

THE WAITING GAME:

FOIA PERFORMANCE HITS NEW LOWS

*An in-depth analysis of FOIA
implementation across federal agencies*

COALITION OF
JOURNALISTS FOR
OPEN GOVERNMENT

COALITION OF
**JOURNALISTS FOR
OPEN GOVERNMENT**

The Waiting Game: FOIA Performance Hits New Lows

Federal agencies appear to have made only modest progress, if any, in meeting President Bush's directive to improve service to FOIA requesters.

Requests remain heavily backlogged. Requesters still have long wait times for a response from many agencies. And people seeking records and information remain less likely to get the information they seek than in the past.

New research by the Coalition of Journalists for Open Government shows that the government's overall FOIA performance remains at the lowest point since agency reporting began in 1998, despite President Bush's executive order last December directing agencies to become more service oriented and reform legislation introduced in the Congress.

The Coalition collected the FOIA performance reports from the 15 Cabinet-level departments and 15 agencies dating back to 1998. It analyzed in depth the performance records of 26 of those departments and agencies, excluding the Social Security Administration and three others that primarily respond to requests from individuals seeking personal data where no discretionary decisions are involved. The 2006 performance reports of the 18 agencies that had filed by March 9 were also reviewed.

Few of the agency annual reports filed provide any year-to-year comparisons; none offer cross-agency comparisons. The Justice Department posts the reports but provides no analysis. The Coalition's research project is an effort to fill that void.

The Coalition's look at the first eight years of reporting by the 26 agencies shows a clear need for FOIA reform. The reports of the 18 agencies that have filed 2006 reports indicates that, so far at least, there has been little meaningful change for the requester.

- **The backlog is getting worse.** The backlog of requests – the percentage of requests unprocessed at the end of the year – hit a record 31% in 2005, a whopping 138% above the 1998 level. The 18 agencies that have so far reported 2006 data show a 34% higher backlog than the year before.
- **People are waiting longer for information.** In 1998, only five of the 26 agencies reported a “median” response time beyond the 20 working-day statutory deadline for handling “Simple” requests. In 2005, 13 failed. The 2006 reports filed through March 9 do not suggest any overall improvement. In 2005, none of the departments or agencies met the deadline for handling of “Complex” requests. Both the Defense Department and the National Archives said they brought the median processing time for “Complex” requests under 20-working days in 2006. However, the State Department's median response time rose almost 50% and the Security and Exchange

Commission's median wait time for the almost 1,459 "Complex" requests it handled increased by 70% to 706 working days – just a couple months shy of three years.

- **Agencies continued to say “no” about as often.** The percentage of requesters who received all or even part of the information sought did not change for the 18 agencies in fiscal 2006. They were responding positively to just over half of the requests. In 2005, the study showed, 52,398 fewer requesters than in 1998 got any of the information they sought.
- **Those denied information initially got relief on appeal less often.** With the Justice Department leading the way, the 26 agencies granted an average of 21 percent fewer appeals from 2002 through 2005 than they did in the last three years of the Clinton administration. Justice granted a yearly average of 49% fewer appeals in that period. Only 19% of those appealing were granted relief in 2005. The 18 agencies reporting so far for 2006 showed a one percentage point drop in appeals granted.
- **FOIA costs continue to rise.** FOIA requests hit a highpoint in 2000 and have fallen modestly since then. However, the cost of handling FOIA requests, however, rose 85% from 2000 to 2005, and that trend continued into 2006, with the 18 agencies showing an 8% overall increase and a 27% increase in the cost per request processed.
- **Staffing has recovered after hitting a low point, but efficiency falls.** The 26 agencies reported in 2005 that their FOIA staffs were 20% smaller than in 1998. In 2006, however, a number of agencies with double digit backlogs added personnel, including the Environmental Protection Agency, which increased staff by 50% and cut its backlog from 27% to 16%. Total staffing for the 18 agencies rose 25%. However, efficiency, as measured by requests handled per employee, fell by one-third.

Additional analysis and complete tables on all government data filed since 1998 can be found at the Coalition website, www.cjog.net.

Combined Agency Performance 1998 and 2005

	Requests				Grants				
	Received	Processed	Backlog	%	Full	Partial	%	Denials	Other *
1998	516,446	520,262	65,957	13%	290,915	66,302	69%	23,003	169,371
1999	548,086	534,924	77,279	14%	295,246	70,430	68%	19,402	188,718
2000	608,511	604,801	78,679	13%	331,814	72,418	67%	20,999	187,123
2001	490,394	484,545	87,378	18%	278,513	76,267	73%	13,093	118,810
2002	505,390	515,860	81,081	16%	272,765	86,353	70%	13,949	142,793
2003	532,570	531,688	83,393	16%	253,109	108,375	68%	13,154	157,019
2004	547,193	524,909	105,119	20%	234,438	116,544	67%	15,383	166,227
2005	525,247	480,306	149,262	31%	198,635	106,184	63%	11,435	156,443
Change									
1998 - 2005	8,801	-39,956	83,305	126%	-92,280	39,882	-8%	-11,568	-12,928

Overall, even though more people requested information, 52,398 fewer requests were granted in 2005 than in 1998 by the 26 agencies surveyed.

*Other: A denial of the request in which the agency cites a reason other than one of the nine exemptions, such as "no such record", "withquest withdrawn", "fee related", "duplicate", and "not an agency record".

Backlog, Comparing 1998-2002-2005-2006

Department/ Agency	1998			2002			2005			2006		
	Requests Processed	Yearend Backlog	%	Requests Processed	Yearend Backlog	%	Requests Processed	Yearend Backlog	%	Requests Processed	Yearend Backlog	%
Agriculture	88,204	1,506	2%	78,062	2,012	3%	51,922	1,965	4%	NR	NR	
Commerce	2,283	157	7%	2,063	298	14%	1,834	278	15%	1,987	309	16%
Defense	106,191	10,240	10%	76,943	12,543	16%	78,775	14,953	19%	72,266	18,216	25%
Education	1,679	137	8%	1,718	219	13%	2,219	545	25%	1,904	539	28%
Energy	2,314	741	32%	3,319	1027	31%	3,831	1159	30%	3,861	910	24%
Homeland Sec	Department did not exist until 2003						126,126	82,591	65%	NR	NR	
HUD	3,354	1,456	43%	4,171	671	16%	2,923	3,725	127%	NR	NR	
Interior	5,002	545	11%	4,378	902	21%	6,420	1,910	30%	NR	NR	
Justice	195,105	25,304	13%	184,928	32,545	18%	51,435	8,637	17%	54,925	8,004	15%
Labor	17,540	994	6%	18,201	809	4%	23,284	780	3%	23,608	906	4%
State	2,317	5,349	231%	4,636	5,343	115%	3,870	2,728	70%	3,866	3,799	98%
Transportation	17,406	4,362	25%	17,540	3,885	22%	9,384	2,072	22%	8,758	2,197	25%
Treasury	1,775	895	50%	47,812	7,681	16%	53,987	4,883	9%	NR	NR	
AID	263	99	38%	222	148	67%	197	469	238%	NR	NR	
CIA	7,169	4,716	66%	3,046	1,547	51%	3,110	975	31%	2,579	896	35%
CPSC	13,467	239	2%	9,636	166	2%	5,387	112	2%	4,728	84	2%
EEOC	17,551	1,343	8%	16,735	1,701	10%	16,232	1,907	12%	16,936	1,779	11%
EPA	18,848	6,117	32%	19,259	4,567	24%	11,108	2,991	27%	12,685	1,973	16%
GSA	NR	NR		1,407	141	10%	1,561	93	6%	1,454	79	5%
Archives	5,930	1,111	19%	8,826	3,590	41%	8,878	6,382	72%	8,884	7,193	81%
NASA	2114	230	11%	1723	137	8%	1351	135	10%	1,132	241	21%
NLRB	6133	162	3%	5550	206	4%	4702	133	3%	5,553	269	5%
NRC	448	53	12%	426	55	13%	345	80	23%	NR	NR	
NSF	213	15	7%	254	2	1%	266	17	6%	340	5	1%
SEC	3,190	114	4%	2,888	821	28%	7,422	9,710	131%	8,268	10,403	126%
SBA	2,293	72	3%	2,117	65	3%	3,737	32	1%	NR	NR	
Subtotal	520,789	65,957	13%	515,860	81,081	16%	480,306	149,262	31%			

Increase

NR=Not Reported

The 18 agencies reporting as of March 9 had an average backlog of 31%. The average for those agencies in 2005 was 23%.

Median Days Wait for Response to Simple, Complex, and Expedited Requests

	1998			2002			2005			2006		
	Simple	Comp.	Exped.	Simple	Comp.	Exped.	Simple	Comp.	Exped.	Simple	Comp.	Exped.
Agriculture	131	268	12	2\ 85	9\ 905	3\ 76	2 \ 90	12 \ 1,277	3 \ 40	NR	NR	NR
Commerce	10	30	5	12	45	NR	12	40	8	12	45	44
Defense	16	39	2.5	20	58	1	15.5	85	NR	17	5/15	NR
Education	13	30	3	5\ 35	7\ 180	2\ 10	35	66	24	15/478	13/279	1/15
Energy	NR	184	NR	75	238	118	5 \ 106	10 \ 170	1 \ 12	2/108	34/431	2/6
Homeland Sec.	Did not exist until 2003						16 \ 61	3 \ 242	2 \ 45	NR	NR	NR
HUD	22	NR	NR	15\ 59	34\ 83	5\ 27	21 \ 65	35 \ 160	9 \ 70	NR	NR	NR
Interior	18	NR	4.5	10\ 58	NR	5\ 33	2 \ 43	28 \ 89	1 \ 15	NR	NR	NR
Justice	1 \ 40	1 \ 292	1 \ 18	3\ 49	13\ 621	1\ 190	2 \ 139	12 \ 863	2 \ 185	1/109	12/510	3/398
Labor	10	25	3	1\ 25	7\ 49	2\ 28	6 \ 28	14 \ 60	2 \ 18	3/30	4/44	3/19
State	333	NR	85	351	431	225	14	142	136	54	210	232
Transportation	14	40	9	8	39	29	1 \ 30	20 \ 134	5 \ 30	1/36	14/142	9/60
Treasury	13	97	NR	4\ 17	6\ 383	2\ 5	2 \ 86	3 \ 251	1	NR	NR	NR
AID	NR	36	NR	52	NR	NR	55	NR	34	NR	NR	NR
CIA	NR	440	NR	7	83	NR	7	68	NR	7	59	NR
CPSC	7	30	NR	7	27	NR	6	35	NR	6	45	NR
EEOC	15.5	NR	4	19	NR	5	18	NR	5	19	NR	4
EPA	16	20 \ 27	7	17\ 113	31\ 123	6\ 75	13 \ 32	4 \ 166	8 \ 109	15/101	40/156	8/81
GSA	NR	NR	NR	0	14	NR	0	14	NR	NR	16	NR
NARA	29	NR	NR	7	20	NR	13.5	252	NR	5	20	21
NASA	17	27	20	19	29	3	19	49	15	5/140	7/91	1/60
NLRB	10	NR	NR	12	NR	NR	9	NR	NR	6	NR	NR
NRC	15	15	NR	14	25	23	12	75	20	NR	NR	NR
NSF	10	NR	NR	10	NR	0	14	NR	NR	18	NR	NR
SEC	7	151	0	16	137	5	26	410	14	15	706	NR
SBA	12	NR	9	1	NR	NR	7	NR	NR	NR	NR	NR

Missed Response Deadline

NR = None Reported

Agencies are required to respond to all FOIA requests within 20 working days. Those that reported a median response time beyond the 20 days are highlighted. Some agencies report only by component unit, providing no agency total. In those instances, the "Median Day" figures shown here reflect the lowest and highest processing times reported by the components.

Since there is no way to determine the average, we have used the latter in determining agency compliance.

Agency Grants of FOIA Requests, Comparing 1998-2002-2005-2006

Department/ Agency	1998			2002			2005			2006		
	Granted in Full	Partial Grant	%	Granted in Full	Partial Grant	%	Granted in Full	Partial Grant	%	Granted in Full	Partial Grant	%
Agriculture	84,144	1,908	98%	70,965	2,339	94%	46,352	2,277	94%	NR	NR	
Commerce	1,332	240	69%	855	380	60%	652	296	52%	672	382	53%
Defense	65,164	9,998	71%	40,458	11,133	67%	36,587	15,307	66%	35,452	12,886	67%
Education	1,144	319	87%	1,079	344	83%	806	732	69%	795	772	82%
Energy	1,183	355	66%	2,227	277	75%	3,126	269	89%	2,913	306	83%
Homeland Sec							28,631	48,564	61%	NR	NR	
HUD	2,631	313	88%	1,686	384	50%	1,165	485	56%	NR	NR	
Interior	3,225	647	77%	2,212	764	68%	2,145	2873	78%	NR	NR	
Justice	65,135	31,036	49%	81,426	40,571	66%	18,539	7,066	50%	19,537	7,045	48%
Labor	5,556	2,179	44%	5,514	6,442	66%	8,938	6,959	68%	9,046	6,954	68%
State	650	572	53%	634	818	31%	437	905	35%	418	864	33%
Transportation	8,918	2,047	63%	8,803	2,171	63%	3,695	2,180	63%	3,401	2,274	65%
Treasury	1,052	181	69%	21,144	4,622	54%	25,451	3,366	53%	NR	NR	
AID	117	76	73%	77	45	55%	70	58	65%	NR	NR	
CIA	3,188	1,652	68%	391	999	46%	334	1,051	45%	267	939	47%
CSPC	12,586	470	97%	8561	531	94%	4447	454	91%	3,753	465	89%
EEOC	3,623	11,372	85%	1,335	11,853	79%	1,191	11,018	75%	973	10,787	69%
EPA	16,718	746	93%	9,080	603	50%	5,385	518	53%	4,204	612	38%
GSA	NR	205		945	169	79%	1,014	184	77%	905	161	73%
NARA	5,423	157	94%	8,141	48	93%	434	101	6%	454	161	7%
NASA	1,156	534	80%	693	592	75%	469	367	62%	387	334	64%
NLRB	5,342	180	90%	4304	455	86%	3560	386	84%	3,402	478	70%
NRC	232	93	73%	175	110	67%	108	99	60%	NR	NR	
NSF	69	92	76%	51	157	82%	29	197	85%	29	245	81%
SEC	889	416	41%	522	333	30%	1898	294	30%	2,065	181	27%
SBA	1,438	719	94%	1487	213	80%	3172	178	90%	NR	NR	
All	290,915	66,507	69%	272,765	86,353	70%	198,635	106,184	63%			

Above the Average

NR = Not Reported

The 18 agencies reporting as of March 9 granted 52 percent of the requests in full or in part in 2006. That's the same grant percentage those 18 averaged in 2005.

FOIA Appeals by Agency, Comparing 1998, 2002, 2005 and 2006

Department/ Agency	1998			2002			2005			2006		
	Appeals Processed	% Backlog	Appeals Granted	Appeals Processed	% Backlog	Appeals Granted	Appeals Processed	% Backlog	Appeals Granted	Appeals Processed	% Backlog	Appeals Granted
Agriculture	186	50%	48%	164	68%	59%	162	41%	51%	NR	NR	NR
Commerce	56	27%	41%	78	0%	24%	40	43%	13%	84	0%	21%
Defense	1,098	0%	14%	928	0%	21%	798	0%	22%	747	26%	18%
Education	15	60%	20%	13	115%	15%	39	3%	26%	29	0%	31%
Energy	115	0%	35%	71	6%	24%	46	7%	11%	50	8%	16%
Homeland Sec	Department did not exist until 2003						885	57%	12%	NR	NR	NR
HUD	33	0%	18%	58	34%	14%	33	42%	15%	NR	NR	NR
Interior	209	18%	62%	165	43%	50%	157	20%	40%	NR	NR	NR
Justice	3,626	18%	15%	3,491	7%	8%	2,441	20%	6%	1970	40%	4%
Labor	458	0%	32%	319	0%	44%	188	94%	31%	303	10%	37%
State	179	0%	63%	184	18%	68%	243	34%	61%	138	48%	42%
Transportation	334	0%	20%	184	0%	18%	136	0%	28%	136	0%	31%
Treasury	13	85%	38%	1,010	0%	19%	413	0%	13%	NR	NR	NR
AID	9	0%	67%	6	0%	33%	1	33%	0%	NR	NR	NR
CIA	195	12%	20%	224	0%	13%	233	0%	27%	203	0%	19%
CPSC	43	0%	14%	12	8%	0%	19	0%	0%	29	0%	17%
EEOC	326	0%	46%	416	0%	40%	345	0%	49%	321	0%	44%
EPA	38	226%	24%	105	0%	16%	110	6%	27%	202	0%	26%
GSA	17	0%	41%	11	27%	73%	13	0%	62%	27	0%	44%
NARA	14	7%	14%	19	5%	37%	29	0%	21%	13	50%	23%
NASA	24	0%	29%	21	0%	38%	22	0%	27%	13	7%	23%
NLRB	40	0%	15%	43	0%	28%	38	0%	26%	23	4%	22%
NRC	17	0%	35%	15	0%	20%	12	17%	58%	NR	NR	NR
NSF	3	0%	67%	7	0%	14%	6	0%	17%	7	0%	14%
SEC	28	0%	11%	55	47%	31%	244	43%	18%	334	20%	15%
SBA	30	7%	53%	20	0%	45%	16	25%	56%	NR	NR	NR
All	7,106	8%	22%	7,619	1%	19%	6,669	22%	19%			

Above the Average

The appellate backlog for the 18 agencies reporting as of March 9 was 26%. In 2005 it was 12%.

The 18 agencies granted an average of 17% of their appeals in 2006. Their average was 18% in 2005.

Processing Costs, Workforce, Efficiency, Litigation Costs, Compared for 2005, 2006

Department/ Agency	2005					2006				
	Processing Costs	Requests Processed	Cost per Request	FTEs	Requests per FTE	Processing Costs	Requests Processed	Cost per Request	FTEs	Requests per FTE
Commerce	\$ 1,227,066	1,834	\$ 669	17	106	\$ 1,742,222	1,987	\$ 877	19	105
Defense	\$ 47,876,973	78,775	\$ 608	752	105	\$ 64,181,003	72,266	\$ 888	824	88
Education	\$ 1,063,860	2,219	\$ 479	10	220	\$ 2,502,689	1,904	\$ 1,314	27	71
Energy	\$ 4,020,094	3,831	\$ 1,049	71	54	\$ 3,992,699	3,861	\$ 1,034	67	58
Justice	\$ 56,610,612	51,435	\$ 1,101	524	98	\$ 43,529,174	54,925	\$ 793	459	120
Labor	\$ 9,926,300	3,870	\$ 2,565	143	27	\$ 15,787,200	23,608	\$ 669	179	132
State	\$ 7,334,051	9,384	\$ 782	87	108	\$ 5,471,349	3,866	\$ 1,415	108	36
Transportation	\$ 7,334,051	9,384	\$ 782	87	108	\$ 7,500,350	8,758	\$ 856	72	122
CIA	\$ 8,350,000	3,110	\$ 2,685	74	42	\$ 8,870,000	2,579	\$ 3,439	75	34
CPSC	\$ 1,142,756	5,387	\$ 212	11	481	\$ 1,011,376	4,728	\$ 214	10	473
EEOC	\$ 1,976,105	16,232	\$ 122	49	331	\$ 2,499,564	16,936	\$ 148	46	368
EPA	\$ 9,449,572	11,108	\$ 851	181	61	\$ 10,075,991	12,685	\$ 794	277	46
GSA	\$ 1,311,000	1,561	\$ 840	19	82	\$ 1,334,000	1,454	\$ 917	18	81
NARA	\$ 1,741,987	8,878	\$ 196	25	355	\$ 2,622,615	8,884	\$ 295	32	278
NASA	\$ 1,128,410	1,351	\$ 835	19	72	\$ 1,473,386	1,132	\$ 1,302	22	51
NLRB	\$ 779,187	4,702	\$ 166	8	613	\$ 734,538	5,553	\$ 132	7	761
NSF	\$ 214,166	266	\$ 805	2	177	\$ 241,816	340	\$ 711	2	227
SEC	\$ 3,835,658	7,422	\$ 517	36	206	\$ 4,283,262	8,268	\$ 518	40	207
Subtotal	\$ 165,321,848	220,749	\$ 749	1,831	121	\$ 177,853,234	185,750	\$ 957	2,284	81

Total costs for the 18 agencies reporting for 2006 as of March 9 were 8 percent higher than in 2005, The per request cost, however, was 27% higher. The agencies increased their FOIA workforce during the year by 25 percent, but efficiency, as measured by the requests handled per employee, fell by one-third.

Year to Year Change in Backlog, Agency Efficiency, 1998 to 2005

	Requests Processed	% Change	Percent Backlog	% Change	Cost per Request	% Change	Requests per FTE	% Change
1998	520,789		13%		\$ 294		129	
1999	534,924	3%	14%	8%	\$ 220	-25%	137	6%
2000	604,801	13%	13%	-7%	\$ 283	29%	145	6%
2001	484,545	-20%	18%	38%	\$ 416	47%	138	-5%
2002	515,860	6%	16%	-11%	\$ 429	3%	135	-2%
2003	531,688	3%	16%	0%	\$ 444	3%	136	1%
2004	524,909	-1%	20%	25%	\$ 437	-2%	144	6%
2005	480,306	-8%	31%	55%	\$ 494	13%	143	-1%
98 to 05		-8%		138%		68%		11%
00 to 05		-21%		138%		74%		-1%

Increase from Prior Year

The cost per FOIA request has risen 68 per cent even as the number of requests declined and employees processed more requests per person, and the agencies fell further behind.

FOIA Workforce Shrinks, Backlog Grows

	FTEs	Yr to Yr	Back-log	Yr to Yr
1998	4042		13%	
1999	3901	-3%	14%	8%
2000	4185	7%	13%	-7%
2001	3507	-16%	18%	38%
2002	3828	9%	16%	-11%
2003	3903	2%	16%	0%
2004	3650	-6%	20%	25%
2005	3350	-8%	31%	55%

The FOIA workforce in the 26 agencies studied has declined by 20 percent since the year 2000 while the percent of requests unprocessed at the end of increased by 138 percent. The year 2000 was the highpoint in FOIA workforce numbers.

Departments and Agencies Included in Study

Agriculture	Department of Agriculture
Commerce	Department of Commerce
Defense	Department of Defense
Education	Department of Education
Energy	Department of Energy
Homeland Sec	Department of Homeland Security
HUD	Department of Housing and Urban Development
Interior	Department of the Interior
Justice	Department of Justice
Labor	Department of Labor
State	Department of State
Transportation	Department of Transportation
Treasury	Department of the Treasury
AID	Agency for International Development
CIA	Central Intelligence Agency
CPSC	Consumer Product Safety Commission
EEOC	Equal Employment Opportunity Commission
EPA	Environmental Protection Agency
GSA	General Services Administration
NARA	National Archives and Records Administration
NASA	National Aeronautics and Space Administration
NLRB	National Labor Relations Board
NRC	Nuclear Regulatory Commission
NSF	National Science Foundation
SEC	Securities and Exchange Commission
SBA	Small Business Administration

The 26 agencies selected for this study and included in all of the Coalition comparisons in this study are those used in frequent Government Accountability Office reports on FOIA, plus several others with a high number of third party FOIA requests.

The four agencies listed in the section at the bottom are also regularly included in GAO studies but shown only for reference because most requests are from individuals seeking personal records that are routinely granted with minimal delay.