

## A Review of Justice Department Report on FOIA Executive Order

The Justice Department, in their rose-colored report to the President on implementation of his executive order, declares that federal departments and agencies have made diligent and measurable progress toward improving service to FOIA requesters.

More than half, Justice states, made their milestones and goals on time.

The Justice report then focuses on 25 “key” departments and agencies and says that 90 percent made meaningful progress. But Justice’s own graphic shows that only 11 of those “key” agencies (44%) met all their milestones and that 3, or 12%, didn’t meet a single milestone.

The milestones themselves are simply a measure of bureaucratic progress: they are the self-established steps toward service improvement, not a measure of service improvement itself.

For example, Justice commends the Department of Housing and Urban Development for exceeding its milestone on backlog reduction. HUD bragged in its annual report that it took the “challenge of backlog reduction seriously, completing one milestone a year ahead of time.” That milestone was having the Deputy Secretary circulate a memo on backlog problems.

Meanwhile, the agency’s backlog – the level of unprocessed requests – increased 33 percent during the year. At the end of fiscal 2006, HUD’s backlog was 188 percent of its processing rate. That means an information request filed in September 2006 will not even be reviewed until the summer of 2008.

The Justice report is clearly designed to do more than inform the President, whose order, critics say, was aimed as much or more at sidetracking FOIA reform legislation as it was improving service to requesters. It succeeded in squelching efforts to pass the OPEN Government Act in the 109th Congress but the bill was refiled in both houses earlier this year and has already passed the House. A floor vote is currently being held up in the Senate through a “hold” placed by Sen. Jon Kyl, R-AZ. Kyl cites the “strong” Justice objections for his action.

Justice says “backlog reduction is the single most significant improvement area” and that “many agencies have already realized meaningful backlog reductions.” But the report cites no data to support the claim.

And in fact the 2006 reports – many filed well after the Feb. 1 deadline – do not support that claim. Those reports show:

- The number of unprocessed requests among the 25 agencies Justice selected to highlight actually increased 13 percent.
- Excluding agencies whose majority filings include joint Privacy Act-FOIA requests, the backlog increase was 26 percent.
- Of the 10 agencies that did show backlog reductions, only five succeeded in reducing double digit (and in one case triple digit) backlogs by 10 percentage points.

Justice does note that about one third of the 92 agencies reported a backlog increase but that half of those, 16, also experienced an increase in the number of requests,

suggesting that this justified the higher backlog. However the report provided no comparisons for the key 25. The performance reports for the 25 show a somewhat different pattern:

- Thirteen received more requests but six of those nonetheless were able to reduce their backlog.
- Five of the 13 reported more requests and a higher backlog, but with three, Homeland Security, HUD and State, the backlog gains were far out of proportion to the increase in requests. Homeland Security experienced a 9% increase in requests; its backlog rose 50%. HUD had a 32 percent gain in requests; its backlog jumped 48%. And State received 28% more requests while its backlog rose 40%. In its report to the President, Justice notes that HUD and Homeland Security “completed their initial steps toward backlog reduction.”
- Three agencies – NASA, the CIA and Treasury – reported fewer requests but their backlogs still rose. Treasury’s request volume fell 28%; its backlog rose from 9 to 10%. Requests to NASA dropped 8%; its backlog more than doubled to 21%.