

**Office of Science and Technology FOIA Implementation Plan
and Report Pursuant to Executive Order 13,392
June 14, 2006**

Pursuant to Executive Order 13,392, “Improving Agency Disclosure of Information,” the Office of Science and Technology Policy (OSTP) has prepared this plan to ensure that the agency’s administration of the Freedom of Information Act (FOIA)¹ complies with applicable law and the policies set forth by the Administration. These policies include the goals and practices established by E.O. 13,392, which, in general, directs federal agencies, including those entities within the Executive Office of the President that are subject to FOIA, to “respond courteously and appropriately” to FOIA requesters, and to “provide FOIA requesters, and the public in general, with citizen-centered ways to learn about the FOIA process, about agency records that are publicly available (e.g., on the agency’s website), and about the status of a person’s FOIA request and appropriate information about the agency’s response.”² The Order also directs agencies to “process requests under the FOIA in an efficient and appropriate manner and achieve tangible, measurable improvements in FOIA processing.”³

As further required by E.O. 13,392, this plan includes specific activities that will be implemented to eliminate or reduce the existing FOIA backlog and increase public awareness of FOIA processing. To those ends, this plan establishes “concrete milestones, with specific timetables and outcomes to be achieved...” by which to measure and evaluate OSTP’s success in implementing the plan. Additionally, in accordance with Department of Justice (DOJ) Implementation Guidance, issued April 27, 2006, and the plan format it prescribes, this document summarizes the findings of OSTP’s internal review of its FOIA implementation policies and procedures (including OSTP’s participation in a public “listening session” held by Executive Office of the President offices on May 10, 2006), and describes this agency’s selected Improvement Areas and Improvement Actions.

OSTP Appointments under E.O. 13,392

Pursuant to E.O. 13,392, the Director of the Office of Science and Technology Policy (OSTP) designated the OSTP General Counsel as the agency’s Chief FOIA Officer. The OSTP Associate General Counsel will serve as OSTP’s Public Liaison for FOIA, and will act as the primary manager of OSTP’s FOIA Service Center. In addition to overseeing OSTP’s FOIA operations generally, the General Counsel and Associate General Counsel will ensure that the responsibilities of the Chief FOIA Officer, the Public Liaison, and the Service Center under E.O. 13,392 are fully satisfied and will report to the Director accordingly.

¹ 5 U.S.C. § 552.

² E.O. 13,392 § 1(b) (Dec. 14, 2005).

³ Id. § 1(c).

A. Overview of FOIA Operations

In accordance with section 3 of E.O. 13,392, OSTP conducted a review of the agency's FOIA implementation policies and practices. Before describing current OSTP implementation of FOIA and this agency's plans for improvement, it is important to note that OSTP is a relatively small agency that typically receives a correspondingly low number of FOIA requests. As a result, at least in comparison to larger departments and agencies, OSTP does not devote substantial resources to FOIA compliance – for example, no one OSTP FTE is devoted exclusively to FOIA whereas many larger agencies have several FTEs devoted to FOIA if not entire FOIA offices. Nonetheless, OSTP is subject to FOIA and does comply with its mandates. In that regard, this plan addresses the points contained within E.O. 13,392 and applies its requirements to ensure that OSTP policies and practices comport with the Administration's most recent policy directives.

In general, OSTP's implementation of FOIA has been achieved through the use of relatively informal mechanisms. OSTP makes use of a FOIA-specific website to inform the general public of its FOIA procedures and the public's rights and responsibilities under the Act. Assistance to individual requesters has typically been provided as a result of and through informal, personal communications. From a practical standpoint, the relatively low number of FOIA requests OSTP receives has not made investment in significant FOIA-related IT a necessity. Finally, while OSTP, due to the nature of its statutory mission and role within the Administration, does not produce a large number of materials subject to FOIA, it post a significant portion of its products on its website. Such electronic publishing has likely had the effect of reducing the number of FOIA requests received, in keeping with the policies established by the Electronic Freedom of Information Act Amendments of 1996.⁴ An expanded description of OSTP's review of its FOIA implementation, as required by E.O. 13,392 and its Implementation Guidance, is provided in Section C of this document.

B. Areas Selected for Review

E.O. 13,392 expressly indicates that each agency's FOIA implementation review is to evaluate and address five primary categories of FOIA implementation activities. The categories are:

- (1) the administration of FOIA, including its expenditure of resources on FOIA compliance and the extent to which requests for records have not been processed within the generally applicable time limits;⁵
- (2) the processes and practices by which the agency assists and informs the public regarding the FOIA process;⁶
- (3) the use of information technology in responding to FOIA requests, including the tracking of requests and requester communications, the agency's practices

⁴ Pub. L. No. 104-231, 110 Stat. 3048 (Mar. 31, 1997) (codified at 5 U.S.C. § 552(a)(2)(D)).

⁵ E.O. 13,392 § 3(a)(i) (Dec. 14, 2005).

⁶ Id. § 3(a)(ii).

with respect to requests for expedited processing, and its implementation of multi-track processing;⁷

(4) the policies and practices relating to the availability of public information through websites and other means, including the use of websites to publish records subject to FOIA requests;⁸ and

(5) methods for the elimination or reduction of existing request backlogs.⁹

OSTP's review of its FOIA implementation procedures and policies included analysis of each of these areas. In addition to the broad categories set forth in the Order itself, DOJ's Implementation Guidance provided additional "Potential Improvement Areas" suggested for analysis, subject to each agency's individual circumstances. To the extent applicable to OSTP, these areas will be addressed in the discussion of OSTP's planned improvement actions under one of the five corresponding categories derived from E.O. 13,392.

C. Results of Review

OSTP's review of FOIA implementation was completed in June 2006. Consistent with DOJ Implementation Guidance, the results of OSTP's review are summarized below.

(1) Administration of FOIA

OSTP is a comparatively small agency with a correspondingly low number of FOIA requests being received each year, and limited additional resources are used to administer FOIA. For example, no employee is devoted exclusively to FOIA implementation and the office's FOIA response system is relatively informal. When a FOIA request is received in OSTP, the inquiry is forwarded to the OSTP employee(s) with general responsibility for the subject matter of the request. Such employees are assigned the responsibility to search for any records that may be responsive to the request. The responses are returned to the FOIA Officer who consolidates the records, reviews the content for disclosure, and prepares the response to the inquirer.

In the period from FY2002 through FY2005, OSTP has, on average, received 28.75 requests, processed 24.5 requests, and carried an average backlog of 17.5 requests. The agency's current backlog is 21 requests (excluding the current fiscal year). These outstanding requests originated in various fiscal years; however, the majority results from an atypically active request period, and the receipt of many complex requests, preceding the most recent presidential election.

(2) Informing and Assisting the Public with the FOIA Process

OSTP employs several methods to ensure public awareness of the agency's generally applicable procedures and to keep the public apprised of the status of pending requests. The primary mechanism for providing the public with this information is the agency's FOIA website,

⁷ Id. § 3(a)(iii).

⁸ Id. § 3(a)(iv).

⁹ Id. § 3(a)(v).

available at <http://ostp.gov/html/foia.html#2000>, which provides a variety of basic FOIA information about OSTP. As a small agency, OSTP does not have an automated system in place for informing members of the public of the status of their requests. Rather, members of the public who contact OSTP with FOIA-related inquiries are referred to or contacted by the agency's legal counsel, resulting in a direct and immediate response, typically by phone and sometimes by email.

(3) Processing Policies

The small size of OSTP has thus far made it unnecessary or impractical for the office to procure IT specifically to aid in FOIA implementation. Likewise, the average number and complexity of requests has not, to date, provided justification for seeking significant additional resources for IT purposes. OSTP does allow FOIA requests to be submitted electronically by email (as indicated on the OSTP FOIA website) and will respond in kind; however, the agency does not have software specifically designated to tracking or responding to requests. Information related to incoming requests; such as their perfection date, level of complexity, reply date, and the records released and withheld; are maintained by OSTP in a spreadsheet, and the relevant information is entered manually by the FOIA officer who processes requests.

In practical terms, OSTP has received relatively few requests for expedited processing. In the period ranging from FY2002 through FY2005, OSTP records indicate that only seven requests for expedited service were received, and that those requests did not satisfy the threshold standard of exceptional need or urgency justifying an expedited response.

OSTP has not, to date, established multi-track processing, and there does not appear to be significant variation in implementation procedures across the multi-track categories.

(4) Public Availability of Information

In addition to the publication of basic FOIA information and annual FOIA reports as required, OSTP regularly publishes on its website a wide variety of documents (*e.g.*, budgetary material, Director speeches, and National Science and Technology Council reports). These documents might not otherwise have been required to be made available pursuant to the Electronic FOIA Amendments, but they nonetheless would likely become the subject of frequent FOIA requests if not otherwise posted.

(5) Backlog Elimination

OSTP's backlog has varied significantly over time, most notably recently as a result of receiving a large number of complex requests associated with political campaign research and the 2004 presidential election. Based on OSTP's past experiences and its E.O. 13,392 review, an effort to reduce the impact of future election-related FOIA requests has been undertaken, such that political correspondence and similar, relevant materials will now be filed in manner that will improve response efficiency should similar requests be made in the future.

The most significant development in OSTP's ability to administer FOIA and to prevent future backlogs (and eliminate its current backlog) is the agency's recent decision to hire a civil service attorney whose time will be devoted to FOIA and other similar legal responsibilities. The OSTP Director not only determined that FOIA and other issues should receive more resources, but also acted to ensure this will occur from Administration to Administration as a structural matter, through the establishment of a new civil service FTE position.

D. OSTP Improvement Areas

OSTP has identified areas for potential improvement within the five general categories established by E.O. 13,392. Additionally, this agency's Implementation Plan incorporates actions, as described in the next section, that can be categorized under the 27 points enumerated in DOJ's Implementation Guidance. Under this guidance, OSTP will take Improvement Actions with respect to the following areas: (1) OSTP Regulatory Standards, (2) Public Awareness, (3) Information Technology, (4) Backlog Reduction, (5) Request Volume Impacts, and (6) Agency-wide FOIA Awareness.

E. Improvement Actions

As stated in E.O. 13,392, FOIA provides an important means through which the public can obtain information regarding the activities of federal agencies and, as such, facilitates the effective functioning of our constitutional democracy. OSTP regards FOIA requesters as entitled to a service from the federal government and affords them courteous and appropriate responses. In order to improve this service to the public, OSTP has identified a series of actions to undertake in order to clarify and streamline the implementation of FOIA.

(1) OSTP Regulatory Standards

OSTP does not currently have agency-specific FOIA regulations. OSTP will undertake a review of existing policies with an eye toward promulgating formal regulations, OSTP will determine the extent to which those policies can be improved, including whether clarified policies with respect to fee waivers, expedited processing, multi-track processing, and the appeals process should be addressed. Upon defining the appropriate scope of these regulations, OSTP will publish basic guidance on its website, and a draft and final rule consistent with applicable law and E.O. 13,392.

Steps:

- Review OSTP policies and FOIA regulations issued by other agencies
- Coordinate with the Department of Justice Office of Information and Privacy and the Office of Management and Budget
- Issue guidance
- Prepare and publish Proposed Rule, and consider comments received
- Issue Final Rule

Target Completion: Draft Regulations by the end of January 2007; Final Regulations by the end of FY2007.

(2) Public Awareness

In order to increase public awareness of OSTP's FOIA program and its procedures, OSTP will undertake a variety of measures to improve the quality and availability of information available to the public. OSTP will review other agencies' FOIA websites and then revise its own FOIA website (http://ostp.gov/html/_foia.html) and monitor its content to ensure that it reflects accurate and timely information. Additionally, this plan will be posted on the website, as will information regarding the status of OSTP's development of FOIA regulations. Finally, OSTP will continue to monitor its products to determine which merit electronic publication, consistent with the law and the policies established by E.O. 13,392.

Steps:

- Redesign website to reflect current FOIA procedures and to improve the quality and clarity of available information
- Monitor OSTP products for electronic publication
- Post copies of records that have previously been released under FOIA and appear likely to become the subject of additional requests
- Post additional information as it becomes available

Target Completion: Initial updates by the end of FY2006, and continued monitoring thereafter.

(3) Information Technology

OSTP will evaluate the feasibility of using existing IT capabilities to determine whether an automated system for tracking of requests and communication with requesters is feasible or would result in a practical improvement of FOIA operations. OSTP will advise the Office of Management and Budget and the Office of Administration on the outcome of this evaluation and any persisting IT needs the agency may have.

Steps:

- Evaluate current IT available to OSTP
- Coordinate with OA and OMB
- Implement new IT procedures as warranted

Target Completion: Decision on automated tracking system by the end of FY2006; implementation of any improvements by December 31, 2006.

(4) Backlog Reduction

While OSTP's current backlog (21 inquiries) is comparatively small, OSTP will implement a comprehensive backlog elimination program. This will be performed primarily with the assistance of the Office's new Associate General Counsel. OSTP will coordinate with the Department of Justice to ascertain how to proceed with any pending requests that may present unusual legal questions.

Steps:

- Implement backlog elimination program
- Contact requesters and inform them of request status where complicated issues exist
- Coordinate with DOJ as necessary

Target Completion: Eliminate entire OSTP backlog by end of FY2006.

(5) Request Volume Impacts

OSTP has learned that request volumes increase significantly immediately preceding presidential elections, partially as a result of research on candidate positions. In response, OSTP will develop a filing system that will ease the agency's response to FOIA requests for such information. Primarily, this will involve the maintenance of duplicate files in the OSTP FOIA Service Center of correspondence with Members of Congress and State Governors (the subject of most "opposition research" requests).

Steps:

- Implement revised filing policy
- Monitor agency records and communications for relevant documents

Target Completion: Implement filing program by August 2006; continued monitoring thereafter.

(6) Agency-wide FOIA Awareness

OSTP intends to increase intra-agency awareness of FOIA, its requirements, and the role each OSTP employee is expected to perform in its implementation. OSTP will develop a Handbook on FOIA to assist personnel training.

Steps:

- Develop and promulgate OSTP FOIA regulations
- Prepare and publish OSTP FOIA Handbook
- Implement training program for OSTP staff

Target Completion: Within six months of publication of final OSTP regulations.

F. Implementation Time Periods

The DOJ Implementation Guidance requests federal agencies to divide their Improvement Areas into categories based on targeted completion dates. Improvement Areas are listed below, as appropriate. In instances where major actions are to be followed by continued monitoring without a termination date, the completion date for the last major action within the Improvement Area has been used.

- 1. Areas Anticipated to be Completed by December 31, 2006**
 - a. Request Volume Impacts
 - b. Public Awareness
 - c. Information Technology
 - d. Backlog Reduction
- 2. Areas Anticipated to be Completed by December 31, 2007**
 - a. OSTP Regulatory Standards
- 3. Areas Anticipated to be Completed after December 31, 2007**
 - a. Agency-wide FOIA Awareness