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FOIA Update – 01/02/07



- **Key FOIA Activity for 12/26/06 – 12/29/06**

- **FOIA Litigation Issues:** No major litigation releases. New DoD FOIA lawsuit received from a NY law professor representing a former detainee.
- **Other FOIA Activity:** FOID working on DoD GC directed expedited responses associated with medical records of current and former detainees [redacted]

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[redacted] The oldest FOIA request in the government was completed by FOID with a release of redacted documents associated with Freedom of Navigation issues; the age of this case has been referenced by Congress and has appeared in the media on multiple occasions.

- **Executive Order:** DA&M signed memos going to COCOMs and Service Administrative Assistants giving guidance on organizational structure of FOIA offices. Initial draft prepared of DoD annual FOIA report due to DOJ Feb 1, 2007.

- **Key FOIA Activity Projected for 01/02/07 – 01/05/07**

- **Litigation Releases:** No major releases scheduled.
- **Other FOIA Activity:** Detainee medical records information referenced above may be released. CPA records on Iraqi infrastructure, training and contracting are being reviewed by OSD(PA) and may be released to the National Security Archive.
- **Executive Order:** DFOIPO will issue a memo giving guidance to DoD Components on FOIA contracting and defining inherently governmental FOIA functions. [redacted]

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[redacted] This action will complete the calendar year 2006 goals of the DoD plan implementing the provisions of the FOIA Executive Order. These completed goals will be documented in the DoD FOIA report due to DOJ on Feb 1, 2007.



FOIA Update – 01/08/07

- **Key FOIA activity for 01/03/07 – 01/05/06**

- **FOIA Litigation Issues:** Several media stories were written following a release made by DOJ in the ongoing ACLU FOIA litigation. The released information consisted of FBI documents concerning allegations of detainee abuse by military personnel at GTMO.
- **Executive Order:** GAO forwarded a draft Fact Sheet on their review of DoD implementation of the FOIA EO. [REDACTED]

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[REDACTED] FOIA backlog not an issue. DFOIPO memo on defining FOIA Inherently Governmental Functions to FOIA POCs delayed. OSD (AT&L), as the OSD Component responsible for maintaining a list of DoD Governmental Functions, has raised concerns about the designation of some of the FOIA functions as Inherently Governmental; continuing to work the issue.

- **Key FOIA activity projected for 01/08/07 – 01/12/07**

- **Litigation Releases:** No major releases scheduled.
- **Executive Order:** The GAO exit conference call referenced above scheduled for Tuesday, Jan 9; DFOIPO to provide alternative language to better reflect DoD's positive response to all provisions of the FOIA EO.



FOIA Update – 01/16/07

- **Key FOIA activity for 01/08/07 – 01/12/07**
 - **FOIA Litigation Issues:** In court, DoD won on litigation concerning adequacy of search for TALON reports. Received FOIA litigation for lack of response from a law professor representing a detainee who has been released. In response to an order from a judge in an ongoing FOIA litigation, a release of the names and identifying numbers of 22 detainees was made to the AP; this release of minimal data is not expected to generate media interest.
 - **Other FOIA Activity:** At the request of DoD GC, FOID made the first release of individual detainee medical files; more such releases to follow, but media attention is not expected to be great. A release was made to the ACLU in response to their request for information concerning alternative truth detection techniques and their use on detainees. The documents released concerned only general discussion of techniques, such as thermal imaging, with no release of documents on utilization of these techniques on detainees; ASD(PA) and DoD GC are aware of the release and media coverage is not expected to be great. Initiative with National Security Archive to close backlogged requests resulted in the Archive withdrawing 23 old complex requests dating from 1993-1997; these actions will save the DoD thousands of dollars in reviewing costs - a DoD EO Implementation Plan success.
 - **Executive Order:** Met with GAO to discuss DoD implementation of EO; addressed concerns about GAO evaluation of DoD communications with FOIA requester community.
- **Key FOIA activity projected for 01/16/07 – 01/19/07**
 - **Other FOIA Activity:** Release scheduled of redacted documents concerning GTMO Initial Response Force to NBC News.
 - **Executive Order:** Working FY 2006 FOIA Annual Report for DA&M/ACFO signature; due date to DOJ is Feb 1, 2007.



FOIA Update – 01/22/07

- **Key FOIA activity for 01/16/07 – 01/19/06**
 - **FOIA Activity:** A DOJ FOIA release of a document found within DoD files listing names of law firms representing detainees is linked to the comments made on a radio talk show by the DASD (Detainee Affairs); concern over the connection to the FOIA has been noted by Congress. FOID has learned from reliable National Security Archive congressional sources that the FOIA legislation proposed in the last Congress is anticipated to be passed within 6-9 months. Release made of redacted documents concerning GTMO Initial Response Force (IRF) to NBC News; the released information includes redacted statements of IRF team members relating incidents in which detainees were restrained or forcibly extracted.
 - **Executive Order:** DFOIPO published standards for contracting FOIA processing within the DoD and defined FOIA inherently governmental functions. This action marks the completion of the 2006 milestones set forth in the DoD Plan to implement the EO.
- **Key FOIA activity projected for 01/22/07 – 01/26/07**
 - **FOIA Activity:** Release scheduled to CNN of information associated with military service enlistment waivers. The media and Congress have been expressing interest on the question of recruitment standards being lowered because of the war.
 - **Executive Order:** DA&M scheduled to approve and sign FY 2006 FOIA Annual Report this week due to DOJ by Feb1, 2007.



FOIA Update – 01/29/07

- **Key FOIA activity for 01/22/07 – 01/26/07**
 - **FOIA Litigation:** No major releases.
 - **Other FOIA Activity:** A release was made to a media requester asking for the FOIA request of Monica Crowley that is associated with the statements made by the DASD for Detainee Affairs on a radio talk show; this release was coordinated with OSD(PA). A chair has been appointed for the new Information Policy, Census and National Archives Subcommittee of the House Committee on Oversight and Government Reform (HCOGR). This Subcommittee was established by Congressman Waxman, the new chair of the HCOGR, and it is anticipated that oversight of agency FOIA operations will be a primary focus.
 - **Executive Order:** Submitted DoD Annual FOIA Report to DA&M for approval; briefed DA&M; Report due to DOJ by 1 Feb 07.
- **Key FOIA activity projected for 01/29/07 – 02/03/07**
 - **FOIA Litigation/Activity:** No major releases scheduled.
 - **Executive Order:** DFOIPO working on Info Paper reflecting results of the Annual Report and related FOIA concerns. DFOIPO monitoring DoD FOIA Websites to ensure compliance with standards established by the EO.



FOIA Update – 02/05/07

- **Key FOIA activity for 01/29/07 – 02/02/07**
 - **FOIA Litigation:** No major releases.
 - **Other FOIA Activity:** A release was made to a Miami reporter asking for the FOIA response to the request for a list of lawyers representing detainees. The response reflects that the DoD identified a responsive DOJ record and the request was forwarded to DOJ for their processing. FOID met with the new USD(P) Executive Secretary to discuss the large USD(P) FOIA backlog. ESD is working with USD(P) on a pilot project to facilitate ESD electronic searches of USD(P) records to identify information responsive to FOIA, Congressional and other requests.
 - **Executive Order:** Submitted FOIA Annual Report to DOJ. Prepared draft Information Paper on FOIA from DA&M to SecDef. Held meeting of DoD working group looking at possible DoD-wide FOIA IT solutions.
- **Key FOIA activity projected for 02/05/07 – 02/09/07**
 - **FOIA Litigation/Activity:** No major releases scheduled.
 - **Executive Order:** DFOIPO to prepare draft of DA&M response to President's Management Council on DoD implementation of the FOIA EO.



FOIA Update – 02/12/07

- **Key FOIA activity for 02/05/07 – 02/10/07**

- **FOIA Litigation:** No major releases. 2 new FOIA lawsuits against DoD: The Electronic Frontier Foundation sued for denial of expedited processing of their request for information concerning an Army unit that monitors Internet postings by soldiers. The Community of Financial Services Association sued for non-response of their request for information associated with the Report, "Predatory Lending Practices Directed at Members of the Armed Services and Their Dependents".
- **Other FOIA Activity:** The Acting Director of the DOJ Office of Information & Privacy (OIP) met with Congressional Staffers on Feb 8 to discuss a Congressional hearing on the FOIA on Feb 15 in which she will testify. A bill has been introduced (H.R. 541) to establish a Commission on FOIA Processing Delays. This bill is essentially a re-introduction of a similar bill proposed by the Senate in the last Congress and reflects continued Congressional interest in FOIA issues.
- **Executive Order:** FOIA Info Memo for SecDef submitted to DA&M for approval.

- **Key FOIA activity projected for 02/12/07 – 02/16/07**

- **Executive Order:** Response to be submitted for DA&M approval to President's Management Council on implementing the EO. DFOIPO to provide talking points for DA&M presentation at an American Society of Access Professionals (ASAP) luncheon on Feb 15; pre-brief at 1100, 13 Feb.
- **Other FOIA Activity:** The Acting Director DOJ(OIP) will testify Feb 15 at a Congressional hearing on the FOIA for the new House Subcommittee on Information, Policy, Census, and National Archives (Hot Item submitted). This subcommittee has indicated that the FOIA will be an area of focus, and further calls for testimony from government FOIA officials are anticipated.



FOIA Update – 02/20/07

- **Key FOIA activity for 02/12/07 – 02/16/07**
 - **Other FOIA Activity:** Congressional hearing held on the FOIA (report submitted to DA&M via email). FOID and DoD GC met with OSD(PA) to discuss processing of NY Times request concerning DoD interaction with media military analysts that may be headed toward FOIA litigation. British MOD to use US FOIA court case involving denial of lists of names of DoD personnel to support denial of similar information in a British FOIA litigation.
 - **Executive Order:** DA&M spoke on the implementation of the EO at a luncheon sponsored by an access professional organization. GAO issued another report on Federal Agency implementation of the EO – no remarks critical of DoD. Submitted to DA&M response to PMC on FOIA Improvement Plan milestone deficiencies.
- **Key FOIA activity projected for 02/20/07 – 02/23/07**
 - **Executive Order:** DFOIPO sending memoranda to Components whose FOIA web sites are not compliant with web site guidance published in October 2006.



FOIA Update – 2/26/07

• Key FOIA activity for 02/20/07 – 02/23/07

- **FOIA Litigation:** No major releases. FOID working with Defense Logistics Agency and DOJ on key litigation concerning format for data base releases pertaining to contracts. FOID provided input to DoD GC on AP request for payment of over \$250,000 in attorney fees associated with FOIA litigation against DoD related to detainee affairs; this is in initial negotiation.
- **Executive Order:** Received responses from AF and Army (awaiting Navy) for DA&M tasking for input on FOIA organizational structure. [REDACTED]

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• Key FOIA activity projected for 02/26/07 – 03/02/07

- **FOIA Litigation:** Scheduled DOJ release of TALON information as part of ongoing ACLU litigation – possible media interest. DOJ has coordinated this release with FOID and DoD GC. Scheduled release of documents to attorney for [REDACTED] a long term death row military prisoner; no media coverage expected.
- **Executive Order:** In accordance with the DoD EO implementation plan, DFOIPO to send memorandum to DoD Components instructing them to take measures to correct noted deficiencies in their FOIA websites.

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FOIA Update – 03/05/07

- **Key FOIA activity for 02/26/07 – 03/02/07**
 - **FOIA Litigation:** DOJ released additional portions of TALON policy documents as part of ongoing litigation with the ACLU. This action was coordinated with DoD GC and FOID has notified OSD(PA) of the release.
 - **Other FOIA:** In association with a request from Senator Obama for a list of names of all detainees, OSD(LA) asked FOID if any FOIA requests had been received for such a list. After conferring with CENTCOM, FOID advised OSD(LA) that they were not aware of any FOIA requests for the names; this action may become a FOIA request. In response to a media request for papers written by Senator McCain while a student at the National War College in 1973-1974, FOID released a redacted paper that had been released three times previously in response to FOIA requests.
 - **Executive Order:** DFOIPO sent out a memo asking DoD Components to identify any FY 2008 budget cuts associated with FOIA personnel.
- **Key FOIA activity projected for 03/05/07 – 03/09/07**
 - **FOIA Litigation:** No major releases anticipated.
 - **Other FOIA:** Senior FOID staff to serve as instructors at the major ASAP conference of all government agencies.



FOIA Update – 03/05/07

- **Key FOIA activity for 03/05/07 – 03/09/07**
 - **FOIA Litigation:** No significant activity to report.
 - **FOIA Legislation:** The Freedom of Information Act Amendments of 2007, H.R. 1309, was presented in Congress and referred to the Committee on Oversight and Government Reform. DFOIPO has analyzed this bill and is providing an information paper to DA&M and DoD Components.
 - **Other FOIA:** The New York Times sent a FOIA request to the NDU asking for documents related to the papers of Mr. Wolfowitz and Mr. Feith and other personal papers recently archived at NDU. The actual papers were not requested; however, indices were. CBS News asked for documents related to Mr. Rumsfeld's current relationship with the DoD; PA provided some information outside of the FOIA; FOID working with requester to see if she'll revise her request based on what PA provided.
 - **Executive Order:** No significant activity to report.
- **Key FOIA activity projected for 03/12/07 – 03/16/07**
 - **FOIA Litigation:** No major releases anticipated.
 - **Other FOIA:** This is Sunshine Week. Expect intense media coverage, 1 Congressional posturing, and criticism of Federal Agencies.



FOIA Update – 03/19/07

- **Key FOIA activity for 03/12/07 – 03/16/07**
 - **FOIA Litigation:** Release made 16 March of detainee height and weight statistics in association with ongoing AP litigation (Hot Item submitted). This release will include [REDACTED] which may be the subject of media stories. New FOIA lawsuit from attorney representing 3 detainees.
 - **Other FOIA:** Bill to amend FOIA passes House and similar bill introduced in Senate. The administration went on record opposing the House proposal (Info Paper provided Friday).
 - **Executive Order:** No significant action.
- **Key FOIA activity projected for 03/19/07 – 03/24/07**
 - **FOIA Litigation:** No major releases anticipated.
 - **Other FOIA:** Interim release scheduled to NY Times of OSD (PA) schedules, press releases, agendas, and presentations given to select group of military media analysts. Future releases will include transcripts of briefings given to the analysts and may result in significant media coverage.



FOIA Update – 03/26/07

- **Key FOIA activity for 03/19/07 – 03/23/07**
 - **FOIA Litigation:** No major releases. No new lawsuits.
 - **Other FOIA:** OMB submitted through OLC a request for comments on a DOJ position on the Senate version of the proposed FOIA legislation. DFOIPO agreed with and added supporting points to the 11 page DOJ position which strongly disagreed with the proposal. The bill is currently in mark-up and is expected to be brought up for full Senate vote soon. After criticizing the DoD FOIA website in the media, the National Security Archive made similar comments within Congressional testimony given at a Senate hearing on the FOIA held during Sunshine Week. An interim release to the NY Times was made in response to their request for information associated with OSD(PA) presentations to military media analysts.
- **Key FOIA activity projected for 03/26/07 – 03/31/07**
 - **FOIA Litigation:** No major releases anticipated.
 - **Other FOIA:** Coordination continues with DoD GC, the Joint Staff, NDU and USD(P) on a NY Times request for indices of collections of records given to the NDU by high level DoD personnel.



FOIA Update – 04/02/07

- **Key FOIA activity for 03/26/07 – 03/30/07**
 - **FOIA Litigation:** No new lawsuits. No major releases. FOID prepared two declarations for ongoing litigations involving a military death row prisoner and a mercenary currently in prison in Afghanistan.
 - **Other FOIA:** GAO report released on the FOIA and agency implementation of the EO. DoD is noted as being one of the agencies receiving large amounts of FOIA requests along with VA, HHS, DHS, DOJ and Treasury. No negative statements against the DoD in this report which is a duplicate of an earlier GAO report released in congressional testimony.
 - **Executive Order:** DFOIPO distributed two memos to DoD FOIA POCs asking for input on any Component initiatives to reduce backlogs without additional funding and asking Components to supply mid-FY 07 statistics to determine if FOIA requests are going up in DoD.
- **Key FOIA activity projected for 04/02/07 – 04/06/07**
 - **FOIA Litigation:** No major releases anticipated.
 - **Other FOIA:** DFOIPO working on briefing to the DA&M on current status of proposed FOIA legislation and its potential impact on DoD.



FOIA Update – 04/09/07

Key FOIA activity for 04/02/07 – 04/06/07

- **FOIA Litigation:** No major releases
- **Other FOIA:** No record responses made to two news media representatives for requests for Secretary Rumsfeld's resignation letter to the President. ESD and OSD EXSEC searched their files with negative results. A second request within a week has been received from the news media targeting communications between OSD and Congress. The first requester asked for "earmark" information associated with the DoD budget. The second request is for communications between Congress and OSD(LA).
- **Executive Order:** No significant activity.

• Key FOIA activity projected for 04/09/07 – 04/13/07

- **FOIA Litigation:** No major releases anticipated.
- **Other FOIA:** No significant activity anticipated.



FOIA Update – 04/16/07

- **Key FOIA Activity 04/09/07 – 04/13/07**
 - **FOIA Litigation:** No major releases or press activity
 - **FOIA EO:** Continue to receive responses to DFOIPO tasking which sought FY07 mid-year statistics from Big 17 on the number of FOIA requests and appeals received.
 - **FOIA Legislation:** FOID submitted estimates on the cost of implementing H.R. 1309 and S. 849 in response to an OMB green sheet tasking.
 - **FOIA Requests:** Anticipate making a third interim release of material to The New York Times in response to a request for access to information pertaining to interactions with military and security analysts by the DOD.

- **Key FOIA Activity Projected 04/16/07 – 04/20/07**
 - **FOIA Litigation:** Anticipate making a release of approximately 3100 pages of material in the Community Financial Services Assoc. litigation involving a request for access to all records related to the "Report On Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents."



FOIA Update – 04/23/07

- **Key FOIA activity for 04/16/07 – 04/21/07**
 - **FOIA Litigation:** A release of about 3100 pages of worksheets prepared for a report to Congress on predatory lending practices directed against military personnel was made to the Community Financial Services Association.
 - **Other FOIA:** The Senate Judiciary Committee passed the Senate version of the FOIA legislation. The bill was going to mark-up for vote by the full Senate when Senator Kyl (R-Arizona) introduced a paper that questions the provisions of the bill that would give favorable media status to virtually all requesters, facilitate increased potential for collection of legal fees for attorneys representing requesters in litigation, and establish penalties for agencies not meeting the 20 day period to respond to requests. The mark-up of the bill is expected to be delayed while the issues are debated.
- **Key FOIA activity projected for 04/23/07 – 04/28/07**
 - **FOIA Litigation:** No major releases anticipated.
 - **Other FOIA:** Developing a FOIA Update briefing for the DA&M addressing the new legislation, 2007 FOIA EO Plan objectives, and the FOIA-PA-CIO linkage.



FOIA Update – 04/30/07

- **Key FOIA activity for 04/23/07 – 04/27/07**
 - **FOIA Litigation:** No significant releases.
 - **Other FOIA:** Attorneys for the NY Times have sent a letter to FOID questioning the speed and thoroughness of the OSD (PA) processing of their request for documents associated with OSD (PA) briefings to military media analysts. The Times has an ongoing FOIA litigation with the NSA over domestic surveillance issues and they are considering adding the media analyst request into the litigation with the accusation that the DoD is “penalizing” them with slow action because they sued for non-response in the NSA issue. In response to a media request for documents associated with USD(P) Iraq planning, under the provisions of the FOIA, the Principal Deputy Under Secretary of Defense (Policy) has initiated an effort to review documents declassified by the USD(P) Iraq Declassification Team.
- **Key FOIA activity projected for 04/30/07 – 05/04/07**
 - **FOIA Litigation:** No major releases anticipated.
 - **EO:** DFOIPO receiving responses from DoD Components in response to a tasking to provide ongoing efforts to reduce FOIA backlogs without additional resources.



FOIA Update – 05/07/07

- **Key FOIA activity for 04/30/07 – 05/04/07**
 - **FOIA Litigation:** No significant releases.
 - **Other FOIA:** The FOID management team hosted a DOS sponsored discussion on access issues with representatives of the Albanian government and private sector. Albania passed a FOIA law in 1999 and the exchange of information between the US and a former Soviet Bloc country is an example of the growing global awareness of the importance of public access programs.
 - **EO:** DFOIPO provided FOIA training at RPN for DoD FOIA/Privacy Act personnel. The courses for the training included a session on the Executive Order and the proposed FOIA legislation.
- **Key FOIA activity projected for 05/07/07 – 05/11/07**
 - **FOIA Litigation:** A second interim release is expected in the Community Financial Services Association litigation concerning predatory lending practices directed against military personnel. No significant media coverage is expected.



FOIA Update – 05/14/07

- **Key FOIA activity for 05/7/07 – 05/11/07**
 - **FOIA Litigation:** Another interim release made for the litigation associated with predatory lending practices against military personnel. No media activity anticipated.
 - **Other FOIA:** Another interim release made to the NY Times for the request for records concerning DoD presentations to specific military analysts. Possibility of media coverage or FOIA litigation from the NY Times because of slow response. The oldest FOIA appeal (concerning convicted spy Jonathan Pollard) in OSD was forwarded for signature.
 - **USD(I) Briefing:** Briefed the FOIA Program to new senior USD(I) staff members. Focus was on FOIA functions and interactions with USD(I).
- **Key FOIA activity projected for 05/14/07 – 05/18/07**
 - **FOIA Litigation:** An OSD release is anticipated for a FOIA litigation against the Army concerning monitoring of internet activity of Army personnel by a web risk assessment cell. The OSD release is not considered to be significant although releases associated with the litigation by the Army could generate media interest.



FOIA Update – 05/21/07

- **Key FOIA activity for 05/14/07 – 05/18/07**

- **FOIA Litigation:** A release was made to the Electronic Freedom Frontier of records associated with the monitoring of internet activity of Army personnel. No media coverage of the OSD release is anticipated although Army releases associated with this FOIA litigation may generate news.
- **Other FOIA:** DoDIG referred to FOID 111 pages of OSD originated documents responsive to a request from former DepSecDef Wolfowitz for records of a DoDIG investigation on him associated with the DoD employment of [REDACTED] for Iraq reconstruction efforts in 2004-2005 (Hot Item submitted). ESD working a revised proposal to fund the DFOIPO with eight FTEs as a UFR for FY 08.

- **Key FOIA activity projected for 05/21/07 – 05/25/07**

- **FOIA Litigation:** No major releases anticipated.
- **Other FOIA Activity:** Release is anticipated of medical records of two specific detainees. No significant media coverage is expected.



FOIA Update – 05/29/07

- **Key FOIA activity for 05/21/07 – 05/25/07**
 - **FOIA Litigation: No major releases.**
 - **Other FOIA:**
 - **DOJ will release this week or next records concerning protective order violations associated with detainee habeas litigation. DoD equities in this release focus on two letters from GTMO Commander ADM Harris to a translator discussing violations of non-disclosure agreements. The DoD has the same FOIA request but has not processed responsive documents. The media has inquired about the upcoming release and news coverage of the issue is anticipated.**
 - **OSD(PA) has posted on the Internet audio transcripts of a Combatant Status Review Tribunal (CSRT) for a high value GTMO detainee. There are 3 FOIA requests from the media for unredacted transcripts of all detainees. Although processing continues on the FOIA requests, the requesters of the CSRTs are frequent FOIA litigators and litigation for non-response of the FOIA requests may result due to the media's high interest.**
 - **Two sets of medical records for specific detainees released. General SOPs for GTMO medical treatment also released and updated on FOIA website.**
 - **FOIA EO: DFOIPO reviewed an OLC tasking from OMB to review a DOJ report on agency implementation of the EO. The DoD received "green" and "yellow" stoplight designations for the implementation of the EO as reflected on the FOIA annual report.**
- **Key FOIA activity projected for 05/29/07 – 06/01/07**
 - **FOIA Litigation: No major releases anticipated. Work within FOID continues on ACLU litigation concerning TALON issues. To date, 750 pages of USD(I) 1 documents have been reviewed and heavily redacted.**



FOIA Update – 06/04/07

- **Key FOIA activity for 05/29/07 – 06/01/07**
 - **FOIA Litigation:** No major releases.
 - **Other FOIA:** End of May FOID statistics reveal that the monthly goal of closing at least 200 requests a month continues to be met but the monthly number of requests received remains higher than the number of requests closed. May numbers were 215 received, 209 closed. As a result, the OSD FOIA backlog continues to grow.
 - **FOIA Legislation:** The Senate version of the FOIA legislation that passed the House came up for vote but was blocked anonymously. Sen. Kyl was identified as the individual who blocked the vote because of concerns that DOJ had expressed about the legislation. The provision that would have prevented agencies from using certain exemptions to deny information if there was no response to the FOIA request after 20 days has been taken out of the Senate version.
- **Key FOIA activity projected for 06/04/07 – 06/08/07**
 - **FOIA Litigation:** No major releases anticipated.
 - **Other FOIA:** Release to 2 media requesters of Donald Rumsfeld's resignation letter scheduled, subject to review by ExecSec.



FOIA Update – 06/11/07

- **Key FOIA activity for 06/04/07 – 06/08/07**

- **FOIA Litigation:** DoD has two new FOIA lawsuits for non-response to requests. The first is from a law firm representing on a pro bono basis a group of 10 Guantanamo detainees. Combatant Status Review Tribunal and Administrative Review Board reports for the detainees were identified as responsive to the initial request and are currently being reviewed by DoD GC. The second complaint is from a collection of public interest groups suing the DoD, CIA, and other agencies for a lack of response to their request for information associated with the rendition and alleged secret detention of terrorist prisoners.
- **FOIA EO:** The GAO has initiated another review of agency implementation of the provisions of the FOIA Executive Order. The new audit will focus on the progress made by agencies in implementing their improvement plans and trends in agency backlogs as reflected in annual FOIA reports from 2002. The non-funding (as of now) of the initiative to reduce FOIA backlogs within DoD in FY 08 will likely be an issue in the GAO review.
- **Key FOIA activity projected for 06/11/07 – 06/15/07**
- **FOIA Litigation:** No major releases anticipated.



FOIA Update – 06/18/07

- **Key FOIA activity for 06/11/07 – 06/15/07**

- **FOIA Litigation:** No major releases
- **Other FOIA:** Redacted documents concerning detainee abuse against DoD personnel were re-posted on the FOIA website at the request of DoD GC in association with a Congressional request for documents.

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- **OSD Privacy:** The OSD Privacy Manager has been working with USD(P&R), DLA and the DISA COOP office on a number of issues concerning Privacy Act statements and proper designation of Privacy Act Systems Notices. Of noted significance is a DLA request for an OSD Privacy rep to be part of a working group looking into a GAO audit of the Transportation Subsidy Program and the abuse of Metro tickets issue.

- **Key FOIA activity projected for 06/18/07 – 06/23/07**

- **FOIA Litigation:** No major releases anticipated.
- **FOIA EO:** The GAO will hold an entrance interview on Monday June 18 for their review of agency implementation of the FOIA EO. This review differs from previous ones in that the information GAO is seeking concerns more specific analysis of oldest open requests, missed EO Plan milestones, and agency progress reducing backlogs.



FOIA Update – 06/25/07

- **Key FOIA activity for 06/18/07 – 06/22/07**

- **FOIA Litigation:** No major releases.
- **Other FOIA:** Release to Harpers magazine of previously released records associated with detainee abuse of military personnel at Guantanamo-possible future story in that periodical. Article in the New Yorker magazine on Major General Taguba will likely generate FOIA requests for high level DoD records referenced in the article.

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- **FOIA EO:** Representatives from DFOIPO and ESD met with GAO for an entrance meeting for the latest GAO review of agency implementation of the EO (Hot Item submitted).

- **Key FOIA activity projected for 06/25/07 – 06/29/07**

- **FOIA Litigation:** No major releases anticipated.
- **Other FOIA:** A Secretary Rumsfeld letter to the DoDIG concerning the Secretary's knowledge of how he learned of the death of Patrick Tillman will be tasked

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FOIA Update – 07/02/07

- **Key FOIA activity for 06/25/07 – 06/29/07**

- **FOIA Litigation:** No major releases.

- The ACLU has filed a new FOIA lawsuit against the DoD. The latest complaint is for non response of a 30 Apr 07 request for information associated with DoD use of National Security Letters. [REDACTED]

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- The DoD has 45 days to produce documents responsive to a request from an attorney representing a high value detainee. At the request of DoD GC, FOID is dedicating 2 personnel to review approximately 2000 pages of interrogation reports and other records pertaining to the detainee.

- **FOIA EO:** DOJ tasked offices that had not met stated 2006 EO milestones by Feb 2007 to prepare reports to the President's Management Council. DoD was not one of the agencies required to prepare a report.

- **Key FOIA activity projected for 07/02/07 – 07/06/07**

- **FOIA Litigation:** No major releases anticipated.

- **FOIA EO:** Submitted to DA&M an Action Memo to the DepSecDef requesting FY08 funding necessary to systematically reduce FOIA backlog across the DoD.



FOIA Update – 07/09/07

- **Key FOIA activity for 07/02/07 – 07/06/07**

- **FOIA Litigation:** No major releases.

- **Other FOIA:**

- OSD(PA) inquired about the status of the proposed release of Secretary Rumsfeld's resignation letter [REDACTED]

(b)(6)

- Review of FY 07 3rd quarter FOIA backlog statistics reveal similar closure rates to those of FY 06 with an average of 218 requests closed and 237 requests opened per month. The average number of requests received in a month for FY 07 3rd quarter (237) is higher than the average monthly figure for 2002-2005 (222) and continues the trend of receiving more requests the past two years.
 - FOID was asked to review a Privacy Advisory for a CPMS survey. FOID questioned that the survey appeared to solicit personal information and may require a Privacy Act System of Records Notice. FOID was told by CPMS that the OPM parent survey on which the DoD version was based had been initially determined by OPM not to be a Privacy Act system of records. [REDACTED]

(b)(5),(b)(6)

Key FOIA activity projected for 07/09/07 – 07/13/07

- **FOIA Litigation:** No major releases anticipated.



FOIA Update – 07/16/07

- **Key FOIA activity for 07/09/07 – 07/13/07**
 - **FOIA Litigation:** No major releases made.
 - **Other FOIA/Privacy Act Issues:**
 - The Initial Processing Branch is currently assisting OGC in the following FOIA litigations: the predatory lending practices lawsuit; the “National Security Letters” ACLU litigation; the new “ghost” detainee litigation; and, another detainee-related lawsuit involving ten detainees
 - P&R requested a Privacy Act review of a DoD organizational assessment tool and a proposed survey of service members and their family needs during deployment cycles that it is planning to launch in the very near future. The OSD/JS Privacy Act Program Officer is currently reviewing these projects for compliance with the Privacy Act.

Key FOIA activity projected for 07/16/07 – 07/20/07

- **FOIA Litigation:**
 - A release is anticipated in the predatory lending practices lawsuit.
 - A declaration will be filed in the Gerstein litigation, which involves information regarding the reporting/investigation of leaks of classified information



FOIA Update – 07/23/07

- **Key FOIA activity for 07/16/07 – 07/20/07**
 - **FOIA Litigation:** No releases.
 - **Other FOIA:**
 - DFOIPO met with a P&ED rep to discuss the applicability of a Lean Six Sigma (LSS) study of the DoD FOIA process to reinforce an Action Memo to the DSD for funding to reduce DoD FOIA backlog – per DA&M guidance.
 - OLC requested review of testimony from the DHS Chief Privacy Officer prior to the DHS official testifying on privacy issues before a House Subcommittee. The GAO had audited the DHS privacy program and a similar audit of the DoD Privacy program with Congressional interest is a possibility (Hot Item to be submitted via separate email).
 - SAIC issued a press release concerning the potential breach of TRICARE-originated personally identifying information of military personnel. SAIC is in the process of notifying the affected individuals of the potential identity theft. This press release is expected to generate media interest.
- **Key FOIA activity projected for 07/23/07 – 07/28/07**
 - **FOIA Litigation:** A final release is anticipated in the litigation concerning predatory lending practices against military personnel. The release will consist of emails associated with the report to Congress on the issue and will compliment a prior release of survey worksheets. No media coverage is expected.



FOIA Update – 07/30/07

- **Key FOIA activity for 07/23/07 – 07/27/07**

- **FOIA Litigation:** Final release made to the plaintiff in litigation concerning predatory lending practices against military personnel. FOID has been working directly with DOJ to facilitate this release. No significant media attention is expected.
- **Other FOIA:**
 - The NY Times indicated to DoD and DOJ a strong intent to sue for release of records associated with OSD(PA) briefings and other communications given to specific television media commentators (Hot Item submitted).
 - Documents posted on the DoD FOIA website concerning GTMO detainees are being used by the public sector and the DoD in a debate about the level of threat posed by the detainees (Hot Item submitted).
 - ESD prepared staff actions justifying FY 08 funding for the DoD to reduce FOIA backlogs and for FY 09 funding to staff the Defense Freedom of Information Policy Office.

- **Key FOIA activity projected for 07/30/07 – 08/03/07**

- **FOIA Litigation:** No significant releases scheduled.
- **Other FOIA:** Release scheduled to NY Times of OSD(PA) documents summarizing appearances of military media experts on television news shows. As discussed above, the Times intends to sue for records responsive to this request, and media coverage of this release is possible.
- **EO:** FOID will comply with a GAO request for documentation associated with the 10 oldest FOIA requests in the DoD. GAO is currently conducting a review of government agencies' implementation of the FOIA EO and is focusing on explanations of delay for the oldest requests¹.



FOIA Update – 08/06/07

- **Key FOIA activity for 07/30/07 – 08/03/07**

- **FOIA Litigation:** FOID signed a declaration explaining search parameters for responsive records for a FOIA litigation from a NY Post writer who asked for records associated with criminal investigations by DOJ concerning leaks of classified information. A release consisting of heavily redacted DoD documents originating with CIFA was also made to the plaintiff. The release may generate news stories.
- **Other FOIA:** Sen. John Kerry wrote to five agencies, including the AF, and asked them to report to his office on why they have FOIA backlogs (Hot Item submitted). A writer for the Washington Post contacted FOIA and USD(P) questioning the non-response to his request for USD(P) records concerning Operation Iraqi Freedom. (Hot Item submitted).
- **Executive Order:** In response to an ongoing GAO review of Federal Agencies' implementation of the EO, DFOIPO provided reference documents to GAO concerning the 10 oldest FOIA requests in the DoD. The documents forwarded to GAO provided explanations as to why the requests remain open.

- **Key FOIA activity projected for 08/06/07 – 08/10/07**

- **FOIA Litigation:** FOID is working with OSD GC and DOJ on a new litigation brought on by three humanitarian organizations for CIA, DoD, DHS and DOS records associated with unregistered or "ghost" detainees.



FOIA Update – 08/13/07

- **Key FOIA activity for 08/06/07 – 08/10/07**

- **FOIA Litigation:**

- The DoD has agreed to a stipulation order in the ACLU vs. CIA/DoD litigation concerning national security letters. According to the order, FOID will release documents by October 1.
- Documents were released to plaintiff's counsel in Slahi vs. DoD. Slahi, a high value detainee, requested and sued for documents on himself under the FOIA.

- **Other FOIA:**

- FOID made its 5th interim release to a reporter for the NY Times of documents related to the OSD (PA) briefings to military media analysts.
- OGC finished its final review of the annexes to the Taguba Report. These final annexes will be posted on the FOIA web site. Additionally, a number of backlogged FOIA requests for the Report were closed by this action.

- **Key FOIA activity projected for 08/13/07 – 08/17/07**

- **FOIA Litigation:** In Rayner vs. DoD (detainee litigation), FOID will release some documents to plaintiff by August 17th. These are JTF-GTMO originated documents that FOID must reprocess because of irregularities when initially processed by GTMO. Media interest unlikely.



FOIA Update – 08/20/07

- **Key FOIA activity for 08/13/07 – 08/17/07**
 - **FOIA Litigation:** No significant releases.
 - **Other FOIA:**
 - The Senate passed their version of the FOIA legislation. With the bill previously passing in the House, a final version is expected to be forwarded to the President for signature.
 - A copy of Secretary Rumsfeld's resignation letter was provided to the media outside of the FOIA and there were news stories stating that the DoD had answered previous FOIA requests for the letter with a no record response (Hot Item submitted).
 - A review of PBD 704 revealed that the Army, Navy, AF and O&M Defense-wide were directed to fund a total of \$14.5M in FY 08 for reduction of FOIA backlog. Chief, WHS/FMD to discuss the issue with DA&M (Hot Item submitted).
- **Key FOIA activity projected for 08/20/07 – 08/24/07**
 - **FOIA Litigation:** Interim releases scheduled for two ongoing FOIA litigations (Raynor & Slahi) concerning detainees. The releases consist of hundreds of pages of interrogation and intelligence reports concerning the detainees that are the subjects of the FOIA requests and may generate media coverage.



FOIA Update – 08/27/07

- **Key FOIA activity for 08/20/07 – 08/24/07**
 - **FOIA Litigation:** DOJ made an interim release of about 300 pages of redacted classified intelligence documents in the Slahi litigation concerning one detainee; possible media coverage. Continued FOIA litigation support provided to DoD GC through review of thousands of Guantanamo originated classified intelligence documents that are responsive to Slahi and one other litigation from law firms representing detainees.
 - **Other FOIA:** FOID provided an initial training class to new FOIA contractors for a new USD(P) effort to use 12 contractors to process FOIA actions to include backlogged requests within USD(P).
- **Key FOIA activity projected for 08/27/07 – 08/31/07**
 - **FOIA Litigation:** Further interim releases scheduled for ongoing FOIA litigations (Raynor & Slahi) concerning detainees.
 - **Other FOIA:** Release scheduled for ongoing NY Times request for documents associated with the OSD(PA) program to provide information to select media military analysts. The release consists of transcribed interviews with the selected media representatives of CSA General Casey and three other general officers; possible media coverage.



FOIA Update – 09/04/07

- **Key FOIA activity for 08/27/07 – 08/31/07**
 - **FOIA Litigation:** Redacted documents released and declaration signed by FOID for Gerstein litigation concerning investigations associated with leaks of classified information. No immediate media coverage expected. Release made (257 redacted pages) in the Slahi litigation concerning specific detainees. No media coverage expected.
 - **Other FOIA:** DFOIPO provided FOIA website information to ASD(NII) for the annual DoD E-Government Act Annual Report. FOID received feedback from OSD components of a tasking for privacy information from OASD(AT&L) (HOT ITEM submitted). DFOIPO tasked the DoD components to submit required data for the DoD annual FOIA report to DOJ.
- **Key FOIA activity projected for 09/04/07 – 09/07/07**
 - **FOIA Litigation:** Another release in the Slahi litigation expected as well as for the Raynor litigation concerning detainees.
 - **Other FOIA:** DoD working closely with DoD GC to facilitate a release to the AP of Administrative Review Board (ARB) documents concerning Guantanamo detainees. The AP had sued for the production of the initial ARB information and this release is hoped to prevent another litigation. The documents released to the AP and other previously released information on detainees will be posted on the FOIA website.¹



FOIA Update – 09/10/07

- **Key FOIA activity for 09/03/07 – 09/07/07**
 - **FOIA Litigation:** Another interim release of detainee related Intelligence files made in the Slahi litigation.
 - **Other FOIA:** Although not in litigation, there was a major release Friday to the AP of Guantanamo Administrative Review Board documents and other information concerning detainees. The information released to the AP along with other detainee related documents (to include complete sets of unclassified Combatant Status Review Tribunals) will be posted on the OSD FOIA website and be available for review by the public. News stories are expected from the AP and other news media which will likely focus on controversial releases such as detainee allegations of torture, lack of medical treatment and fears of detainees in returning to their native countries. DoD GC has coordinated this release with DOJ and OSD(PA) was briefed prior to the documents being posted on the website.
 - **Executive Order:** DOJ issued instructions on Sep 6, 2007 requiring federal agencies to establish additional FOIA backlog reduction goals for Fiscal years 2008-2010. The requirements are in addition to the initial provisions of the EO and must be established and posted on the agency's website by Nov. 1, 2007.
- **Key FOIA activity projected for 09/10/07 – 09/14/07**
 - **Executive Order:** DOJ will host a 13 Sep meeting of Agency Chief FOIA Officers and principal FOIA POCs to discuss the above new requirements and other EO issues.



FOIA Update – 09/17/07

- **Key FOIA activity for 09/10/07 – 09/14/07**
 - **FOIA Litigation:**
 - DoD sued by NY Times for not responding in full to request for information associated with briefings given to selected media analysts. FOID coordinating with DoD GC and OSD(PA).
 - Release of about 1300 pages of intelligence files made in Slahi litigation concerning a high level detainee. This release meets a court ordered deadline and no significant media coverage is expected.
 - **Other FOIA:** Multiple news stories were published, as anticipated, following release to AP and posting on FOIA website of detainee information. DA&M briefed on new GAO and DOJ FOIA reporting requirements concerning backlog reduction. DoD completion of backlog goals dependant on success of current funding efforts.
- **Key FOIA activity projected for 09/17/07 – 09/21/07**
 - **FOIA Litigation:** FOID coordinating with DoD GC to meet court ordered deadline of Oct 1 to produce documents responsive to ACLU litigation concerning National Security Letters. Meeting the deadline is dependant on review of responsive documents by USD(I), OSD(PA) and DoD intelligence components.



FOIA Update – 10/01/07

- **Key FOIA activity for 09/24/07 – 09/28/07**
 - **FOIA Litigation:** As requested by DOJ, FOID executed a declaration in the Slahi (a high visibility detainee) litigation. The declaration describes the sequence of events in the processing of documents responsive to the request.
 - **Other FOIA:**
 - DFOIPO responded to GAO request for more information on DoD efforts to reduce FOIA backlogs. As part of a current audit of agency FOIA programs, GAO asked all agencies to provide updated data on progress made in reducing backlogs and requested additional information from DoD on efforts to obtain funding and provide more resources for backlog reduction.
 - FOID made a release to CBS News of statistics concerning suicides in the military. Coordination between OSD(PA) and DMDC ensured that the most current information was released. CBS has been pushing FOID and OSD(PA) for a release and a media story is expected. The data will reveal a modest increase in suicides in recent years.
 - A major conference of government FOIA/Privacy Act personnel (ASAP) was held in the NCR. Issues discussed included the Controlled Unclassified Information (CUI – formerly FOUO) initiative and the pending FOIA legislation. DoD attendees also indicated a need for policy and guidance in processing Mandatory Declassification Review (MDR). MDR/FOIA interface is an emerging issue and DOJ is working it.
- **Key FOIA activity projected for 10/01/07 – 10/05/07**
 - **FOIA Litigation:** Another scheduled release to Slahi. Scheduled release to the ACLU in their litigation concerning National Security Letters. DoD will be releasing policy information and actual letters from the military services. Media coverage is possible.



FOIA Update – 10/09/07

- **Key FOIA activity for 10/01/07 – 10/05/07**
 - **FOIA Litigation:** Release made of Intel reports in Slahi litigation concerning a high level detainee. No media coverage expected. Major release made to the ACLU in their request for DoD documents associated with National Security Letters (NSLs). The release included redacted NSLs from the 3 services and policy documents concerning the issue. The ACLU has been reviewing the documents and media coverage is expected. FOID intends to put the released versions of the documents on the FOIA website next week.
 - **GAO Interest in FOIA EO:** As part of their ongoing review of agency implementation of the FOIA Executive Order, GAO asked DoD for proof of completion of a 2006 calendar year milestone documented in the annual FOIA report. The DoD had reported successful completion of a stated goal to submit a budget request by the end of 2006 for funding to reduce FOIA backlogs in DoD. In response to the GAO, DFOIPO forwarded the DA&M memo to the USD (Comptroller) dated Sep 18, 2006, Subject: "Over-guidance request: FY 08 Funding for DoD Freedom of Information Act (FOIA) Improvements in Response to Executive Order (EO) 13392". The GAO implied that Congress wanted documentation from Federal Agencies of completed EO milestones. This action reflects the high level of Congressional interest in FOIA oversight, and further scrutiny from GAO on FOIA programs is expected.
- **Key FOIA activity projected for 10/09/07 – 10/12/07**
 - **FOIA EO:** Responses due from DoD Components to DFOIPO tasking for backlog statistics to respond to DOJ requirement. Response due to AF FOIA policy office request for information associated with AF FOIA litigation with National Security Archive. DFOIPO has previously responded to AF OGC request for the same information. Will brief DA&M on this issue.



FOIA Update – 10/15/07

- **Key FOIA activity for 10/09/07 – 10/12/07**

- **FOIA Litigation:** The ACLU is suing DoD for records concerning civilian casualties in Iraq and Afghanistan. CENTCOM/JA sent a letter to the ACLU this past week explaining the complexities and difficulties conducting a search for documents in the field. Expect media coverage on this issue. Also, DoD recently was sued by a private citizen who did not get a response to her FOIA request. She is asking for the information concerning the loss of her security clearance. WHS/HRD is conducting the search for documents. DoD has now been sued at least 20 times so far in 2007. This volume of litigation is consistent with the past few years.
- **FOIA EO/Policy:** DFOIPO published policy guidance to ensure that DoD Component FOIA Web pages meet the requirements of the FOIA. This is a high interest item with the requester community, GAO, and Congress. DFOIPO will audit all DoD FOIA Web pages in January to assure compliance.

- **Key FOIA activity projected for 10/15/07 – 10/19/07**

- **FOIA:** FOLD will post on its Web site copies of redacted National Security Letters and related documents released to the Electronic Freedom Frontier in litigation.
- **FOIA EO:** DFOIPO will provide its response to DoJ tasking this week concerning backlog statistics. This tasking asked the Department to estimate the number of FOIA requests it will receive and close over the next three fiscal years, and to post this on our Website by November 1.



FOIA Update – 10/22/07

- **Key FOIA activity for 10/15/07 – 10/19/07**
 - **FOIA Litigation:** No major releases.
 - **OTHER FOIA/EO:**
 - Chief, DFOIPO attended DOJ Agency Chief FOIA Officer Conference - no major issues/concerns raised.
 - DFOIPO submitted estimated out-year DoD backlog numbers required by DOJ. Following DOJ review, the information will be posted on the FOIA Website.
 -
- **Key FOIA activity projected for 10/22/07 – 10/26/07**
 - **OTHER FOIA/EO:** DFOIPO will meet with Defense Security Service (DSS) FOIA Officer to discuss DSS backlog of over 10,000 FOIA/Privacy Act requests. The DSS backlog is the largest in the DoD.

(b)(5)



FOIA Update – 10/29/07

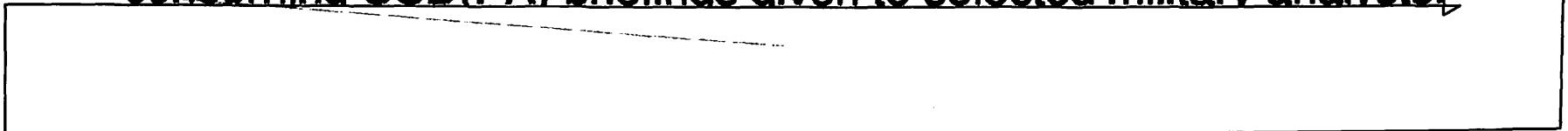
- **Key FOIA activity for 10/22/07 – 10/26/07**
 - **FOIA Litigation:** No major releases.
 - **OTHER FOIA/EO:**
 - DFOIPO met with the Defense Security Service (DSS) FOIA Officer and discussed the DSS backlog of over 11,000 FOIA/Privacy Act requests. DSS is drafting a memo to USD(I) asking for more resources to devote to its FOIA mission. Additionally, DFOIPO advised DSS that the FY 08 PBD 704 offset funding (DSS is documented as an intended funds recipient) was currently being worked within FMD and, if passed, could be applied toward obtaining additional resources.
 - FOID prepared an information paper for FMD that outlined issues associated with the offsets directed by PBD 704. Dir, FMD to reengage USD Comptroller staff seeking resolution of PBD 704 funding issues with ESD/FOID technical assistance as required.
- **Key FOIA activity projected for 10/29/07 – 11/02/07**
 - **FOIA Litigation:** No significant releases scheduled.



FOIA Update – 11/05/07

- **Key FOIA Activity for 10/29/07 – 11/02/07**
 - **FOIA Litigation:** No major releases. FOID met with OGC, DOJ, DHS and representatives from multiple DoD Components to discuss a FOIA litigation brought on by Amnesty International for records associated with the ghost detainee issue.
 - **Other FOIA/Privacy Act Issues:**
 - Verified that documents referenced in a Washington Post story on Secretary Rumsfeld's snowflakes were not released through a FOIA action.
 - Provided input to Chief, Defense Privacy Office on resource requirements for the OSD/JS Privacy Office.
- **Key FOIA Activity projected for 11/05/07 – 11/09/07**
 - **FOIA Litigation:** Release scheduled in NY Times litigation concerning OSD(PA) briefings given to selected military analysts.

(b)(5)





FOIA Update – 11/13/07

- **Key FOIA activity for 11/05/07 – 11/09/07**
 - **FOIA Litigation:** No major releases. A public interest organization that is a frequent FOIA litigant sued the Defense Information Systems Agency for White House emails and telephone logs maintained by the White House Communications Agency. Because White House records are not responsive to the FOIA, expect major political and legal interest in this case. OGC is aware.
 - **Other FOIA/EO:** None

- **Key FOIA activity projected for 11/13/07 – 11/16/07**
 - **FOIA Litigation:** Release was postponed until this week of documents concerning OSD(PA) briefings given to selected military analysts in NY Times litigation. As part of this action, some of Secretary Rumsfeld's snowflakes will be denied and others will be released. One snowflake mentioned by the Washington Post in its story on snowflakes is among those being released.



FOIA Update – 11/19/07

- **Key FOIA activity for 11/12/07 – 11/16/07**
 - **FOIA Litigation:** No significant releases.
 - **Other FOIA/EO:** Coordination ongoing with OSD(PA) and the Office of The Special Assistant to the Secretary of Defense on the release of snowflakes and other documents responsive to the FOIA litigation from the NY Times for OSD(PA) records associated with the OSD(PA) program to brief specific media analysts.
- **Key FOIA activity projected for 11/19/07 – 11/23/07**
 - **FOIA Litigation:** Release scheduled in the NY Times FOIA litigation of an OSD(PA) contract for web based media analysis support. The contract has been reviewed by OSD(PA) and the contractor and will be released in its entirety. Media coverage is likely.
 - **Other FOIA:** Documents responsive to a FOIA Appeal from Fox News for notes taken from 9/11 Commission testimony given by then CDR Phillpott concerning Able Danger will be denied release. Media coverage and/or subsequent FOIA litigation possible.



FOIA Update – 11/26/07

- **Key FOIA activity for 11/19/07 – 11/23/07**
 - **FOIA Litigation:**
 - Coordination still ongoing with the Special Assistant to the Secretary on the release of snowflakes and other documents responsive to the NY Times FOIA litigation concerning ASD(PA) briefings to military analysts.
 - The DoD has been named in two more FOIA litigations:
 - A complaint from two bioethics experts for non-response to their request for information associated with the participation of healthcare personnel in the interrogation of military prisoners and other detainees.
 - A complaint from an attorney for non-response to his request for information concerning a detainee who died in Guantanamo in June 2006.
- **Key FOIA activity projected for 11/26/07 – 11/30/07**
 - **FOIA Litigation:** Redacted statements from guards scheduled for release in litigation concerning Guantanamo detainee assaults and harassment against military personnel.
 - **Other FOIA:**
 - DoD GC scheduled to release a list of 38 detainees determined not to be enemy combatants by the Combatant Status Review Tribunals. DoD GC has advised ASD(PA) of the release. The list will be posted on the OSD FOIA Website.
 - The AP will be denied release of documents responsive to their request for the transfer of 14 high-level detainees to Guantanamo. The denial may generate media coverage.
 - DFOIPO will meet with GAO to discuss the latest GAO findings on government agency efforts to implement the FOIA EO and reduce FOIA backlogs.



FOIA Update – 12/03/07

- **Key FOIA activity for 11/26/07 – 11/30/07**
 - **FOIA Litigation:** As part of an ongoing FOIA litigation with the NY Times, 112 pages of documents (including 2 snowflakes) associated with OSD(PA) briefings given to selected military analysts were released following review by The Special Assistant to the Secretary.
 - **Other FOIA:**
 - DFOIPO met with GAO and discussed GAO findings for the DoD in their latest review of agency's implementation of the FOIA Executive Order. While GAO will report that DoD FOIA backlogs continue to grow there were no indications that GAO will make any recommendations for DoD in this review.
 - Denial response made to the AP for their request for documents concerning the transfer of 14 high-level detainees to Guantanamo.
 - The Washington Post advised OSD(PA) that there would be a story in Sunday's paper (12-2-07) concerning a released detainee and that the documents used for the story were released through FOIA litigation (Hot Item submitted).
- **Key FOIA activity projected for 12/03/07 – 12/07/07**
 - **FOIA Litigation:** FOI Division scheduled to make the following information available to the public on the FOIA website:
 - Documents associated with the Washington Post story on the released detainee.
 - The JTF-GTMO Camp Delta SOP concerning operational procedure for prison camps that was leaked and posted on the Internet.



FOIA Update – 12/10/07

- **Key FOIA activity for 12/03/07 – 12/07/07**
 - **FOIA Litigation:** No major releases.
 - **Proposed FOIA Legislation:** Senators Cornyn and Leahy have introduced a new Senate version of the proposed FOIA legislation that mirrors the House version. Full explanation to DA&M to be provided during FOIA Update scheduled 12-14-07.
 - **Other FOIA:** FOID met with WHS(APO) to discuss the ongoing proposal for a new FOIA contract that will address OSD/Joint Staff backlog reduction. The new contract will incorporate offset funds directed by PBD 704 and is envisioned to begin in April 2008.
- **Key FOIA activity projected for 12/10/07 – 12/14/07**
 - **FOIA Litigation:**
 - Final release scheduled for litigation concerning a detainee named Slahi. This will be the last of many releases associated with the litigation and is not expected to generate any immediate media attention.
 - The release by DoD GC to the ACLU of the Camp Delta SOP is scheduled for next week. Once it is verified that the ACLU has received the information, it will be posted on the publicly available FOIA website.
 - Final release scheduled to Landmark Legal Foundation of documents concerning detainee abuse of military personnel at Guantanamo. This release may generate media coverage on talk radio.
 - **Other FOIA:** ESD scheduled to meet with DA&M on Friday to discuss FOIA
legislation, a Mod 2 to the Improvement Plan, and execution of PBD 704.



FOIA Update – 12/17/07

- **Key FOIA activity for 12/10/07 – 12/14/07**
 - **FOIA Litigation:**
 - The DoD has been served with another FOIA lawsuit concerning Guantanamo detainees. A lawyer representing two detainees has sued over non-response to their FOIA request.
 - OGC made a major release of over 5,000 pages of intelligence and interrogation reports in the Slahi lawsuit concerning a single detainee. There will likely be media coverage if Slahi's attorney shares the information with the press
 - **Other FOIA:** The Washington Post reporter who has made requests for DoD GC information concerning the Special Inspector General for Iraq Reconstruction made multiple aggressive phone calls to FOID in attempts to obtain information on her requests. A related article appeared in the Friday Dec 14 edition of the Post and the newspaper may pursue FOIA litigation.
- **Key FOIA activity projected for 12/17/07 – 12/21/07**
 - **FOIA Litigation:** No major releases scheduled.
 - **Other FOIA:** Review of statements of Guantanamo military personnel abused by detainees scheduled for release. OGC review of proposed release revealed additional deletions required to ensure privacy of the Guantanamo guards and the detainees.

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**Washington Headquarters Services
Executive Services Directorate**

**DoD FOIA Program Update
07-12-07**

Freedom of Information Division

PURPOSE

To brief the DA&M on:

- **The Mod 2 to the EO Implementation Plan**
- **Results of the IPT on DoD-wide FOIA IT System**
- **OSD Privacy Program**

Mod 2 to DoD Implementation Plan

•Factors that caused modification of FOIA Implementation Plan

- Inability to obtain funding necessary to accomplish several milestones within 2 separate objectives in the Training and Resources/Backlog Improvement Areas.**
- Implementation of NSPS resulted in DFOIPO having to re-work procedures and milestones necessary to accomplish an objective within the Organizational Structure/Manning area.**
- DOJ advised that Mods to plans will not change the fact that original milestones were not met. Milestone “deficiencies” will be explained in the 2007 Annual FOIA Report due 1 Feb 08.**
- Signature package for Mod 2 forthcoming.**

DFOIPO IPT on DoD-Wide FOIA System

Objective of Study

- **Objective 3 in the Technology Improvement Area of the DoD FOIA Improvement Plan: Conduct a feasibility study for a DoD-wide electronic network to expedite FOIA processing.**

Facts/Observations

- **No single IT network for DoD FOIA Offices.**
- **DoD not using any medium to electronically transmit FOIA requests and documents between Components.**
- **DoD FOIA Offices utilize a variety of tracking tools from simple spreadsheet to sophisticated network systems.**
- **Some of these tracking systems are on classified networks.**

DFOIPO IPT on DoD-Wide FOIA System

Findings

- **Advantages of single DoD tracking system.**
 - **DFOIPO can ascertain status of any request in DoD.**
 - **Requesters can call one location to find status of request.**
- **Difficulties of single DoD tracking system.**
 - **Security issues concerning classification of different systems make information sharing impossible.**
 - **Migration of information from old to new systems would be time consuming and expensive.**
 - **Accuracy of system is dependent upon worldwide FOIA personnel accurately entering data.**
 - **Because of these difficulties, the new system would not be all-inclusive.**

DFOIPO IPT on DoD-Wide FOIA System

Findings

- Army developed in-house tracking system called FACTS.
- Defense Knowledge Online (DKO) has the capability for document sharing, as does DKO-S (up to SECRET).

Conclusion

- A single DoD-wide tracking system not feasible at this time. Additionally, there is no imposed requirement for it.

Recommendations

- Do not pursue comprehensive DoD-wide tracking system.
- Encourage Components to explore using FACTS.
- FOLD use DKO and DKO-S and share findings with DoD.

OSD Privacy Program

Factors

- **DPO – new Chief inbound**
- **DoDIG Report on Privacy**
- **Section 208 requirements of E-Gov Act**
- **May 07 OMB Memo**
- **Impact of DoD Privacy Survey**
- **OGC role in Privacy – Vahan filled this role**
- **Significantly increased visibility and importance of Privacy**

OSD Privacy Program

- **Historically a part-time duty in ESD Records Management; recently assigned to FOID to better address increased focus on Privacy**
- **Four personnel in FOID currently working OSD Privacy**
- **At least two Gov positions required for OSD Privacy**

OSD Privacy Program

Points for Consideration

- Privacy Offices under DA&M:
 - Separate DPO and OSD Privacy Office – the current structure
 - Consolidated DPO/OSD Privacy Office under the DFOIPO/FOID model
- Resource issues:
 - Neither Privacy Office is staffed adequately to do the job today
 - Full-time legal advisor – GC says Privacy not a common legal specialty – not easy to recruit



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Defense Freedom of Information

Policy Office

FOIA Update

9-12-07

Agenda

- **DOJ Memo Requiring Backlog Statistics**
- **New GAO Requirements For Backlog Data**
- **Ongoing Funding Initiatives**

New DOJ/OIP Requirements

- AG report to President on EO recommended:
 - Follow up meetings of Chief FOIA Officers and training for Public Liaison Officers
 - Continuation of Government wide technology initiative
 - Agencies with backlogs specify initiatives to reduce backlogs in FY 08 – FY10 and post them on their websites
- September 6 2007 DOJ memo to Agency Chief FOIA Officers issues requirements on above recommendations. Chief concern is backlog:
 - Agencies to complete uniform templates estimating backlog reduction goals for FY 08 – FY10.
 - Draft of goals due to DOJ by 19 Oct 07
 - Following DOJ review of goals, each agency to post the goals on their FOIA websites by 01 Nov 07
- DFOIPO forwarded DOJ memo to Components on 10 Sep 07
 - Big 17 advised that specific tasking for DOJ requirements is forthcoming
 - More immediate concern is GAO tasking

New GAO Requirements

- Three e-mails from GAO requesting additional backlog information to be provided to GAO by 28 Sep 07
- All agencies:
 - Summarize progress made on EO backlog initiatives since 2006 Annual Report (Feb 07) - to be addressed by DFOIPO
 - Define "start date" for computation of agency backlog data - to be addressed by DFOIPO
 - Provide GAO with number of backlogged requests as of September 14, 2007 - figures must be collected from DoD Components (DFOIPO tasked on 10 Sep 07)
- DoD only: Explain DoD reporting successfully meeting EO milestones:
 - "Determine manpower required to reduce backlogs in offices that have backlogs of over 50 requests"
 - "Fund additional FOIA personnel in 08 and beyond"
- DoD reduction of backlogs dependant on funding from PBD 704; will have to answer GAO with status of funding efforts

Ongoing Funding Initiatives

- **07** – Working proposal to use EOY 07 funds for FOIA in 08
 - A&PO can only use funds to extend existing contract
 - Potential use of GovWorks contract vehicle – more flexible
- **08** – PBD offset – \$14.5M for DoD-wide FOIA backlog initiative
 - Service funding vague; offset not moving from Service Comptrollers to FOI Staff; Services to fund COCOMs vague
 - \$6.4M funded for “O&M Defense Wide” – OSD & DoD Agencies
 - OSD piece \$928K – Clai Ellett working
 - Remainder of “O&M Defense Wide” \$6.4M in doubt but crucial for NSA, DIA and for DoD to meet stated goals
- **09** – No 08 funding for DFOIPO, but 09 (and beyond) proposal for \$1.072M UFR on track so far
 - DFOIPO needed for DoD oversight, policy, FOIA litigation, and appeals
 - Two separate issues here: DFOIPO funding and DoD backlog funding
- If initiatives not funded and managed correctly, DoD will miss milestones

4



**Washington Headquarters Services
Executive Services Directorate**

**FOIA Program Update
Freedom of Information Division**

12-18-07

PURPOSE

To brief the DA&M on:

- **FOIA legislation update**
- **Proposed Mod 2 to DoD FOIA Improvement Plan**
- **FOIA PBD 704 funding update**

FOIA Legislation Update

- **Proposal passed in the Senate after DOJ/Kyl compromises**
 - However, House Oversight & Government Reform Chair Resisted amendment
- **Senate passed new version Dec 14**
- **House may pass latest version this week**
- **Major Items affecting the DoD:**
 - Increase penalties on agencies that exceed the 20-day response provision
 - Create unfunded ombudsman and oversight office in NARA
 - FOIA attorney fees – Agencies will pay plaintiffs' attorneys' fees from appropriated agency funds
 - More extensive reporting for Annual FOIA Report which will require major re-tooling of DoD Component FOIA IT/case accountability systems
 - Will have to provide estimated dates of completion

Mod 2 to DoD FOIA Improvement Plan

- Mod 2 envisioned as PR vehicle to update public, GAO, and others on changes to EO implementation plan. DoD must still document to DOJ in FY 07 FOIA Annual Report any failures to reach milestones established in original plan. Mod 2 Areas of Improvement:
- **Organizational Structure and Manning** milestones revised to establish an end date for DoD Components to provide progress reports on implementation.
- **Standardized job series for FOIA personnel** milestones revised to more accurately accommodate coordination of NSPS issues with HRD.
- **Training** milestones associated with online training project deleted because in-house solutions were obtained and projected contract was not required.
- **Resources/Backlog** milestones revised to reflect:
 - submission of FOIA funding request by DA&M to DoD Comptroller
 - offsets directed by PBD 704 for FOIA backlogs
 - active monitoring of implementation of PBD 704
- Mod 2, as well as Mod 1 and original plan, all base backlog reduction on obtaining additional resources.

Need to publish Mod 2 by end 2007 with/without resolution of PBD 704 issues

FOIA Funding Update

- PBD 704 recap of issues
- Per discussion between Clai Ellett and Gretchen Anderson, USD Comptroller:
 - PBDs are not the normal method of enforcing compliance with a PBD
 - PBDs carry the force of the SecDef
 - SecDef's program designee is responsible to enforce compliance
- Immediate target/concern is to address FY 08 funding; same issues with FY 09

FY 08 Funding Issues	Course of Action	Remarks
Service funding (\$8.1M)	DA&M memo to Service Secretaries	Workable; supported by PBD 704; offsets directed
COCOM funding (\$1.8M imbedded in Service \$8.1M)	Not addressed in Ellett-Anderson discussion; could include in DA&M memo to Services	Maybe workable given Services received COCOM funds, although PBD does not specify this direct coverage; PBD support weak
Defense Agency funding (\$5.5M cited in \$6.4M O&M, D-W)	DA&M "to explain problem to Defense Agencies"	No directed offsets specified in PBD for O&M, D-W; solution needed for Defense Agencies
OSD/JS FOIA Office (\$.928M cited in \$6.4M O&M, D-W)	Dir WHS "to decide to fund now to prevent us appearing hypocritical"	Directed in current PBD 704 for FY 08 – FY 13

FOIA Funding Update Suggested Way Forward

- **Fund \$.928M for OSD/JS FOIA Office in FY 08**
 - Specifically directed/provided for in latest PBD 704
 - Addresses OSD/JS backlog – our backyard – also supports current DA&M Lean Six Sigma initiative
 - Will target most of DoD's oldest and most complicated cases
 - FOID/A&PO moving forward on new contract proposal
- **Engage the Defense Agencies to fund their portion of the remainder of \$6.4M in FY 08 and \$5.7M in FY 09 (O&M, D-W)**
 - IAW chart 5 COA, prepare DA&M memo, with USD(C) coordination, reminding and clarifying purpose of FY08 (and FY 09) PBD 704 direction
 - Work with OUSD(C) to ensure the necessary funding and clarity for funding in PBD 704 for FY 10 and beyond

**Talking Points for ASAP FOIA Luncheon
15Feb07**

- **Thanks to our host, Claire Shanley for bringing us together**
 - **Purpose today: share some perspectives on DoD's implementation of the President's EO (13392) of December 2005.**
-
- **Perspectives of a large agency: According to a recent GAO review, #4 in size behind VA, HHS, DHS**
 - **Receiving nearly 83k cases and processing over 79k per year**
 - **Highly decentralized operations across 17 components and over 600 FOIA offices worldwide ...to include combat zones in Iraq and Afghanistan...In fact, when one DoD component was asked to indicate any obstacles impeding FOIA processing they stated, "Unique location in Baghdad Iraq. Mail processing slow, slow IT connections, lack of fax capability and ground transportation is dangerous."**
 - **Implementation of the Executive Order and establishment of a Chief FOIA Officer has increased awareness and put more management attention on Freedom of Information issues**
 - **Most important point of departure for DoD was a survey of our FOIA community**
 - **Helped identify issues and established the basis for our improvement plan**
 - **Over the past year, DoD has focused on**
 - **Organizational structure and manning**
 - **Establishing our internal DoD organization for oversight of FOIA work**
 - **Confirming where FOIA work is being done in our various components and headquarters, and by whom**
 - **Establishing standardized job descriptions for FOIA personnel**

- **Training**
 - Establishing an online training capability for DoD FOIA
 - Establishing a program for resident DoD FOIA training
- **Challenges and opportunities in greater use of technology**
 - Making sure DoD components are aware of redaction software and other FOIA software products such as tracking systems...and encouraging their use
 - Established a working group to examine the applicability of DoD-wide IT systems to support FOIA operations
- **Source of backlogs: ~30 offices responsible for most of the backlog in DoD, and most of the backlogged cases are complex, involving classified information controlled by different agencies within DoD and/or across the Executive Branch**
- **Current and Future Challenges**
 - **Backlogs**
 - We have put more focused attention on the oldest cases
 - But the backlog continues to grow: from 15k at end '05 to 18k end '06
 - **Completing complex cases within the 20 day window required by law remains a challenge**
 - Fast tracking to litigation those cases that cannot be processed within 20 days is increasing overall FOIA costs
 - **Constrained budgets remain the norm, challenging our ability to bring resources to bear that would address the backlog and help us introduce available technology**
- **In sum, the current environment, and the one just over the horizon, pose significant challenges in four dimensions**
 - **Executive branch efforts to increase responsiveness**
 - **Potential legislative efforts to facilitate broader access**
 - **The growing complexity of cases for DoD, the national security community, and other Federal Agencies**
 - **The pressure to improve performance without increasing the resources we devote to this work.**