

FREEDOM OF INFORMATION ANNUAL REPORT – FISCAL YEAR 2007

I. AGENCY: **Centers for Medicare & Medicaid Services**

REPORT PREPARED BY: **Michael S. Marquis**

TITLE: **Director, Freedom of Information Group**

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ELECTRONIC ADDRESS FOR REPORT ON THE WORLD WIDE WEB:

<http://www.cms.hhs.gov/foia/>

ADDRESS FOR PAPER COPIES OF REPORT: **Same as above**

II. HOW TO MAKE A FOIA REQUEST:

http://www.cms.hhs.gov/FOIA/02_requests.asp#TopOfPage

A. Names, addresses, and telephone numbers of all individual agency components and offices that process FOIA requests (do not include coordinating offices; do not use persons' names – only titles):

http://www.cms.hhs.gov/FOIA/10_rocontacts.asp#TopOfPage

B. Brief description of agency's response time range(s):

The agency's response time ranges from as little as 1 day for a simple FOIA request that seeks documents that may be directly released to requesters by CMS program offices, to upwards of 132 months for complex FOIA requests that seek records that must be reviewed against the FOIA exemptions and processed in accordance with the agency's first-in, first-out practice.

C. Brief description of why some requests are not granted:

Requests are not granted in order to preserve the confidentiality of sensitive personal, commercial and government information within CMS's possession and control, and to protect the effective and efficient operations of the agency. To this end, the exemptions most often applicable to CMS records are Exemptions 2, 4, 5, 6, and 7. This agency's decision to deny access to a record (or portion thereof) is made only after application of the Attorney General's "sound legal basis" standard.

III DEFINITIONS OF TERMS AND ACRONYMS USED IN REPORT:

- A. Agency-specific acronyms or other terms: **None**
- B. Basic terms: **CMS uses all terms from FOIA Update, Summer 1997.**

IV EXEMPTION 3 STATUTES:

- A. List of Exemption 3 statutes relied on by the agency during report year:

41 U.S.C. 253b(m)

- 1. Brief description of type(s) of information withheld under each statute:

<u>Statute/Rule</u>	<u>Type of Information Withheld</u>	<u>Case Citation</u>
41 U.S.C. 253b(m)	Any proposal submitted by a contractor in response to the requirements of a solicitation of a competitive proposal, if such proposal is not set forth or incorporated by reference in the ensuing contract.	None

- 2. Has a court upheld the use of each statute? If so, cite example: **No.**

V. INITIAL FOIA/PA ACCESS REQUESTS (Include all requests, 3rd or 1st party):

- A. Numbers of initial requests (line 1 + line 2 - line 3 = line 4):

- 1. Number of requests pending at close of preceding fiscal year: **7,180**
- 2. Number of requests received during reporting fiscal year: **37,587**
- 3. Number of requests processed during reporting fiscal year: **36,822**
- 4. Number of requests pending at close of reporting fiscal year: **7,945**
(Enter this number also as Line VII.B.1.)

- B. Disposition of Initial Requests:

- 1. Number granted in full: **29,532**
- 2. Number granted in part: **41**
- 3. Number of full denials: **1,965**

a. Number of times each FOIA exemption was used:

Exemption 1: **0**
Exemption 2: **2**
Exemption 3: **3**
Exemption 4: **6**
Exemption 5: **15**
Exemption 6: **1,984**
Exemption 7: **7 =7a=0,7b=0,7c=6,7d=0,7e=0,7f=0**
Exemption 8: **0**
Exemption 9: **0**

4. Other reasons for non-disclosure (total): **5,284**

a. No records: **2,740**
b. Referrals: **54**
c. Request withdrawn: **673**
d. Fee-related reason: **166**
e. Records not reasonably described: **300**
f. Not a proper FOIA request for some other reason: **591**
g. Not an agency record: **0**
h. Duplicate request: **4**
i. Other (specify): **756** (admin closures)

VI. APPEALS OF INITIAL DENIALS OF FOIA/PA REQUESTS (include all access requests whether first or third party):

A. Numbers of Appeals:

1. Number of appeals received during the fiscal year: **44**
2. Number of appeals processed during the fiscal year: **20**

B. Disposition of Appeals:

1. Number completely upheld: **1**
2. Number partially reversed: **1**
3. Number completely reversed: **13**

a. Number of times each FOIA exemption used (counting each exemption used once per appeal)

Exemption 1: **0**
Exemption 2: **0**
Exemption 3: **0**
Exemption 4: **0**
Exemption 5: **2**

Exemption 6: **0**
Exemption 7: **0**
Exemption 7(A): **0**
Exemption 7(B): **0**
Exemption 7 (C): **0**
Exemption 7(D): **0**
Exemption 7(E): **0**
Exemption 7(F): **0**
Exemption 8: **0**
Exemption 9: **0**

4. Other reasons for non-disclosure (total): **5**
- a. No records: **0**
 - b. Referrals: **0**
 - c. Request withdrawn: **0**
 - d. Fee-related reason: **0**
 - e. Records not reasonably described: **0**
 - f. Not a proper FOIA request for some other reason: **0**
 - g. Not an agency record: **_**
 - h. Duplicate request: **0**
 - i. Other (specify): **5** (admin closures)

VII. COMPLIANCE WITH TIME LIMITS/STATUS OF PENDING REQUESTS:

A. Median Processing Time for Requests Processed During the Year.

- 1. Simple Requests (if multiple tracks used):
 - a. Number of requests processed: **34,783**
 - b. Median number of days to process: **18**
- 2. Complex Requests (specify for any and all tracks used):
 - a. Number of requests processed: **1,998**
 - b. Median number of days to process: **370**
- 3. Requests Accorded Expedited Processing:
 - a. Number of requests processed: **41**
 - b. Median number of days to process: **203**

B. Status of Pending Requests (if multiple tracks are being used, report for each track as well as totals).

- 1. Number of requests pending as of the end of the fiscal year covered in this report (from Line V.A.4):
 - a. Simple Requests: **3,392**
 - b. Complex Requests: **4,553**

2. Median number of days that such requests were pending as of that date
 - a. Simple Requests: **20**
 - b. Complex Requests: **369**

VIII. COMPARISONS WITH PREVIOUS YEARS(S) (Optional):

	<u>2007</u>	<u>2006</u>	<u>2005</u>
A. Requests Expedited, Granted and Processed:	41	40	42
B. Requests Denied Expedited Processing:	43	49	3

IX. COSTS/FOIA STAFFING:

A. Staffing levels:

1. Number of full-time FOIA personnel: **56**
2. Number of personnel with part-time or occasional FOIA duties (in total work-years): **13.88**
3. Total number of personnel (in work years): **69.88**

B. Total costs (including staff and all resources):

1. FOIA processing (including appeals): **\$2,110,796.64**
2. Litigation-related activities (estimated): **\$ 153,008.00**
3. Total costs: **\$2,263,804.64**
4. Comparison with previous year(s) (including percentage of change) (optional):

X. FEES:

- A. Total fees collected by agency for processing requests: **\$ 198,375.95**
- B. Percentage of total costs: **8.8%**

XI. FOIA REGULATIONS (including fee schedule): **45 C.F.R. Part 5**

The FOIA regulation implementing the 1996 amendments to the Freedom of Information Act has been published as a Notice of Proposed Rule Making and public comments have been received. The passage of PL 105-277 requiring OMB to revise circular A-110 will require further revisions to the HHS FOIA

regulation and public comments on those new sections. That effort is currently underway. Until such time as the revised regulation is published as a new final rule, the current HHS FOIA regulation can be found at 45 CFR Part 5, and at: <http://www.hhs.gov/foia/45cfr5.html>.

XII. Report on FOIA Executive Order Implementation

A. Description of supplementation/modification of agency improvement plan (if applicable): **CMS adheres to the HHS FOIA Operations Review and Plan for Improvement.**

B. Report on agency implementation of its plan, including its performance in meeting milestones, with respect to each improvement area:

C. Identification and discussion of any deficiency in meeting plan milestones (if applicable):

D. Additional narrative statement regarding other executive order-related activities (optional)

E. Concise description of FOIA exemptions

F. Additional statistics:

1. Time range of requests pending, by date of request (or, where applicable, by date of referral from another agency)

2. Time range of consultations pending with other agencies, by date of initial interagency communication

G. Attachment: Agency improvement plan (in current form)