

## 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%.

## Comparing Department and Agency Backlogs, 2005 and 2006

Department/ Agency	2005				2006				Numerical
	Received	Processed	Yearend Backlog	%	Received	Processed	Yearend Backlog	%	Change 05/06
Agriculture	51,922	51,922	1,965	4%	59,071	59,065	1,868	3%	(97)
Commerce	1,834	1,834	278	15%	2,018	1,987	309	16%	31
Defense	78,775	78,775	14,953	19%	82,691	72,266	18,216	25%	3,263
Education	2,219	2,219	545	25%	1,958	1,904	539	28%	(6)
Energy	3,831	3,831	1,159	30%	3,609	3,861	910	24%	(249)
Home' Sec	126,126	126,126	82,591	65%	137,871	111,943	108,472	97%	25,881
HUD	2,923	2,923	3,725	127%	3,847	2,631	4,941	188%	1,216
Interior	6,420	6,420	1,703	27%	4,804	5,086	1,481	29%	(222)
Justice	51,435	51,435	8,637	17%	53,992	54,925	8,004	15%	(633)
Labor	23,284	23,284	780	3%	23,194	23,608	906	4%	126
State	3,870	3,870	2,728	70%	4,937	3,866	3,799	98%	1,071
Transport.	9,384	9,384	2,072	22%	8,867	8,758	2,197	25%	125
Treasury	53,330	53,987	4,883	9%	38,559	39,518	3,924	10%	(959)
AID	369	197	449	228%	276	458	267	58%	(182)
CIA	3,110	3,110	975	31%	2,500	2,579	896	35%	(79)
EPA	16,232	11,108	2,991	27%	11,667	12,685	1,973	16%	(1,018)
GSA	1,270	1,182	238	20%	1,440	1,454	79	5%	(159)
NASA	1,351	1,351	135	10%	1,238	1,132	241	21%	106
NSF	273	266	17	6%	328	340	5	1%	(12)
NRC	371	345	80	23%	320	364	36	10%	(44)
SBA	3,737	3,737	32	1%	6,259	6,245	46	1%	14
<b>Subtotal</b>	<b>442,066</b>	<b>437,306</b>	<b>130,936</b>	<b>30%</b>	<b>449,446</b>	<b>414,675</b>	<b>159,109</b>	<b>38%</b>	<b>28,173</b>
HHS	222,372	221,402	24,515	11%	258,152	257,573	26,063	10%	1,548
OPM	12,085	10,900	4,664	43%	12,528	16,267	925	6%	(3,739)
SSA	17,257,886	17,262,315	1,428	0%	18,691,091	18,691,303	1,156	0%	(272)
VA	1,914,395	1,915,013	37,698	2%	1,938,206	1,937,088	38,696	2%	998
<b>Subtotal</b>	<b>19,406,738</b>	<b>19,409,630</b>	<b>68,305</b>	<b>0%</b>	<b>20,899,977</b>	<b>20,902,231</b>	<b>66,840</b>	<b>0%</b>	<b>(1,465)</b>
<b>Total</b>	<b>19,848,804</b>	<b>19,846,936</b>	<b>199,241</b>	<b>1%</b>	<b>21,349,423</b>	<b>21,316,906</b>	<b>225,949</b>	<b>1%</b>	<b>26,708</b>

### Increase from 2005

HHS, OPM, SSA and the VA are shown separately because the bulk of their requests are joint FOIA-Privacy Act requests from individuals seeking personal records. Most do not require discretionary agency decisions on whether to release the documents. They are automatically and quickly granted.

