



DEPARTMENT OF DEFENSE

AGENCY CHIEF FREEDOM OF INFORMATION

ACT OFFICER REPORT

FOR 2011

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Department of Defense a total of approximately \$19,000 for the 2011 Fiscal Year.

DIRECTOR OF ADMINISTRATION
AND MANAGEMENT

2011 Department of Defense Chief Freedom of Information Act (FOIA) Officer's Report to the Department of Justice

Executive Summary

The heightened engagement of Senior Leadership across the Department of Defense (DoD) was evident over the past year as many components reported support that led to additional staff and resources to aid in the success of FOIA Programs. Components are also engaged in streamlining processes, goal setting and brainstorming to ensure the reduction of backlogs. With more than half of the DoD Components reducing backlogs this year, coupled with a 12% increase in the number of documents released in full, and extensive efforts in place to insure the posting of information for public consumption, it is clear that although we have more work to do, the Department is in sync with the President's goal of transparency of government.

The DoD's thirty-two components and hundreds of FOIA professionals and attorneys throughout the world remained focused on processing over 75,000 requests and appeals during fiscal year 2010. They stayed abreast of laws and policy governing the FOIA in order to successfully implement the programs they are assigned to run and support. In vast numbers they attended training held by the Department of Defense, the Department of Justice (DOJ), the United States Department of Agriculture Graduate School and the American Society of Access Professionals (ASAP). Several DoD Components hosted specialized training sessions for their employees to hone in on improving skills and increasing awareness of policies and practices.

This report encompasses the execution of efforts of all DoD Components:

AF	Department of the Air Force
AFRICOM	U.S. Africa Command
ASBCA	Armed Services Board of Contract Appeals
Army	Department of the Army
CENTCOM	U.S. Central Command
DCAA	Defense Contract Audit Agency
DCMA	Defense Contract Management Agency
DeCA	Defense Commissary Agency
DFAS	Defense Finance and Accounting Service
DIA	Defense Intelligence Agency

DISA	Defense Information Systems Agency
DLA	Defense Logistics Agency
DoDEA	Department of Defense Education Activity
DoD IG	Department of Defense Inspector General
DSS	Defense Security Service
DTIC	Defense Technical Information Center
DTRA	Defense Threat Reduction Agency
EUCOM	U.S. European Command
JFCOM	U.S. Joint Forces Command
Navy	Department of the Navy
NGA	National Geospatial-Intelligence Agency
NGB	National Guard Bureau
NORTHCOM	U.S. Northern Command
NRO	National Reconnaissance Office
NSA	National Security Agency
OSD/JS	Office of the Secretary of Defense/Joint Staff
PACOM	U.S. Pacific Command
SOCOM	U.S. Special Operations Command
SOUTHCOM	U.S. Southern Command
STRATCOM	U.S. Strategic Command
TRANSCOM	U.S. Transportation Command
TMA	TRICARE Management Activity

Department of Defense (DoD) Chief Freedom of Information Act (FOIA) Officer's Report to the Department of Justice

Steps Taken to Apply the Presumption of Openness:

Approaching FOIA decisions with a presumption of openness has become a guiding principle for the DoD FOIA Program. As indicated in the 2010 Chief FOIA Officer report, senior leadership in the DoD Components were briefed on the President's FOIA Memorandum and Attorney General's FOIA guidelines. This led to leadership transmitting the message of support for the presumption of openness to subordinate components.

DoD Components continue to raise awareness about the importance of openness, with all components reporting additional forms of publication of the memoranda, ranging from presentations at training sessions and conferences, posting on web sites, forwarding with taskings to document owners, and briefings to newcomers during employee orientation sessions.

DLA engages in bi-monthly teleconferences reinforcing the President's FOIA Memorandum and Attorney General's FOIA guidelines. DCMA attributes the acquisition of four additional FOIA staff members to the dissemination of this guidance to senior leadership. The Secretary of the Air Force issued a memorandum to all Air Force personnel, reiterating the overall importance of compliance with the FOIA and principles of disclosure, asking personnel to be timely and accurate with their responses, proactive in posting information online and vigilant with recordkeeping and information management. DoD Components are incorporating guidance on the presumption of openness, as articulated in the President's FOIA Memorandum and Attorney General's FOIA guidelines, into FOIA manuals, instructions and Standard Operating Procedures.

All DoD Components report that members of their staff have attended training and some Components report that they have conducted training. Training attended was provided by DoD, DOJ, ASAP, and United States Department of Agriculture Graduate School; while the following Components conducted training: OSD/JS, AFRICOM, Army, DCMA, DIA, DLA, EUCOM, Navy, NGB, PACOM, SOCOM, SOUTHCOM, TRANSCOM, and TMA. The training conducted included sessions on the memoranda from the President and Attorney General, to include proactive disclosures and discretionary releases, administrative/processing issues, FOIA litigation, and relevant case law. Also, the FOIA community has begun to capitalize on opportunities to not only train FOIA professionals, but to train Information Technology (IT) professionals, Records Managers and document owners as well.

The Defense Freedom of Information Policy Office (DFOIPO) is tasked, on behalf of the DoD Chief FOIA Officer, with the oversight of DoD FOIA procedural guidance to ensure it is in compliance with current policy. To this end, DFOIPO is currently revising FOIA issuances that incorporate the Administration's open government and FOIA policy and translate this policy into specific procedural guidance. These DoD issuances are in the final stages of development and

should be published before this summer. Additionally, DFOIPO has actively engaged DoD FOIA Public Liaisons and FOIA Officers to remind them of their responsibilities to approach all FOIA decisions with the presumption of openness.

DoD implemented the DOJ's policy to cease the application of "low" Exemption 2 to documents requested under the FOIA, and further pursued the practice started the previous year of making discretionary releases on information that could be denied under "high" Exemption 2, Exemption 5 and (some parts of) Exemption 7 information when the record owner does not articulate a harm in the release of the records.

Here are two examples of how DoD Components review records to ensure discretionary releases are made whenever possible. The first example involves FOIA litigation for the OSD/JS. Whenever the FOIA litigation support team tasks another DoD Component, or even another Federal agency, to review documents subject to FOIA litigation, the tasking memorandum reiterates the discretionary release policy and emphasizes that the DoD will not support denials of information that come under the discretionary release exemptions unless a clear statement of foreseeable harm is made by the reviewing activity. If the activity does recommend that information that qualifies for discretionary release should be withheld because of a foreseeable harm, the statement of harm is evaluated by the FOIA litigation support team, the DoD Office of General Counsel and DOJ attorneys to see if it can be supported. The other example involves appeals of FOIA denials made by the OSD/JS and the Combatant Commands. For all cases of a denial of information which could qualify for discretionary disclosure, a foreseeable harm statement is required from the originator of the information and an in-depth evaluation is made by the staff processing the appellate action. If it is determined by the appellate authority that a clearly articulable harm is present, the response from the appellate authority to the requester describes the harm that could result from release of the information. A member of the Office of General Counsel reviews the decision.

As a result of these practices, the DoD released 12% more documents in full during Fiscal Year 2010 and the number of documents released in part remained virtually unchanged. Of the denials issued, DoD experienced a 12% decrease in the application of Exemption 5.

Year	Released in Full	Released in Part
Fiscal Year 2009	26,330	16,273
Fiscal Year 2010	29,491	16,133
Percent Change	+12%	-.86%

Year	Percentage of Times Exemption 5 Used When DoD Denied Info
Fiscal Year 2009	6.6
Fiscal Year 2010	5.8
Percent Change	-12%

Steps Taken to Ensure an Effective System for Responding to Requests:

Ninety percent of the DoD FOIA Offices have sufficient IT support and report that they are actively engaged in using FOIA specific Commercial-off-the-Shelf (COTS) software; homegrown databases using off-the-shelf software; and more sophisticated systems created in-house, specifically for FOIA tracking and processing. Some use “systems” as simple as an off-the-shelf spreadsheet product, and report satisfaction with these “systems” which tend to meet the needs of those components that receive relatively few FOIA requests each year. The number of instances where these systems are unable to calculate the Annual FOIA report is rare, and on the occasion where assistance is needed, DFOIPO provides an alternative solution, with its in-house tool created to assist with calculating figures for the annual FOIA report. Ten percent of DoD Components have insufficient IT support and some report that while their leadership authorized the purchase of COTS software, the software is not being utilized because the IT department has yet to approve installation on desktops. DFOIPO is currently working with DTIC on the development of a single DoD-wide system that can be used for automatically creating the DoD Annual FOIA Report.

The DoD Chief, Freedom of Information Division is a member of the DoD Open Government team and meets with the team members regularly to discuss Open Government implementation, and FOIA compliance and plays an active role in the planning and execution of data and data sets to be added to websites and Data.gov links. In the few components where Open Government teams exist (Air Force, Army, CENTCOM, DCAA, DLA, STRATCOM and TRANSCOM), FOIA Officers report that they are fully engaged in consulting, participating in meetings, working collaboratively and sharing documents.

Components have reviewed and analyzed metrics, processes, backlogs, workload and existing resources and have discussed FOIA program staffing needs with senior leadership. As a result, most report that they are adequately staffed, or working to improve staffing. The good news is that some indicate an increase in staff, the civilianizing of positions previously performed by contractors, and re-organizations, which improved the running of their programs. For instance, DCMA reported the hiring of a full-time professional analyst and authorization to hire two additional full-time paralegals and attributes this success to extensive support from the Chief FOIA Officer and the Office of General Counsel. JFCOM re-organized, transferring its FOIA program to its Office of the Staff Judge Advocate and appointing various civilian attorneys and hired one full-time contractor - all to assist in resolving its substantial backlog and assisting in

overall program improvement. The effort by JFCOM resulted in a phenomenal 90% reduction in its FOIA backlog during fiscal year 2010. CENTCOM converted 5 contractors to General Schedule positions, while OSD/JS and DFOIPO converted their contractor positions to 18 General Schedule positions.

To some degree, components report being understaffed. These components report that high turnover, and a tendency of management to temporarily transfer non-FOIA trained individuals to assist with the FOIA program leads to a great deal of time being devoted to training the individuals which often takes time away from actual FOIA case processing. In the next few months, the DoD Chief FOIA Officer intends to explore the causes and develop possible resolution of this understaffing.

Steps Taken to Increase Proactive Disclosures:

DoD websites have become replete with documents in support of government transparency. Since the last DoD Chief FOIA Officer Report, sixty percent of DoD components posted new FOIA material on their websites. The OSD/JS FOIA Office has initiated a practice of posting every FOIA release, without privacy implications, to its FOIA website. As a result, over 300,000 pages of FOIA documents were posted and the Chief FOIA Officer decided to make this a standard across DoD by sending a memorandum to DoD FOIA Public Liaisons asking them to begin this practice and to make the information linkable to the DoD main FOIA page for ease of use by the public. Once this is accomplished, to further serve the public DFOIPO intends to have one search engine on its website with the capability of searching all DoD FOIA websites for specific documents.

In May of 2010, the Under Secretary of Defense for Acquisitions, Technology and Logistics issued a memorandum re-iterating that the Department of Defense (DoD) fully supports free scientific exchanges and dissemination of research results to the maximum extent possible, and that disclosure of fundamental research should not be restricted unless required by national security or other legal requirements (See <http://open.dodlive.mil/files/2010/06/DOD-Policy-Memo-on-Protecting-Exemptions-for-Fundamental-Research.pdf>).

The Defense Security Service provides an alert of newly posted information on its site and as recently as January 6, 2011, posted an unclassified edition of its latest Counterintelligence Directorate report, entitled, "[Targeting U.S. Technologies: A Trend Analysis of Reporting from Defense Industry](#)". The same Directorate also added two new tri-fold Counterintelligence brochures in October 2010 and provides a link ([here](#)) to a list of brochures available on its website.

DoD Components report the posting of these various types of information that used to be available only by making a FOIA request: contracts; solicitations; sole source justifications; aircraft accident reports; government purchase card holder lists; organizational charts; operational records; intelligence documents; technical reports; User Council Bylaws; strategic plans; DoD Congressional Budget; Military Critical Technologies List; job announcements; Mentor Program records; information on Somali Pirates, Haiti Earthquake relief; Deepwater Horizon; radar reports, transportation rates and rules; studies; monthly statistics on capital and

direct medical education costs; instructions; logs; NSA Technical Journal Articles; oral histories; nine volumes of European Axis Signal Intelligence in WWII; cryptological information, to include: Cryptologic Quarterly articles, Cryptologic Almanac articles, Cryptologic Spectrum article, and Cryptologic Histories; general military or U.S. History facts; and points of interest.

While to some degree the posting of this information eliminates the need for potential FOIA requesters to submit requests, in some cases the posting of the information assists potential FOIA requesters in formulating new, and often more detailed requests which allow for deeper exploration of a topic contained within a document found on a website. For instance, while a potential FOIA requester no longer has to submit a request for a solicitation, sole source justification, organizational chart or an accident report, the review of the unclassified edition of the "Targeting U.S. Technologies" report mentioned above could result in additional requests for references mentioned within the report.

As part of the Department's Open Government Plan, DoD launched an Open Government webpage at www.defense.gov/open. A major function of the site is to provide a single portal to reach some of the most important sources of information about DoD's finances, scientific research and legal materials, in addition to FOIA Reading Rooms across the Department. Given the scale of the DoD and its presence on the Web, this is a significant step in improving the accessibility of the extensive already-posted material available.

In addition, as part of the Data.gov program, DoD has made datasets available to the public, including geographic information about major domestic bases and installations, demographics about military personnel, FOIA logs, domestic waterway traffic data from the Army Corps of Engineers, data from the overseas voting assistance program (managed by DoD for the entire U.S. Government), and datasets about DoD's Business Enterprise Architecture.

The DoD utilizes social media in a manner that makes massive amounts of information available to the public. With hundreds of social media sites across all branches of the services, DoD is demonstrating a quest to operate in a spirit of openness. From Facebook, MySpace, Twitter, Flickr, YouTube, and Diigo (Digest of Internet Information, Groups, and Other stuff) to News Feeds, Kids pages and Blogs, the DoD is taking advantage of social media tools and keeping its public informed in a big way, see <http://www.defense.gov/registersites/socialmediasites.aspx>.

Steps Taken to Greater Utilize Technology:

As expressed in last year's FOIA Officer's report, all DoD Components have the ability to receive requests electronically. Requests are received via email, facsimile and through the use of online forms. An overwhelming majority of components use FOIA specific tracking systems, with less than 10% using an off-the-shelf spreadsheet product, Task Management Systems and other non-FOIA specific tools to track their cases. FOIA Offices throughout the DoD Components are using scanners, redaction software, tasking systems, email, outlook scheduling and facsimiles to task, redact, communicate with requesters and record owners, and to execute document reviews. The DeCA is using a Records Management and Archives System to search for documents throughout the agency and reports that this tool greatly reduces processing and response times. Less than 1% of DoD components report that they use antiquated methods of

processing their requests, to include calculators and calendars to determine figures for the Annual Report and “exacto” knives to remove exempt information from documents.

DFOIPO is responsible for preparing the DoD Annual FOIA Report on behalf of the Agency Chief FOIA Officer. Because of the size and decentralization of the DoD FOIA program and for security reasons, the DoD does not employ a single DoD-wide FOIA tracking system. The lack of a single tracking system means that each DoD Component must manually submit to DFOIPO, on a specific DoD form, its input for the DoD report. DFOIPO must then compile the input from the forms into a single report. This process is very resource intensive, prone to many errors, and inefficient. Accordingly, several years ago DFOIPO engaged DTIC to develop a single system that all DoD Components can use to submit their annual report data. The system was developed and is used by Components that are able to manually input data. The next step is for the system to provide the capability to automatically accept annual report data from those Components that use automated tracking systems. DFOIPO is currently engaged with DTIC in developing this enhancement, and it is hoped that it will be available for use for the fiscal year 2012 DoD Annual FOIA Report.

Steps Taken to Reduce Backlogs and Improve Timeliness:

Initial FOIA Requests

For fiscal year 2010, DoD decreased its backlog by 3,368 cases or 31%. In fact, over 50% of DoD components met the goal of reducing FOIA backlogs by at least 10%, while Department of Army and DISA demonstrated remarkable success as they reduced their FOIA backlogs by 68% (from 3542 to 1141) and 95% (250 to 13), respectively.

This success is attributed to goal setting; senior leadership taking an obvious heightened interest in FOIA programs; components engaging in the mentoring of subordinate components to provide guidance on streamlining procedures; backlog monitoring of subordinate components; and monitoring performance metrics.

Of the number of Components that did not meet the 10% reduction goal, 8% experienced a reduction of 4.75%; 22% experienced backlogs that remained unchanged; and 70% experienced backlogs that increased. Seventy five percent of those whose backlogs increased have less than 100 cases in their backlog. Their backlogs increased as follows: from 1 to 7; from 3 to 6; from 4 to 8; from 1 to 17; from 9 to 42; from 11 to 36 and from 32 to 82. The remaining components' backlog numbers increased from 198 to 223 and 357 to 474. Also, four of last year's reported ten oldest cases remain in the DoD backlog.

We attribute any increase in DoD Component backlogs to increases in the number of requests received; turnover of experienced staff; and increases in the complexity of requests. DFOIPO frequently discusses these issues with the DoD Chief FOIA Officer, and as expressed earlier, a more in-depth look at staffing is forthcoming.

The increased complexity of FOIA cases involves issues such as classification and the need to coordinate a review with various concerns within the components.

FOIA Appeals

Eighteen DoD components receive and process administrative appeals. Fifty-five percent of these components either experienced a decrease in the appeals backlog or maintained a backlog of zero. The remaining 45% experienced an increase in their appeals backlog. DoD received 15.2% more appeals during fiscal year 2010; processed virtually the same number of appeals as in fiscal year 2009; and the number of appeals in the DoD backlog increased, in fiscal year 2010, by 14.3%. Seventy percent of the ten oldest DoD appeals were closed during fiscal year 2010.

We attribute the increase in the DoD FOIA Appeals backlog primarily to the success the DoD is experiencing in reducing its backlog of initial FOIA requests, which subsequently increases the number of appeals received.

Year	# of Appeals Received	# of Appeals Processed	Backlog of Appeals
Fiscal Year 2009	961	1025	575
Fiscal Year 2010	1107	1023	657
Percent Change	+15.2%	-.2%	+14.3%

Spotlight on Success:

One of the most noteworthy transparency initiatives set forth in DoD is the posting of 85% of all OSD/JS FOIA responses (over 300,000 pages) on its webpage and the move to require all thirty-two components to follow suit.

Another noteworthy accomplishment is the Department of Army's Backlog Reduction Project, which included site visits to local subordinate components to determine reasons for backlogs and to offer training on methods to improve efficiency and to gain leadership support of the FOIA programs. These efforts led to an astounding 68% decrease in the Army's backlog.