" request queue.

As a part of this enhanced service level, all FDA components are working with requesters, when requests are submitted for copies of agency records which are available on the internet.

Early in 2009, FDA also published the names and contact information for all component office public liaisons on the internet, better enabling requesters to contact component FOI offices, and obtain information on how to best submit a request for records in that component. The FDA component offices are also stressing the issuance of partial responses, whenever possible, as a way of providing information to the requester community as quickly as possible.

The FDA FOIA components have re-evaluated the triage function as a component of the multi-track system. As a result, some requests which were formerly considered to be "complex" were migrated to the "simple" queue, ensuring that these requests were processed more quickly and improving overall timeliness.

Health Resources and Services Administration (HRSA)

The HRSA FOIA backlog from 2008 to 2009 increased from 23 to 30, an increase of seven (7). However, the total number of requests increased by 33, which correspondingly increased the workload. As mentioned earlier in this report, HRSA will be computerizing its automated FOIA system this year.

Currently, HRSA is dealing with a major increase in the number of requests. As of February, 2009, HRSA had received 145 FOIA requests, while last year HRSA did not reach 145 until March 2009, and in 2008 not until May. Nevertheless, HRSA is keeping abreast of the influx. At the moment HRSA has only two overdue FOIA requests, each because of circumstances beyond our control. At the current rate, HRSA may exceed 550 requests this year, compared with the total of 338 in '08, 303 in '07, and 242 in '06.

Indian Health Service (IHS)

The IHS backlog is decreasing. While the IHS receives a large number of requests each year, its backlog is not substantial. However, IHS continues to strive to reduce the backlog while working on its current caseload. In the past few years, we have received more voluminous requests that required each Area office to compile the responsive information, which can prove to be time-consuming and burdensome to FOIA staff in terms of search, review and redaction. It is these cases that make up most of our backlog because of the nature of the information being requested and the volume of responsive information that requires the staff to make the necessary time-consuming redactions.

In an effort to improve timeliness in responding to requests, IHS has cross-trained employees other than FOIA staff to assist with the FOIA program case load. Over the past year, three employees have been assigned to help FOIA staff with the processing of FOIA requests. Two of the staff members have assisted with only the redactions and/or follow-up on cases (without the duty of initially logging cases in and beginning the FOIA process). However, as of now, IHS is using a staff assistant to help with logging in, sending the request to program offices for a search for materials, helping with FOIA request tracking, and any other associated administrative duties. This staff person does not assist the FOIA staff with the substantive processing of requests but allows the FOIA staff to focus on the more analytical or substantive work. The additional staff member has proven to be very beneficial in ensuring that the FOIA caseload is handled properly and also reduces the number of backlogged cases for the current reporting period of FY2010. The IHS does not process its own appeals.

National Institutes of Health (NIH)

The NIH is making progress both in reducing its backlog and in reducing processing times for requests pending at the end of each fiscal year. Data comparisons from the NIH Annual FOIA Reports for FYs 2008 and 2009 are as follows:

Backlog:

Number of Backlogged Requests as of End of FY 2008	Number of Backlogged Requests as of End of FY 2009
100	70

Processing Times:

Requests Pending at the end of FY 2008			Requests Pending at the end of FY 2009		
# Pending	Median # days	Avg # days	# Pending	Median # days	Avg # days
151	36	93	115	31	77

The NIH is taking several steps to continue to reduce its backlog and its processing times. The most effective and simplest step is to continuously monitor the list of pending requests, identifying those that have been pending the longest and meeting with the responsible FOIA Coordinator and FOIA Public Liaison. Enhancements made to the electronic NIH FOIA Tracking System enable the FOIA Officer to monitor all agency activity as a whole as well as monitor the activity of individual FOIA Requester Service Centers. In addition, FOIA Coordinators can monitor their own request load with ease. Increasing backlogs can be spotted before they become bigger.

Generally, this has resulted in additional resources being directed to the responsible FOIA program, which then results in faster processing and a reduction in backlog. For example, one NIH IC experienced a loss of staff in the FOIA program, which resulted in a corresponding significant increase in backlogged requests. The NIH FOIA Officer met with the FOIA Coordinator and the FOIA Public Liaison to discuss the issue and to stress the need to address the situation. The IC agreed to reassign an existing staff member from another program area to FOIA with the result being a reduction in that IC's backlog from 31 requests to 8 requests in less than six months.

The NIH will continue to take steps to further reduce its backlog as well as processing times. These include a combination of monitoring the agency's requests, diligence, resource commitment and increased proactive disclosures.

The NIH Director has communicated his commitment to openness and transparency to the NIH community. In addition, over the past several years, the NIH has committed resources to its FOIA program that have enabled the agency to reduce both its backlog and processing times. Decentralized FOIA processing under the guidance of the NIH FOIA Officer and with the tools provided by the NIH FOIA Office enables the IC FOIA Requester Service Centers to process requests for records with which they have familiarity more efficiently. The creation of a FOIA fee-for-service center to process requests for smaller ICs which receive only a few requests each year also results in decreased processing times. Finally, the use of technology has greatly enhanced the agency's ability to process requests for awarded grants and other data maintained electronically more easily, while also reducing processing times.

Office of Inspector General (OIG)

The OIG doesn't currently have a significant backlog; 338 of the 419 FOIA requests received in 2009 were processed within the 20-day statutory timeframe. To improve timeliness in responding to requests OIG constantly monitors all FOIA requests and stays in constant contact with program offices and requestors. We ensure complete understanding of any delays and often discuss ways of reducing delays by focusing on the requestor's actual requirements.

Public Health Service (PHS)/Program Support Center (PSC)

The PHS/PSC FOIA office decreased the appeal and request backlog by 25% in FY09. To improve its timeliness in responding to requests and appeals the PHS/PSC FOIA office provided training to staff in program offices on searching for records. The PHS/PSC FOIA office educated employees on both its staff as well as in program offices to triage new requests, resulting in more expeditious processing. We have also hired additional staff and communicate more regularly with the requesters.

Substance Abuse and Mental Health Services Administration (SAMHSA)

A fair number of SAMHSA FOIA requests are for copies of top scoring grant applications for all of the SAMHSA grant programs. The FOIA Officer is working with the Grants Management Division to obtain the top three grant applications from each program and to pre-process those applications. Upon request, they would be readily available to be released, with a minimum turn around time. These practices will reduce pending requests, and will enhance response time to the requester.

There was an increase of FOIA request in 2009. The SAMHSA received 157 FOIA requests for the year. Currently SAMHSA has approximately 89 requests.

References

Below please find the guidance issued by the Department of Justice for the preparation and completion of Departmental Chief FOIA Officer Reports. HHS and our operating divisions followed this guidance in the preparation of this report.

I. Steps Taken to Apply the Presumption of Openness

The guiding principle underlying the President's FOIA Memorandum and the Attorney General's FOIA Guidelines is the presumption of openness.

1. Describe below the steps your agency has taken to ensure that that presumption is being applied to all decisions involving the FOIA. This section should include a discussion of the range of steps taken by your agency to apply this presumption, from publicizing the President's FOIA Memorandum and Attorney General's FOIA Guidelines and providing training on them, to implementing the presumption in response to FOIA requests and administrative appeals, with examples or statistics illustrating your agency's action in making discretionary releases of records or partial releases when full disclosure is not possible.

2. Report whether your agency shows an increase in the number of requests where records have been released in full or where records have been released in part when compared with those numbers in the previous year's Annual FOIA Report.

II. Steps Taken to Ensure that Your Agency has an Effective System for Responding to Requests

As the Attorney General emphasized in his FOIA Guidelines, "[a]pplication of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just a presumption of disclosure, but also an effective system for responding to FOIA requests." Describe here the steps your agency has taken to ensure that your system for responding to requests is effective and efficient. This section should include a discussion of how your agency has addressed the key roles played by the broad spectrum of agency personnel who work with FOIA professionals in responding to requests, including, in particular, steps taken to ensure that FOIA professionals have sufficient IT support.

III. Steps Taken To Increase Proactive Disclosures

Both the President and Attorney General focused on the need for agencies to work proactively to post information online without waiting for individual requests to be

received. Describe here the steps your agency has taken to increase the amount of material that is available on your agency website, including providing examples of proactive disclosures that have been made since issuance of the new FOIA Guidelines.

IV. Steps Taken To Greater Utilize Technology

A key component of the President's Memorandum was the direction to "use modern technology to inform citizens about what is known and done by their Government." In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests. For this section of the Chief FOIA Officer Report, please answer the following questions:

1.) Does your agency currently receive requests electronically.

2.) If not, what are the current impediments to your agency establishing a mechanism to receive requests electronically.

3.) Does your agency track requests electronically.

4.) If not, what are the current impediments to your agency utilizing a system to track requests electronically.

5.) Does your agency use technology to process requests.

6.) If not, what are the current impediments to your agency utilizing technology to process requests.

7.) Does your agency utilize technology to prepare you agency Annual FOIA Report.

8.) If not, what are the current impediments to your agency utilizing technology in preparing your Annual FOIA Report.

V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests

Improvements to timeliness in responding to pending FOIA requests and reductions in backlogs is an ongoing agency effort. Both the President and the Attorney General emphasized the importance of improving timeliness in responding to requests. Section XII of your Annual FOIA Report includes figures that show your agency's backlog of pending requests and administrative appeals for the previous fiscal year and for this current fiscal year. Your Chief FOIA Officer Report should address the following elements.

1. If you have a backlog, report here whether your backlog is decreasing. That reduction should be measured both in terms of the numbers of backlogged requests

and administrative appeals that remain pending at the end of the fiscal year, and in terms of the age of those requests and appeals.

2. If there has not been a reduction in the backlog describe why that has occurred and what steps your agency is taking to bring about a reduction.

3. Describe the steps your agency is taking to improve timeliness in responding to requests and to administrative appeals.
Timing for Submission of Chief FOIA Officer Reports

In order to appropriately ensure that agency Chief FOIA Officer Reports address all the elements detailed above, each agency must submit a draft of their Chief FOIA Officer Report to OIP for review by March 1, 2010. The drafts should be submitted by e-mail to DOJ.OIP.FOIA@usdoj.gov.

Each agency Chief FOIA Officer must then submit a finalized Chief FOIA Officer Report to the Department of Justice by March 15, 2010, to the e-mail address noted above.

Each agency must also post its Chief FOIA Officer Report on its website.

Contacts

Agencies with questions regarding this matter should contact Vanessa Brinkmann, Ken Hendricks, or Tom Hitter at the Department of Justice's Office of Information Policy at (202) 514-3642. (posted 09/30/2009)

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