

FEDERAL ENERGY REGULATORY COMMISSION
Annual Freedom of Information Act Report
FY 2007



February 2008

FEDERAL ENERGY REGULATORY COMMISSION
ANNUAL FREEDOM OF INFORMATION ACT REPORT
FY 2007

I. Basic Information Regarding the Report

A. Contact with questions about the report.

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Federal Energy Regulatory Commission
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Telephone: 202-502-8389
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B. Electronic address for report on the World Wide Web.

<http://www.ferc.gov/legal/ceii-foia/foia/ann-rep.asp>

C. How to obtain a copy of the report in paper form.

Write to the following address:

Public Reference and Files Maintenance Branch Federal Energy Regulatory Commission
888 First Street, NE, Room 2A Washington, DC 20426

Telephone: 202-502-8371 FAX Number: 202-208-2320

E-Mail: public.reference@ferc.gov

II. How to Make a FOIA Request

Please refer to the FOIA Reference Guide on the Commission's Web Site:
(<http://www.ferc.gov/legal/ceii-foia/foia/guide/basics.asp>)

- A.** Name, address, and telephone number of individual receiving FOIA requests at the Commission.

Andrew J. Black
Director, Office of External Affairs
Federal Energy Regulatory Commission
888 First Street, NE, Code EA-1
Washington, DC 20426

Telephone: 202-502-8004

- B.** The Commission's most rapid response for FY 2007 equaled seven days. The longest response time for FY 2006 437 days.
- C.** Some FOIA requests are not granted because (a) the agency has no responsive documents, (b) the responsive documents fall within one or more FOIA exemptions and are not appropriate for discretionary release, or (c) a request has been rendered moot because the responsive documents were subsequently released through other means, such as a negotiated disclosure in the course of a Commission proceeding.

III. Definitions of Terms and Acronyms Used in the Report

- A.** Agency-specific acronyms or other terms.

1. Track One Requests -- the processing track for a FOIA request that is seeking records that are readily identifiable and were previously cleared for release.
2. Track Two Requests -- the processing track for a FOIA request that is seeking records that are readily identifiable and require limited review.
3. Track Three Requests -- the processing track for a FOIA request that is seeking records that are complex and/or voluminous and require a significant search and/or review.

- B.** Basic terms, expressed in common terminology.

1. FOIA/PA Request -- Freedom of Information Act/Privacy Act request. A FOIA request is generally a request for access to records concerning a third party, an organization, or a particular topic of interest. A Privacy Act request is a request for records concerning oneself; such requests are also treated as FOIA requests. (All requests for access to records, regardless of which law is cited by the requester, are included in this report.)

2. Initial Request -- a request to a federal agency for access to records under the Freedom of Information Act.
3. Appeal -- a request to a federal agency asking that it review at a higher administrative level a full denial or partial denial of access to records under the Freedom of Information Act, or any other FOIA determination such as a matter pertaining to fees.
4. Processed Request or Appeal -- a request or appeal for which an agency has taken a final action on the request or the appeal in all respects.
5. Multi-track Processing -- a system in which simple requests requiring relatively minimal review are placed in one processing track and more voluminous and complex requests are placed in the one or more other tracks. Requests in each track are processed on a first-in/first-out basis. A requester who has an urgent need for records may request expedited processing (see below).
6. Expedited Processing -- an agency will process a FOIA request on an expedited basis when a requester has shown an exceptional need or urgency for the records which warrants prioritization of his or her request over other requests that were made earlier.
7. Simple Request -- a FOIA request that an agency using multi-track processing places in its fastest (nonexpedited) track based on the volume and/or simplicity of records requested.
8. Complex Request -- a FOIA request that an agency using multi-track processing places in a slower track based on the volume and/or complexity of records requested.
9. Grant -- an agency decision to disclose all records in full in response to a FOIA request.
10. Partial Grant -- an agency decision to disclose part of a record in response to a FOIA request, deleting information determined to be exempt under one or more of the FOIA's exemptions; or a decision to disclose some records in their entireties, but to withhold others in whole or in part.
11. Denial -- an agency decision not to release any part of a record or records in response to a FOIA request because all the information in requested records is determined by the agency to be exempt under one or more of the FOIA's exemptions, or for some procedural reason (such as because no record is located in response to a FOIA request).

12. Time Limits -- the time period in the Freedom of Information Act for an agency to respond to a FOIA request (ordinarily 20 working days from proper receipt of a "perfected" FOIA request).
13. "Perfected" Request -- a FOIA request for records that adequately describes the records sought, that has been received by the FOIA office of the agency or agency component in possession of the records, and for which there is no remaining question about the payment of applicable fees.
14. Exemption 3 Statute -- a separate federal statute prohibiting the disclosure of a certain type of information and authorizing withholding it under FOIA subsection (b)(3).
15. Median Number -- the middle, not average, number. For example, of 3, 7, and 14, the median number is 7.
16. Average Number -- the number obtained by dividing the sum of a group of numbers by the quantity of numbers in the group. For example, of 3, 7, and 14, the average number is 8.

IV. Exemption 3 Statutes

A. List of Exemption 3 statutes relied on by the Commission during FY 2007.

1. **Statute/Rule:** 16 U.S.C. § 470aa, *et seq.* (1994) [Specifically 16 U.S.C. § 470hh(a)]

Type of Information Withheld:

Archaeological survey data

Case Citation:

None

2. Statement of whether a court upheld the use of this statute. Our use of the statute has not been challenged in the courts.

V. Initial FOIA/PA Access Requests

A. Numbers of initial requests.

1. Number of requests pending as of end of preceding fiscal year: **16**
2. Number of requests received during current fiscal year: **99**
3. Number of requests processed during fiscal year: **104**

4. Number of requests pending as of end of current fiscal year: **11**

A. Disposition of initial requests.

1. Number of total grants: **32**

2. Number of partial denials: **21**

3. Number of denials: **18**

a. Number of times each FOIA exemption used

(1) Exemption 1: **0**

(2) Exemption 2: **1**

(3) Exemption 3: **7**

(4) Exemption 4: **5**

(5) Exemption 5: **11**

(6) Exemption 6: **10**

(7) Exemption 7: **5**

(8) Exemption 7(A): **0**

(9) Exemption 7(B): **0**

(10) Exemption 7(C): **0**

(11) Exemption 7(D): **0**

(12) Exemption 7(E): **1**

(13) Exemption 7(F): **4**

(14) Exemption 8: **0**

(15) Exemption 9: **0**

- 4. Other reasons for nondisclosure: **33**
 - a. No records: **20**
 - b. Referrals: **0**
 - c. Request withdrawn: **13**
 - d. Fee-related reason: **0**
 - e. Records not reasonably described: **0**
 - f. Not a proper FOIA request for some other reason: **0**
 - g. Not an agency record: **0**
 - h. Duplicate request: **0**
 - i. Other: **0**

VI. Appeals of Initial Denials of FOIA/PA Requests

A. Numbers of appeals.

- 1. Number of appeals received during fiscal year: **9**
- 2. Number of appeals processed during fiscal year: **11**

B. Disposition of appeals.

- 1. Number completely upheld: **7**
- 2. Number partially reversed: **1**
- 3. Number completely reversed: **2**
 - a. number of times each FOIA exemption used (counting each exemption once per appeal)
 - (1) Exemption 1: **0**
 - (2) Exemption 2: **0**
 - (3) Exemption 3: **2**
 - (4) Exemption 4: **1**
 - (5) Exemption 5: **3**
 - (6) Exemption 6: **0**

- (7) Exemption 7(A): **0**
- (8) Exemption 7(B): **0**
- (9) Exemption 7(C): **0**
- (10) Exemption 7(D): **0**
- (11) Exemption 7(E): **0**
- (12) Exemption 7(F): **1**
- (13) Exemption 8: **0**
- (14) Exemption 9: **0**

4. Other reasons for nondisclosure (total): **1**

- a. no records: **0**
- b. referrals: **0**
- c. request withdrawn: **1**
- d. fee-related reason: **0**
- e. records not reasonably described: **0**
- f. not a proper FOIA request for some other reason: **0**
- g. not an agency record: **0**
- h. duplicate request: **0**
- i. other (specify)

VII. Compliance with Time Limits/Status of Pending Requests

A. Median processing time for requests processed during the year.

- 1. Track one requests
 - a. Number of requests processed: **29**
 - b. Median number of days to process: **17**
- 2. Track two requests
 - a. Number of requests processed: **68**
 - b. Median number of days to process: **22**

3. Track three requests
 - a. Number of requests processed: **5**
 - b. Median number of days to process: **22**
 4. Requests accorded expedited processing: **2**
 - a. Number of requests processed: **2**
 - b. Median number of days to process: **11**
- B.** Status of pending requests.
1. Number of requests pending as of end of current fiscal year : **11**
 2. Median number of days that such requests were pending as of that date: **24.5**

VIII. Comparisons with Previous Year

- A.** The number of requests received in FY 2006 was 103 and in FY 2007, the number was 99, a 4% decrease in FY 2007.
- B.** The number of requests processed in FY 2006 was 104 and in FY 2007, the number was 104, no change.
- C.** The median number of days requests were pending as of the end of FY 2006 was 9.5 and at the end of FY 2007, the number was 24.5, a 157% increase in FY 2007.¹
- D.** Other statistics significant to agency: We received 17 requests for expedited treatment. We granted two.
- E.** Other narrative statements describing agency efforts to improve timeliness of FOIA performance and to make records available to the public (e.g., backlog-reduction efforts; specification of average number of hours per processed request; training activities; public availability of new categories of records).

The Commission instituted the following new FOIA processing procedures to improve the timeliness of performance: (1) the search request to FERC offices for responsive documents is now sent by e-mail that includes the scanned incoming FOIA request; (2) the FOIA staff aggressively follows up with the Commission's offices on the progress of their search through e-mail; and (3) the search memorandum used by the FOIA administrative office to request a search has been updated.

¹ The sharp increase in the median number of days pending is due to the fact that FY04-191 and FY05- 38 were on hold for 252 days in FY 2006 at the behest of the requester.

IX. Costs/FOIA Staffing

A. Staffing levels.

1. Number of full-time FOIA personnel: **1**
2. Number of personnel with part-time or occasional FOIA duties (in total work-years): **3.90**
3. Total number of personnel (in work-years): **4.90**

B. Total costs.

1. FOIA processing: **\$868,784**
2. Litigation-related activities: N/A
3. Total costs: **\$868,784**
4. Comparison with previous year : **32% Increase**

X. Fees

A. Total amount of fees collected processing requests: **\$11,512.19**

B. Percentage of total costs: **1.3%**

XI. FOIA Regulations (Including Fee Schedule)

The Commission's FOIA regulations, 18 C.F.R. § 388.108, can be accessed through GPO (<http://www.access.gpo.gov/nara/cfr/index.html>)

XII. REPORT ON EXECUTIVE ORDER 13,392 IMPLEMENTATION

This section of the annual FOIA report contains the Federal Energy Regulatory Commission's (FERC) description of its progress in implementing the milestones and goals of the agency's FOIA Improvement Plan that was submitted on June 14, 2006 in response to Executive Order 13,392. The reporting period for Section XII include progress made by components through December 2007 and often into January 2008. The reporting period for this section, Section XII, is different from that used for the rest of this report, which is based on data compiled for Fiscal Year 2007.

A. Description of supplementation/modification of agency improvement plan (if applicable)

On September 20, 2006, the FERC FOIA Improvement Plan was revised to specifically address the eight outstanding FOIA requests mentioned in paragraph (A) (page 1) of the agency plan previously submitted on June 14, 2006. To address the outstanding requests, the agency added an eighth area of improvement, “8. *Improvement for processing outstanding requests identified in the review*”, complete with distinct steps, milestones and a means of measurement of success.

B. Report on agency implementation of its plan, including its performance in meeting milestones, with respect to each improvement area

During FY 2007, the Commission has met the established goals that were reflected in the FOIA improvement plan and the supplemental modification to the plan. Overall, the Commission FOIA program continues to strive to make adjustments as necessary to ensure that the program is as efficient and as user friendly as possible. This includes efforts to seek out new technology to enhance staff’s ability to track requests and provide more efficient reporting methods. In this regard, the Commission has established a working group to evaluate the recently enacted FOIA legislation to see how the program should be updated to meet the new mandates and goals of the legislation.

Specifically, the Commission conducted the following steps to meet milestones with respect to each improvement area in the FOIA improvement plan:

1) Affirmative disclosure under subsection (a) (2)

In FY 2007, the Commission has continued to utilize its established policy for posting on its “eLibrary” website all documents filed and all final documents or orders, including press releases and the Commissioners’ formal statements, issued with respect to all proceedings or other actions taken by the Commission, including staff studies and reports. Documents that are not exempt under FOIA are routinely posted in “eLibrary” as “public” or made available through the public reference room. Additionally, documents disclosed under the FOIA process are routinely made available to individuals who request the identical material outside of the FOIA process to ensure that the material is received by the requesters in an expedient fashion.

2) Overall FOIA Web site improvement

In FY 2007, the Commission continued its practice of periodically updating its FOIA website. The FOIA website is consistently updated: (1) to include information detailing the agency’s FOIA Requester Service Center and (2) to rearrange items on the website to enhance the overall clarity of the web pages, thereby making them easier to navigate and more user-friendly. This included updated contact information as FOIA personnel went through a period of transition. Also, in FY 2007, the Commission established a form for individuals to electronically submit FOIA requests in a simple and efficient manner. The electronic form is now the most utilized feature for submitting FOIA requests.

3) Automated tracking capabilities

In FY 2007, Commission staff fully utilized an automated tracking system. This system allows Commission staff to provide requesters with detailed updates on their requests. The Commission also has recently created an electronic depository of FOIA requests, e-mails, submitter's rights letters, notices of intent to release documents and other pertinent information regarding these requests. This depository assists Commission staff in internally tracking requests and in providing the requester with materials relating to their requests.

4) Acknowledgment letters

In FY 2007, the Commission fully implemented the process of sending out acknowledgment letters when a request is received. The acknowledgment letter is typically done in email format and includes a tracking number for the request and information on when the request should be completed. This system offers more transparency to the process and is consistent with recent legislation passed by Congress and signed by the President.

5) Process by which necessary cooperation is obtained from agency program personnel

In FY 2007, through meetings, training efforts and the selection of alternate program office staff, the Commission's FOIA and program office staff continue to achieve the goal of working cooperatively in completing timely, accurate and adequate office searches in response to FOIA requests. Overall, these efforts are contributing to quicker FOIA response times.

6) Additional training needed (formal and/or on-the-job)

In FY 2007, the Commission has continued to provide appropriate training to staff concerning the FOIA process. This has included sending the FOIA liaison to Department of Justice FOIA training sessions and providing internal training for individuals who have been brought into the FOIA process. For the next fiscal year FOIA staff is developing an additional onsite training session for program offices to review the FOIA procedures and inform them of the recent FOIA legislation. The session will particularly emphasize the new requirement in the legislation that an agency may pay any necessary fees that may be incurred during the appeal process.

7) Recycling of improvement information gleaned from FOIA Requester Service Center

In FY 2007, FOIA staff utilized verbal and electronic comments and suggestions to improve the process. For example, the Commission implemented an electronic FOIA request form upon the suggestions of past requesters. The Commission also made suggested changes to the website and clarified filing procedures to facilitate the request process.

8) Improvement for processing outstanding requests identified in the review

In FY 2007, FOIA staff has continued to work towards eliminating any backlog acquired during the processing of requests. FOIA staff has strived to limit the number of outstanding requests and to process requests in a manner that meets the requesters' expectations. Specifically, staff met its goal of eliminating all backlog FOIA cases identified in the previous annual report. Our review of FY 2007 data has identified four outstanding rolling requests. The status of these requests are reflected below:

(1) Staff has provided initial determinations for two of these requests. The requesters have since filed appeals. Staff expects to reach a resolution with the requesters and close these requests by March 30, 2008.

(2) One request has been placed on hold. This request will be closed if additional information is not provided by the requester by February 15, 2008.

(3) The remaining request will be closed when staff provides the remaining third of the redacted document to the requester. This request will be closed by March 30, 2008.

- C. Identification and discussion of any deficiency in meeting plan milestones (if applicable)
Not applicable
- D. Additional narrative statement regarding other executive order-related activities (optional)
Not applicable
- E. Concise descriptions of FOIA exemptions

The nine exemptions to the FOIA authorize federal agencies to withhold information covering: (1) classified national defense and foreign relations information; (2) internal agency rules and practices; (3) information that is prohibited from disclosure by another federal law; (4) trade secrets and other confidential business information; (5) inter-agency or intra-agency communications that are protected by legal privileges; (6) information involving matters of personal privacy; (7) records or information compiled for law enforcement purposes, to the extent that the production of those records (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or (F) could reasonably be expected to endanger the life or physical safety of any individual; (8) information relating to the supervision of financial institutions; and (9) geological information on wells.

F. Additional Statistics:

1. Ten Oldest Pending FOIA Requests

Calendar Year	2000	2001	2002	2003	2004	2005	2006	2007
Requests	0	0	0	0	10/27/04 *rolling request	2/11/05 *rolling request	0	9/21/07 5/30/07 <i>rolling requests</i>

2. Consultations

a.) Number of Consultations Received, Processed, and Pending

Consultations Received From Other Agencies During FY07	Consultations Received From Other Agencies That Were Processed by Your Agency During FY07 (includes those received prior to FY07)	Consultations Received From Other Agencies That Were Pending at Your Agency as of October 1, 2007 (includes those received prior to FY07)
0	0	0

b.) Ten Oldest Pending Consultations Received From Other Agencies

Calendar Year	1999	2000	2001	2002	2003	2004	2005	2006	2007
Consults Received	0	0	0	0	0	0	0	0	0

* These rolling requests were on hold for 252 days in FY 2006 at the behest of the requester.