

FREEDOM OF INFORMATION ANNUAL REPORT -- FY 2008

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

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ELECTRONIC ADDRESS FOR THIS REPORT ON THE WORLD WIDE WEB:

http://www.cms.hhs.gov/FOIA/05_annualreports.asp#TopOfPage

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

2. Brief description of why some requests are not granted: Documents requested were protected by an exemption and release would have caused harm to the interest protected by the exemption.

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. ACRONYMS, DEFINITIONS, AND EXEMPTIONS:

1. Agency-specific acronyms or other terms:

HHS - U.S. Department of Health and Human Services

OPDIVs - Operating Divisions of HHS

OS - Office of the Secretary, HHS

OASPA - Office of the Assistant Secretary for Public Affairs, HHS

AoA - Administration on Aging

ACF - Administration for Children and Families

AHRQ - Agency for Healthcare Research and Quality

ATSDR - Agency for Toxic Substances and Disease Registry
CDC - Centers for Disease Control and Prevention
CMS – Centers for Medicare and Medicaid Services
FDA - Food and Drug Administration
HRSA - Health Resources and Services Administration
IHS - Indian Health Service
NIH - National Institutes of Health
OIG – Office of the Inspector General
OPHS - Office of Public Health and Science
PHS - Public Health Service
PRO - Professional Review Organization
PSC - Program Support Center
SAMHSA - Substance Abuse and Mental Health Services Administration

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

- a. **Administrative Appeal** – a request to a federal agency asking that it review at a higher administrative level a FOIA determination made by the agency at the initial request level.
- b. **Average Number** – the number obtained by dividing the sum of a group of numbers by the quantity of numbers in the group. For example, of 3, 7, and 14, the average number is 8.
- c. **Backlog** – the number of requests or administrative appeals that are pending at an agency at the end of the fiscal year that are beyond the statutory time period for a response.
- d. **Component** – for agencies that process requests on a decentralized basis, a “component” is an entity, also sometimes referred to as an Office, Division, Bureau, Center, or Directorate, within the agency that processes FOIA requests. The FOIA now requires that agencies include in their annual re[po]rt data for both the agency overall and for each principal component of the agency.
- e. **Consultation** – the procedure whereby the agency responding to a FOIA request first forwards a record to another agency for its review because that agency has an interest in the document. Once the agency in receipt of the consultation finishes its review of the record, it responds back to the agency that forwarded it. That Agency, in turn, will then respond to the FOIA requester.
- f. **Exemption 3 Statute** – a federal statute that exempts information from disclosure and which the agency relies on to withhold information under subsection (b)(3) of the FOIA.
- g. **FOIA Request** – a FOIA request is generally a request to a federal agency for access to records concerning another person (i.e., a “third-party” request), or concerning an organization, or a particular topic of interest. FOIA requests also include requests made by requesters seeking records concerning themselves (i.e., “first-party” requests) when those requesters are not subject to the Privacy Act, such as non-U.S. citizens. Moreover,

because all first-party requesters should be afforded the benefit of both the access provisions of the FOIA as well as those of the Privacy Act, FOIA requests also include any first-party requests where an agency determines that it must search beyond its Privacy Act “systems of records” or where a Privacy Act exemption applies, and the agency looks to FOIA to afford the greatest possible access. All requests which require the agency to utilize the FOIA in responding to the requester are included in this Report. Additionally, a FOIA request includes records referred to the agency for processing and direct response to the requester. It does not, however, include records for which the agency has received a consultation from another agency. (Consultations are reported separately in Section XII of this Report.)

- h. **Full Grant** - an agency decision to disclose all records in full in response to a FOIA request.
- i. **Full Denial** - an agency decision not to release any records in response to a FOIA request because the records are exempt in their entirety under one or more of the FOIA exemptions, or because of a procedural reason, such as when no records could be located.
- j. **Median Number - Median Number** – the middle, not average, number. For example, of 3, 7, and 14, the median number is 7.
- k. **Multi-Track Processing** – a system in which simple requests requiring relatively minimal review are placed in one processing track and more voluminous and complex requests are placed in one or more other tracks. Requests granted expedited processing are placed in yet another track. Requests in each track are processed on a first in/first out basis.
 - i. **Expedited Processing** – an agency will process a FOIA request on an expedited basis when a requester satisfies the requirements for expedited processing as set forth in the statute and in agency regulations.
 - ii. **Simple Request** – a FOIA request that an agency using multi-track processing places in its fastest (non-expedited) track based on the low volume and/or simplicity of the records requested.
 - iii. **Complex Request** – a FOIA request that an agency using multi-track processing places in a slower track based on the high volume and/or complexity of the records requested.
- l. **Partial Grant/Partial Denial** – in response to a FOIA request, an agency decision to disclose portions of the records and to withhold other portions that are exempt under the FOIA, or to otherwise deny a portion of the request for a procedural reason.
- m. **Pending Request or Pending Administrative Appeal** – a request or administrative appeal for which an agency has not taken final action in all respects.
- n. **Perfect Request** – a request for records which reasonably describes such records and is made in accordance with published rules stating the time, place, fees (if any) and procedures to be followed.
- o. **Processed Request or Processed Administrative Appeal** – a request or

- administrative appeal for which an agency has taken final action in all respects.
- p. **Range in Number of Days** – the lowest and highest number of days to process requests or administrative appeals.
 - q. **Time Limits** – the time period in the statute for an agency to respond to a FOIA request (ordinarily twenty working days from receipt of a perfected FOIA request).
3. Include the following concise descriptions of the nine FOIA exemptions:
- a. **Exemption 1:** classified national defense and foreign relations information
 - b. **Exemption 2:** internal agency rules and practices
 - c. **Exemption 3:** information that is prohibited from disclosure by another federal law
 - d. **Exemption 4:** trade secrets and other confidential business information
 - e. **Exemption 5:** inter-agency or intra-agency communications that are protected by legal privileges
 - f. **Exemption 6:** information involving matters of personal privacy
 - g. **Exemption 7:** records or information compiled for law enforcement purposes, to the extent that the production of those records (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or (F) could reasonably be expected to endanger the life or physical safety of any individual
 - h. **Exemption 8:** information relating to the supervision of financial institutions
 - i. **Exemption 9:** geological information on wells

IV. EXEMPTION 3 STATUTES (See Chart)

V. FOIA Requests (See Chart)

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

1. Number of requests pending as of start of fiscal year:	7,945
2. Number of requests received in fiscal year:	43,792
3. Number of requests processed in fiscal year:	41,260
4. Number of requests pending as of end of fiscal year:	10,477

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

1. Number of full grants: **33,669**
2. Number of partial grants: **63**
3. Number of full denials based on Exemptions: **1,624**
4. Number of Full Denials Based on Reasons Other than Exemptions (Total): --- **5,904**
 - a. No records: **3,088**
 - b. Referrals: **515**
 - c. Request withdrawn: **807**
 - d. Fee-related reason: **106**
 - e. Records not reasonably described: **94**
 - f. Improper FOIA request for some other reason: **711**
 - g. Not an agency record: **0**
 - h. Duplicate request: **3**
 - i. Other (specify): **580** (Admin Closure = 574, Quasi-Federal = 6)

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

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

Exemption 1: **0**
Exemption 2: **2**
Exemption 3: **5**
Exemption 4: **11**
Exemption 5: **15**
Exemption 6: **1,671**
Exemption 7(A): **1**
Exemption 7(B): **0**
Exemption 7(C): **11**
Exemption 7(D): **0**
Exemption 7(E): **0**
Exemption 7(F): **0**
Exemption 8: **0**
Exemption 9: **0**

VI. ADMINISTRATIVE APPEALS OF INITIAL DETERMINATIONS OF FOIA REQUESTS

A. Received, Processed and Pending Administrative Appeals ____

1. Number of appeals pending as of start of Fiscal Year **384**
2. Number of appeals received in Fiscal Year: **36**
3. Number of appeals processed in Fiscal Year: **273**
4. Number of appeals pending as of end of Fiscal Year **147**

B. Disposition of Administrative Appeals – All Processed Appeals _____

1. Number affirmed on appeal
2. Number partially affirmed and partially reversed/remanded on appeal **1**
3. Number completely reversed/remanded on appeal **3**
4. Number of appeals closed for other reasons **269**

C. (1) Reasons for denial on Appeal – Number of Times Exemptions applied

Exemption 1:
 Exemption 2:
 Exemption 3:
 Exemption 4:
 Exemption 5:
 Exemption 6: **1**
 Exemption 7

Exemption 7(A):
 Exemption 7(B):
 Exemption 7(C):
 Exemption 7(D):
 Exemption 7(E):
 Exemption 7(F):

Exemption 8: 0
 Exemption 9: 0

C. (2) Reasons for denial on Appeal – Reasons other than exemptions

- a. No records:
- b. Referrals:
- c. Request withdrawn:
- d. Fee-related reason:
- e. Records not reasonably described:
- f. Improper request for other reason:
- g. Not an agency record:
- h. Duplicate request:
- i. Request in litigation:
- j. Appeal based solely on denial of request for expedited processing:

C. (3) Reasons for denial on Appeal – Other **269 (Admin Closures)**

Administrative closures, records previously released to appellant

- C. (4) Response time for administrative appeals
 - a. Median number of days: **1678**
 - b. Average number of days: **1764**
 - c. Lowest Number of days: **37**
 - d. Highest number of days: **4151**

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

- VII. FOIA REQUESTS: RESPONSE TIME FOR PROCESSED AND PENDING REQUESTS: (See Charts)
 - A. Processed Requests – Response Time for All Processed Perfected Requests
 - B. Processed Requests – Response Time for Perfected Requests in Which Information Was Granted
 - C. Processed Requests – Response Time in Day Increments
 - D. Pending Requests – All Pending Perfected Requests
 - E. Pending Requests – Ten Oldest Pending Perfected Requests
- VIII. REQUESTS FOR EXPEDITED PROCESSING AND REQUESTS FOR FEE WAIVER (See Chart)
 - A. Requests for Expedited Processing
 - B. Requests for Fee Waiver
- IX. FOIA PERSONNEL AND COSTS (See Chart)
 - A. Personnel
 - B. Costs
- X. FEES COLLECTED FOR PROCESSING REQUESTS (See Chart)
\$404,497.06
- XI. FOIA REGULATIONS
<http://www.hhs.gov/foia/45cfr5.html>.
- XII. BACKLOGS, CONSULTATIONS, AND COMPARISONS
 - A. Backlogs of FOIA Requests and Administrative Appeals (See Chart)
 - B. Consultations on FOIA Requests – Received, Processed, and Pending Consultations (See Chart)
 - C. Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency (See Chart)
 - D. Comparison of Numbers of Requests from Previous and Current Annual Report – Requests Received, Processed, and Backlogged (See Chart)
 - E. Comparison of Numbers of Administrative Appeals from Previous and Current Annual Report – Appeals Received, Processed, and Backlogged (See Chart)

Part V A
 Received, Processed and Pending FOIA Requests

	Number of Requests Pending as of Start of Fiscal Year	Number of Requests Received in Fiscal Year	Number of Requests Processed in Fiscal Year	Number of Requests Pending as of End of Fiscal Year
OS				
ACF				
AOA				
CMS	7,945	43,792	41,260	10,477
OIG				
OPHS				
AHRQ				
CDC				
FDA				
HRSA				
IHS				
NIH				
SAMHSA				
PHS Total				
HHS Total				

V B. (2) Disposition of FOIA Requests – “Other” Reasons for “Full Denials Based on Reasons Other than Exemptions” from Section V, B (1) Chart

Component	Description of “Other” Reasons for Denials from Chart B (1) & Number of Times Those Reasons Were Relied upon	TOTAL
OS		
ACF		
CMS	ADMIN CLOSURE QUASI-FEDERAL	574 6
OIG		
OPHS		
AHRQ		
CDC		
FDA		
HRSA		
IHS		
NIH		
SAMHSA		
PHS Total		
HHS Total		

VI .A. Received Processed and Pending Appeals

Column 1 Column 2 Column 3 Column 4

	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
OS				
CMS	384	36	273	147
PHS				
HHS Total				

VI B. Disposition of Processed Appeals

	Number Affirmed on Appeal	Number Partially Affirmed & Partially Reversed/Remanded on Appeal	Number Completely Reversed/Remanded on Appeal	Number of Appeals Closed for Other Reasons	TOTAL
OS					
CMS	0	1	3	269	273
PHS					
HHS Total					

VI. C. (3) Reasons for Denial on Appeal – “Other” Reasons from Section VI, C (2) Chart

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

	Description of “Other” Reasons for Denial on Appeal from Chart C (2) & Number of Times Those Reasons Were Relied upon	TOTAL
OS	Description # Description #	
CMS	Continuing interest initiative conducted and appellants contacted. As a result, CMS administratively closed 269 pending appeals due to discontinued interest.	269
PHS		
HHS Total		

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

	Median Number of Days	Average Number of Days	Lowest Number of Days	Highest Number of Days
OS				
CMS	1678.6	1764.88	37.8	4151.7
PHS				
HHS Total				

VIII A Requests for Expedited Processing

	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate	Number Adjudicated Within Ten Calendar Days
OS					
ACF					
AOA					
CMS	19	0	1	9.37	14
OIG					
OPHS					
AHRQ					
CDC					
FDA					
HRSA					
IHS					
NIH					
SAMHSA					
PHS Total					
HHS Total					

In accordance with the 2008 Guidelines for Agency Preparation of Annual FOIA Reports, issued by the Office of Information and Privacy, U.S. Department of Justice, May 2008, the statistics reported in this attachment are for the period July 1 – September 30, 2008.

VIII. B Requests for Fee Waiver

	Number Granted	Number Denied	Median Number of Days to Adjudicate	Average Number of Days to Adjudicate
OS				
ACF				
AOA				
CMS	0	0	0	0
OIG				
OPHS				
AHRQ				
CDC				
FDA				
HRSA				
IHS				
NIH				
SAMHSA				
PHS Total				
HHS Total				

In accordance with the 2008 Guidelines for Agency Preparation of Annual FOIA Reports, issued by the Office of Information and Privacy, U.S. Department of Justice, May 2008, the statistics reported in this attachment are for the period July 1 – September 30, 2008.

IX. B. 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
OS						
OS						
ACF						
AOA						
CMS	62	18	80	\$2,635,278	\$116,000	\$2,751,278
OIG						
OPHS						
AHRQ						
CDC						
FDA						
HRSA						
IHS						
NIH						
SAMHSA						
PHS Total						
HHS Total						

Part X
Fees Collected

	Total Amount of Fees Collected	Percentage of Total Costs
OS		
ACF		
AOA		
CMS	\$404,497.06	14.7%
OIG		
OPHS		
AHRQ		
CDC		
FDA		
HRSA		
IHS		
NIH		
SAMHSA		
PHS Total		
HHS Total		

Part XII A
Backlogs

	Number of Backlogged Requests as of End of Fiscal Year	Number of Backlogged Appeals as of End of Fiscal Year
OS		
ACF		
AOA		
CMS	10,477	147
OIG		
OPHS		
AHRQ		
CDC		
FDA		
HRSA		
IHS		
NIH		
SAMHSA		
PHS Total		
HHS Total		

XII B

Consultations on FOIA Requests Received, Processed, and Pending

	Number of Consultations Received from Other Agencies that Were Pending at Your Agency 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 by Your Agency During the Fiscal Year	Number of Consultations Received from Other Agencies that Were Pending at Your Agency as of End of the Fiscal Year
OS				
ACF				
AOA				
CMS	0	0	0	0
OIG				
OPHS				
AHRQ				
CDC				
FDA				
HRSA				
IHS				
NIH				
SAMHSA				
PHS Total				
HHS Total				

XII D 1

Comparison Numbers of Requests from Previous and Current Annual Report - Requests Received, Processed, and Backlogged

	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 Annual Report	Number Processed During Fiscal Year from Last Year's Annual Report	Number Processed During Fiscal Year from Current Annual Report
OS				
ACF				
AOA				
CMS	37,587	43,792	36,822	41,260
OIG				
OPHS				
AHRQ				
CDC				
FDA				
HRSA				
IHS				
NIH				
SAMHSA				
PHS Total				
HHS Total				

XII D 3 FOR 2009

Column 1

Column 2

	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
OS		
ACF		
AOA		
CMS	7,945	10,477
OIG		
OPHS		
AHRQ		
CDC		
FDA		
HRSA		
IHS		
NIH		
SAMHSA		
PHS Total		
HHS Total		

XII E 1

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

	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
OS				
ACF				
AOA				
CMS	44	36	20	273
OIG				
OPHS				
AHRQ				
CDC				
FDA				
HRSA				
IHS				
NIH				
SAMHSA				
PHS Total				
HHS Total				