

Central Intelligence Agency

OCA FILE DDH



OCA 3873-88

Washington, D.C. 20505

18 OCT 1986

The Honorable Lee H. Hamilton
Chairman
Permanent Select Committee
on Intelligence
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The enclosed final report is submitted in compliance with the reporting requirements of the CIA Information Act of 1984. This report--due 15 October 1986--covers the six-month period from 15 March to 14 September 1986. We have also included data illustrating the results of our efforts over the entire two-year period.

This reporting period again showed a significant reduction in our backlog, a considerable improvement in our response time, and successful efforts to further refine our processing system. Although we are now approaching a true workload situation, we expect the downward trend in our backlog to continue as we work toward further improvement in our response time.

Sincerely,

[/s/ William F. Donnelly]

William F. Donnelly
Deputy Director
for
Administration

Enclosure

Central Intelligence Agency



Washington, D. C. 20505

The Honorable Jack Brooks
Chairman
Committee on Government Operations
House of Representatives
Washington, DC 20515

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Washington, D.C. 20505

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Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

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Washington, D.C. 20505

13 OCT 1986

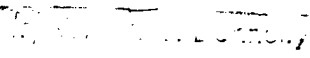
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Deputy Director
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Enclosure

Fourth and Final Report on FOIA Processing

This is our fourth and final report required by the CIA Information Act of 1984 on the processing of requests submitted to the Agency under the Freedom of Information Act. We are so proud of our achievements during the past two years that we are taking the liberty of summarizing in this last report our entire two-year effort.

During Congressional considerations of the CIA Information Act, Agency management stressed the importance of the relief sought; in turn, the Agency made rather specific commitments concerning the effort the Agency would make to improve its FOIA processing record, especially to reduce the long-standing backlog and response time. Upon enactment of the CIA Information Act of 1984, our Director of Information Services (D/OIS), as program manager, instituted a series of actions that were aimed at fulfilling the serious commitments made to the Congress. These actions included the appointment of a task force to implement the portion of the Information Act that dealt with designation of operational files by the Director of Central Intelligence and discussions with staffs of both Congressional oversight committees. In addition, an Inter-Directorate Advisory Group was established. Chaired by D/OIS, the group consisted of senior officials from throughout the Agency who carried some program responsibility for FOIA matters. This served the purpose of sharing information as well as ensuring that all participants worked together in fulfilling commitments made to the Congress. The Advisory Group will continue to exist. Other actions included reorganization of the Information-Privacy Division, purchase of additional equipment, and assignment of additional staff.

Our record shows that our backlog has been reduced by 1750 cases. The number of remaining cases received prior to 1980 has been reduced from 178 to 47. Our response time on new cases has improved to the point where many cases are now completed in a matter of weeks, some within a matter of days. We have maintained our manpower commitment to FOIA at the same level as reported in the 1984 annual report, and we have allocated a sizeable expenditure of funds for more up-to-date equipment, which will continue to help us improve our efficiency beyond the required reporting period.

We believe that this final report will demonstrate that the Agency has more than fulfilled its commitment to the Congress, that it has taken very seriously its responsibilities under the law, and that significant progress has been achieved during the past two years. We will work as hard in the future as we have in the past two years to ensure a timely response to requests.

Measures to Improve Processing

Initiatives begun during earlier reporting periods continue in effect throughout the Agency to improve the efficiency of our FOIA processing. Rehired annuitants are being used extensively

because of their special expertise in various fields, and over-time continues to be used to prevent the development of lengthy processing queues.

In the Coordinator's office, the shelf review of all open cases continues to be productive. This involves a thorough review of each case, a comparison of the file with the information in our data base, corrections to the data base where necessary, and phone calls or memoranda as appropriate to move the case along. The Coordinator's office has also taken over from the Office of Training and Education the running of the FOIA Seminar, our principal vehicle for training of personnel involved in FOIA processing. In addition, the Coordinator's office has begun to provide specially tailored "mini-seminars" for individual components to address their own particular needs. Several problems with the data base used for tracking cases have been identified, and the assistance of programmers has now been obtained to study these problems in an effort to eliminate the need for some manual backup record keeping. For the future, an entirely new, more up-to-date data base is being designed using IBM PCs linked to the mainframe in our computer center.

Outside the Coordinator's office, initiatives toward more efficient processing continue. Within the Directorate of Administration, the Records Management Officers of each component have been designated as the focal point for all searches, and this directorate has been especially forthcoming in helping the Coordinator's office identify components in need of training. An increasing use of word processors has enhanced this directorate's efficiency.

The Directorate of Intelligence has added a full-time clerical to the Information Review Officer's staff, thus speeding up the processing of cases assigned to that directorate.

The Directorate of Operations has instituted a new tracking system for cases assigned to that directorate that gives management personnel a more positive control over cases in process, more flexibility in distributing the workload, and greater ability to project completion dates.

The Directorate of Science and Technology has established a case tracking system using word processors. Cases assigned to that directorate can now be controlled and monitored more efficiently.

The Office of General Counsel has added a full-time staff professional to its FOIA personnel.

Budgetary and Personnel Allocations

As mentioned in the three earlier semi-annual reports, Agency personnel handling Freedom of Information Act (FOIA) requests also process Privacy Act (PA) and Executive Order 12356 Mandatory Review (EO) requests. Budgetary and personnel allocations for FOIA,

therefore, will again be estimated on the basis of FOIA's percentage of our total workload. FOIA requests received thus far this year have constituted 48% of our workload, while PA and EO requests have made up 52%.

The estimated expenditure for personnel during this reporting period is \$1.9 million. This figure is calculated by the same formula used for the 1985 annual report, based on an average professional grade of GS-12/7 and an average non-professional grade of GS-07/6. Since FOIA requests made up 48% of our workload, the estimated personnel expenditure for processing FOIA requests was \$.9 million.

During this reporting period, 115 Agency employees were primarily or entirely tasked with processing FOIA/PA/EO requests. Seventy-four of these are full-time staff employees; 18 are part-time staff, and 23 are rehired annuitants working two or three days a week. The number of full-time staff employees is somewhat lower than previously reported, but this is a temporary condition. Vacancy notices are circulating, and the positions will be filled through reassignment of qualified personnel. In the meantime, overtime has been used to keep the work flowing normally and to prevent backups from developing. Thus, even with summer vacations taking their usual large bite out of our manpower input--as is normally reflected at this time of year--our manpower figures converted to manyears is 113. We expect that the yearend figure will be about the same as that reported in the 1984 annual report, 114 manyears. As can be seen from the above, we have kept our commitment to Congress that passage of the CIA Information Act would not result in a reduction of personnel devoted to FOIA processing, and we continue to look for ways of using this manpower more efficiently.

Workload Trends

Despite the fact that incoming requests are increasing, we have been able to maintain a steady decrease in our total backlog. This accomplishment has not gone unnoticed, even at the highest levels of the Agency. Director Casey, himself, recently acknowledged this accomplishment with a congratulatory letter. The downward trend during this reporting period can be seen by the following table:

	<u>15 Mar 86 Backlog</u>	<u>Cases Opened</u>	<u>Cases Closed</u>	<u>14 Sept 86 Backlog</u>	<u>Net Reduction</u>
Total	1514	1556	1786	1284	230
FOIA	877	724	908	693	184

The reduction of open FOIA cases during this six-month period from 877 to 693 represents a decrease of 21% since 15 March 1986, and a total reduction of 65% since October 1984 when the CIA Information Act was passed. A reduction in PA and EO cases has also occurred--a modest 7% for the current reporting period but 45% overall. Since PA and EO cases are not affected by the file

exemptions permitted under the CIA Information Act, the reduction in these workloads is illustrative of the overall efficiency that has been achieved in processing.

The same table used above, expanded to include the full two year period, shows the workload over those two years and the net result:

	<u>15 Oct 84 Backlog</u>	<u>Cases Opened</u>	<u>Cases Closed</u>	<u>14 Sept 86 Backlog</u>	<u>Net Reduction</u>
Total	3034	5575	7325	1284	1750
FOIA	1967	2664	3938	693	1274

The reduction in our total and FOIA backlog over the two year period represents a 58% overall reduction and a 65% reduction in FOIA cases.

Recapping some of the statistics from our previous reports, the steady reduction of the backlog through the four reporting periods can be seen clearly:

	<u>15 Oct 84</u>	<u>14 Mar 85</u>	<u>14 Sep 85</u>	<u>14 Mar 86</u>	<u>14 Sep 86</u>
Total	3034	2642	2055	1514	1284
FOIA	1967	1638	1266	877	693

We continue to count as a significant success the reduction in the number of open cases received prior to 1980. In October 1984 there were 178 of these (119 FOIA, 58 PA, and 1 EO). We have closed a total of 131, bringing our number of pre-1980 cases to 47 (37 FOIA, 10 PA, and no EO cases). Some of these have been awaiting coordinations from other agencies, and our vigorous efforts to obtain their responses have resulted in the completion of most of the cases awaiting other agency action. Most of the open pre-1980 cases, however, have been stalled by the massive review effort involved. The review of a body of material on a single subject frequently encompasses a number of individual requests. The component most burdened by these massive, complex cases has been assigning additional reviewers to each project as personnel become available, and we hope to get at least one of these projects completed by the end of the year.

Response Time

One principal concern of Congress when considering the passage of the CIA Information Act was that the Act should have some favorable impact on our FOIA response time--and indeed it has had. This reporting period has seen another reduction in the median response time, from 5.7 months as reported in April of this year to 3.4 months. A comparison with our response time as of 15 October 1984 is not possible, since we began our reporting using the mean average. It was at the time of the second semi-annual report that we realized the distortion this method was introducing and began using the median. Our baseline for overall comparison

is, therefore, the 9.2 months reported in October 1985. The response time of 3.4 months reported above represents a significant reduction in only a year and a half.

Future Prospects

We would like to assure the members of Congress that we have every intention of continuing these efforts, even though the semi-annual reporting required by the Act ends with this report. In fact, looking for better and more expeditious ways of doing our job has become a habit with the personnel involved with FOIA. Although we have not spent any large sums on equipment during this reporting period, we have allocated in excess of \$200,000 for this purpose over the past two years. Our future plans include the purchase of "state-of-the-art" data processing equipment for the personnel handling our collection of previously released documents. As this collection grows, it has become increasingly useful in servicing new requests and has been a significant factor in the improvement of our response time. It is because of this collection of material that some requests can now be answered in just a week or two. With the new equipment we are considering, previously released documents could be subjected to a full text search and retrieved more rapidly.

Passage of the CIA Information Act has produced all the beneficial results anticipated during its debate. The public is getting no less information than before, but, with the improvement in our response time, the information is being made available faster. The Agency is no longer burdened with the review of operational files, which were known to contain no releasable information. Finally, we believe the Act has had a favorable impact on our overall collection effort, since our sources of information no longer need fear the inadvertent release of operational information through the FOIA process. We greatly appreciate the consideration Congress showed in enactment of this legislation, and we assure you of our continuing efforts on behalf of the requesting public.

Central Intelligence Agency



Washington, D.C. 20505

86-0697

09 APR 1986

The Honorable Strom Thurmond
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The enclosed report is submitted in compliance with the reporting requirements of the CIA Information Act of 1984. This report--due 15 April 1986--covers the six-month period from 15 September 1985 to 14 March 1986.

This reporting period again showed a significant reduction in our backlog, a considerable improvement in our response time, and successful efforts to further refine our processing system.

We are especially pleased with the further improvement in our median response time from 9.2 months to 5.7 months. Much of this improvement is directly attributable to the CIA Information Act, allowing us to provide a faster response on requests involving exempt files. The continued downward trend in our backlog is also an accomplishment in which we take considerable satisfaction. In fact, as of this date our total backlog has fallen below the 1514 cases mentioned in this report and now stands at 1478 cases. The prospects for continued progress are very good and are viewed enthusiastically by our personnel responsible for processing FOIA cases.

Sincerely,

[Redacted signature box]

Richard J. Kerr
Deputy Director
for
Administration

Enclosure

STAT

Central Intelligence Agency



Washington, D.C. 20505

86-0697

U.S. APR 1986

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CENTRAL INTELLIGENCE AGENCY



Washington, D.C. 20505

86-0697

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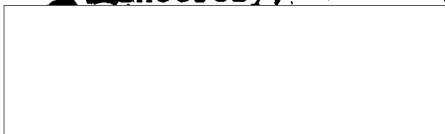
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Washington, D.C. 20505

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Enclosure

Third Report on FOIA Processing

Measures to Improve Processing

During this reporting period the Agency has concentrated its efforts on "fine tuning" measures previously initiated in earlier reporting periods, improving communications among personnel involved in processing information requests, completing as many of the old cases as possible, and, in general, making our handling of all cases more efficient and responsive to the requesters.

The partial reorganization of the Coordinator's staff, reported in October, the cross-training of personnel, the renovation of its office space, and the purchase of new equipment have all contributed to greater efficiency and responsiveness. The last three computer terminals were recently installed, giving the Coordinator's staff ready access to tracking and status information. The Associate Coordinator has been scheduling regular visits with the various components in an effort to resolve problems, effect internal coordinations, and keep cases moving steadily through the system. In addition, the Coordinator has established a regular monthly meeting with the directorate Information Review Officers to discuss issues, concerns, and problems of a common nature within and outside the Agency to insure uniformity and promptness of response. Particular emphasis has been placed on completion of a number of very complex cases that had been awaiting coordination between components or were delayed by the massive review effort involved.

Overtime continues to be used as needed throughout the Agency to prevent processing queues from increasing.

Budgetary and Personnel Allocations

Since Agency personnel handling Freedom of Information Act (FOIA) requests also process Privacy Act (PA) and Executive Order Mandatory Review requests (EO), budgetary and personnel allocations will again be estimated on the basis of FOIA's percentage of our total workload. FOIA requests received thus far this year have constituted 50.4% of our workload, while Privacy and Mandatory Review requests have made up 43.8% and 5.8% respectively.

There are 121 Agency employees primarily or entirely tasked with processing FOIA/PA/EO requests. Eighty-two of these are full-time staff employees; 18 are part-time staff, and 21 are rehired annuitants working two or three days a week. As is normal for this time of year, our total FOIA/PA/EO manhours converted to manyears--123--is running higher than recent year-end figures because summer vacations have not yet taken their toll. The estimated expenditure for personnel during this reporting period is \$2.08 million. This figure is calculated by the same formula used for the 1985 annual report to Congress, based on an average professional grade of GS-12/7 and an average non-professional grade of GS-07/6. Since FOIA requests made up 50.4% of our workload, the estimated personnel expenditure for FOIA processing was \$1.04 million.

Workload Trends

The continued reduction of our total FOIA/PA/EO backlog is a source of great satisfaction to those involved with processing these cases, and the acknowledgment of their success by senior Agency officials and others has been a morale-enhancing factor and a source of pride. This reporting period has shown yet another significant reduction in both our overall backlog and the FOIA backlog as the following statistics demonstrate:

	<u>15 Sept 1985 Backlog</u>	<u>Cases Opened</u>	<u>Cases Closed</u>	<u>14 Mar 86 Backlog</u>	<u>Net Reduction</u>
Total	2055	1359	1900	1514	541
FOIA	1266	693	1082	877	389

The reduction of FOIA cases during this six-month period from 1266 to 877 represents a decrease of 31% since 15 October 1985, and a total reduction of 50% since October 1984, when the CIA Information Act was enacted. A sizable reduction in the PA and EO cases has also occurred--19% for the current reporting period and 40% overall. The number of incoming requests remains at about the same level as reported for the 1984 and 1985 calendar years--2800 and 2804 respectively.

Among our most successful efforts during this reporting period has been the completion of as many large, complex old cases as possible. Our backlog at the beginning of this reporting period included 112 cases received prior to 1980 (74 FOIA, 37 PA, and 1 EO). As mentioned earlier, these had become stalled by the massive review effort required or sidetracked awaiting multiple coordinations, either internally or with other agencies. We have made a concerted effort to move these cases and have succeeded in closing out 41 of them, or 36% (25 FOIA and 16 PA). Most of these cases involve the review of three to eight linear feet of material, much of which has to be coordinated with several other components or agencies.

Response Time

Another significant success since the last semi-annual report has been the improvement in our response time. During this six-month period the median response time has been reduced from 9.2 months to 5.7 months. In other words, 50% of the 1082 FOIA cases closed during this reporting period were completed in 5.7 months or less, while the other 50% required 5.7 months or more. We expected some dramatic improvement in this regard as the older cases were closed out, but this figure surpasses even our most optimistic expectations. The key to further improvement is a continuation of our concerted effort to make our workload more current. Since these older cases remain part of our backlog, in most instances because of their volume and the massive review effort involved, they tend to impede our response time by the number of manhours they require. Their closure does more than reduce the backlog in that it frees personnel for more current efforts.

Future Prospects

We are indeed pleased to be able to report the considerable success we have had thus far in reducing our backlog, completion of older cases, and improvement in our response time. We expect, and will work diligently toward, continued improvement in these areas. It is not inconceivable that the backlog could be approaching the 1100 mark by October, although we expect that at some point, given little variation in the number of incoming requests, we will reach an equilibrium where our backlog will become a true current workload and, therefore, not likely to vary greatly in either direction.

Our major emphasis during the coming reporting period will concern the further refining of our processing procedures and, perhaps, studying the possibility of shifting some personnel from phases of the processing where the workload is becoming lighter to those where the workload is increasing.

Central Intelligence Agency

85-1273/1



Washington, D. C. 20505

OCT 11 1 55 PM '85

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Chairman
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The period was highlighted by a significant reduction in the backlog, a marked improvement in the response time (when discounting old cases), and initiatives to improve the number and quality of personnel, the work environment, the organizational structure, and the processing system.

We are extremely pleased with the significant progress made during the reporting period, especially with the unprecedented reduction in our backlog of cases. In fact, as of this date our total backlog has fallen even further and now stands at 1,967 cases. The prospects for continued and even greater progress excites us all, especially our personnel responsible for processing FOIA cases.

Sincerely,

/s/ Harry E. Fitzwater

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Enclosure

Second Report on FOIA Processing

Measures to Improve Processing

During this reporting period, the Agency has continued its efforts to improve its processing of FOIA requests. Within the Information and Privacy Division of the Office of Information Services (IPD/OIS)--the Coordinator's staff--the following initiatives were undertaken.

--Two more rehired annuitants were brought on as FOIA case officers and assigned to work unusually large FOIA cases. One began work in April and the other in August. Following a period of work on the easier cases under the tutelage of senior staff case officers, both are now ready to begin work as a team on older, more complex cases. IPD now has two teams of two rehired annuitants each available to finalize large FOIA cases. These annuitants and the team approach have already closed several large, complicated cases, and more of the same is expected.

--IPD's final two word processors have arrived. One is operational and has been assigned to the Appeals and Litigation Branch to speed up their correspondence with requesters. The other will be assigned to a staff case officer who is now sharing a word processor with another officer. Hook-up awaits the installation of cables, which will take place this fall. All staff case officers will then have their own word processors, which will speed correspondence with requesters. Two of the final five computer terminals have been received and installed, thus speeding up the work of the newly formed Support Services Branch. The remaining three terminals should arrive and become operational within the next few months. This will mean that all processing and support personnel have access to computer terminals which in turn will greatly facilitate the processing of cases.

--The IPD office space renovation is essentially complete. One object of the renovation was to move the Appeals and Litigation Branch into the same office space as the rest of the division. This has occurred, and the resulting improvement in communication among the three branches is paying significant dividends.

Despite the confusion, noise, dust, and dislocation resulting from renovation of the IPD office space, the work of the division was not disrupted, as evidenced by the response-time and workload results, and the net impact of these renovations and relocations is to reduce many of the physical impediments previously affecting our overall efficiency.

--Overtime continues to be used to prevent bottlenecks from developing in various stages of case processing within IPD. The division's queue of cases awaiting final response to the requester amounts to no more than two days' work at any given time.

--The new Support Services Branch is functioning smoothly and has proved to be a great improvement over the previous structure. This newly formed branch consolidates all processing-support functions within a single organizational entity, thus allowing management and chain-of-command concepts to be applied more effectively to the processing of FOIA cases. It has been especially effective in tracking cases to ensure that action continues to be taken and that none is sidetracked or lost.

--Conferences with directorate Information Review Officers (IROs)--and the joint initiatives these meetings have produced--have resulted in the completion of a large number of unusually complicated old cases that have been choking the system and delaying the processing of simpler cases which could otherwise be processed in a short period of time. These meetings have also served as a forum for discussion of processing procedures and any other problems that arise. The net result has been improvement in the processing of cases and a greater understanding and appreciation of processing issues unique to particular components.

--The position of Deputy Chief of IPD has been upgraded along with the designation of the incumbent as Associate Information and Privacy Coordinator. This gives the Deputy Chief increased authority in dealing with FOIA personnel throughout the Agency and provides IPD with a second senior officer directly responsible for the management of the Agency's FOIA program. This has also improved the management of the division staff personnel and their workload.

Other components of the Agency have taken steps to improve their processing as well:

- Within the Directorate of Administration several steps have been taken to improve processing. Additional secretarial help has been assigned to the IRO and increased use has been made of an automated log to track cases. The Office of Security has maintained its FOIA personnel level.
- The Office of the General Counsel has increased the personnel primarily engaged in FOIA processing by one part-time paralegal. In addition, an attorney who had partial responsibility for FOIA cases now devotes substantially more of his time to FOIA.
- The Directorate of Intelligence has added one full-time staff employee to its FOIA processing staff.
- The Directorate of Science and Technology, with the lightest case load of the four directorates, has added no new full-time personnel, but more personnel are assigned FOIA responsibilities on an ad hoc basis as the requirements levied on offices within that directorate dictate. This directorate has also made a special effort to complete its older cases and has asked IPD to alert the directorate IRO to any cases remaining open because of a lack of response from that directorate. Any such cases identified are then given special attention so that a final response to the requester can be made in the shortest possible time.
- The Directorate of Operations maintained its level of personnel primarily engaged in FOIA processing.

Budgetary and Personnel Allocations

As explained in our 15 April 1985 report, the funds, personnel, and equipment devoted to processing FOIA requests are necessarily an approximation based on the percentage of the workload made up of FOIA cases, since the personnel working on FOIA cases also process Privacy Act (PA) and Executive Order Mandatory Review (EO) requests. Thus far this year FOIA requests have constituted 51.3% of the requests received, while PA and EO requests amounted to 38.3% and 10.4% respectively.

There are 126 Agency employees primarily or entirely tasked with processing FOIA/PA/EO requests. Eighty-seven of these are full-time staff employees, 18 are part-time staff, and 21 are rehired annuitants working two or three days a week. Our total

FOIA/PA/EO manhours converted to manyears thus far this year would be 115, about the same as the 114 manyears reported for 1984. This is down somewhat from the April report, as expected, because of summer vacations. The estimated expenditure for personnel is \$1.73 million. This figure is calculated by the same formula used for our annual reports to Congress, based on an average professional grade of GS-12/1 and an average clerical grade of GS-06/1 for FOIA personnel. Based on the workload percentages noted above, personnel expenditures for FOIA amounted to \$885,754. An additional \$157,100 was spent on office renovation and the acquisition of furniture, word processors, and computer terminals.

Workload Trends

The file designations mandated by the CIA Information Act were in effect throughout this reporting period, but are just now beginning to show their effect on our FOIA workload, primarily in the form of reduced processing time for new cases. We expect the number of such cases to increase dramatically during the next reporting period as we close out even more of the large backlog of old cases opened prior to passage of the CIA Information Act. Even though the file designations are retroactive, a decision was made to continue processing cases that were substantially completed at the time the files were officially designated. This kept those requests that were almost ready for final response moving toward that goal.

The overall workload figures for the reporting period are as follows:

	<u>15 Mar 1985 Backlog</u>	<u>Cases Opened</u>	<u>Cases Closed</u>	<u>14 Sept 1985 Backlog</u>	<u>Net Reduction</u>
Total Backlog	2,642	1,425	2,012	2,055	587
FOIA Backlog	1,638	696	1,068	1,266	372

The reduction of the FOIA case backlog during this reporting period from 1,638 to 1,266--a reduction of 372 cases--represents a decrease of about 23% in our FOIA cases since 15 March, and a total reduction thus far of 36% since October 1984, the date the CIA Information Act became law. (A comparable reduction of PA and EO cases has also occurred--21% for the current reporting period and 26% since October 1984.) Inasmuch as requests received during this reporting period increased, we view the backlog reduction as an achievement of the highest order. We hope to reduce it even further.

Response Time

In the 15 April report, we reported an average response time of 14.5 months for the 880 FOIA cases completed during the 15 September-14 March reporting period. We believe that the average number of months required to process the 1,068 FOIA cases completed during the 15 March-14 September reporting period is misleading. Many of the cases completed during this period were several years old. While we are pleased to see these old, rather complex cases make their way through the review/coordination process, the length of time these have taken distorts the average response time. For this reason we regard the median as a more representative measure of response time. The median response time was 9.2 months for the 1,068 FOIA cases completed during this reporting period. This means that 50% or 534 of the 1,068 FOIA cases closed during this reporting period took 9.2 months or longer to complete, while the remaining 50% or 534 cases closed took 9.2 months or less to complete. The mean or average response time for these 1,068 cases was 15.5 months. The discrepancy between the mean response time of 15.5 months and the median response time of only 9.2 months illustrates clearly the distortion in the response-time measure produced by our special efforts to clear old cases. More importantly, it shows how dramatically the response time can improve once the backlog of old cases is eliminated. This reduction in response time is most encouraging, and should show even more dramatic improvement in the next reporting period. We believe that is clearly what Congress intended when it enacted the new legislation.

Future Prospects

Our most spectacular success during this reporting period has been the steady decline in our backlog of cases. We expect this decline to continue and our overall backlog (FOIA, PA, and EO cases) to fall to well below 2,000 cases by the end of the third reporting period.

The backlog reduction alone will further improve our response time, especially the closing out of older cases. As these are completed, personnel who have been reviewing and coordinating mounds of documents containing essentially no releasable information will be freed to work on more current

cases. Furthermore, as our workload decreases, thus resulting in a lighter case load for each case officer, these officers will be able to devote more time and attention to monitoring the progress of current cases through the system, thus ensuring that the processing of each case moves steadily forward with no unnecessary delay. Continuous attention to each case as it moves through the processing system is yet another initiative planned by IPD to speed the processing of cases and reduce overall response time even further.

Another activity that is already affecting our response time favorably is the increase in our collection of material previously released under FOIA. This collection is managed and maintained by our newly formed Support Services Branch, and many new FOIA requests can be serviced directly on a nearly overnight basis from this collection. This means a faster response for many requesters without the time and expense of additional records search and review. As this collection expands, more requests can be completed in this way. We will be looking into newer technology as a means of making this system more responsive, and plans have already been made to add a contract librarian/indexer to our staff so that the collection of previously released materials can be organized and structured so as to be searchable in response to a wider variety of FOIA requests.

Central Intelligence Agency

DD/A Registry
85-1273



Washington, D.C. 20505

9 APR 1985

The Honorable Dave Durenberger
Chairman
Select Committee on Intelligence
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The enclosed report is submitted in compliance with the reporting requirements of the CIA Information Act of 1984. By agreement between our Office of Legislative Liaison and staff members of your committee and the House Permanent Select Committee on Intelligence, this initial report--due 15 April 1985--covers a five-month period in order to allow time for developing statistical data necessary for producing the report. Subsequent reports, due 15 October 1985, 15 April 1986, and 15 October 1986, will cover a full six months each.

Personnel of this Agency who are working on FOIA requests are making a strong and conscientious effort to comply with the Director's commitment to Congress. The results of their efforts thus far are encouraging and we are optimistic that our next report to you will show even more progress.

Sincerely,

[Redacted Signature]

Harry E. Fitzwater
Deputy Director
for
Administration

Enclosure

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Central Intelligence Agency

DD/A Registry

85-1273



Washington, D.C. 20505

9 APR 1985

The Honorable Jack Brooks
Chairman
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The enclosed report is submitted in compliance with the reporting requirements of the CIA Information Act of 1984. By agreement between our Office of Legislative Liaison and committee staff members of Senate Select Committee on Intelligence and House Permanent Select Committee on Intelligence, this initial report--due 15 April 1985--covers a five-month period in order to allow time for developing statistical data necessary for producing the report. Subsequent reports, due 15 October 1985, 15 April 1986, and 15 October 1986, will cover a full six months each.

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Sincerely,



Harry E. Fitzwater
Deputy Director
for
Administration

Enclosure

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Central Intelligence Agency

DDA Registry

85-1273



Washington, D. C. 20505

5 APR 1985

The Honorable Strom Thurmond
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The enclosed report is submitted in compliance with the reporting requirements of the CIA Information Act of 1984. By agreement between our Office of Legislative Liaison and committee staff members of the Senate Select Committee on Intelligence and House Permanent Select Committee on Intelligence, this initial report--due 15 April 1985--covers a five-month period in order to allow time for developing statistical data necessary for producing the report. Subsequent reports, due 15 October 1985, 15 April 1986, and 15 October 1986, will cover a full six months each.

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Sincerely,



Harry E. Fitzwater
Deputy Director
for
Administration

Enclosure

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Central Intelligence Agency



Washington, D.C. 20505

DD Form 1
85-1275

9 APR 1985

The Honorable Lee H. Hamilton
Chairman
Permanent Select Committee
on Intelligence
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The enclosed report is submitted in compliance with the reporting requirements of the CIA Information Act of 1984. By agreement between our Office of Legislative Liaison and staff members of your committee and the Senate Select Committee on Intelligence, this initial report--due 15 April 1985--covers a five-month period in order to allow time for developing statistical data necessary for producing the report. Subsequent reports, due 15 October 1985, 15 April 1986, and 15 October 1986, will cover a full six months each.

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Sincerely,

[Redacted signature]

Harry E. Fitzwater
Deputy Director
for
Administration

Enclosure

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Initial Report on FOIA Processing

Measures to Improve Processing

During the hearings prior to the passage of the CIA Information Act of 1984, the Director of Central Intelligence committed the Agency to improving the processing of Freedom of Information Act (FOIA) requests to the maximum extent possible and to effect a substantial reduction in the Agency backlog of requests. The file designations permitted by the Act were not fully in effect during this reporting period and have, therefore, had no impact on our accomplishments reflected in this initial report. As a result of the Director's commitment, however, several initiatives were undertaken and are already showing success. We have used this initial reporting period to revamp our supporting mechanisms and to identify ways our processing procedures can be made more efficient.

--Within the Information and Privacy Division (IPD)--the Coordinator's staff--personnel have been augmented by three annuitants rehired on a part-time basis. This additional help at the case officer level has enabled IPD to reduce its backlog of cases ready for final response to about one or two days' work.

--Additional equipment has been ordered for IPD to increase the staff's efficiency. This includes two more word processors, five more computer terminals, and related hardware.

--More up-to-date, ergonomically-designed furniture has been ordered to make better use of existing space, accommodate additional personnel, and increase the efficiency of the staff.

--Judicious use of overtime has been authorized to keep backlogs from developing within the Division and to maintain a smooth flow of work.

--A major change in the structure of the Division was accomplished by creating a branch to manage the support functions essential to the processing of cases. This branch is also required to maintain, monitor, and review existing case files on a continuing basis. This is designed both to speed up our processing and to increase its accuracy. Cases are now less likely to be misplaced or correspondence neglected, as is almost inevitable without such continuous tracking, given our large workload.

--Finally, in an effort to complete some of the oldest, problem cases, the Coordinator is initiating a series of regular conferences with the Information Review Officers of each directorate to determine why these cases are still open and to assign appropriate action to complete them.

Other components of the Agency have looked closely at their own organization and have made similar improvements and plans.

--The Office of General Counsel (OGC) has increased by one the number of attorneys devoted primarily to processing information requests and appeals, raising the total to three. OGC plans to hire an additional part-time paralegal and has made increased use of overtime.

--The Office of Legislative Liaison has hired a part-time professional who works entirely on FOIA, Privacy Act, and Executive Order information requests.

Budgetary and Personnel Allocations

It is not possible to calculate personnel or equipment devoted to FOIA processing alone, because FOIA requests are processed throughout the Agency by the same people who process Privacy Act (PA) requests and Executive Order (EO) 12356 mandatory review requests. The only way this can be approximated is by percentage of workload, and this changes daily. During 1984, for instance, FOIA requests constituted 54% of requests received, while PA and EO requests constituted 38% and 8%, respectively. This has not changed greatly over the years, but a gradual trend toward a higher percentage of FOIA requests has been evident in recent years.

There are 119 Agency personnel partially or entirely occupied with processing FOIA/PA/EO information requests. Of these, 86 are full-time staff, 16 are part-time staff, and 17 are rehired annuitants working two to three days per week. Based on the number of hours worked thus far this year, our manpower input would average 118.6 manyears if extrapolated for the full year. This is somewhat higher so far than the 114 manyears reported in our annual report to Congress for 1984. The estimated expenditure for personnel costs during this period was \$1.32 million. This figure is based on an average professional grade of GS-12/1 and an average clerical grade of GS-06/1--the same formula used for our annual report. Based on the percentages given above, it is estimated that about \$700,000 of this total was spent on FOIA.

Workload Trends

The file designations allowed by the CIA Information Act of 1984 were not in effect for most of this reporting period and, as stated earlier, have not yet had an impact on our workload. The initiatives described above, however, have enabled us to reduce our backlog of FOIA/PA/EO cases requests by 392 cases. The following tabulation will illustrate this decline:

	<u>15 Oct 84</u> <u>Backlog</u>	<u>Cases</u> <u>Opened</u>	<u>Cases</u> <u>Closed</u>	<u>15 Mar 85</u> <u>Backlog</u>	<u>Net</u> <u>Reduction</u>
Total backlog	3,034	1,235	1,627	2,642	392
FOIA backlog	1,967	551	880	1,638	329

The reduction of our FOIA case backlog from 1,967 to 1,638--a reduction of 329--represents a decrease of about 17% in FOIA backlog.

Response Time

It is also too soon to see an impact of the file designations on our response time, but we have made some baseline calculations for future comparisons. For this purpose we reviewed all FOIA cases closed during the period 15 October 1983 to 14 October 1984 and recorded the number of months required for completion of each. We have done the same review of cases closed between 15 October 1984 and 14 March 1985, and will do so for each six-month period until October 1986. Our review indicates that the response time has improved slightly. For cases closed between 15 October 1983 and 14 October 1984, the average number of months required to complete a case was 14.9. For the period of 15 October 1984 to 14 March 1985 the average was 14.5 months.

Future Prospects

For your information, the Coordinator has instructed components that cases for which a search has already been made and review substantially completed are to be finalized with all documents treated in the final response, whether or not the records retrieved were retrieved from files now designated.

Even with operational files designated as exempt, there are major records systems that are still accessible under FOIA and which contain the intelligence product of the operational files.

Furthermore, all requests for information on himself/herself received from a U.S. citizen or permanent resident alien, whether requested under FOIA or PA, will be searched in all appropriate files, including those designated as exempt.

The net impact of the file designations permitted by the CIA Information Act of 1984 will be to reduce response time, not the amount of information released.

During the next reporting period the file designations should be fully implemented, and our recently purchased equipment and furniture should have arrived. In addition, we are considering rehiring up to three more annuitants on a part-time basis. While we made progress during this initial reporting period, we expect the measures described in this report to improve further our FOIA processing during subsequent reporting periods.

Central Intelligence Agency



Washington, D C 20505

29 FEB 1988

The Honorable James C. Wright
Speaker of the House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Submitted herewith, pursuant to the provisions of 5 U.S.C. §552(d), is the report of the Central Intelligence Agency concerning its administration of the Freedom of Information Act (FOIA) during calendar year 1987.

This year we continued our record of achievements notwithstanding a notable increase in requests received and the demands imposed by other legislative and executive requirements. In particular, a key element in our present as well as future progress was the merger of our FOIA and classification review staffs into one unit, responsible to one manager, which has served to centralize and expedite the processing of all categories of requests. The results of this merger and our commitment to efficient processing of information requests is demonstrated by our present median response time of 1.49 months which compares very favorably with the 3.24 months reported for 1986, and which is a considerable improvement over the 9.2 months reported in October 1985, when this calculation was first made. The results of our efforts to complete the older cases have also been gratifying; only 125 of the cases received before 1986 remain in process. All 1975, 1976, and 1977 cases have been completed, and only two 1978 and six 1979 cases remain open. These are massive, but we hope to complete them in 1988. In fact, to illustrate the currency of our processing, 74% of our 1987 workload was received during that year.

As noted, new requests increased more than 7% over 1986 (3324 compared with 3094 during the previous year). Of these 3324 cases, 1655 were FOIA requests, 1412 were "my file" requests under the Privacy Act (PA), and 257 were mandatory review requests under Executive Order (EO) 12356. In addition to this increase, an additional requirement was the workload imposed on our records officers throughout the Agency by the four separate legal and congressional inquiries relating to the Iran/Contra matter. As would be expected, the officers qualified to conduct these massive records searches and reviews were primarily those individuals normally responsible for FOIA and PA matters. And, in many components, those same officers are responsible for the conduct or support of on-going intelligence activities. As a result, our workload increased by 279 cases notwithstanding the fact that we closed 3045 cases. A more detailed tabulation of our workload can be found in Tab A.

Processing of administrative appeals was influenced by the same two factors as were initial requests--increased numbers of new appeals and reduced manpower available to process them. There were 172 new appeals received in 1987; with the completion of 134, we ended the year with 204 open appeals as compared to 166 at the end of 1986. These figures include FOIA, PA, and mandatory review cases, like the initial processing figures cited earlier.

During 1987 our manpower input to FOIA/PA/EO processing was 94 manyears -- a level somewhat below that of recent years for reasons discussed earlier in paragraph three. This continues to represent a significant burden to the Agency in terms of both personnel and funds diverted from our primary mission. This is true for two reasons. First, even with the passage of the CIA Information Act and the exemption of operational files, operational documents found in other files must be reviewed for release by professional officers working on the area concerned. This means that they must be diverted from their intelligence duties to conduct the review. Second, discounting expenditures for space, equipment, and overtime differential, all of which remain high, the expenditure of funds continued at about the same level as in 1986. Since 1975 we estimate that the Agency has spent over \$39.5 million in personnel costs alone for processing information requests -- \$22.9 million for FOIA. Although we are allowed under FOIA to charge fees for records searches and duplication, these fees are inadequate for recovering even a small portion of the costs. The Agency, since 1975, has collected only \$107,723 in fees. When compared with funds expended for administering the FOIA, this continues to represent a return of only one-half cent on the dollar. Because of the fee waiver provisions in the Freedom of Information Reform Act, passed in late 1986, the Agency collected only \$2,637 in fees during 1987--about half the amount collected in 1986.

During 1987 we continued to benefit from the effects of the CIA Information Act. First, we have been able to concentrate our efforts more productively on potentially releasable records to the benefit of the requesters. Second, and more importantly, the time formerly spent in searching for and processing sensitive operational files can now be devoted to other requests and to carrying out the Agency's primary missions. We are encouraged by the continued improvement in our processing procedures, which shows in our response time and the currency of our workload, and will make every effort to show further improvement during CY 1988.

Sincerely,

[Redacted Signature]

R. M. Huffstutler
Deputy Director
for
Administration

Enclosures

Central Intelligence Agency



Washington, D.C. 20505

29 FEB 1988

The Honorable George Bush
President of the Senate
Washington, DC 20510

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During 1987 our manpower input to FOIA/PA/EO processing was 94 manyears -- a level somewhat below that of recent years for reasons discussed earlier in paragraph three. This continues to represent a significant burden to the Agency in terms of both personnel and funds diverted from our primary mission. This is true for two reasons. First, even with the passage of the CIA Information Act and the exemption of operational files, operational documents found in other files must be reviewed for release by professional officers working on the area concerned. This means that they must be diverted from their intelligence duties to conduct the review. Second, discounting expenditures for space, equipment, and overtime differential, all of which remain high, the expenditure of funds continued at about the same level as in 1986. Since 1975 we estimate that the Agency has spent over \$39.5 million in personnel costs alone for processing information requests -- \$22.9 million for FOIA. Although we are allowed under FOIA to charge fees for records searches and duplication, these fees are inadequate for recovering even a small portion of the costs. The Agency, since 1975, has collected only \$107,723 in fees. When compared with funds expended for administering the FOIA, this continues to represent a return of only one-half cent on the dollar. Because of the fee waiver provisions in the Freedom of Information Reform Act, passed in late 1986, the Agency collected only \$2,637 in fees during 1987--about half the amount collected in 1986.

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Sincerely,

[Redacted Signature]

R. M. Huffstutler
Deputy Director
for
Administration

Enclosures

FREEDOM OF INFORMATION ACT
ANNUAL REPORT TO THE CONGRESS FOR THE YEAR 1987

1. Total number of initial determinations not to comply with a request for records made under subsection 552(a): 702

There were 594 other FOIA cases in which the requesters were neither given access to nor denied the records sought. None of these cases was regarded as a denial, however, inasmuch as the Agency was either prepared to act upon the request or there proved to be no records to act upon. Accordingly, these 594 have not been included in the 702 figure provided in answer to question No. 1 above. In 119 instances, our searches uncovered no records relevant to the request. In 4 other cases, we found no CIA-originated records, but did locate in our files pertinent documents created by another agency, which were subsequently referred to the agency of origin for review and direct response to the requesters. There were 120 instances in which the information requested was not related to the CIA's activities, and the requester was thus referred to the agency or agencies having cognizance over the records. In 2 cases, requesters appealed on the basis of our failure to respond within the statutory deadline; in another 4 cases, the requesters chose not to exercise their right to administrative appeal and went directly into litigation for the same reason. In each of these instances, therefore, the initial processing of the requests progressed into the Agency's appellate or litigation channels. Eight requests were withdrawn by the requesters after processing had commenced, but before action on them could be completed. Finally, 337 cases were canceled by the Agency because of the failure of requesters to respond to letters asking for clarification, additional identifying information, notarized releases from third parties, fee payments, fee deposits, or written commitments that all reasonable search and/or copying fees would be paid, etc.

2. Authority relied upon for each such determination:

(a) Exemptions in 552(b):

<u>Exemption involved</u>	<u>Number of times (i.e., requests) invoked</u>
(b) (1)	628
(b) (2)	3
(b) (3)	613
(b) (4)	4
(b) (5)	22
(b) (6)	33
(b) (7)	5
(b) (8)	0
(b) (9)	0

(b) Statutes invoked pursuant to Exemption No. 3:

<u>Statutory citation</u>	<u>Number of times (i.e., requests) invoked</u>
50 U.S.C. 403(d) (3) and/or 50 U.S.C. 403g	613

(c) Other authority: None

3. Appeal Determinations:

(a) Total number of administrative appeals from adverse initial decisions received in 1987 made pursuant to subsection (a) (6): 143

(b) Number of all appeals closed in 1987 in which, upon review, request for information was granted in full: None

(c) Number of all appeals closed in 1987 in which, upon review, request for information was denied in full: 60

(d) Number of all appeals closed in 1987 in which, upon review, request was denied in part: 15

4. Authority relied upon for each such appeal determination:

(a) Exemptions in 552(b):

<u>Exemption invoked</u>	<u>Number of times (i.e., appeals) invoked</u>
(b) (1)	70
(b) (2)	1
(b) (3)	71
(b) (4)	0
(b) (5)	4
(b) (6)	5
(b) (7)	5
(b) (8)	0
(b) (9)	0

(b) Statutes invoked pursuant to Exemption No. 3:

<u>Statutory citation</u>	<u>Number of times (i.e., appeals) invoked</u>
50 U.S.C. 403(d) (3) and/or 50 U.S.C. 403g	71

5. Names and titles of those persons who, on appeal, were responsible for the denial in whole or in part of records requested and the number of instances or participation of each:

<u>Name</u>	<u>Title</u>	<u>No. of instances of participation</u>
Donnelly, William F.	Former Deputy Director for Administration	4
Kerr, Richard J.	Deputy Director for Intelligence	26
Hauver, Carroll L.	Former Inspector General	4
George, Clair E.	Former Deputy Director for Operations	52
Hineman, Richard E.	Deputy Director for Science and Technology	5
Doherty, David P.	Former General Counsel	1

6. Provide a copy of each court opinion or order giving rise to a proceeding under subsection (a)(4)(F), etc.: None

7. Provide an up-to-date copy of all rules or regulations issued pursuant to or in implementation of the Freedom of Information Act (5 U.S.C. 552):

Handbook HHB-70-1 submitted with the 1983 report is still valid. See Tab B for new CFR regulations.

8. Provide separately a copy of the fee schedule adopted and the total dollar amount of fees collected for making records available:

See Tab C for a copy of the fee schedule.

The total amount collected and transmitted for deposit in the U.S. Treasury during 1987 was \$2637.00.

9. (a) Availability of records:

As the CIA does not promulgate materials as described in 5 U.S.C. 552(a)(2)(A)-(C), no new categories have been published.

In the case of each request made pursuant to the Freedom of Information Act, all reasonably segregable portions of records are released.

(b) Costs:

A total of 170,436 actual man-hours of labor was devoted during calendar year 1987 to the processing of Freedom of Information Act, Privacy Act, and mandatory classification review requests, appeals, and litigations. Taking into account leave and holidays, this would equate to approximately 94 full-time personnel. We estimate the average grade for professional employees at GS-12/7, and for non-professional employees at GS-07/6. The funds expended during calendar year 1987 on personnel salaries, if overtime payments are ignored, would thus amount to \$3.2 million. If fringe benefits such as retirement and hospitalization are factored in as amounting to 10 percent of the salaries, the total personnel costs come to \$3.5 million. Of this total, approximately \$2.2 million can be attributed to the Freedom of Information Act.

(c) Compliance with time limitations for Agency determinations:

(I) Provide the total number of instances in which it was necessary to seek a 10-day extension of time: None

The Agency's processing backlogs have been such that in almost all instances the deadlines for responding to requests and appeals expired prior to our actually working on them. We were seldom in a position, for that reason, to assert that any of the three conditions upon which an extension must be based existed. We have, accordingly, explained the problem to requesters and appellants and apprised them of their rights under the law.

(II) Provide the total number of instances in which court appeals were taken on the basis of exhaustion of administrative procedures because the Agency was unable to comply with the request within the applicable time limits: 2

Both actions were brought under FOIA.

(III) Provide the total number of instances in which a court allowed additional time upon a showing of exceptional circumstances, together with a copy of each court opinion or order containing such an extension of time: None

(d) Internal Memoranda: None

Production/Workload Statistics

	<u>FOIA</u>	<u>PA</u>	<u>EO*</u>	<u>TOTALS</u>	<u>%</u>
Workload:					
Cases carried over from 1986	658	341	176	1175	(26.1)
Cases logged during 1987	<u>1655</u>	<u>1412</u>	<u>257</u>	<u>3324</u>	(73.9)
Totals	<u>2313</u>	<u>1753</u>	<u>433</u>	<u>4499</u>	
Actions taken:					
Granted in full	291	376	50	717	(23.5)
Granted in part	294	218	112	624	(20.5)
Denied in full	408	106	55	569	(18.7)
No records found	119	476	0	595	(19.5)
No CIA records found	4	8	0	12	(0.4)
Canceled	337	39	4	380	(12.5)
Withdrawn	8	4	0	12	(0.4)
Referred elsewhere	120	7	1	128	(4.2)
Early appeal	2	0	0	2	(0.1)
Early litigation	<u>4</u>	<u>2</u>	<u>0</u>	<u>6</u>	(0.2)
Totals:	<u>1587</u>	<u>1236</u>	<u>222</u>	<u>3045</u>	(100.0)
Cases carried over to 1988	726	517	211	1454	
Change in workload	+68	+176	+35	+279	(+23.7)

*These are requests processed under the mandatory classification review provision of Executive Order 12356. Most of them are either referrals from the Presidential Libraries or declassification requests from other Federal agencies.

2. Paragraph (a) of § 351.5 is amended by the addition at the end thereof of two sentences. As revised paragraph (a) reads as follows:

§ 351.5 [Amended]

(a) *Payroll plans*: Bonds may be purchased through deductions from the pay of employees of organizations which maintain payroll savings plans. The bonds must be issued by an authorized issuing agent, which may be the employer organization or a financial institution or Federal Reserve Bank or Branch servicing that organization. Effective February 1, 1988, bonds may be purchased only in denominations of \$100 or higher, except that employees who on such date are purchasing \$50 or \$75 through payroll deductions will be permitted to continue the purchases. Although these employees may increase the amount of their payroll deductions, or change the inscriptions on their existing authorizations, no new authorizations for additional registrations in the \$50 and \$75 denominations may be made.

[FR Doc. 87-28051 Filed 12-7-87; 8:45 am]
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CENTRAL INTELLIGENCE AGENCY

32 CFR Part 1900

Public Access to Documents and Records and Declassification Requests

AGENCY: Central Intelligence Agency.
ACTION: Final rule.

SUMMARY: Part 1900 of Title 32 CFR was last published in full text in the *Federal Register* on 12 January 1983 (Vol. 48, No. 8, p. 1293). Since then, there have been several substantive amendments and more recently, proposed amendments were published in the *Federal Register* of 18 May 1987 (Vol. 52, No. 95, p. 18579) affecting those portions of the regulation relating to fees as required by the Freedom of Information Reform Act (FOIRA) of 1986. For the benefit of the public, Part 1900 is being republished with all current amendments and revisions, including a number of error corrections and changes in phraseology as well as technical and/or administrative changes to clarify or more accurately reflect applicable procedures.

EFFECTIVE DATE: December 8, 1987.

ADDRESS: Lee Strickland, Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505.

FOR FURTHER INFORMATION CONTACT: Lee S. Strickland, Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505, Telephone: (703) 351-2083.

SUPPLEMENTARY INFORMATION: The policies and procedures of the Central Intelligence Agency (CIA or Agency) for handling requests for CIA records under the Freedom of Information Act (FOIA) or Executive Order 12356 are published in 32 CFR Part 1900. This final rule, in part, hereby amends those portions of the regulation concerned with fees charged for records services in response to FOIA requests to be consistent with the provisions of the FOIRA and is issued subsequent to formal public notice and comment. During the comment period, written comments were received from a number of individual journalists and organizations. These comments, which were generally critical of the Office of Management and Budget (OMB) and Department of Justice (DOJ) guidelines on fee regulations under FOIRA, were considered by the Agency in adopting these regulations. For example, the definitions in the proposed regulations of "commercial use," "representative of the news media," "educational institution," and "freelance journalist" were argued to be too restrictive. In addition, the fee waiver guidelines were also argued to be too restrictive. The comments were duly considered in drafting the final rule published herein. To accomplish the purposes of the FOIRA it will be necessary to modify §§ 1900.3 (Definitions) and 1900.25 (Fees for records services). The amended fee schedule reflects recommended adjustments for agency-wide charges that are permitted by law and the remaining charges are based on the government-wide schedule. The increases in fee schedule charges more accurately reflect current, direct costs. In addition, the FOIRA specifies two basic requirements to qualify for a waiver or reduction of chargeable fees. This amendment also sets forth the factors which will be used in making such determinations.

This final rule also amends the remaining sections of Part 1900 by incorporating into the regulation a number of error corrections and changes in phraseology as well as a number of technical and/or administrative changes to clarify or reflect more accurately applicable procedures and practices. It has been determined that invitation of public comment on these changes to the Agency's implementing regulations prior to adoption would be impracticable and unnecessary, and it is therefore not

required under the public rulemaking provisions of the Administrative Procedures Act, 5 U.S.C. 553. Interested persons, however, are invited to comment in writing on these changes. All written comments received will be considered in making subsequent amendments or revisions to these regulations. Written comments should be addressed to: Lee S. Strickland, Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505.

Lastly, it has been determined that this final rule is not a "major rule" within the criteria specified in section 1(b) of Executive Order 12291 and does not have substantial impact on the public. In addition, this rule does not contain a collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 32 CFR Part 1900

Freedom of information.

Accordingly, 32 CFR Part 1900 in its entirety is revised and reads as follows:

PART 1900—PUBLIC ACCESS TO DOCUMENTS AND RECORDS AND DECLASSIFICATION REQUESTS

Sec.

General

- 1900.1 Purpose and authority.
- 1900.3 Definitions.
- 1900.5 Organization: requests and submittals.

Requesting Records

- 1900.11 Freedom of Information Act and Executive Order 12356 communications: requirements as to form.
- 1900.21 Identification of persons requesting information under the provisions of Executive Order 12356.
- 1900.23 Pre-request option: Estimates of charges.
- 1900.25 Fees for records services.

Processing Freedom of Information and Executive Order Communications

- 1900.31 Screening communications.
- 1900.33 Processing expressions of interest.
- 1900.35 Processing requests for records.

Actions on Requests

- 1900.41 Searching for requested records.
- 1900.43 Reviewing records.
- 1900.45 Expeditious action; extension of time.
- 1900.47 Allocation of manpower and resources; agreed extension of time.
- 1900.49 Notification and payment; furnishing records.

Appeals

- 1900.51 Appeals to CIA Information Review Committee.

Miscellaneous

- 1900.61 Access for historical research.

interest (§ 1900.33), a request (§ 1900.35) or other, and

(2) If he determines the communication to be an intended expression of interest or intended request, he shall further determine whether it fails to qualify as an expression of interest or request only because it fails to reasonably describe the records of interest.

(c) The Coordinator thereupon shall take the appropriate one of the following actions.

(1) If he determines that the communication was not an intended expression of interest or an intended request, he shall take such action with respect to the communication as he may deem appropriate.

(2) If he determines that the communication was an intended expression of interest or an intended request but failed to reasonably describe the records of interest, he shall so inform the originator of the communication promptly, in writing, and he may offer to assist the originator in revising and perfecting the description of the records of interest.

(3) The Coordinator shall determine whether any communication not acted on under paragraph (c)(1) or (c)(2) of this section is an expression of interest, or is a request made in accordance with published rules stating the procedures to be followed, as required by subsection (a)(3) of the Freedom of Information Act or Executive Order 12356. The Coordinator's determination in this regard shall be based on and shall reflect the clear intent of the originator of the communication insofar as the Coordinator is able to determine that intent. When the originator's intent is not apparent to the Coordinator and when the Coordinator deems it desirable and feasible, he shall promptly communicate with the originator in order to ascertain the latter's intent. In this and any cases where additional information is required, the request will be canceled after 60 days if no reply is received.

(d) The Coordinator shall inform the requester, in writing, of his determination made under paragraph (c)(3) of this section and, in the case of a determination that the communication is a request, of the date of acceptance. The search conducted pursuant to that request shall be for records in existence as of and through the acceptance date. Such notification shall be given promptly and, in any case, within five work days of the date of such determination. The ten work days within which the Agency must determine whether to comply with a

collecting a fee would be equal to or greater than the fee itself. These provisions work together, so that, except for commercial use requesters, the Agency will not begin to assess fees until after providing the specified free search and reproduction. If the amount of the chargeable fees is equal to or less than the cost of the Agency of billing the requester and processing the fee collected, no charges would result. The elements to be considered in determining the "cost of collecting a fee" are the administrative costs to the Agency of receiving and recording a requester's remittance, and processing the fee for deposit in the Treasury Department's special account. The per-transaction cost to the Treasury to handle such remittances will not be considered in the Agency's determination.

(1) For purposes of these restrictions on assessment of fees, the word "pages" refers to paper copies of a standard Agency size which will normally be "8½x11" or "11x14." Thus, requesters would not be entitled to 100 microfiche or 100 computer diskettes, for example, but rather such microfiche, diskettes, or other computer output having a dollar value equivalent to 100 pages of paper copies (i.e., \$10.00).

(2) Similarly, the term "search time" in this context has, as its basis, manual search. To apply this term to searches made by computer, the Agency will provide computer searches under § 1900.25(c)(4) through (6) having a dollar value equivalent to two (2) hours of professional search time (i.e., \$36.00).

(1) There are four categories of FOIA requesters: "commercial use" requesters; "educational and non-commercial scientific institution" requesters; "representatives of the news media" requesters; and, "all other" requesters. The FOIRA prescribes specific levels of fees for each of these categories:

(1) "*Commercial Use*" Requesters: When the Agency receives a request for documents for commercial use, it will assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Requesters must reasonably describe the records sought. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents. The Agency will recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records.

(2) "*Educational and Non-commercial Scientific Institution*" Requesters: The Agency will provide documents to requesters in this category for the cost of

reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying United States institution and that the records are not sought for commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters must reasonably describe the records sought.

(3) "*Representatives of the News Media*" Requesters: The Agency shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in § 1900.3(q), and his or her request must not be made for a commercial use. In reference to this class of requester, a request for records supporting the news dissemination function of a requester shall not be considered to be a request that is for commercial use provided that the requester meets the requirements specified in § 1900.3(q). Requesters must reasonably describe the records sought.

(4) "*All Other*" Requesters: FOIA requesters who do not fit in any of the categories above will be charged fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Moreover, requesters asking for records about themselves will continue to be treated under the CIA fee provisions of the Privacy Act of 1974 which permit access to records without charge.

CENTRAL INTELLIGENCE AGENCY**32 CFR Part 1900****Public Access to Documents and Records and Declassification Requests**

AGENCY: Central Intelligence Agency.
ACTION: Final rule.

§ 1900.25 Fees for records services.

(a) Search, review, and duplication fees will be charged in accordance with the schedule set forth in paragraph (c) of this section for services rendered in responding to requests for Agency records under this part. To the extent possible, the most efficient and least costly methods will be used to comply with requests for documents made under the FOIA. Records will be furnished without charge or at a reduced rate whenever the Coordinator determines that a waiver or reduction is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the United States government and is not primarily in the commercial interest of the requester. The Coordinator shall consider the following factors in making his determination:

(1) Whether the subject of the requested records concerns the operations or activities of the United States government; and, if so.

(2) Whether the disclosure of the requested documents is likely to contribute to an understanding of United States government operations or activities; and, if so.

(3) Whether the disclosure of the requested documents will contribute to public understanding of United States government operations or activities; and, if so.

(4) Whether the disclosure of the requested documents is likely to contribute significantly to public understanding of United States government operations and activities; and.

(5) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so.

(6) Whether the disclosure is primarily in the commercial interest of the requester.

(b) The Coordinator may also waive or reduce the charge whenever he determines that the interest of the government would be served thereby. In addition, fees shall not be charged where they would amount, in the aggregate, for a request or for a series of related requests, to less than \$6.00.

(c) Denials of requests for fee waivers or reductions may be appealed by writing to the Chairman of the Information Review Committee, via the Coordinator. Requests for fee waivers or reductions or appeals of such decisions will not be considered after a requester has given his commitment to pay fees and/or processing costs have been incurred by the CIA.

(d) In order to protect the requester and the Agency from large, unexpected fees, when the anticipated charges will amount to more than \$25.00 and the requester has not indicated his willingness to pay applicable fees, the processing of the request shall be suspended until the requester indicates his willingness to pay. The requester shall be notified and asked for this commitment to pay all reasonable search and duplication (and when appropriate, review) fees. At his option, the requester may indicate in advance a dollar limitation to the fees he is prepared to pay. In such an event, the Coordinator shall initiate a search of the system or systems of records deemed most likely to produce relevant records, instructing the system managers to discontinue the search as soon as the stipulated amount has been expended. Where an advance limit has not been stipulated, the Coordinator may, at his discretion or at the behest of the requester, compile an estimate of the search fees likely to be incurred in processing a request, or of such portion thereof as can readily be estimated. The requester shall be promptly notified of the amount and be asked to approve its expenditure and guarantee payment thereof. The request shall be cancelled after 60 days if no response is received.

(e) In those cases where the Coordinator estimates that the fees will exceed \$250.00 and the requester has no history of payment, an advance deposit

of up to 100 percent of the estimated fees will be required. In all cases where there is reasonable evidence that the requester may possibly fail to pay the fees which would be accrued by processing his request, an advance deposit of 100 percent of the estimated fees will be required. The notice or request for an advance deposit shall extend an offer to the requester whereby he is afforded an opportunity to revise the request in a manner calculated to reduce the fees. Dispatch of such a notice shall suspend the running of the period for response by the Agency until a reply is received from the requester.

(f) Except for requests that are for a commercial use, the Agency will not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester or associated requesters may not file a series of multiple requests, which are merely discrete subdivisions of the information he actually seeks, for the purpose of avoiding or reducing applicable fees. When the Coordinator reasonably believes that a requester or a group of requesters acting in concert, is attempting to break a request down into a series of smaller requests solely for the purpose of evading the assessment of fees, the Coordinator may aggregate any such requests and charge accordingly.

(g) The schedule of fees for services performed in responding to requests for CIA records is established as follows:

(1) For each one quarter hour, or fraction thereof, spent by non-professional personnel in searching for a record, \$2.50;

(2) For each one quarter hour, or fraction thereof, spent by professional personnel in searching for a record, \$4.50;

(3) For each one quarter hour, or fraction thereof, spent by professional personnel in reviewing a record in response to a FOIA request, which is primarily commercial, \$4.50;

(4) For each on-line computer search, \$11.00;

(5) For each off-line (batch) computer search of Central Reference Files, \$27.00;

(6) For all other off-line computer searches of Agency files, \$8.00 per minute of Central Processing Unit (CPU) time;

(7) For copies of paper documents in sizes not larger than 8½ x 14, \$0.10 per copy of each page;

(8) For duplication of non-paper media (film, magnetic tape, diskette, etc.) or any document that cannot be reproduced on a standard office copier, actual direct cost; and

1900.63 Suggestions and complaints.

Authority: National Security Act of 1947, as amended; Central Intelligence Agency Act of 1949, as amended; Freedom of Information Act, as amended; CIA Information Act of 1984; and E. O. 12356.

General**§ 1900.1 Purpose and authority.**

The part is issued under the authority of and in order to implement: section 102 of the National Security Act of 1947, as amended (50 U.S.C. 403); the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a *et seq.*); the Freedom of Information Act, as amended (5 U.S.C. 552); the CIA Information Act of 1984 (50 U.S.C. 431); and Executive Order 12356 (3 CFR Part 166 (1983)). It prescribes procedures for:

(a) Requesting records pursuant to the Freedom of Information Act;

(b) Requesting the declassification of documents pursuant to Executive Order 12356;

(c) Filing an administrative appeal of a denial of a mandatory review request under Executive Order 12356 or an initial request under the Freedom of Information Act;

(d) The prompt and expeditious processing of such requests and appeals; and

(e) Requesting estimates and advice prior to actually requesting records, thus affording protection against unanticipated fees.

This part is also designed to assist Central Intelligence Agency management at all appropriate echelons to allocate resources to perform the functions, duties and responsibilities of the Central Intelligence Agency prescribed by and pursuant to law, including in particular those situations where it is deemed necessary to choose among conflicting requirements, duties and responsibilities.

§ 1900.3 Definitions.

For the purpose of this part, the following terms have the meanings indicated:

(a) "Agency" includes any executive department, military department or other establishment or entity included in the definition of agency in subsection 552(e) of Title 5 of the United States Code;

(b) "Coordinator" means the Central Intelligence Agency Information and Privacy Coordinator;

(c) "Expression of interest" means a written communication submitted by a potential requester pursuant to § 1900.33 to indicate an interest in requesting records;

(d) "Freedom of Information Act" means section 552 of Title 5 of the United States Code, as amended;

(e) "Executive Order" means Executive Order 12356 (3 CFR Part 166 (1983));

(f) "Potential requester" means a person, organization or other entity who submits an expression of interest in accordance with § 1900.33;

(g) "Records," with reference to records of the Central Intelligence Agency, includes all papers, maps, photographs, machine readable records, and other documentary materials regardless of physical form or characteristics made or received by the Central Intelligence Agency in pursuance of federal law or in connection with the transaction of public business and appropriate for preservation by the Central Intelligence Agency as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the Agency or because of the informational value of data contained therein. But the term does not include:

(1) Index, filing and museum documents made or acquired and preserved solely for reference, indexing, filing or exhibition purposes;

(2) Routing and transmittal sheets and notes and filing instructions and notes which do not also include information, comment or statement of substance or policy;

(3) Books, newspapers, magazines, and similar publications and clippings and excerpts from any such publications;

(4) Records not originated by the CIA and subject to the continued control of the originator (such records will be referred to the originator for a disposition pursuant to § 1900.43(c)).

(h) "Records of interest" means records which are responsive to expression of interest or of a request;

(i) "Work days" means calendar days other than Saturdays and Sundays and legal public holidays.

(j) "Direct costs" means those expenditures which an agency actually incurs in searching for and duplicating (and reviewing in the case of commercial requesters) documents to respond to a FOIA request. Direct costs include, for example, the current salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space and heating or lighting the facility in which the records are stored.

(k) "Search" includes all time spent looking for material that is responsive to a request utilizing available indices and other finding aids. The term search is predicated on the concept of reasonable search as contrasted to research which is neither required nor authorized by the FOIA. Efforts will be made to ensure that search for material is done in the most efficient and least expensive manner so as to minimize costs for both the Agency and the requester. "Search" for the purpose of determining whether a document is responsive is distinguished from "review" where the objective is to determine whether any of the responsive material is exempt from disclosure. Searches may be done manually or by computer using existing programming.

(l) "Duplication" refers to the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk) among others. The copy provided must be in a form that is reasonably usable by requesters.

(m) "Review" refers to the process of examining documents located in response to a request that is for a commercial use (see paragraph (n) of this section) to determine whether any portion of any document located must be withheld. It also includes processing any documents for disclosure (e.g., doing all that is necessary to remove or obliterate any material which is exempt from disclosure and otherwise preparing them for release). Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(n) "Commercial use" request refers to a request in which the disclosure sought is primarily in the commercial interest of the requester. It is a request from or on behalf of one who seeks information primarily for the use or purpose that furthers the commercial, trade, income or profit interests of the requester or person on whose behalf the request is made. In determining whether a requester is properly included in this category, the Agency will consider and may draw reasonable inferences from the identity and activities of the requester as well as the use to which the requester will put the documents requested.

(o) "Educational institution" refers to a United States preschool, public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an

institution of professional education and an institution of vocational education which operates a degree-granting, accredited program or programs of scholarly research in recognized fields of study. The criteria to be met to be included in this category, for the purposes of fee waivers, are not satisfied simply by showing that the request is for a library or other records repository. Such requests, like those of other requesters, will be analyzed to identify the particular person who will actually use the requested information in a scholarly or other analytic work and then disseminate it to the general public.

(p) "Non-commercial scientific institution" refers to an institution in the United States that is not operated on a "commercial" basis as that term is referenced in paragraph (n) of this section and which is operated solely for the purpose of conducting natural life or physical sciences research the results of which are not intended to promote any particular product or industry.

(q) "Representatives of the news media" refers to any person actively gathering news for a United States entity that is organized and operated to publish or broadcast news in the United States to the general public. The term "news" means information that is about current events or that would be of current interest to the general public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of printed periodicals (but only in those instances when they qualify as disseminators of "news") who make their products available for purchase or subscription by the general public and whose products are, in fact, received by a significant element of the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the requester's past publication record may also be relevant evidence of the requester's status.

§ 1900.5 Organization; requests and submittals.

The headquarters of the Central Intelligence Agency is located in Fairfax

County, VA. Functions are channeled and determined by regular chain-of-command procedures. Except as provided by this regulation, there are no formal or informal procedural requirements regarding public access to Agency records. Requests and other submittals should be addressed to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505.

Requesting Records

§ 1900.11 Freedom of Information Act and Executive Order 12356 communications; requirements as to form.

(a) Any communication to the CIA or to the Director of Central Intelligence under the Freedom of Information Act or Executive Order 12356 should be addressed to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, D.C. 20505. This address should appear on the envelope or other folder or package in which the communication is transmitted. It should also be included as the addressee of the letter or other communication or be clearly set forth in the text of the communication.

(b) Any request for records under the Freedom of Information Act (§ 1900.35), expression of interest in requesting records (§ 1900.35) or request for declassification of records under Executive Order 12356 (§ 1900.35) shall be in writing and shall be addressed as prescribed by § 1900.11(a). The Coordinator may, but need not, waive the requirements as to address.

(c) The request or expression of interest shall reasonably describe the records of interest and, in the case of mandatory declassification review, requests shall identify the document(s) with specificity such as by National Archives and Records Administration (NARA) Document Accession Number or other applicable, unique document identifying number.

(d) Any request or communications to an agency other than the Central Intelligence Agency which concern documents, records or information originated by the CIA and referred to the CIA, shall be considered a Freedom of Information request to the CIA for that referred document as of date of receipt by the CIA of the referral, and shall be processed pursuant to regulations.

§ 1900.21 Identification of persons requesting information under the provisions of Executive Order 12356.

Pursuant to section 3.4(a)(1) of Executive Order 12356, a mandatory declassification review request can be made only by a United States citizen or

permanent resident alien, a federal agency or a State or local government. This Agency shall require sufficient identifying information from the requester to authenticate the requester's qualifications.

§ 1900.23 Pre-request option: Estimates of charges.

(a) In order to avoid being faced with unanticipated sizeable charges, interested persons and entities may defer the submission of requests for records and first submit a written request, in accordance with the procedures prescribed by § 1900.11 for an estimate of charges likely to be incurred if the records are requested.

(b) Notice is hereby given that a requester may be liable for the payment of search charges, in accordance with the fee schedule and provisions of § 1900.25, even if search for requested records locates no such records and even if some or all of requested records which are located are denied the requester under one or more exemptions of the Freedom of Information Act or Executive Order 12356.

§ 1900.25 Fees for records services.

(a) Search, review, and duplication fees will be charged in accordance with the schedule set forth in paragraph (c) of this section for services rendered in responding to requests for Agency records under this part. To the extent possible, the most efficient and least costly methods will be used to comply with requests for documents made under the FOIA. Records will be furnished without charge or at a reduced rate whenever the Coordinator determines that a waiver or reduction is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the United States government and is not primarily in the commercial interest of the requester. The Coordinator shall consider the following factors in making his determination:

(1) Whether the subject of the requested records concerns the operations or activities of the United States government; and, if so.

(2) Whether the disclosure of the requested documents is likely to contribute to an understanding of United States government operations or activities; and, if so.

(3) Whether the disclosure of the requested documents will contribute to public understanding of United States government operations or activities; and, if so.

(4) Whether the disclosure of the requested documents is likely to contribute significantly to public understanding of United States government operations and activities; and,

(5) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so.

(6) Whether the disclosure is primarily in the commercial interest of the requester.

(b) The Coordinator may also waive or reduce the charge whenever he determines that the interest of the government would be served thereby. In addition, fees shall not be charged where they would amount, in the aggregate, for a request or for a series of related requests, to less than \$6.00.

(c) Denials of requests for fee waivers or reductions may be appealed by writing to the Chairman of the Information Review Committee, via the Coordinator. Requests for fee waivers or reductions or appeals of such decisions will not be considered after a requester has given his commitment to pay fees and/or processing costs have been incurred by the CIA.

(d) In order to protect the requester and the Agency from large, unexpected fees, when the anticipated charges will amount to more than \$25.00 and the requester has not indicated his willingness to pay applicable fees, the processing of the request shall be suspended until the requester indicates his willingness to pay. The requester shall be notified and asked for this commitment to pay all reasonable search and duplication (and when appropriate, review) fees. At his option, the requester may indicate in advance a dollar limitation to the fees he is prepared to pay. In such an event, the Coordinator shall initiate a search of the system or systems of records deemed most likely to produce relevant records, instructing the system managers to discontinue the search as soon as the stipulated amount has been expended. Where an advance limit has not been stipulated, the Coordinator may, at his discretion or at the behest of the requester, compile an estimate of the search fees likely to be incurred in processing a request, or of such portion thereof as can readily be estimated. The requester shall be promptly notified of the amount and be asked to approve its expenditure and guarantee payment thereof. The request shall be cancelled after 60 days if no response is received.

(e) In those cases where the Coordinator estimates that the fees will exceed \$250.00 and the requester has no history of payment, an advance deposit

of up to 100 percent of the estimated fees will be required. In all cases where there is reasonable evidence that the requester may possibly fail to pay the fees which would be accrued by processing his request, an advance deposit of 100 percent of the estimated fees will be required. The notice or request for an advance deposit shall extend an offer to the requester whereby he is afforded an opportunity to revise the request in a manner calculated to reduce the fees. Dispatch of such a notice shall suspend the running of the period for response by the Agency until a reply is received from the requester.

(f) Except for requests that are for a commercial use, the Agency will not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester or associated requesters may not file a series of multiple requests, which are merely discrete subdivisions of the information he actually seeks, for the purpose of avoiding or reducing applicable fees. When the Coordinator reasonably believes that a requester or a group of requesters acting in concert, is attempting to break a request down into a series of smaller requests solely for the purpose of evading the assessment of fees, the Coordinator may aggregate any such requests and charge accordingly.

(g) The schedule of fees for services performed in responding to requests for CIA records is established as follows:

(1) For each one quarter hour, or fraction thereof, spent by non-professional personnel in searching for a record, \$2.50;

(2) For each one quarter hour, or fraction thereof, spent by professional personnel in searching for a record, \$4.50;

(3) For each one quarter hour, or fraction thereof, spent by professional personnel in reviewing a record in response to a FOIA request, which is primarily commercial, \$4.50;

(4) For each on-line computer search, \$11.00;

(5) For each off-line (batch) computer search of Central Reference Files, \$27.00;

(6) For all other off-line computer searches of Agency files, \$8.00 per minute of Central Processing Unit (CPU) time;

(7) For copies of paper documents in sizes not larger than 8½ x 14, \$0.10 per copy of each page;

(8) For duplication of non-paper media (film, magnetic tape, diskette, etc.) or any document that cannot be reproduced on a standard office copier, actual direct cost; and

(9) For copies of reports, maps, reference aids, and other Agency publications, actual costs.

(h) Inasmuch as the Agency's systems of records are decentralized, several computer searches may be required to process a request, depending upon its scope. The computer search costs given in paragraphs (g)(4) through (6) of this section, do not include whatever manual search time is needed to determine whether the records located are in fact responsive to the request.

(i) Search fees are assessable even when no records pertinent to the requests, of no releasable records are found, provided the requester has been advised of this fact and he has, notwithstanding, agreed to incur the costs of search. Individuals associated with or otherwise making requests on behalf of any organization or other entity or person shall be jointly and severally liable with such party for all applicable search, review, and reproduction costs incurred.

(j) For requests which have accrued search and duplication fees in excess of \$250.00, or where there is reasonable evidence that the requester may possibly fail to pay the accrued fees, then, at the discretion of the Coordinator, the requester may be required to pay the accrued search and duplication fees prior to the actual delivery of the requested records; otherwise, the requester shall be billed for such fees at the time the records are provided. Payment shall be remitted by check or money order, made payable in U.S. dollars to the Treasurer of the United States, and shall be sent to the Coordinator. No appeals shall be accepted or any additional records services provided to the requester or associated requester until the requester and associated requesters have paid all outstanding charges for services rendered under this CFR part or corresponding CFR part for other government agencies or departments. In cases of requesters associated with, acting in concert with, or on behalf of any other individual or organization, such requesters, individuals and organizations shall be jointly and severally liable for all applicable charges.

(k) With the exception of requesters seeking documents for a commercial use, section (4)(A)(iv) of the Freedom of Information Act, as amended, requires agencies to provide the first 100 pages of duplication and the first two hours of search time without charge. Moreover, this section prohibits agencies from charging fees to any requester, including commercial use requesters, if the cost of

collecting a fee would be equal to or greater than the fee itself. These provisions work together, so that, except for commercial use requesters, the Agency will not begin to assess fees until after providing the specified free search and reproduction. If the amount of the chargeable fees is equal to or less than the cost of the Agency of billing the requester and processing the fee collected, no charges would result. The elements to be considered in determining the "cost of collecting a fee" are the administrative costs to the Agency of receiving and recording a requester's remittance, and processing the fee for deposit in the Treasury Department's special account. The per-transaction cost to the Treasury to handle such remittances will not be considered in the Agency's determination.

(1) For purposes of these restrictions on assessment of fees, the word "pages" refers to paper copies of a standard Agency size which will normally be "8½x11" or "11x14." Thus, requesters would not be entitled to 100 microfiche or 100 computer diskettes, for example, but rather such microfiche, diskettes, or other computer output having a dollar value equivalent to 100 pages of paper copies (i.e., \$10.00).

(2) Similarly, the term "search time" in this context has, as its basis, manual search. To apply this term to searches made by computer, the Agency will provide computer searches under § 1900.25(c)(4) through (6) having a dollar value equivalent to two (2) hours of professional search time (i.e., \$36.00).

(1) There are four categories of FOIA requesters: "commercial use" requesters; "educational and non-commercial scientific institution" requesters; "representatives of the news media" requesters; and, "all other" requesters. The FOIRA prescribes specific levels of fees for each of these categories:

(1) "*Commercial Use*" Requesters: When the Agency receives a request for documents for commercial use, it will assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Requesters must reasonably describe the records sought. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents. The Agency will recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records.

(2) "*Educational and Non-commercial Scientific Institution*" Requesters: The Agency will provide documents to requesters in this category for the cost of

reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying United States institution and that the records are not sought for commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters must reasonably describe the records sought.

(3) "*Representatives of the News Media*" Requesters: The Agency shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in § 1900.3(q), and his or her request must not be made for a commercial use. In reference to this class of requester, a request for records supporting the news dissemination function of a requester shall not be considered to be a request that is for commercial use provided that the requester meets the requirements specified in § 1900.3(q). Requesters must reasonably describe the records sought.

(4) "*All Other*" Requesters: FOIA requesters who do not fit in any of the categories above will be charged fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Moreover, requesters asking for records about themselves will continue to be treated under the CIA fee provisions of the Privacy Act of 1974 which permit access to records without charge.

Processing Freedom of Information and Executive Order Communications

§ 1900.31 Screening communications.

(a) If any Agency employee receives a written communication which the employee believes to be an apparent or intended communication under the Freedom of Information Act or the mandatory declassification review provisions of Executive Order 12356, he shall expeditiously transmit the communication to the Coordinator.

(b) Upon receipt of a communication in accordance with § 1900.11 or paragraph (a) of this section, the Coordinator shall promptly consult with such Agency components as he may deem appropriate and:

(1) Determine the nature of the communication—an expression of

interest (§ 1900.33), a request (§ 1900.35) or other, and

(2) If he determines the communication to be an intended expression of interest or intended request, he shall further determine whether it fails to qualify as an expression of interest or request only because it fails to reasonably describe the records of interest.

(c) The Coordinator thereupon shall take the appropriate one of the following actions.

(1) If he determines that the communication was not an intended expression of interest or an intended request, he shall take such action with respect to the communication as he may deem appropriate.

(2) If he determines that the communication was an intended expression of interest or an intended request but failed to reasonably describe the records of interest, he shall so inform the originator of the communication promptly, in writing, and he may offer to assist the originator in revising and perfecting the description of the records of interest.

(3) The Coordinator shall determine whether any communication not acted on under paragraph (c)(1) or (c)(2) of this section is an expression of interest, or is a request made in accordance with published rules stating the procedures to be followed, as required by subsection (a)(3) of the Freedom of Information Act or Executive Order 12356. The Coordinator's determination in this regard shall be based on and shall reflect the clear intent of the originator of the communication insofar as the Coordinator is able to determine that intent. When the originator's intent is not apparent to the Coordinator and when the Coordinator deems it desirable and feasible, he shall promptly communicate with the originator in order to ascertain the latter's intent. In this and any cases where additional information is required, the request will be canceled after 60 days if no reply is received.

(d) The Coordinator shall inform the requester, in writing, of his determination made under paragraph (c)(3) of this section and, in the case of a determination that the communication is a request, of the date of acceptance. The search conducted pursuant to that request shall be for records in existence as of and through the acceptance date. Such notification shall be given promptly and, in any case, within five work days of the date of such determination. The ten work days within which the Agency must determine whether to comply with a

request, as provided by subsection (a)(6)(A)(i) of the Freedom of Information Act, shall begin as of the acceptance date.

(e) The Coordinator shall promptly process under the procedures specified by § 1900.33 those communications which he determines to be expressions of interest. He shall promptly process under the procedures specified by § 1900.35 those communications which he determines to be requests.

§ 1900.33 Processing expressions of interest.

(a) Upon determining, in accordance with § 1900.31(c)(3), that a communication is an expression of interest, and after promptly consulting with such Agency components as he may deem appropriate, the Coordinator, to the extent feasible, shall determine the applicable search, review (if applicable), and, duplication charges likely to be incurred in processing the potential request. In determining such charges, the Coordinator shall take into account the nature and quantity of the work and services of people and computers and other equipment which may be required, and the applicable rates set out in the fee schedule prescribed by § 1900.25(g). If feasible at this stage, the Coordinator also shall determine whether to waive or reduce the fee in accordance with § 1900.25(a).

(b) The Coordinator thereupon shall advise the potential requester, in writing, of the likely charges and he shall make clear that the amounts indicated are estimates only, if such be the case, and, if there is a possibility that the charges to be incurred may be greater than the estimate, he shall so inform the potential requester. If the amounts indicated are not estimates but are the amounts which in fact are to be charged if the potential requester makes a request, he shall inform the potential requester of that fact. In either event, he shall also inform the potential requester that search charges will be levied upon the requester even if no records fitting the description are located or if any or all records which do fit the description are denied the requester.

(c) When he deems it appropriate or when the potential requester so requests, the Coordinator may assist the requester in determining whether and, if so, how to revise the description of the records of interest so as to cause or permit a reduction in the likely applicable charges.

(d) Upon receipt of such estimate and advice concerning likely charges, the potential requester may:

(1) In accordance with § 1900.11, submit a request for records, either the

records of interest indicated in his expression of interest or records encompassed in a modified description;

(2) Advise the Coordinator that he does not intend to request records; or

(3) Take no additional action.

(e) If, as a result of his consultations with the Coordinator or otherwise, the potential requester wants to request records additional to or other than those described in his expression of interest, he may submit an expression of interest with respect to such records, in accordance with § 1900.33 or a request for such records in accordance with § 1900.35.

§ 1900.35 Processing requests for records.

(a) Upon determining that a communication is a request for records, the Coordinator, after consulting with such Agency components as he may deem appropriate, shall promptly transmit a copy of the request to the component or components believed to be a logical repository of responsive records, inform the components of the date of receipt of the request as determined by him pursuant to § 1900.31(d), and alert the components to the action required of them by §§ 1900.41 through 1900.47 with respect to the request. Requests will be handled with each component on a first-received, first-answered basis. In those components where the volume of pending, highly-complex ("project") requests has substantially impeded the processing of other smaller requests, the Coordinator may direct the establishment of a dual-queue system in order to ensure that both regular and project requests receive appropriate and equitable processing.

(b) Notwithstanding paragraph (a) of this section, the Coordinator may determine that there is no basis for searching for the requested records or that the Agency's required response to the request obviates the need to conduct any search since

(a) The fact of the existence or non-existence of records responsive to the request would itself be classified pursuant to Executive Order 12356, or

(2) The category of the information requested is within the scope of 50 U.S.C. 403(d)(3), 50 U.S.C. 403g, or other applicable exempting statute and thus the requested information, if it existed, would be exempt from required disclosure pursuant to FOIA exemption (b)(3).

Whenever the Coordinator makes such a determination he shall respond to the requester accordingly, and the requirements of paragraph (a) of this section and of §§ 1900.41 through

1900.43 shall not apply as to that particular request.

Actions on Requests

§ 1900.41 Searching for requested records.

(a) Upon receipt of a copy of a request and the tasking pursuant to § 1900.35, the components which are logical repositories of the requested records (hereinafter the "cognizant components"), shall, with such assistance as may be appropriate from the Coordinator and from such reference, indexing of filing aids as available, undertake to locate the requested records from all files except those designated by the Director of Central Intelligence as exempt from search pursuant to the CIA Information Act, 50 U.S.C. 431 through 432.

(b) If no records described by the requests are located, the cognizant components shall inform the Coordinator who shall promptly inform the requester in writing. The Coordinator also shall determine the charges, if any, for which the requester shall be liable, in accordance with the fee schedule and provisions of § 1900.25. He shall inform the requester of the amount charged, explain the basis of computation, and request prompt payment thereof.

§ 1900.43 Reviewing records.

(a) The cognizant components shall review any located records in accordance with the provisions of the Freedom of Information Act and Executive Order 12356 and on the basis of other applicable law, regulations and policy, and determine which, if any, requested records, or reasonably segregable portions of records, are to be furnished the requester and which are to be denied or withheld. Any decision to furnish or to deny or withhold requested records shall be made only by employees and officials to whom authority to make such decisions has been duly delegated.

(b) In the event an Agency component believes that located records require review by another CIA component or another agency, it shall forward such records to the Coordinator who shall expeditiously coordinate such review.

(c) In the event located records are determined to have originated with another government agency, the Coordinator shall expeditiously forward such records or a description thereof to the originating agency for their determination.

(d) Pursuant to subsection 3.4(f)(1) of Executive Order 12356, this Agency shall refuse to confirm or deny the existence

or non-existence of information requested whenever the fact of its existence or non-existence is itself classifiable under this Order.

§ 1900.45 Expeditious action; extension of time.

(a) Concerning Freedom of Information Act requests, whenever feasible under the standards prescribed by § 1900.47, the search and review functions prescribed by §§ 1900.41 and 1900.43 and notice to the requester of the Agency action on the request, as prescribed by § 1900.49(a), shall be completed within ten days of the date of Agency receipt of the request as determined by the Coordinator pursuant to § 1900.31(d). Whenever the Coordinator determines that "unusual circumstances" as defined by subsection (a)(6)(B) of the Freedom of Information Act exist, he may, by written notice to the requester, authorize an additional period for completion of Agency action, but no such extension shall be for more than ten work days. His notice shall also set forth the reasons for the extension.

(b) Concerning mandatory declassification review requests, Agency responses shall be governed by the amount of search and review time required to process the request under §§ 1900.41 and 1900.43. If unusual circumstances prevent a final Agency determination from being reached within one year of the date of receipt, the Agency shall inform the requester of the additional time needed to process the request.

§ 1900.47 Allocation of manpower and resources; agreed extension of time.

(a) Agency components shall devote such manpower and other resources to searching for, locating and reviewing records in accordance with §§ 1900.41 and 1900.43 as may be appropriate and expeditious in the circumstances, taking into account:

(1) The manpower and resources available for those purposes;

(2) The right of a requester submitting a request under the Freedom of Information Act to resort to litigation if the Agency decision on the request is not made within ten work days; and

(3) All functions, duties and responsibilities assigned to those components by, or pursuant to, a law.

(b) The responsible components shall consult with the Coordinator with regard to the need to allocate resources and establish priorities, and the latter with the requester, as may be appropriate, in order to accomplish such arrangements and agreements with the requester as may be acceptable to the requester concerning the Agency's

efforts and ability to act on his request expeditiously. In particular, when the Coordinator deems it feasible and of possible benefit to the requester, the public, or the Agency, he shall inform the requester that more thorough or extensive search or review, or both, could be accomplished, which might be of benefit to the requester, if additional time were to be available. When appropriate in such cases, the Coordinator shall also advise the requester of the effect on charges and fees such additional search might cause. Any extensions arranged or agreed to under this section may be in addition to any extensions under § 1900.45.

§ 1900.49 Notification and payment; furnishing records.

(a) The Coordinator shall promptly inform the requester, in writing, which of the requested records, or portions thereof, if any, are to be furnished the requester and those, if any, which are denied, as determined pursuant to § 1900.43(a). With respect to the latter, he shall also explain the reasons for the denial and he shall furnish the names and titles or positions of the persons responsible for the decision to deny access.

(b) Upon receipt of payment of all fees and charges, or upon the completion of arrangements satisfactory to the Coordinator that payment will be made promptly, the Coordinator shall promptly prepare copies of the records, or portions of records, which are to be made available and transmit them to the requester. The Coordinator shall do likewise with respect to any records or portions of records made available to a requester by the action of the Central Intelligence Agency Information Review Committee under § 1900.51(e).

(c) As an alternative to any requester receiving any records from the Agency by mail, a requester may arrange to inspect the records at a CIA Reading Room in the metropolitan Washington, DC area. The Coordinator will designate a Reading Room for the purpose of records inspection, and the requester may select whatever records the requester wishes to purchase at a cost set forth in § 1900.25. Access to the Reading Room will be granted only after the fees that accumulated from the search (and review if applicable) to produce the requested records have been paid, or waived by the Coordinator pursuant to § 1900.25(a). Upon receipt of a written statement from the requester exercising this option, the Coordinator will advise the requester of the location of the Reading Room and provide directions thereto. Records that the Agency will release will be available for

inspection in the Reading Room on a date or dates mutually agreed upon by the Coordinator and the requester, not more than seven days from the Agency's receipt of the written request or from completion of the processing of the request for records, whichever is later. The requester may agree to a date or dates more than seven days from such time. On the days the Reading Room is open, it will be available to requesters from 9:30 a.m. to 3:30 p.m.

Appeals

§ 1900.51 Appeals to CIA Information Review Committee.

(a) *Establishment of Committee.* The CIA Information Review Committee is hereby established pursuant to the Freedom of Information Act and section 3.4(d) of Executive Order 12356. The Committee shall be composed of the Deputy Director for Administration, the Deputy Director for Operations, the Deputy Director for Science and Technology, the Deputy Director for Intelligence, and the Inspector General. The Director of Central Intelligence shall appoint a Chairman. The Committee, by majority vote, may delegate to one or more of its members the authority to act on any appeal or appeals under this section, and may authorize the Chairman to delegate such authority. The Chairman may appoint an Executive Secretary and delegate such authorities as he deems appropriate; in the absence of such an appointment, he shall exercise any delegated or assigned functions himself. The Chairman may call upon appropriate components to participate when special equities or expertise are involved.

(b) *Right of appeal; Notice.* Whenever access to any requested record or any portion thereof is denied, the requester shall be apprised, in writing, of his or her right to appeal the denial to the CIA Information Review Committee through the Coordinator.

(c) *Appeal procedures.* Any such appeal or request to the Committee shall be in writing, addressed to the Coordinator. The appeal or request may present such information, data, and argument in support thereof as the requester may desire. The Committee shall not permit a requester or his representative to appear before the Committee or to make an oral presentation. No appeal shall be accepted if the requester or associated requester has outstanding record service charges with the CIA or other federal government agency or department.

(d) *Time for appeal; expiration of appeal.* An appeal under the Freedom of Information Act shall be exercised

within thirty days of the date of receipt of notification of the right to appeal and the right of appeal shall cease as of the expiration of that period. But the Committee, for good cause shown, may permit an additional thirty days for the submission of an appeal. Pursuant to the mandatory declassification review provisions of Executive Order 12356, an administrative appeal must be filed within sixty days of receipt of the denial of the initial request.

(e) *Committee action on appeals and requests.* (1) The Committee shall promptly consider any appeal, together with any submissions in support thereof, and shall grant or deny the appeal or take such other action thereon as it may deem appropriate. The Committee's review, decision and action shall be based on and shall be in conformance with the Freedom of Information Act, Executive Order 12356 and other applicable law, directives, regulations and policy.

(2) The Committee shall promptly consider any requests under Executive Order 12356 for declassification under paragraph (a) of this section and shall declassify any such records or reasonably segregable portions or coherent segments of such records as it deems appropriate in accordance with Executive Order 12356.

(3) Committee action on appeals of FOIA determinations shall be completed within twenty work days of receipt of the appeal, and appeal of mandatory declassification review determinations shall be completed within thirty (30) workdays, except that the Committee may, in accordance with the provisions of § 1900.45, avail itself of an additional period of time for completion of its work on the appeal. But no such extension shall be available with respect to an appeal of a denial of a request which was the subject of an extension of time for Agency action by the Coordinator under this Part. In the event that the Committee is unable to complete its review of an appeal within the time prescribed by this subsection, it shall so advise the requester.

(4) Concerning appeals under the FOIA, the Committee shall promptly inform the requester of its determination(s) and, with respect to any decision to withhold or deny records, it shall identify the officer responsible therefore. If any record or portion thereof is denied the requester by the Committee's action, the Committee shall also inform the requester of the provision for judicial review of that determination under subsection (a)(4) of the Freedom of Information Act.

(5) Concerning appeals under the mandatory declassification review provisions of Executive Order 12356, Committee decisions are final and no right of judicial review exists.

Miscellaneous

§ 1900.61 Access for historical research.

(a) Any person engaged in a historical research project may submit a request, in writing, to the Coordinator to be given access to information classified pursuant to an Executive Order for purposes of that research. Any such request shall indicate the nature, purpose, and scope of the research project. It is the policy of the Agency to consider applications for historical research privileges only in those instances where the researcher's needs cannot be satisfied through requests for access to reasonably described records under the Freedom of Information Act or Executive Order 12356.

(b) The Coordinator may authorize access, under such conditions and at such time and place as he may deem feasible. But the Coordinator shall authorize access only with respect to documents and records prepared or originated not less than ten years prior to the date of such requests and only upon the prior written approval by the CIA Director of Security of a current security clearance of the requester and of persons associated with him in the project, in accordance with applicable executive orders, regulations, and directives, and upon the Coordinator's further determination that:

(1) A serious professional or scholarly research project is contemplated;

(2) Such access is clearly consistent with the interests of national security;

(3) Appropriate steps have been taken to assure that classified information will not be published or otherwise compromised;

(4) The information requested is reasonably accessible and can be located and compiled with a reasonable amount of effort.

(5) The historical researcher agrees to safeguard the information in a manner consistent with Executive Order 12356, and signs an agreement to safeguard the classified material to which access is granted in accordance with Agency security requirements; and

(6) The historical researcher agrees to authorize a prior review of his notes and manuscript by the Agency for the sole purpose of determining that no classified information is contained therein.

(c) An authorization shall be valid for the period required for the research project as the Coordinator may determine, but in no event for more than

two years. But upon renewed request in accordance with paragraph (a) of this section, authorization may be renewed in accordance with paragraph (b) of this section and this paragraph.

(d) The Coordinator shall cancel any authorization whenever the Director of Security cancels the security clearance of the requester or of any person associated with the requester in the research project or whenever the Coordinator determines that continued access would not be in compliance with one or more of the requirements of paragraph (b) of this section.

§ 1900.63 Suggestions and complaints.

Any person may direct any suggestion or complaint with respect to the CIA administration of Executive Order 12356 to the CIA Information Review Committee. The Committee shall consider such suggestions and complaints and shall take such action thereon as it may deem feasible and appropriate.

Date: December 2, 1987.

William F. Donnelly,

Deputy Director for Administration.

[FR Doc. 87-28115 Filed 12-7-87; 8:45 am]

BILLING CODE 6310-02-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 3295-7]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: This notice approves, as a revision to the Ohio State Implementation Plan (SIP) for total suspended particulates (TSP), operating permits for the following two shiploading facilities: The Andersons Grain Division, Toledo Plant and Mid-States Terminals Incorporated. These permits are needed to satisfy the requirements of Part D of the Clean Air Act.

EFFECTIVE DATE: This final rulemaking becomes effective on January 7, 1987.

ADDRESSES: Copies of the SIP revision and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Delores Sieja, at (312) 886-6038, before visiting the Region V Office.)

Central Intelligence Agency



Washington, D.C. 20505

28 FEB 1987
OIS 87-019

The Honorable George Bush
President of the Senate
Washington, DC 20510

Dear Mr. President:

Submitted herewith, pursuant to the provisions of 5 U.S.C. §552(d), is the report of the Central Intelligence Agency concerning its administration of the Freedom of Information Act (FOIA) during calendar year 1986.

This was another year of achievement in terms of our commitment to reduce our backlog of requests for information. Despite an increase of 10 percent in the number of incoming requests, compared with the number received in 1985 (3094 compared with 2804), we were able to complete 3580 requests. Our backlog of 1661 cases at the end of 1985 was thus reduced to 1175 at the end of 1986, a reduction of 29 percent. Of the 3094 new requests, 1526 were FOIA cases, 1312 were "my file" requests processed under the Privacy Act, and 256 were for mandatory review under Executive Order 12356.

The Agency's semi-annual reports to Congress, required by the CIA Information Act, have been sent for the last two years to the Senate Committee on the Judiciary, the Senate Select Committee on Intelligence, the House Permanent Select Committee on Intelligence, and the House Committee on Government Operations. In those reports we included statistics for the median response time in handling FOIA requests. Representative English, Chairman of the Government Information, Justice, and Agriculture Subcommittee of the Committee on Government Operations, found that statistic particularly useful in assessing our performance and asked that we continue to include our response time in the annual reports. For the FOIA cases on which responses were completed in 1986, the median response time was 3.24 months. This is a considerable improvement over the median response time of 9.2 months reported in October 1985 for the period of March to September 1985. October 1985 was the first time this calculation was made.

The CIA Information Act has contributed significantly to the reduction of both our backlog and our response time because Intelligence Officers no longer have to spend time reviewing a large volume of unreleasable operational documents. They can now devote their efforts to documents that possibly can be released, thus speeding up the processing of requests that have some potential for adding to the public's knowledge. We have also concentrated part of

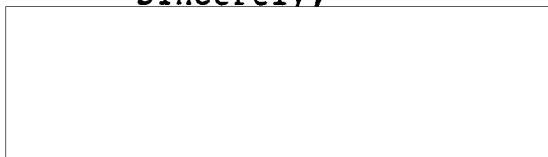
our manpower on completing our older requests. In most instances, these are massive cases that require the efforts of several analysts over a long period of time. Again this year we reduced the number of open cases received prior to 1980 by over half. At the beginning of 1986 there were 96 pre-1980 cases still open; at year's end there were only 34. There are only 26 cases received in 1980 that remain open, bringing our total remaining pre-1981 cases to 60 with the inclusion of an additional year. More complete details of our production/workload statistics for CY 1986 are enclosed at Tab A. There were 158 new administrative appeals received this year. With the completion of 178 appeals, our appeals workload was reduced by 20 cases, bringing our total of open appeals to 166.

During 1986 our manpower input to FOIA/PA processing was 107 man-years -- a level consistent with recent years. This continues to represent a significant burden to the Agency in terms of both personnel and funds diverted from our primary mission. This is true for two reasons. First, even with the passage of the CIA Information Act and the exemption of operational files, operational documents found in other files must be reviewed for release by professional officers working on the area concerned. This means that they must be diverted from their intelligence duties to conduct the review. Second, discounting expenditures for space, equipment, and overtime differential, all of which remain high, the expenditure of funds continued at about the same level as in 1985. Since 1975 we estimate that the Agency has spent over \$36 million in personnel costs alone for processing information requests -- \$20.7 million for FOIA. Although we are allowed under FOIA to charge fees for records searches and duplication, these fees are inadequate for recovering even a small portion of the costs. The Agency has, since 1975, collected only \$105,086 in fees. When compared with funds expended for administering the FOIA, this continues to represent a return of only one-half cent on the dollar. Because of the number of fee waivers and reductions granted, the Agency collected only \$4,877 in fees and advance deposits during CY 1986 -- about half that of CY 1985. The fee waiver provisions in the Freedom of Information Reform Act, passed in late 1986, will further reduce our fee collections during the coming year.

During 1986 we continued to benefit from the effects of the CIA Information Act. First, we have been able to concentrate our efforts more productively on potentially releasable records to the benefit of the requesters. Second, and more importantly, the time

formerly spent in searching for and processing sensitive operational files can now be devoted to other requests and to carrying out the Agency's primary missions. We are encouraged by our continued improvement in the reduction of our backlog and response time and will make every effort to show further improvement during CY 1987.

Sincerely,



William F. Donnelly
Deputy Director
for
Administration

Enclosures

STAT

Central Intelligence Agency



Washington, D.C. 20505

28 FEB 1987
OIS 87-019

The Honorable James C. Wright
Speaker of the House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Submitted herewith, pursuant to the provisions of 5 U.S.C. §552(d), is the report of the Central Intelligence Agency concerning its administration of the Freedom of Information Act (FOIA) during calendar year 1986.

This was another year of achievement in terms of our commitment to reduce our backlog of requests for information. Despite an increase of 10 percent in the number of incoming requests, compared with the number received in 1985 (3094 compared with 2804), we were able to complete 3580 requests. Our backlog of 1661 cases at the end of 1985 was thus reduced to 1175 at the end of 1986, a reduction of 29 percent. Of the 3094 new requests, 1526 were FOIA cases, 1312 were "my file" requests processed under the Privacy Act, and 256 were for mandatory review under Executive Order 12356.

The Agency's semi-annual reports to Congress, required by the CIA Information Act, have been sent for the last two years to the Senate Committee on the Judiciary, the Senate Select Committee on Intelligence, the House Permanent Select Committee on Intelligence, and the House Committee on Government Operations. In those reports we included statistics for the median response time in handling FOIA requests. Representative English, Chairman of the Government Information, Justice, and Agriculture Subcommittee of the Committee on Government Operations, found that statistic particularly useful in assessing our performance and asked that we continue to include our response time in the annual reports. For the FOIA cases on which responses were completed in 1986, the median response time was 3.24 months. This is a considerable improvement over the median response time of 9.2 months reported in October 1985 for the period of March to September 1985. October 1985 was the first time this calculation was made.

The CIA Information Act has contributed significantly to the reduction of both our backlog and our response time because Intelligence Officers no longer have to spend time reviewing a large volume of unreleasable operational documents. They can now devote their efforts to documents that possibly can be released, thus speeding up the processing of requests that have some potential for adding to the public's knowledge. We have also concentrated part of

our manpower on completing our older requests. In most instances, these are massive cases that require the efforts of several analysts over a long period of time. Again this year we reduced the number of open cases received prior to 1980 by over half. At the beginning of 1986 there were 96 pre-1980 cases still open; at year's end there were only 34. There are only 26 cases received in 1980 that remain open, bringing our total remaining pre-1981 cases to 60 with the inclusion of an additional year. More complete details of our production/workload statistics for CY 1986 are enclosed at Tab A. There were 158 new administrative appeals received this year. With the completion of 178 appeals, our appeals workload was reduced by 20 cases, bringing our total of open appeals to 166.

During 1986 our manpower input to FOIA/PA processing was 107 manyears -- a level consistent with recent years. This continues to represent a significant burden to the Agency in terms of both personnel and funds diverted from our primary mission. This is true for two reasons. First, even with the passage of the CIA Information Act and the exemption of operational files, operational documents found in other files must be reviewed for release by professional officers working on the area concerned. This means that they must be diverted from their intelligence duties to conduct the review. Second, discounting expenditures for space, equipment, and overtime differential, all of which remain high, the expenditure of funds continued at about the same level as in 1985. Since 1975 we estimate that the Agency has spent over \$36 million in personnel costs alone for processing information requests -- \$20.7 million for FOIA. Although we are allowed under FOIA to charge fees for records searches and duplication, these fees are inadequate for recovering even a small portion of the costs. The Agency has, since 1975, collected only \$105,086 in fees. When compared with funds expended for administering the FOIA, this continues to represent a return of only one-half cent on the dollar. Because of the number of fee waivers and reductions granted, the Agency collected only \$4,877 in fees and advance deposits during CY 1986 -- about half that of CY 1985. The fee waiver provisions in the Freedom of Information Reform Act, passed in late 1986, will further reduce our fee collections during the coming year.

During 1986 we continued to benefit from the effects of the CIA Information Act. First, we have been able to concentrate our efforts more productively on potentially releasable records to the benefit of the requesters. Second, and more importantly, the time

formerly spent in searching for and processing sensitive operational files can now be devoted to other requests and to carrying out the Agency's primary missions. We are encouraged by our continued improvement in the reduction of our backlog and response time and will make every effort to show further improvement during CY 1987.

Sincerely,

[Redacted Signature]

William F. Donnelly
Deputy Director
for
Administration

Enclosures

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FREEDOM OF INFORMATION ACT
ANNUAL REPORT TO THE CONGRESS FOR THE YEAR 1986

1. Total number of initial determinations not to comply with a request for records made under subsection 552(a): 850

There were 680 other FOIA cases in which the requesters were neither given access to nor denied the records sought. None of these cases was regarded as a denial, however, inasmuch as the Agency was either prepared to act upon the request or there proved to be no records to act upon. Accordingly, these 680 have not been included in the 850 figure provided in answer to question No. 1 above. In 249 instances, our searches uncovered no records relevant to the request. In 11 other cases, we found no CIA-originated records, but did locate in our files pertinent documents created by another agency, which were subsequently referred to the agency of origin for review and direct response to the requesters. There were 73 instances in which the information requested was not related to the CIA's activities, and the requester was thus referred to the agency or agencies having cognizance over the records. In 7 cases, requesters appealed on the basis of our failure to respond within the statutory deadline; in another 4 cases, the requesters chose not to exercise their right to administrative appeal and went directly into litigation for the same reason. In each of these instances, therefore, the initial processing of the requests progressed into the Agency's appellate or litigation channels. Seventeen requests were withdrawn by the requesters after processing had commenced, but before action on them could be completed. Finally, 319 cases were canceled by the Agency because of the failure of requesters to respond to letters asking for clarification, additional identifying information, notarized releases from third parties, fee payments, fee deposits, or written commitments that all reasonable search and/or copying fees would be paid, etc. In each of the latter cases, at least 60 days had elapsed without a reply from the requester before action was taken to discontinue processing.

2. Authority relied upon for each such determination:

(a) Exemptions in 552(b):

<u>Exemption involved</u>	<u>Number of times (i.e., requests) invoked</u>
(b) (1)	732
(b) (2)	6
(b) (3)	792
(b) (4)	9
(b) (5)	22
(b) (6)	83
(b) (7)	21
(b) (8)	0
(b) (9)	0

(b) Statutes invoked pursuant to Exemption No. 3:

<u>Statutory citation</u>	<u>Number of times (i.e., requests) invoked</u>
50 U.S.C. 403(d) (3) and/or 50 U.S.C. 403g	792

(c) Other authority: None

3. Appeal Determinations:

(a) Total number of administrative appeals from adverse initial decisions received in 1986 made pursuant to subsection (a)(6): 95

In six other cases, requests which were initially processed under the provisions of the Privacy Act were processed under the Freedom of Information Act upon appeal, in accord with the wishes of the appellants. These were requests for access to personal records, which the CIA usually processes under the Privacy Act rather than the Freedom of Information Act.

(b) Number of all appeals closed in 1986 in which, upon review, request for information was granted in full: None

(c) Number of all appeals closed in 1986 in which, upon review, request for information was denied in full: 73

(d) Number of all appeals closed in 1986 in which, upon review, request was denied in part: 22

4. Authority relied upon for each such appeal determination:

(a) Exemptions in 552(b):

<u>Exemption invoked</u>	<u>Number of times (i.e., appeals) invoked</u>
(b) (1)	88
(b) (2)	2
(b) (3)	93
(b) (4)	0
(b) (5)	1
(b) (6)	10
(b) (7)	5
(b) (8)	0
(b) (9)	0

(b) Statutes invoked pursuant to Exemption No. 3:

<u>Statutory citation</u>	<u>Number of times (i.e., appeals) invoked</u>
50 U.S.C. 403(d) (3) and/or 50 U.S.C. 403g	93

5. Names and titles of those persons who, on appeal, were responsible for the denial in whole or in part of records requested and the number of instances or participation of each:

<u>Name</u>	<u>Title</u>	<u>No. of instances of participation</u>
Donnelly, William F.	Deputy Director for Administration	8
Kerr, Richard J.	Deputy Director for Intelligence	21
Hauver, Carroll L.	Inspector General	7
George, Clair E.	Deputy Director for Operations	66
Hineman, Richard E.	Deputy Director for Science and Technology	6

6. Provide a copy of each court opinion or order giving rise to a proceeding under subsection (a)(4)(F), etc.: None7. Provide an up-to-date copy of all rules or regulations issued pursuant to or in implementation of the Freedom of Information Act (5 U.S.C. 552):

Handbook HHB-70-1 submitted with the 1983 report is still valid.

8. Provide separately a copy of the fee schedule adopted and the total dollar amount of fees collected for making records available:

See Tab B for a copy of the fee schedule.

The total amount collected and transmitted for deposit in the U.S. Treasury during 1986 was \$4877.20.

9. (a) Availability of records:

As the CIA does not promulgate materials as described in 5 U.S.C. 552(a)(2) (A)-(C), no new categories have been published.

In the case of each request made pursuant to the Freedom of Information Act, all reasonably segregable portions of records are released.

(b) Costs:

A total of 193,269 actual man-hours of labor was devoted during calendar year 1986 to the processing of Freedom of Information Act, Privacy Act, and mandatory classification review requests, appeals, and litigations. Taking into account leave and holidays, this would equate to approximately 107 full-time personnel. We estimate the average grade for professional employees at GS-12/7, and for non-professional employees at GS-07/6. The funds expended during calendar year 1986 on personnel salaries, if overtime payments are ignored, would thus amount to \$3.53 million. If fringe benefits such as retirement and hospitalization are factored in as amounting to 10 percent of the salaries, the total personnel costs come to \$3.9 million. Of this total, approximately \$2.5 million can be attributed to the Freedom of Information Act.

(c) Compliance with time limitations for Agency determinations:

(I) Provide the total number of instances in which it was necessary to seek a 10-day extension of time: None

The Agency's processing backlogs have been such that in almost all instances the deadlines for responding to requests and appeals expired prior to our actually working on them. We were seldom in a position, for that reason, to assert that any of the three conditions upon which an extension must be based existed. We have, accordingly, explained the problem to requesters and appellants and apprised them of their rights under the law.

(II) Provide the total number of instances in which court appeals were taken on the basis of exhaustion of administrative procedures because the Agency was unable to comply with the request within the applicable time limits: 2

Both actions were brought under FOIA.

(III) Provide the total number of instances in which a court allowed additional time upon a showing of exceptional circumstances, together with a copy of each court opinion or order containing such an extension of time: None

(d) Internal Memoranda: None

Production/Workload Statistics

	<u>FOIA</u>	<u>PA</u>	<u>EO*</u>	<u>TOTALS</u>	<u>%</u>
Workload:					
Cases carried over from 1985	941	509	211	1661	(35.0)
Cases logged during 1986	<u>1526</u>	<u>1312</u>	<u>256</u>	<u>3094</u>	(65.0)
Totals	<u>2467</u>	<u>1821</u>	<u>467</u>	<u>4755</u>	
Actions taken:					
Granted in full	279	483	46	808	(22.6)
Granted in part	406	357	170	933	(26.1)
Denied in full	444	167	72	683	(19.1)
No records found	249	401	0	650	(18.2)
No CIA records found	11	5	0	16	(0.4)
Canceled	319	58	3	380	(10.6)
Withdrawn	17	1	0	18	(0.5)
Referred elsewhere	73	7	0	80	(2.2)
Early appeal	7	0	0	7	(0.2)
Early litigation	<u>4</u>	<u>1</u>	<u>0</u>	<u>5</u>	(0.1)
Totals:	<u>1809</u>	<u>1480</u>	<u>291</u>	<u>3580</u>	(100.0)
Cases carried over to 1987	658	341	176	1175	
Change in workload	-283	-168	-35	- 486	(-29.2)

*These are requests processed under the mandatory classification review provision of Executive Order 12356. Most of them are either referrals from the Presidential Libraries or declassification requests from other Federal agencies.

74920 Federal Register / Vol. 45, No. 221 / Thursday, November 13, 1980 / Rules and Regulations**CENTRAL INTELLIGENCE AGENCY****32 CFR Part 1900****Public Access to Documents and Records and Declassification Requests****AGENCY:** Central Intelligence Agency.**ACTION:** Final rule.**EFFECTIVE DATE:** November 13, 1980.**§ 1900.25 Fees for records services.**

(a) Search and duplication fees shall be charged according to the schedule set forth in paragraph (c) of this section for services rendered in responding to requests for Agency records under this part. Records shall be furnished without charge or at a reduced rate whenever the Coordinator determines that a waiver or reduction of the charge is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Thus, the Coordinator shall determine the existence and extent of any identifiable benefit which would result from furnishing the requested information and he shall consider the following factors in making this determination:

(1) The public or private character of the information sought;

(2) The private interest of the requester;

(3) The numbers of the public to be benefited;

(4) The significance of the benefit to the public;

(5) The usefulness of the information to the public; and

(6) The quantity of similar or duplicative information already in the public domain. In no case will the assessment of fees be utilized as an obstacle to the disclosure of the requested information. The Coordinator may also waive or reduce the charge whenever he determines that the interest of the government would be served thereby. Fees shall not be charged where they would amount, in the aggregate, for a request, or a series of related requests, to less than \$6. Denials of requests for fee waivers may be appealed by writing to the Executive Secretary of the Information Review Committee, via the Coordinator.

(b) In order to protect the requester and the Agency from large, unexpected fees, when it is anticipated that the charges will amount to more than \$25, the processing of the request shall be suspended until the requester indicates his willingness to pay. The requester shall be notified and asked for his commitment to pay all reasonable search and duplication fees. At his option, the requester may indicate in advance a dollar limitation to the fees. In such an event, the Coordinator shall initiate a search of the system or systems of records deemed most likely to produce relevant records, instructing the system managers to discontinue the search as soon as the stipulated amount has been expended. Where an advance limit has not been stipulated, the Coordinator may, at his discretion or at the behest of the requester, compile an estimate of the search fees likely to be incurred in processing a request, or of such portion thereof as can readily be estimated. The requester shall be promptly notified of the amount and be asked to approve its expenditure. In those cases where the Coordinator estimates that the fees will be substantial, an advance deposit of 50 percent of the estimated fees will be required; in those cases where there is reasonable evidence that the requester may possibly fail to pay the fees which would be accrued by processing his request, an advance deposit of 100 percent of the estimated fees will be required. The notice or request for an advance deposit shall extend an offer to the requester whereby he is afforded an opportunity to revise the request in a manner calculated to reduce the fees. Dispatch of such a notice or request shall suspend the running of the period for response by the Agency until a reply is received from the requester.

(c) The schedule of fees for services performed in responding to requests for Agency records is established as follows:

(1) For each one quarter hour, or fraction thereof, spent by clerical personnel in searching for a record, \$1.50;

(2) For each one quarter hour, or fraction thereof, spent by professional personnel in searching for a record, \$3.50;

(3) For each on-line computer search, \$11.00;

(4) For each off-line (batch) computer search of Central Reference files, \$27.00.

(5) For all other off-line computer searches of Agency files, \$8.00 per minute of Central Processing Unit (CPU) time.

(6) For copies of paper documents in sizes not larger than 8½ × 14 inches, \$0.10 per copy of each page;

(7) For duplication of non-paper media (film, magnetic tape, etc.) or any document that cannot be reproduced on a standard office copier, actual direct cost; and

(8) For extra copies of reports, maps, reference aids, and other Agency publications, actual cost.

(d) Inasmuch as the Agency's systems of records are highly decentralized, several computer searches may be required to process a request, depending upon its scope. The computer search costs given in paragraph (c), of this section, do not include whatever professional/clerical search time is needed to determine whether the records located are in fact responsive to the request.

(e) Search fees are assessable even when no records pertinent to the requests, or no releasable records are found, provided the requester has been advised of this fact and he has, that notwithstanding agreed to incur the costs of search.

(f) For requests which have accrued substantial search and duplication fees, or for requests for records which have been previously released, or where there is reasonable evidence that the requester may possibly fail to pay the accrued fees, then, at the discretion of the Coordinator, the requester may be required to pay the accrued search and duplication fees prior to the actual delivery of the requested records; otherwise, the requester shall be billed for such fees at the time that the records are provided. Payment shall be remitted by check or money order, made payable to the Treasurer of the United States, and shall be sent to the Coordinator. No appeals or additional requests shall be accepted for processing until the requester has paid all outstanding charges for services rendered under this part.

Central Intelligence Agency



Washington, D.C. 20505

86-2374

The Honorable George Bush
President of the Senate
Washington, DC 20510

Dear Mr. President:

Submitted herewith, pursuant to the provisions of 5 U.S.C. 552(d), is the report of the Central Intelligence Agency concerning its administration of the Freedom of Information Act (FOIA) during calendar year 1985.

This was a record year for the Agency in terms of our accomplishments in reducing our backlog of requests for information. Although the number of requests received was about the same as in 1984 (2,804 total, 1,440 of which were FOIA), we were able to complete the processing of 4,098 requests, reducing our backlog by 1,294 cases. The backlog at the end of CY 1985 stood at 1,661 cases, the lowest it has been in a decade. Contributing significantly to this reduction, especially during the latter half of the year, was the passage of the CIA Information Act and the subsequent designation of our operational files as exempt from search. The file designations were essentially completed by late spring of 1985, allowing us thereafter to complete a number of requests more rapidly where exempt files were involved, since the time consuming search and review of exempt records were eliminated.

Several other factors contributed to our success as well. The investment in equipment during 1984 to provide each case officer on the Coordinator's staff with a word processor paid huge dividends this year in speeding up our correspondence. The reorganization of the Information and Privacy Division to combine all support personnel into one branch gained tighter control over the internal processing, and a continuous review of open cases kept cases moving on track. Finally, the addition of another retired annuitant contractor to the Coordinator's staff, bringing the total to four, to complete the processing of the large, older cases resulted in a final response to over half of the pre-1980 open cases. More complete details of our production/workload statistics for CY 1985 are enclosed at Tab A.

The backlog of administrative appeals increased by 45 during 1985, bringing our year-end appeal workload to 188 cases, not as large as expected in view of the large number of initial cases closed this year. This increase, however, represents an appeal rate of only 1 percent of the 4,098 initial responses.

During 1985 our manpower input to FOIA/PA processing of 115.7 manyears was slightly higher than for 1984. The CIA Information Act passed in 1984 has relieved the Agency of the burden of reviewing exempt operational files, and, in compliance with our promise to Congress during the hearings on the Act, we have maintained our level of manpower input, concentrating on lowering the backlog of open cases and improving our response time. We expect that the Act will be of even more help during the coming years as our workload becomes more current. Nevertheless, FOIA/PA requests continue to represent a significant burden to the Agency in two respects. First of all, even though operational files are no longer subject to search and review, the review of documents located in other files and decisions as to what is releasable must still be made by the professional intelligence officers working on the area concerned. This means that they must be diverted from the primary mission of this agency to conduct the review. Secondly, even discounting our expenditure for space, equipment, and overtime payments, all of which continued high during 1985, the administrative burden remains as heavy as in past years. Since 1975 we estimate that the Agency has spent over \$32.2 million in personnel costs alone for processing information requests--\$18.2 million for FOIA. The provisions of the Act that permit the Agency to charge fees for record searches and duplication are inadequate for recovering even a reasonable part of the costs. The Agency has thus far collected a total of \$100,209 in fees. When compared with expenditures for administering just the FOIA, this continues to amount to a return of slightly over one-half cent on the dollar. Because of the number of fee waivers or fee reductions granted, the Agency was able to collect only \$10,546 in fees and advance deposits during CY 1985--about twice the amount collected in 1984, but closer to our collections in past years.

The passage of the CIA Information Act of 1984 has alleviated our main concerns about the effect of the FOIA on our intelligence collection effort, since our most sensitive files are no longer subject to search. Our requesters are beginning to realize a benefit from the Act, too, in terms of faster response times. Even though our response time has improved considerably, and we expect it to improve even more over the coming year, we will still be unable to comply with the statutory response time requirements imposed by the FOIA.

We are, nevertheless, encouraged by the improvement that has already been made in both our response time and in the reduction of our backlog of cases, and the Agency remains committed to further progress in these matters during the coming year.

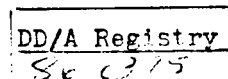
Sincerely,

A rectangular box with a thin black border, used to redact the signature of the sender.

STAT

Richard J. Kerr
Deputy Director
for
Administration

Central Intelligence Agency



Washington, D. C. 20505

The Honorable Thomas P. O'Neill
Speaker of the House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

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This was a record year for the Agency in terms of our accomplishments in reducing our backlog of requests for information. Although the number of requests received was about the same as in 1984 (2,804 total, 1,440 of which were FOIA), we were able to complete the processing of 4,098 requests, reducing our backlog by 1,294 cases. The backlog at the end of CY 1985 stood at 1,661 cases, the lowest it has been in a decade. Contributing significantly to this reduction, especially during the latter half of the year, was the passage of the CIA Information Act and the subsequent designation of our operational files as exempt from search. The file designations were essentially completed by late spring of 1985, allowing us thereafter to complete a number of requests more rapidly where exempt files were involved, since the time consuming search and review of exempt records were eliminated.

Several other factors contributed to our success as well. The investment in equipment during 1984 to provide each case officer on the Coordinator's staff with a word processor paid huge dividends this year in speeding up our correspondence. The reorganization of the Information and Privacy Division to combine all support personnel into one branch gained tighter control over the internal processing, and a continuous review of open cases kept cases moving on track. Finally, the addition of another retired annuitant contractor to the Coordinator's staff, bringing the total to four, to complete the processing of the large, older cases resulted in a final response to over half of the pre-1980 open cases. More complete details of our production/workload statistics for CY 1985 are enclosed at Tab A.

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The passage of the CIA Information Act of 1984 has alleviated our main concerns about the effect of the FOIA on our intelligence collection effort, since our most sensitive files are no longer subject to search. Our requesters are beginning to realize a benefit from the Act, too, in terms of faster response times. Even though our response time has improved considerably, and we expect it to improve even more over the coming year, we will still be unable to comply with the statutory response time requirements imposed by the FOIA.

We are, nevertheless, encouraged by the improvement that has already been made in both our response time and in the reduction of our backlog of cases, and the Agency remains committed to further progress in these matters during the coming year.

Sincerely,

Richard J. Kerr
Deputy Director
for
Administration

FREEDOM OF INFORMATION ACT
ANNUAL REPORT TO THE CONGRESS FOR THE YEAR 1985

1. Total number of initial determinations not to comply with a request for records made under subsection 552(a): 1123

There were 784 other FOIA cases in which the requesters were neither given access to nor denied the records sought. None of these cases was regarded as a denial, however, inasmuch as the Agency was either prepared to act upon the request or there proved to be no records to act upon. Accordingly, these 784 have not been included in the 1123 figure provided in answer to question No. 1 above. In 231 instances, our searches uncovered no records relevant to the request. In 18 other cases, we found no CIA-originated records, but did locate in our files pertinent documents created by another agency, which were subsequently referred to the agency of origin for review and direct response to the requesters. There were 35 instances where the information requested was not related to the CIA's activities, and the requester was thus referred to the agency or agencies having cognizance over the records. In 4 cases, requesters appealed on the basis of our failure to respond within the statutory deadline; in another 10 cases, the requesters chose not to exercise their right to administrative appeal and went directly into litigation for the same reason. In each of these instances, therefore, the initial processing of the requests progressed into the Agency's appellate or litigation channels. Twenty-one requests were withdrawn by the requesters after processing had commenced, but before action on them could be completed. Finally, 465 cases were canceled by the Agency because of the failure of requesters to respond to letters asking for clarification, additional identifying information, notarized releases from third parties, fee payments, fee deposits, or written commitments that all reasonable search and/or copying fees would be paid, etc. In each of the latter cases, at least 90 days had elapsed without a reply from the requester before action was taken to discontinue processing.

2. Authority relied upon for each such determination:

(a) Exemptions in 552(b):

<u>Exemption involved</u>	<u>Number of times (i.e., requests) invoked</u>
(b) (1)	989
(b) (2)	4
(b) (3)	1023
(b) (4)	3
(b) (5)	22
(b) (6)	93
(b) (7)	34
(b) (8)	0
(b) (9)	0

(b) Statutes invoked pursuant to Exemption No. 3:

<u>Statutory citation</u>	<u>Number of times (i.e., requests) invoked</u>
50 U.S.C. 403 (d) (3) and/or 50 U.S.C. 403g	1023

(c) Other authority: None

3. Appeal Determinations:

(a) Total number of administrative appeals from adverse initial decisions made pursuant to subsection (b) (6): 7

In eight other cases, requests which were initially processed under the provisions of the Privacy Act were processed under the Freedom of Information Act upon appeal, in accord with the wishes of the appellants. These were requests for access to personal records, which the CIA usually processes under the Privacy Act rather than the Freedom of Information Act.

(b) Number of appeals in which, upon review, request for information was granted in full: None

(c) Number of appeals in which, upon review, request for information was denied in full: 50

(d) Number of appeals in which, upon review, request was denied in part: 12

4. Authority relied upon for each such appeal determination:

(a) Exemptions in 552(b):

<u>Exemption invoked</u>	<u>Number of times (i.e., appeals) invoked</u>
(b) (1)	56
(b) (2)	0
(b) (3)	60
(b) (4)	0
(b) (5)	5
(b) (6)	11
(b) (7)	1
(b) (8)	0
(b) (9)	0

(b) Statutes invoked pursuant to Exemption No. 3:

<u>Statutory citation</u>	<u>Number of times (i.e. appeals) invoked</u>
50 U.S.C. 403(d) (3) and/or 50 U.S.C. 403g	60

5. Names and titles of those persons who, on appeal, were responsible for the denial in whole or in part of records requested and the number of instances or participation of each:

<u>Name</u>	<u>Title</u>	<u>No. of instances of participation</u>
Fitzwater, Harry E.	Deputy Director for Administration	5
Gates, Robert M.	Deputy Director for Intelligence	5
Stein, John H.	Inspector General	4
George, Clair E.	Deputy Director for Operations	53
Hineman, Richard E.	Deputy Director for Science and Technology	1

6. Provide a copy of each court opinion or order giving rise to a proceeding under subsection (a) (4) (F), etc.: None

7. Provide an up-to-date copy of all rules or regulations issued pursuant to or in implementation of the Freedom of Information Act (5 U.S.C. 552):

Handbook HHB-70-1 submitted with the 1983 report is still valid.

8. Provide separately a copy of the fee schedule adopted and the total dollar amount of fees collected for making records available:

See Tab B for a copy of the fee schedule.

The total amount collected and transmitted for deposit in the U.S. Treasury during 1985 was \$10,546.

9. (a) Availability of records:

As the CIA does not promulgate materials as described in 5 U.S.C. 552(a)(2) (A)-(C), no new categories have been published.

In the case of each request made pursuant to the Freedom of Information Act, all reasonably segregable portions of records are released.

(b) Costs:

A total of 209,260 actual man-hours of labor was devoted during calendar year 1985 to the processing of Freedom of Information Act, Privacy Act, and mandatory classification review requests, appeals, and litigations. Taking into account leave and holidays, this would equate to approximately 115.7 full-time personnel. We estimate the average grade for professional employees at GS-12/7, and for non-professional employees GS-07/6. The funds expended during calendar year 1985 on personnel salaries, if overtime payments are ignored, would thus amount to \$3.81 million. If fringe benefits such as retirement and hospitalization are factored in as amounting to 10 percent of the salaries, the total personnel costs come to \$4.2 million. Of this total, approximately \$2.6 million can be attributed to the Freedom of Information Act.

(c) Compliance with time limitations for Agency determinations:

(I) Provide the total number of instances in which it was necessary to seek a 10-day extension of time: None

The Agency's processing backlogs have been such that in almost all instances the deadlines for responding to requests and appeals expired prior to our actually working on them. We were seldom in a position, for that reason, to assert that any of the three conditions upon which an extension must be based existed. We have, accordingly, explained the problem to requesters and appellants and apprised them of their rights under the law.

(II) Provide the total number of instances in which court appeals were taken on the basis of exhaustion of administrative procedures because the Agency was unable to comply with the request within the applicable time limits: 8

Of these, six actions were brought under the FOIA and two were brought under both the FOIA and PA.

(III) Provide the total number of instances in which a court allowed additional time upon a showing of exceptional circumstances, together with a copy of each court opinion or order containing such an extension of time: 3

Copies of the pertinent court orders are attached at Tab C. No written order was issued by the court in Southam News v. INS, et al., (Civil Action No. 85-2721). Additional time was granted pursuant to an oral agreement at status call.

(d) Internal Memoranda: None

Production/Workload Statistics

	<u>FOIA</u>	<u>PA</u>	<u>EO*</u>	<u>TOTALS</u>	<u>%</u>
Workload:					
Cases carried over from 1984	1762	947	246	2955	(51.3)
Cases logged during 1985	<u>1440</u>	<u>1095</u>	<u>269</u>	<u>2804</u>	(48.7)
Totals	<u>3202</u>	<u>2042</u>	<u>515</u>	<u>5759</u>	
Actions taken:					
Granted in full	354	292	83	729	(17.8)
Granted in part	609	446	152	1207	(29.5)
Denied in full	514	208	65	787	(19.2)
No records found	231	519	0	750	(18.3)
No CIA records found	18	16	0	34	(0.8)
Canceled	465	46	1	512	(12.5)
Withdrawn	21	5	1	27	(0.7)
Referred elsewhere	35	1	2	38	(0.9)
Early appeal	4	0	0	4	(0.1)
Early litigation	<u>10</u>	<u>0</u>	<u>0</u>	<u>10</u>	(0.2)
Totals:	<u>2261</u>	<u>1533</u>	<u>304</u>	<u>4098</u>	(100.0)
Cases carried over to 1986	941	509	211	1661	
Change in workload	-821	-438	-35	-1294	(-43.8)

*These are requests processed under the mandatory classification review provision of Executive Order 12356. Most of them are either referrals from the Presidential Libraries or declassification requests from other Federal agencies.

74920 Federal Register / Vol. 45, No. 221 / Thursday, November 13, 1980 / Rules and Regulations**CENTRAL INTELLIGENCE AGENCY****32 CFR Part 1900****Public Access to Documents and Records and Declassification Requests****AGENCY:** Central Intelligence Agency.**ACTION:** Final rule.**EFFECTIVE DATE:** November 13, 1980.**§ 1900.25 Fees for records services.**

(a) Search and duplication fees shall be charged according to the schedule set forth in paragraph (c) of this section for services rendered in responding to requests for Agency records under this part. Records shall be furnished without charge or at a reduced rate whenever the Coordinator determines that a waiver or reduction of the charge is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Thus, the Coordinator shall determine the existence and extent of any identifiable benefit which would result from furnishing the requested information and he shall consider the following factors in making this determination:

- (1) The public or private character of the information sought;
- (2) The private interest of the requester;
- (3) The numbers of the public to be benefited;
- (4) The significance of the benefit to the public;
- (5) The usefulness of the information to the public; and
- (6) The quantity of similar or duplicative information already in the public domain. In no case will the assessment of fees be utilized as an obstacle to the disclosure of the requested information. The Coordinator may also waive or reduce the charge whenever he determines that the interest of the government would be served thereby. Fees shall not be charged where they would amount, in the aggregate, for a request, or a series of related requests, to less than \$6. Denials of requests for fee waivers may be appealed by writing to the Executive Secretary of the Information Review Committee, via the Coordinator.

(b) In order to protect the requester and the Agency from large, unexpected fees, when it is anticipated that the charges will amount to more than \$25, the processing of the request shall be suspended until the requester indicates his willingness to pay. The requester shall be notified and asked for his commitment to pay all reasonable search and duplication fees. At his option, the requester may indicate in advance a dollar limitation to the fees. In such an event, the Coordinator shall initiate a search of the system or systems of records deemed most likely to produce relevant records, instructing the system managers to discontinue the search as soon as the stipulated amount has been expended. Where an advance limit has not been stipulated, the Coordinator may, at his discretion or at the behest of the requester, compile an estimate of the search fees likely to be incurred in processing a request, or of such portion thereof as can readily be estimated. The requester shall be promptly notified of the amount and be asked to approve its expenditure. In those cases where the Coordinator estimates that the fees will be substantial, an advance deposit of 50 percent of the estimated fees will be required; in those cases where there is reasonable evidence that the requester may possibly fail to pay the fees which would be accrued by processing his request, an advance deposit of 100 percent of the estimated fees will be required. The notice or request for an advance deposit shall extend an offer to the requester whereby he is afforded an opportunity to revise the request in a manner calculated to reduce the fees. Dispatch of such a notice or request shall suspend the running of the period for response by the Agency until a reply is received from the requester.

(c) The schedule of fees for services performed in responding to requests for Agency records is established as follows:

- (1) For each one quarter hour, or fraction thereof, spent by clerical personnel in searching for a record, \$1.50;
- (2) For each one quarter hour, or fraction thereof, spent by professional personnel in searching for a record, \$3.50;

(3) For each on-line computer search, \$11.00;

(4) For each off-line (batch) computer search of Central Reference files, \$27.00;

(5) For all other off-line computer searches of Agency files, \$8.00 per minute of Central Processing Unit (CPU) time;

(6) For copies of paper documents in sizes not larger than 8½ × 14 inches, \$0.10 per copy of each page;

(7) For duplication of non-paper media (film, magnetic tape, etc.) or any document that cannot be reproduced on a standard office copier, actual direct cost; and

(8) For extra copies of reports, maps, reference aids, and other Agency publications, actual cost.

(d) Inasmuch as the Agency's systems of records are highly decentralized, several computer searches may be required to process a request, depending upon its scope. The computer search costs given in paragraph (c), of this section, do not include whatever professional/clerical search time is needed to determine whether the records located are in fact responsive to the request.

(e) Search fees are assessable even when no records pertinent to the requests, or no releasable records are found, provided the requester has been advised of this fact and he has, that notwithstanding agreed to incur the costs of search.

(f) For requests which have accrued substantial search and duplication fees, or for requests for records which have been previously released, or where there is reasonable evidence that the requester may possibly fail to pay the accrued fees, then, at the discretion of the Coordinator, the requester may be required to pay the accrued search and duplication fees prior to the actual delivery of the requested records; otherwise, the requester shall be billed for such fees at the time that the records are provided. Payment shall be remitted by check or money order, made payable to the Treasurer of the United States, and shall be sent to the Coordinator. No appeals or additional requests shall be accepted for processing until the requester has paid all outstanding charges for services rendered under this part.

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