

# DOC FOIA ANNUAL REPORT

FOR  
10/01/2019  
THROUGH  
09/30/2020

The following **Annual Freedom of Information Act** report covers the Period 10/01/2019, through 09/30/2020, as required by 5 U.S.C. 552.

## I. BASIC INFORMATION REGARDING REPORT

1. Name, Title, Address, and Telephone Number

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2. Electronic address for Report on the agency web site.

<http://www.osec.doc.gov/opog/FOIA/default.html>

3. How to obtain a copy of the report in paper form.

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## II. MAKING A FOIA REQUEST

1. Names, addresses, and phone numbers of all individual agency components of the Department that receive FOIA requests are listed at: [http://www.osec.doc.gov/opog/FOIA/FOIA\\_foiacontacts.html](http://www.osec.doc.gov/opog/FOIA/FOIA_foiacontacts.html).

## III. ACRONYMS, DEFINITIONS, AND EXEMPTIONS

1. Acronyms used:

<b>Acronym</b>	<b>Definition</b>
BEA	Bureau of Economic Analysis
BIS	Bureau of Industry and Security
Census	Bureau of the Census
DOC	Department of Commerce
EDA	Economic Development Administration
InfoLaw	Employment, Litigation, and Information
IOS	Immediate Office of the Secretary
ITA	International Trade Administration
MBDA	Minority Business Development Agency
NIST	National Institute of Standards and Technology
NOAA	National Oceanic and Atmospheric Administration
NTIA	National Telecommunications and Information Administration
NTIS	National Technical Information Service
OIG	Office of Inspector General

OS	Office of the Secretary
OUSEA	Office of the Under Secretary for Economic Affairs
PTO	United States Patent and Trademark Office

2. Definition of terms used in this report:

- a. **Administrative Appeal** - a request to a federal agency asking that it review at a higher administrative level a FOIA determination made by the agency at the initial request level.
- b. **Average Number** - the number obtained by dividing the sum of a group of numbers by the quantity of numbers in the group. For example, of 3, 7, and 14, the average number is 8.
- c. **Backlog** - the number of requests or administrative appeals that are pending at an agency at the end of the fiscal year that are beyond the statutory time period for a response.
- d. **Component** - for agencies that process requests on a decentralized basis, a "component" is an entity, also sometimes referred to as an Office, Division, Bureau, Center, or Directorate, within the agency that processes FOIA requests. The FOIA now requires that agencies include in their Annual FOIA Report data for both the agency overall and for each principal component of the agency.
- e. **Consultation** - the procedure whereby the agency responding to a FOIA request first forwards a record to another agency for its review because that other agency has an interest in the document. Once the agency in receipt of the consultation finishes its review of the record, it responds back to the agency that forwarded it. That agency, in turn, will then respond to the FOIA requester.
- f. **Exemption 3 Statute** - a federal statute that exempts information from disclosure and which the agency relies on to withhold information under subsection (b)(3) of the FOIA.
- g. **FOIA Request** - a FOIA request is generally a request to a federal agency for access to records concerning another person (i.e., a "third-party" request), or concerning an organization, or a particular topic of interest. FOIA requests also include requests made by requesters seeking records concerning themselves (i.e., "first-party" requests) when those requesters are not subject to the Privacy Act, such as non-U.S. citizens. Moreover, because all first-party requesters should be afforded the benefit of both the access provisions of the FOIA as well as those of the Privacy Act, FOIA requests also include any first-party requests where an agency determines that it must search beyond its Privacy Act "systems of records" or where a Privacy Act exemption applies, and the agency looks to FOIA to afford the greatest possible access. All requests which require the agency to utilize the FOIA in responding to the requester are included in this Report. Additionally, a FOIA request includes records referred to the agency for processing and direct response to the requester. It does not, however, include records for which the agency has received a consultation from another agency. (Consultations are reported separately in Section XII of this Report.)
- h. **Full Grant** - an agency decision to disclose all records in full in response to a FOIA request
- i. **Full Denial** - an agency decision not to release any records in response to a FOIA request because the records are exempt in their entireties under one or more of the FOIA exemptions, or because of a procedural reason, such as when no records could be located.
- j. **Median Number** - the middle, not average, number. For example, of 3, 7, and 14, the median number is 7.
- k. **Multi-Track Processing** - a system in which simple requests requiring relatively minimal review are placed in one processing track and more voluminous and complex requests are placed in one or more other tracks. Requests granted expedited processing are placed in yet another track. Requests in each track are processed on a first in/first out basis.

- l. **Expedited Processing** - an agency will process a FOIA request on an expedited basis when a requester satisfies the requirements for expedited processing as set forth in the statute and in agency regulations.
  - m. **Simple Request** - a FOIA request that an agency using multi-track processing places in its fastest (non-expedited) track based on the low volume and/or simplicity of the records requested.
  - n. **Complex Request** - a FOIA request that an agency using multi-track processing places in a slower track based on the high volume and/or complexity of the records requested.
  - o. **Partial Grant/Partial Denial** - in response to a FOIA request, an agency decision to disclose portions of the records and to withhold other portions that are exempt under the FOIA, or to otherwise deny a portion of the request for a procedural reason.
  - p. **Pending Request or Pending Administrative Appeal** - a request or administrative appeal for which an agency has not taken final action in all respects.
  - q. **Perfected Request** - a request for records which reasonably describes such records and is made in accordance with published rules stating the time, place, fees (if any) and procedures to be followed.
  - r. **Processed Request or Processed Administrative Appeal** - a request or administrative appeal for which an agency has taken final action in all respects.
  - s. **Range in Number of Days** - the lowest and highest number of days to process requests or administrative appeals.
  - t. **Time Limits** - the time period in the statute for an agency to respond to a FOIA request (ordinarily twenty working days from receipt of a perfected FOIA request).
3. Concise descriptions of the nine FOIA exemptions:
- a. **Exemption 1** - classified national defense and foreign relations information
  - b. **Exemption 2** - internal agency rules and practices
  - c. **Exemption 3** - information that is prohibited from disclosure by another federal law
  - d. **Exemption 4** - trade secrets and other confidential business information
  - e. **Exemption 5** - inter-agency or intra-agency communications that are protected by legal privileges
  - f. **Exemption 6** - information involving matters of personal privacy
  - g. **Exemption 7** - records or information compiled for law enforcement purposes, to the extent that the production of those records (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or (F) could reasonably be expected to endanger the life or physical safety of any individual
  - h. **Exemption 8** - information relating to the supervision of financial institutions
  - i. **Exemption 9** - geological information on wells

#### IV. EXEMPTION 3 STATUTES

Statute	Type of Information Withheld	Case Citation	Number of Times Relied Upon per Component	Total Number of Times Relied Upon by Agency
Trade Act 1974, section 255A(d)(1); 19 U.S.C. 2345a(d)(1)	Confidential Business Information	N/A	EDA: 1	1
National Construction Safety Team Act (P.L. 107-231)	N/A	N/A	NIST: 3	3
5 U.S.C. app. § 107(a) (Ethics in Govt. Act of 1978)	Financial disclosure information pertaining to certain government employees.	Meyerhoff v EPA, 958 F.2d 1498, 1500-02 (9th Cir. 1992); Concepcion v. FBI, 606 F. Supp.2d 14, 33 (D.D.C. 209), renewed motion for summary judgment granted in part on other grounds, 699F.Supp. 2d 106 (D.D.C. 2010)	IOS: 6	6
50 USC 4820(h)(1) Export Control Reform Act 50 USC 4820(h)(1)	Information submitted or obtained in connection with an application for a license or other authorization to export, reexport, or in-country transfer items or engage in other activities, a recordkeeping or reporting requirement, an enforcement activity, or other operations under the Export Control Reform Act.	Wis. Project on Nuclear Arms Control v. U.S. Dep't of Com., 317 F.3d 275, 284 (D.C. Cir. 2003); Times Publ'g Co. v. U.S. Dep't of Com., 236 F.3d 1286, 1289-90 (11th Cir. 2001); Lessner v. U.S. Dep't of Com., 827 F.2d 1333, 1336-37 (9th Cir. 1987).	BIS: 35	35
16 U.S.C. § 1881a(b)(1) (Magnuson-Stevens Act)	Certain information submitted to the Secretary, a State fishery management agency, or a marine fisheries commission by any person in compliance with the requirements of this chapter.	N/A	NOAA: 11	11
31 U.S.C. § 3730 (b)(2)	Material evidence and information.	False Claims Act 31 U.S.C. §§ 3730(b)(2)	OIG: 1	1
35 U.S.C. § 22	Applications for patents; certain information pertaining to applications for patents	Irons & Sears v Dann, 606 F.2d 1215, 1219-21 (D.C. Cir. 1979)	OS: 3	3
50 U.S.C. § 4555(d) Defense Production Act	Information obtained under the Defense Production Act of 1950 that the President deems confidential, or where the person furnishing the information requests confidential treatment of the information.	N/A	BIS: 4	4





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

<b>A. Received, Processed and Pending FOIA Appeals</b>				
	Number of Appeals Pending as of Start of Fiscal Year	Number of Appeals Received in Fiscal Year	Number of Appeals Processed in Fiscal Year	Number of Appeals Pending as of End of Fiscal Year
InfoLaw	90	82	87	85
OIG	1	2	3	0
PTO				
TOTAL				

<b>B. Disposition of Administrative Appeals All Processed Appeals</b>					
	Number of Affirmed on Appeal	Number Partially Affirmed & Partially Reversed/Remanded on Appeal	Number of Completely Reversed/Remanded on Appeal	Number of Appeals Closed for Other Reasons	TOTAL
InfoLaw	55	7	18	7	87
OIG	2	0	1	0	3
PTO					
TOTAL					

<b>C.(1) Reasons for Denial on Appeal Number of Times Exemptions Applied</b>														
	Ex. 1	Ex. 2	Ex. 3	Ex. 4	Ex. 5	Ex. 6	Ex. 7(A)	Ex. 7(B)	Ex. 7(C)	Ex. 7(D)	Ex. 7(E)	Ex. 7(F)	Ex. 8	Ex. 9
InfoLaw	1	3	4	9	11	7	2	0	2	0	2	1	0	0
OIG														
PTO														
TOTAL														

<b>C.(2) Reasons for Denial on Appeal Reasons Other than Exemptions</b>												
	No Records	Records Referred at Initial Request Level	Request Withdrawn	Fee-Related Reason	Records Not Reasonably Described	Improper Request for Other Reasons	Not Agency Record	Duplicate Request or Appeal	Request in Litigation	Appeal Based Solely on Denial for Expedited Processing	Other	
InfoLaw	8	1	4	1	0	2	0	2	0	2	0	
OIG	0	0	0	0	0	1	0	0	0	0	0	
PTO												
TOTAL												

<b>C.(3) Reasons for Denial on Appeal Other Reasons</b>		
	Description of Other Reasons for Denials from Chart C.(2) & Number of Times Those Reasons Were Relied Upon	TOTAL
InfoLaw		
OIG		
PTO		
TOTAL		

<b>C.(4) Response Time for Administrative Appeals</b>				
	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
InfoLaw	60.0	155.93	2.0	1692.0
OIG	9.0	9.33	2.0	17.0
PTO				
TOTAL				

**C.(5) Ten Oldest Pending Administrative Appeals**











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

<b>A. Requests for Expedited Processing</b>					
	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate	Number Adjudicated Within Ten Calendar Days
BEA	0	1	28.0	28.0	0
BIS	1	15	3.0	2.88	16
CEN	32	37	16.0	27.54	22
EDA	1	11	0.0	0.0	12
IOS	15	30	12.0	64.38	18
ITA	2	10	3.0	17.25	11
MBDA	1	4	7.0	17.0	4
NIST	2	5	7.0	10.14	5
NOAA	8	43	4.0	5.61	44
NTIA	1	2	9.0	7.67	2
NTIS	1	2	6.0	57.0	2
OIG	1	14	3.0	5.13	13
OS	29	16	8.0	50.2	27
OUSEA	1	0	364.0	364.0	0
PTO					
TOTAL					

<b>B. Requests for Fee Waiver</b>				
	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate
BEA	2	0	30.0	30.0
BIS	23	4	0.0	6.37
CEN	37	53	0.0	3.17
EDA	5	12	0.0	0.0
IOS	50	24	0.0	20.16
ITA	11	17	0.0	3.86
MBDA	0	6	0.0	0.17
NIST	3	11	4.0	4.36
NOAA	125	58	0.0	0.0
NTIA	1	3	7.5	6.25
NTIS	3	1	0.0	0.0
OIG	2	12	0.5	0.71
OS	22	32	0.0	5.69
OUSEA	1	0	110.0	110.0
PTO				
TOTAL				

**IX. FOIA PERSONNEL AND COSTS**

	PERSONNEL			COSTS		
	Number of Full-Time FOIA Employees	Number of Equivalent Full-Time FOIA Employees	Total Number of Full-Time FOIA Staff	Processing Costs	Litigation-Related Costs	Total Costs
BEA	1	0.0	1.0	\$103,008.00	\$0.00	\$103,008.00
BIS	1.5	0.01	1.5	\$194,514.02	\$0.00	\$194,514.02
CEN	8	0.0	8	\$850,041.60	\$0.00	\$850,041.60
EDA	.22	0.0	.22	\$24,559.91	\$0.00	\$24,559.91
InfoLaw	24	0.02	24.02	\$104,000.00	\$268,095.48	\$372,095.48
IOS						
ITA	3	4.11	7.11	\$1,230,335.77	\$0.00	\$1,230,335.77
MBDA	1	0.0	1.0	\$59,682.00	\$0.00	\$59,682.00
NIST	0	3.75	3.75	\$361,159.21	\$0.00	\$361,159.21
NOAA	37	19.27	56.27	\$2,262,897.91	\$0.00	\$2,262,897.91
NTIA	2.5	0.0	2.5	\$248,471.94	\$0.00	\$248,471.94
NTIS	1.9	0.0	1.9	\$257,374.42	\$0.00	\$257,374.42
OIG	0	1.033	1.033	\$85,018.00	\$0.00	\$85,018.00
OS	5	0.02	5.02	\$208,000.00	\$0.00	\$208,000.00
OUSEA	1	0.0	1.0	\$3,214.87	\$0.00	\$3,214.87
PTO	7.5	0.0	7.5	\$1,154,414.66	\$0.00	\$1,154,414.66
TOTAL						

**X. FEES COLLECTED FOR PROCESSING REQUESTS**

	Total Amount of Fees Collected	Percentage of Total Costs
BEA	\$0.00	
BIS	\$42,325.56	21.76%
CENSUS	\$0.00	
EDA	\$233.10	
IOS	\$0.00	
ITA	\$0.00	
MBDA	\$0.00	
NIST	\$0.00	
NOAA	\$4,168.00	
NTIA	\$0.00	
NTIS	\$0.00	
OIG	\$364.00	
OS	\$0.00	
OUSEA	\$0.00	
PTO	\$0.00	
TOTAL		

## XI. FOIA REGULATIONS

<b>A. Number of Times Subsection (c) Used</b>	
	Number of Times Subsection (c) Used

BEA	0
BIS	0
CEN	0
EDA	0
IOS	0
ITA	0
MBDA	0
NIST	0
NOAA	0
NTIA	0
NTIS	0
OIG	0
OS	0
OUSEA	0
PTO	0
AGENCY OVERALL	

<b>B. Number of Subsection (a)(2) Postings</b>		
	Number of Items Posted by FOIA Office	Number of Items Posted by Program

BEA	0	0
BIS	0	32
CEN	0	0
EDA	0	0
IOS	0	0
ITA	0	0
MBDA	0	0
NIST	0	0
NOAA	0	0
NTIA	14	335
NTIS	0	0
OIG	0	82
OS	0	0
OUSEA	0	0
PTO	0	0
AGENCY OVERALL		

## XII. BACKLOGS, CONSULTATIONS, AND COMPARISONS

<b>A. Backlogs of FOIA Requests and Administrative Appeals</b>		
	Number of Backlogged Requests as of End of Fiscal Year	Number of Backlogged Appeals as of End of Fiscal Year
BEA	1	0
BIS	22	0
CEN	32	0
EDA		
IOS	261	0
ITA	43	0
MBDA	1	0
NIST	22	0
NOAA	105	0
NTIA	4	0
OIG		
OS	113	79
OUSEA		
PTO		
TOTAL		

<b>B. Consultations on FOIA Requests Received, Processed, and Pending Consultations</b>				
	Number of Consultations Received from Other Agencies that Were Pending as of Start of the Fiscal Year	Number of Consultations Received from Other Agencies During the Fiscal Year	Number of Consultations Received from Other Agencies that Were Processed During the Fiscal Year	Number of Consultations Received from Other Agencies that Were Pending as of End of the Fiscal Year
BIS	7	6	12	1
CEN	0	9	8	1
EDA				
IOS	12	17	11	18
ITA	5	6	6	5
MBDA	0	1	1	0
NIST	0	3	3	0
NOAA	11	63	64	10
NTIA	0	5	4	1
NTIS	1	0	0	1
OIG	0	2	2	0
OS	3	4	2	5
OUSEA				
PTO				
TOTAL				

<b>C. Consultations on FOIA Requests Ten Oldest Consultations Received from Other Agencies and Pending</b>										
	10th Oldest Consultation and Number of Days Pending	9th	8th	7th	6th	5th	4th	3rd	2nd	Oldest Consultation and Number of Days Pending
BEA										
BIS										2020-09-21 7
CEN										2020-08-18 30
EDA										
IOS	2019-05-21 342	2019-03-29 379	2019-03-22 384	2019-03-06 396	2019-02-28 400	2018-06-26 566	2018-06-22 568	2018-06-06 580	2017-12-18 697	2017-12-04 707
ITA				2020-09-23 5	2020-09-14 12	2020-05-20 92	2019-10-17 239	2019-04-01 378	2020-09-23 5	2020-09-14 12
MBDA										
NIST										
NOAA	2020-09-22 6	2020-09-15 11	2020-09-15 11	2020-09-09 15	2020-09-08 16	2020-08-06 38	2020-04-22 112	2020-04-14 118	2020-01-07 186	2019-03-27 381
NTIA										2020-09-14 12
NTIS										2019-03-01 399
OIG										
OS	2020-09-22 6	2020-05-11 99	2019-03-05 397	2019-01-30 420	2016-11-18 967	2020-09-22 6	2020-05-11 99	2019-03-05 397	2019-01-30 420	2016-11-18 967
OUSEA										
PTO										2020-06-26 66
TOTAL										

<b>D. Comparison of Numbers of Requests from Previous and Current Annual Report Requests Received, Processed, and Backlogged</b>				
	NUMBER OF REQUESTS RECEIVED		NUMBER OF REQUESTS PROCESSED	
	Number Received During Fiscal Year from Last Year's Annual Report	Number Received During Fiscal Year from Current Year's Annual Report	Number Processed During Fiscal Year from Last Year's Annual Report	Number Processed During Fiscal Year from Current Annual Report
BEA	19	15	13	14
BIS	115	100	88	113
CEN	399	469	384	392
EDA	38	67	38	66
IOS	263	141	129	212
ITA	173	99	235	109
MBDA	5	17	6	13
NIST	93	82	87	84
NOAA	530	449	460	512
NTIA	43	67	46	62
NTIS	11	17	16	17
OIG	50	57	49	60
OS	336	208	144	247
OUSEA	11	3	7	5
PTO				
TOTAL				

	Number of Backlogged Requests as of End of the Fiscal Year from Previous Annual Report	Number of Backlogged Requests as of End of the Fiscal Year from Current Annual Report
BEA	0	1
BIS	26	22
CEN	14	32
EDA		
IOS	313	261
ITA	47	43
MBDA	0	1
NIST	25	22
NOAA	122	105
NTIA	4	4
NTIS	1	0
OIG		
OS	135	113
OUSEA		
PTO		
TOTAL		

<b>E. Comparison of Numbers of Administrative Appeals from Previous and Current Annual Report Appeals Received, Processed, and Backlogged</b>				
	NUMBER OF APPEALS RECEIVED		NUMBER OF APPEALS PROCESSED	
	Number Received During Fiscal Year from Last Year's Annual Report	Number Received During Fiscal Year from Current Annual Report	Number Processed During Fiscal Year from Last Year's Annual Report	Number Processed During Fiscal Year from Current Annual Report
InfoLaw	58	82	60	87
OIG	2	2	1	3
PTO				
TOTAL				

	Number of Backlogged Appeals as of End of the Fiscal Year from Previous Annual Report	Number of Backlogged Appeals as of End of the Fiscal Year from Current Annual Report
InfoLaw	84	79
OIG		
PTO		
TOTAL		