

Freedom of Information Act Annual Report
Fiscal Year 2007

I. Basic Information Regarding Report

- A. Name, title, address, and telephone number of person(s) to be contacted with questions about the report.

Lawrence L. Calvert, Jr., Chief Freedom of Information Act Officer
Nicole St. Louis, Freedom of Information Act Public Liaison
John Vergelli, Freedom of Information Act Requester
Service Center
Candace J. Salley, Freedom of Information Act Requester
Service Center

Federal Election Commission
999 E Street, NW
Washington, DC 20463
(202) 694-1650

- B. Electronic address for report on the World Wide Web.

<http://www.fec.gov/press/foia.shtml>

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

Contact: FOIA Requester Service Center, ATTN: Candace J. Salley
Federal Election Commission
999 E Street, NW
Washington, DC 20463
(202) 694-1650

II. How to Make a FOIA Request

- A. Names, addresses, and telephone numbers of all individual agency components and offices that receive FOIA requests.

Federal Election Commission
FOIA Requester Service Center, ATTN: Candace J. Salley
Room 408
999 E Street, NW
Washington, DC 20463
(202) 694-1650
(202) 219-1043 (fax number)
foia@fec.gov (email address)

- B. Brief description of the agency's response-time ranges.

Requests received in FY 2007 were generally processed within 37 days.

Backlog from FY 2006 required 61-155 days.

- C. Brief description of why some requests are not granted.

No responsive documents

Release prohibited under the Federal Election Campaign Act

III. Definitions of Terms and Acronyms Used in the Report (to be included in each report)

- A. Agency-specific acronyms or other terms.

FEC – Federal Election Commission

FECA – Federal Election Campaign Act

- B. Basic terms, expressed in common terminology.

1. FOIA/PA request -- Freedom of Information Act/Privacy Act request. A FOIA request is generally a request for access to records concerning a third party, an organization, or a particular topic of interest. A Privacy Act request is a request for records concerning oneself; such requests are also treated as FOIA requests. (All requests for access to records, regardless of which law is cited by the requester, are included in this report.)
2. Initial Request -- a request to a federal agency for access to records under the Freedom of Information Act.
3. Appeal -- a request to a federal agency asking that it review at a higher administrative level a full denial or partial denial of access to records under the Freedom of Information Act, or any other FOIA determination such as a matter pertaining to fees.
4. Processed Request or Appeal -- a request or appeal for which an agency has taken a final action on the request or the appeal in all respects.
5. Multi-track processing -- a system in which simple requests requiring relatively minimal review are placed in one processing track and more voluminous and complex requests are placed in one or more other tracks. Requests in each track are processed on

a first-in/first out basis. A requester who has an urgent need for records may request expedited processing (see below).

6. Expedited processing -- an agency will process a FOIA request on an expedited basis when a requester has shown an exceptional need or urgency for the records which warrants prioritization of his or her request over other requests that were made earlier.
7. Simple request -- a FOIA request that an agency using multi-track processing places in its fastest (nonexpedited) track based on the volume and/or simplicity of records requested.
8. Complex request -- a FOIA request that an agency using multi-track processing places in a slower track based on the volume and/or complexity of records requested.
9. Grant -- an agency decision to disclose all records in full in response to a FOIA request.
10. Partial grant -- an agency decision to disclose a record in part in response to a FOIA request, deleting information determined to be exempt under one or more of the FOIA's exemptions; or a decision to disclose some records in their entireties, but to withhold others in whole or in part.
11. Denial -- an agency decision not to release any part of a record or records in response to a FOIA request because all the information in the requested records is determined by the agency to be exempt under one or more of the FOIA's exemptions, or for some procedural reason (such as because no record is located in response to a FOIA request).
12. Time limits -- the time period in the Freedom of Information Act for an agency to respond to a FOIA request (ordinarily 20 working days from proper receipt of a "perfected" FOIA request).
13. "Perfected" request -- a FOIA request for records which adequately describes the records sought, which has been received by the FOIA office of the agency or agency component in possession of the records, and for which there is no remaining question about the payment of applicable fees.
14. Exemption 3 statute -- a separate federal statute prohibiting the disclosure of a certain type of information and authorizing its withholding under FOIA subsection (b)(3).
15. Median number -- the middle, not average, number. For example, of 3, 7, and 14, the median number is 7.

16. Average number -- the number obtained by dividing the sum of a group of numbers by the quantity of numbers in the group. For example, of 3, 7, and 14, the average number is 8.

IV. Exemption 3 Statutes

- A. List of Exemption 3 statutes relied on by agency during current fiscal year.

Federal Election Campaign Act (FECA)

1. Brief description of type(s) of information withheld under each statute

Material regarding ongoing investigation of possible FECA violations – 2 USC 437g(a)(12)(A).

2. Statement of whether a court has upheld the use of each statute. If so, then cite example.

No court has ever addressed the issue.

V. Initial FOIA/PA Access Requests

- A. Numbers of initial requests.

1. Number of requests pending as of end of preceding fiscal year **4**
2. Number of requests received during current fiscal year **85**
3. Number of requests processed during current fiscal year **63**
4. Number of requests pending as of end of current fiscal year **26**

- B. Disposition of initial requests.

1. Number of total grants **8**
2. Number of partial grants **23**
3. Number of denials **1**

a. number of times each FOIA exemption used
(counting each exemption once per request)

(1) Exemption 1 **0**

(2) Exemption 2 **13**

(3) Exemption 3 **2**

(4) Exemption 4 **5**

(5) Exemption 5 **3**

(6) Exemption 6 **6**

(7) Exemption 7(A) **2**

(8) Exemption 7(B) **0**

(9) Exemption 7(C) **4**

(10) Exemption 7(D) **0**

(11) Exemption 7(E) **4**

(12) Exemption 7(F) **0**

(13) Exemption 8 **0**

(14) Exemption 9 **0**

4. Other reasons for nondisclosure (total) **31**

a. no records **17**

b. referrals **2**

c. request withdrawn **4**

d. fee-related reason **0**

e. records not reasonably described **0**

f. not a proper FOIA request for some other reason **2**

g. not an agency record **1**

h. duplicate request **1**

i. other (specify) **material already on the public record 4**

VI. Appeals of Initial Denials of FOIA/PA Requests

A. Numbers of appeals.

1. Number of appeals received during fiscal year **1**

2. Number of appeals processed during fiscal year **1**

B. Disposition of appeals.

1. Number completely upheld **0**

2. Number partially reversed **0**

3. Number completely reversed **0**

a. number of times each FOIA exemption used
(counting each exemption once per appeal)

(1) Exemption 1 **0**

(2) Exemption 2 **0**

(3) Exemption 3 **0**

(4) Exemption 4 **0**

(5) Exemption 5 **0**

(6) Exemption 6 **0**

(7) Exemption 7(A) **0**

(8) Exemption 7(B) **0**

(9) Exemption 7(C) **0**

(10) Exemption 7(D) **0**

(11) Exemption 7(E) **0**

(12) Exemption 7(F) **0**

(13) Exemption 8 **0**

(14) Exemption 9 **0**

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

a. no records **0**

- b. referrals **0**
- c. request withdrawn **0**
- d. fee-related reason **0**
- e. records not reasonably described **0**
- f. not a proper FOIA request for some other reason **0**
- g. not an agency record **0**
- h. duplicate request **0**
- i. other (specify) **dismissed 1**

VII. Compliance with Time Limits/Status of Pending Requests

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

1. Simple requests (if multiple tracks used).

- a. number of requests processed **55**
- b. median number of days to process **36**

2. Complex requests (specify for any and all tracks used).

- a. number of requests processed **0**
- b. median number of days to process **0**

3. Requests accorded expedited processing.

- a. number of requests processed **8**
- b. median number of days to process **79.5**

B. Status of pending requests.

1. Number of requests pending as of end of current fiscal year **26**

- a. number of simple requests pending as of end of current fiscal year **22**

b. number of expedited requests pending as of end of current fiscal year **4**

2. Median number of days that such requests were pending as of that date **38.5**

a. median number of days that simple requests were pending as of that date **32.5**

b. median number of days that expedited request were pending as of that date **106.5**

VIII. Comparisons with Previous Year(s) (Optional)

A. Comparison of numbers of requests received

B. Comparison of numbers of requests processed

C. Comparison of median numbers of days requests were pending as of end of fiscal year

D. Other statistics significant to agency

1. number of requests for expedited processing received **12**

2. number of these requests granted **12**

E. Other narrative statements describing agency efforts to improve timeliness of FOIA performance and to make records available to the public (e.g., backlog-reduction efforts; specification of average number of hours per processed request; training activities; public availability of new categories of records)

IX. Costs/FOIA Staffing

A. Staffing levels.

1. Number of full-time FOIA personnel **0**

2. Number of personnel with part-time or occasional FOIA duties (in total work-years) **< 1**

3. Total number of personnel (in work-years) **< 1**

B. Total costs (including staff and all resources).

1. FOIA processing (including appeals) **\$92,545.51**

2. Litigation-related activities (estimated) **0**

3. Total costs **\$92,545.51**

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4. Comparison with previous year(s) (including percentage of change) (optional)

FY 2006 \$74,073.22

FY 2007 \$92,545.51

Approximately 25% Increase

C. Statement of additional resources needed for FOIA compliance (optional)

X. Fees

A. Total amount of fees collected by agency for processing requests **0**

B. Percentage of total costs **0%**

XI. FOIA Regulations (Including Fee Schedule)

See attachment.

XII. Report on FOIA Executive Order Implementation¹

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

There have been no supplementations or modifications of the plan.

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

Area 1: FOIA Administration and Operations

Improvement 1.C.: FOIA Request Tracking and Processing

The long-term goal in this improvement area is “increasing the use of technology in processing FOIA requests,” by exploring “existing software options for solutions to tracking FOIA response deadlines and maintaining electronic FOIA files.” FOIA staff have been consulting with staff from the Information Technology Division about attaining this goal.

¹ For the benefit of members of the public reading the form on the web site, this section of the report covers calendar year 2007, while sections I. – XI. covers fiscal year 2007.

Assessment: Throughout CY 2007, we continued to experiment with existing software options in order to improve FOIA request tracking and processing. We attempted to make more sophisticated use of the advanced features of off-the-shelf software such as Adobe 8 and Microsoft Excel. For a small agency, this approach made sense, at least as an initial strategy. The goals and objectives in this area have been attained in that we have tentatively concluded that existing software options may not satisfy all of our FOIA needs. Specifically, in the area of request tracking, data input and maintenance are labor-intensive tasks using our current software, and statistical information such as that presented in this report must be compiled manually. Especially given the considerably expanded amount of statistical information that will be required for next year's version of this report pursuant to the OPEN Government Act of 2007, we need to explore more specialized software options to track our FOIA requests. In the area of processing, we are hopeful that currently available software will eventually help us substantially reduce case processing times. However, this outcome will depend on successful resolution of several issues identified with the software we currently use.

Area 3: Staff Training

Improvement 3.A.: FOIA Awareness Training

The goal in this improvement area is to train relevant FEC personnel about FOIA compliance policies and requirements, including searches, and the interaction of FOIA with the Commission's Interim Disclosure Policy.

Assessment: Throughout the third and fourth quarters of CY 2006, the FOIA staff developed a curriculum for this training. In the fourth quarter of CY 2006, the FOIA Public Liaison conducted a pilot training program for selected personnel in the Office of General Counsel's Enforcement Division. The pilot training program was successful and generated useful feedback on the curriculum. Based on this feedback, the curriculum will be modified, and the training expanded to other units throughout the agency. This improvement area is progressing towards successful completion.

Improvement 3.C.: Continuing Staff Training Evaluation

The goal in this improvement area is to "continually examine whether the training [outlined in Improvement Areas 3.B. and 3.C.] sufficiently reduces the agency's occasional delays.

Assessment: Both of the options noted in the Improvement Plan, training a group of attorneys to augment the Service Center on an as-necessary basis and supplementing the training of the program personnel liaisons, remain under evaluation. On-going.

Area 4: FOIA Website

Improvement 4.C.: Online FOIA Request Form

The goal in this improvement area is “to develop an online FOIA request form.”

Assessment: As originally contemplated, this improvement aimed at an interactive form to be available on the agency’s website, from which data would be transferred automatically to the FOIA Service Center. This model turned out to be more complex than we anticipated. We are reporting this improvement area as a deficiency (see XII.C., below).

Improvement 4.D: Customer Service Feedback Form

The goal in this improvement area is to “create an online customer service feedback form.”

Assessment: As with Improvement 4.C., this improvement was originally contemplated as an interactive form on the agency’s website, and proved to be more complex than we expected. We are reporting this improvement area as a deficiency (see XII.C., below).

Area 6: FOIA and E-FOIA Reading Rooms**Improvement 6.B.: Frequently Requested Records**

The goal in this improvement area is to review the history of recent FOIA requests with an eye to evaluating our standards for identifying frequently requested records, and updating those standards if necessary.

Assessment: Our review of the request history indicated that the Commission already makes publicly available, through its extensive public disclosure operation in its unique role as a disseminator of campaign finance disclosure information, the most frequently requested information. We have discovered no reason not to follow the standard OMB guidance in this regard. The Chief FOIA Officer has approved this policy. This goal was attained in CY 2006 ahead of schedule.

C. Identification and discussion of any deficiency in meeting plan milestones.

1. Improvement Plan Area 4.C.
2. Online FOIA Request Form; end of CY 2007.
3. The Improvement Plan contemplated an interactive on-line form to be available on the agency’s website. As work progressed throughout CY 2007, however, this interactivity proved to be more difficult to accomplish than we expected.

4. The FOIA Service Center is developing a printable version that a user may download and use for his or her submission; this printable version of the Request Form will be approved and available by March 1, 2008. In the longer term, agency FOIA personnel are consulting with the agency's Information Technology Division to determine the actual viability and expense of a truly interactive webform. This consultation will be completed by March 31, 2008. Based upon the outcome of this consultation, the Chief FOIA Officer will recommend to the Commission whether to continue to work toward this goal in its original form, or to modify the Improvement Plan with regard to this goal.

1. Improvement Plan Area 4.D.

2. Customer Service Feedback Form; end of CY 2007.

3. The Improvement Plan contemplated an interactive on-line form to be available on the agency's website. As work progressed throughout CY 2007, however, this interactivity proved to be more difficult to accomplish than we expected.

4. The FOIA Service Center is developing a printable version that a user may download and use for his or her feedback; this printable version of the Request Form will be approved and available by March 1, 2008. In the longer term, agency FOIA personnel are consulting with the agency's Information Technology Division to determine the actual viability and expense of a truly interactive webform. This consultation will be completed by March 31, 2008. Based upon the outcome of this consultation, the Chief FOIA Officer will recommend to the Commission whether to continue to work toward this goal in its original form, or to modify the Improvement Plan with regard to this goal.

D. Additional narrative statement regarding other executive order-related activities (optional).

E. Concise description of FOIA exemptions.

| | |
|-------------|---|
| Exemption 1 | This exemption protects from disclosure all national security information concerning national defense or foreign policy that has been properly classified. It rarely, if ever, applies to information in the possession of the FEC. |
| Exemption 2 | This exemption protects information related solely to the internal rules and practices of the FEC, including internal matters of a relatively trivial nature, and |

| | |
|-------------|--|
| | more substantial internal matters where disclosure would risk circumvention of a legal requirement. |
| Exemption 3 | This exemption permits the FEC to withhold information when otherwise permitted to do by statute. The most frequent basis for invoking Exemption 3 at the FEC is the so-called “confidentiality provision” of the Federal Election Campaign Act of 1971, as amended. 2 U.S.C. §437g(a)(12). |
| Exemption 4 | This exemption protects trade secrets and commercial or financial information that is privileged or confidential. At the FEC, it is typically invoked with regard to contracts. |
| Exemption 5 | This exemption permits the FEC to withhold documents that are normally privileged in the civil discovery context. The most typical examples of documents to which this exemption applies are those documents protected by the attorney-client privilege and the deliberative process privilege. |
| Exemption 6 | This exemption allows the FEC to withhold information in personnel, medical, and similar files if the disclosure of the information would constitute a clearly unwarranted invasion of personal privacy. |
| Exemption 7 | <p>This exemption allows the FEC to withhold information compiled for law enforcement purposes, if disclosure of the information could reasonably be expected to:</p> <ul style="list-style-type: none"> • Interfere with a law enforcement proceeding (Exemption 7(A)) • Deprive someone of a fair hearing (Exemption 7(B)) • Make an unwarranted invasion into someone’s personal privacy (Exemption 7(C)) • Disclose the identity of a confidential source (Exemption 7(D)) • Disclose investigative techniques or enforcement |

| | |
|-------------|--|
| | <p>guidelines (Exemption 7(E))</p> <ul style="list-style-type: none"> • Endanger someone's life or safety (Exemption 7(F)) <p>At the FEC, it is not unusual for Exemptions 7(A), 7(C), 7(D), and 7(E) to apply; Exemptions 7(B) and 7(F) rarely, if ever, come into play.</p> |
| Exemption 8 | This exemption protects records pertaining to the regulation or supervision of financial institutions, and is essentially irrelevant to the FEC. |
| Exemption 9 | This exemption pertains to records about geological and geophysical data, and is irrelevant to the FEC. |

F. Additional statistics:

1. Ten Oldest Pending FOIA Requests

| Calendar Year | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|---------------|------|------|------|------|------|------|------|------|------|-------|--|
| Requests | | | | | | | | | | Dec 8 | Jan 3 Feb 21 Mar 29 Jun 11 Jul 27 Aug 3 Aug 6 Aug 21 Sept 10 |

2. Consultations

a. Number of Consultations Received, Processed and Pending

| Consultations Received From Other Agencies During FY 07 | Consultations Received From Other Agencies That Were Processed by Your Agency During FY07 (includes those received prior to FY07) | Consultations Received From Other Agencies That Were Pending at Your Agency as of October 1, 2007 (includes those received prior to FY07) |
|---|---|---|
| 0 | 0 | 0 |

b. Ten Oldest Pending Consultations Received From
other Agencies

| Calendar Year | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|------------------|------|------|------|------|------|------|------|------|------|------|------|
| Requests | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

G. Attachment:

**EXECUTIVE ORDER 13392: SUMMARY REPORT & PLAN OF
THE FEDERAL ELECTION COMMISSION**

INTRODUCTION

Pursuant to Executive Order 13392, issued on December 14, 2005, the Federal Election Commission undertook a comprehensive review and internal assessment of its compliance with the Freedom of Information Act (FOIA). Based upon this review and assessment, the FEC identified several areas in which efforts can be made to improve compliance with FOIA and created a plan for undertaking those improvements. This summary report and plan presents the agency's findings from the review and assessment, describes improvements currently being implemented, and establishes a timetable for improved future compliance.

FEC FOIA OPERATIONS

In early January 2006, the Office of General Counsel of the Federal Election Commission began a comprehensive review of the agency's FOIA compliance practices and procedures. Overall, the agency's review revealed that, with a few exceptions, the agency is meeting or exceeding the requirements of FOIA. As a "disclosure agency," the FEC strives on a daily basis to make campaign finance information available to the public in both paper and electronic format. Furthermore, pursuant in part to the guidelines established in the FEC's Interim Disclosure Policy,² the agency also regularly discloses to the public information related to closed enforcement matters, completed audits, policy information, and other non-exempt materials.

² On December 18, 2003, the FEC published for public comment in the Federal Register its Interim Disclosure Policy regarding placing closed files on the public record in enforcement, administrative fines, and alternative dispute resolution cases. With respect to each type of case, the policy lists the types of documents that the agency will affirmatively disclose as well as the timetable for placing such documents on the public record. The effective date of the Interim Disclosure Policy is January 1, 2004. See *Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files*, 68 Fed. Reg. 70426 (December 18, 2003) (codified at 11 C.F.R. pts. 4 and 111).

As a small agency that routinely discloses information to the public, the FEC receives a relatively low number of FOIA requests annually, compared to other federal agencies.³ A review of agency FOIA request processing data revealed that delays in responding that can lead to backlogs are not common, and usually only occur when the agency receives a request that is particularly complex or voluminous. However, based upon guidance from the Department of Justice and the Office of Management and Budget, the agency has identified six specific areas that it believes warranted further consideration. With an eye toward improving customer service, the agency assessed current policies and procedures for each area, identified specific improvements that can be made in the short term, and established long-term goals toward improved FOIA compliance.

AREAS OF REVIEW

Based upon the guidelines provided in the Executive Order, the FEC chose six distinct areas for further review and consideration.

Area 1: FOIA Administration and Operations

Area 2: FOIA Staffing

Area 3: Staff Training

Area 4: FOIA Website

Area 5: Multi-track and Expedited Processing

Area 6: FOIA and E-FOIA Reading Rooms

RESULTS OF REVIEW

Beginning in January 2006, the Office of General Counsel of the Federal Election Commission conducted a comprehensive review of the agency's FOIA compliance practices and procedures. The results of this review are highlighted below.

AREA 1: FOIA ADMINISTRATION AND OPERATIONS

Prior to implementation of EO 13392, the FEC's Press Office handled the agency's FOIA operations. Section 2 of the Executive Order mandated that each agency designate a Chief FOIA Officer and FOIA Public Liaison, as well as establish a FOIA Requester Service Center. In compliance with this mandate, the agency transferred responsibility for FOIA operations from the Press Office to the Office of General Counsel, General Law and Advice Division (GLA). GLA handles all of the FEC's administrative law, disclosure, Privacy Act, employment and labor law matters, and it administers the Commission's Ethics in Government Act program. In addition, GLA is responsible for providing legal advice on audit and repayment matters, as well as debt settlements, administrative terminations and administrative fines matters. The Commission named Associate General Counsel Thomasenia Duncan as the FEC's Chief FOIA Officer, and Ms. Duncan appointed GLA attorney John Vergelli to be the FOIA Public Liaison.

³ The FEC receives and processes, on average, between 45 and 50 FOIA requests per fiscal year.

Also in response to EO 13392, the agency created the FOIA Requester Service Center within GLA to handle the processing of all agency FOIA requests. The Service Center is staffed by GLA paralegal Candace Salley. These changes not only fulfilled the requirements of EO 13392, they also improved FOIA operations by placing responsibility for FOIA within the division that historically has been responsible for identifying responsive documents. As a result of these changes, the agency has been able to reduce some of the backlogs that occurred due to internal administrative coordination problems. The FEC also has internally publicized the creation of the FOIA Requester Service Center in order to ensure that all staff members are aware of its role in the agency.

Since shifting operations to GLA, the FOIA Requester Service Center, under the guidance of the Chief FOIA Officer, has streamlined the internal procedures for handling FOIA requests. Most importantly, the Service Center created a standardized intake process that utilizes a detailed intake form for each request. The form has fields for establishing a tracking number for each request, clarifying the subject matter, identifying which divisions are most likely to have responsive documents, assigning search responsibilities, indicating whether the request qualifies for expedited processing, and establishing the timeframes for responding to the request. By gathering this information at the outset, the agency is better equipped to process the request in the most efficient and informed manner. The completed form also serves as an invaluable reference throughout the processing of FOIA requests, particularly in ensuring that all responsive documents are identified, and that the response is completed within the established timetables.

AREA 2: FOIA STAFFING

The FOIA Requester Service Center is currently staffed by one paralegal who is responsible for receiving FOIA requests, filling out a standard intake form to determine the proper processing track and plan, coordinating the processing, and corresponding with the Requester. Due to time constraints resulting from other responsibilities within GLA, the paralegal can only dedicate a limited amount of time to the FOIA Requester Service Center.

The current staffing arrangement could prove to be inadequate in the long term, particularly if the agency receives complex or voluminous FOIA requests at the same time that GLA receives a large number of closed case files to process for placement on the public record in accordance with the agency's Interim Disclosure Policy. As noted above, GLA is responsible for placing closed files on the public record in enforcement and administrative fines cases. This includes reviewing entire case files to identify documents for public disclosure, and then reviewing each individual document to redact any information contained therein that falls under a relevant FOIA exemption. Since the same personnel within GLA handle both the affirmative disclosure and request processing responsibilities of the FOIA, FOIA staff can be subject to competing time demands. The agency will continue to monitor FOIA staff resources to determine whether adequate resources have been allocated, with

an eye to making appropriate staffing recommendations.

AREA 3: STAFF TRAINING

In the past, the FEC has focused its FOIA staff training efforts on those few individuals who were responsible for the actual processing of FOIA requests. However, a review of other agencies' staff training policies suggests that wider FOIA awareness training among agency staff could have a positive effect on the agency's overall FOIA compliance. As a result, the FEC is in the process of implementing staff training improvements, as well as establishing future goals related to training.

AREA 4: FOIA WEBSITE

In compliance with the 1996 E-FOIA requirements, the FEC has maintained a FOIA website (www.fec.gov/press/foia) that includes basic information about making a FOIA request as well as copies of the agency's FOIA Annual Reports. After establishing the FOIA Requester Service Center earlier this year pursuant to EO 13392, the agency updated its FOIA website to include contact information for the FOIA Requester Service Center and FOIA Public Liaison. The website also was updated to include more easily accessible instructions for making FOIA requests of the FEC, and a brief overview of the types of records that the agency routinely makes publicly available.

The FEC has conducted a review of other agencies' FOIA websites to identify ways that the FEC's FOIA website can be enhanced to improve customer service to the public. As a result of this review, the FEC intends to make several changes to its FOIA website.

AREA 5: MULTI-TRACK AND EXPEDITED PROCESSING

The Commission's Regulations lay out a general framework for multi-track processing at 11 C.F.R. § 4.7(f) and expedited processing at 11 C.F.R. § 4.7(g). In the past, the agency has applied these regulations in a somewhat informal, case-by-case manner. As a result of this experience, the agency plans to standardize the processes for assigning requests to processing tracks, as described below.

AREA 6: FOIA and E-FOIA READING ROOMS

The agency's FOIA Reading Room is located within the Public Records Office on the first floor of the FEC building at 999 E Street, NW in Washington, DC. The reading room maintains an archive of completed compliance actions, alternative dispute resolution and administrative fines cases; litigation and audit reports; advisory opinion requests, public comments and final opinions; Commission memoranda, bulletins and directives; FEC newsletters and annual reports; press releases; federal register notices, public comments on proposed rulemakings, public hearing documents; Explanations and Justifications; and sunshine notices, agendas, agenda documents, minutes and audio tapes of past Commission meetings. The Public Records Office is open daily during normal

business hours and on some weekends for public inspection and photocopying. Archived materials are searchable using the agency's KEA database and more recent materials can be located using web-based databases on terminals located in the reading room.

Pursuant to the 1996 E-FOIA amendments, the agency also has placed most of the information that is available in the reading room onto its website as an Electronic Reading Room for easy public accessibility. The online materials include indexes for many databases, with full text searchability.

To ensure that the FEC is fully complying with the E-FOIA requirements, the General Law and Advice Division has undertaken a review of the materials that are available in the Public Records Office / FOIA Reading Room and Electronic Reading Room. As a result of this review, the agency has identified several changes that can be made to improve customer service in accordance with EO 13392.

IMPROVEMENT AREAS FOR AGENCY PLAN

As a result of the agency's review of the six areas described above on pages 2 through 5, the FEC identified several improvement areas within each review area. The improvement areas discussed in greater detail below comprise the agency's plan under EO 13392.

Area 1: FOIA Administration and Operations

Improvement 1.A.: Correspondence Library

Improvement 1.B.: Program Personnel Liaisons

Improvement 1.C.: FOIA Request Tracking and Processing

Area 2: FOIA Staffing

Improvement 2.A.: FOIA Staff Resource Review
Methodology

Improvement 2.B.: FOIA Staff Resource Review

Area 3: Staff Training

Improvement 3.A.: FOIA Awareness Training

Improvement 3.B.: Program Personnel Liaison Training

Improvement 3.C.: Continuing Staff Training Evaluation

Area 4: FOIA Website

Improvement 4.A.: Centralized Links

Improvement 4.B.: Detailed FOIA Instructions

Improvement 4.C.: Online FOIA Request Form

Improvement 4.D.: Customer Service Feedback Form

Area 5: Multi-track and Expedited Processing

Improvement 5.A.: Clarify Tracks

Improvement 5.B.: Clarify Criteria for Expedited Processing

Area 6: FOIA and E-FOIA Reading Rooms

Improvement 6.A.: FOIA Reading Room Signage

Improvement 6.B.: Frequently Requested Records

AGENCY PLAN

AREA 1: FOIA ADMINISTRATION AND OPERATIONS

Improvement 1.A: Correspondence Library

Goals and Objectives:

The FOIA Requester Service Center has been working to create a standardized process for responding to FOIA requests based upon GLA's Standard Operating Procedures. As part of this effort, the Service Center is developing a library of correspondence form letters that assist in expediting response times and communicating more effectively with the public. A review of other agency FOIA practices indicates that many agencies are using standardized form letters for corresponding with Requesters, and the agency believes that this is another step in the streamlining process that began with the development of the standard intake form. Included in the correspondence library will be a standard acknowledgment letter that will be sent to every requester notifying them of the agency's receipt of their request and informing them of their track(s), tracking number, and anticipated timetable for completion of the request. The acknowledgment letter will also provide information about the ability to "opt in" to a faster track by limiting the request (see Improvement 5.A. below).

Timetable:

The agency anticipates completing the correspondence library by the end of the third quarter of CY2006.

Improvement 1.B: Program Personnel Liaisons

Goals and Objectives:

The agency will establish a central point of contact within each FEC division. This contact person will be responsible for corresponding with the FOIA Requester Service Center during the processing of requests. The individual contacts from each division will be identified with the assistance of the offices of the Commission's Staff Director and General Counsel. By identifying a single point of contact within each division, the agency will be better able to alleviate delays that occur when a division does not fully or timely respond to a request from the FOIA Requester Service Center.

Timetable:

The FEC will establish program personnel contacts within each division by the end of the second quarter of CY2006.

Improvement 1.C: FOIA Request Tracking and Processing

Goals and Objectives:

The FEC has identified a longer-term goal of increasing the use of technology in processing FOIA requests. In collaboration with the agency's Information Technology division, the FEC plans to look into existing software options for solutions to tracking FOIA response deadlines and maintaining electronic FOIA response files.

Timetable:

The agency plans to begin working with the Information Technology Division beginning in the second quarter of CY2006 and complete any upgrades by the end of CY2007.

AREA 2: FOIA STAFFING

Improvement 2.A: FOIA Staff Resource Review Methodology

Goals and Objectives:

To assess the agency's FOIA staffing needs, OGC will work with the agency's Information Technology Division to establish a baseline methodology for reviewing the total staff resources that are expended on FOIA compliance. The agency will most likely utilize an existing software application, *Law Manager 98™*, to track the time that GLA personnel spend working on FOIA-related projects. The software application allows for several methods of statistical analysis of the input data.

Timetable:

The agency anticipates having a methodology in place by the end of the second quarter of CY2006.

Improvement 2.B: FOIA Staff Resource Review

Goals and Objectives:

During the fourth quarter of CY2006, the agency will complete a study of FOIA staff resources using the methodology discussed above. By making a detailed and informed assessment of the staffing issues involved with administering the FOIA, the agency hopes to discover staffing solutions that will improve customer service and decrease or even eliminate the occasional backlogs.

Timetable:

The agency will complete the study by the end of CY2006. Based upon the outcome of the study, OGC will request additional budgetary allocations for future fiscal years, where necessary, to support improved staffing requirements.

AREA 3: STAFF TRAINING

Improvement 3.A: FOIA Awareness Training

Goals and Objectives:

The agency is planning FOIA awareness training for FEC personnel who maintain agency records likely to be responsive to FOIA requests. These training sessions will focus on providing employees with a basic understanding of the agency's FOIA compliance policies and requirements. Specific topics include procedures for conducting searches for responsive FOIA documents within an employee's own files, as well as general FOIA practices of making records publicly available in accordance with the agency's Interim Disclosure Policy. The objective of this awareness training will be to encourage FEC employees to maintain their office files in such a way as to facilitate a timely and thorough search of their files should they be responsive to a FOIA request, and that employees recognize which documents from their files should be placed on the public record at the appropriate time.

Timetable:

This training is preliminarily planned to take place during the third or fourth quarter of CY2006.

Improvement 3.B: Program Personnel Liaison Training

Goals and Objectives:

The FEC is developing specialized training for the division liaisons discussed in Area 1.B above. This training will focus on skills for managing searches for responsive documents within the various divisions of the agency. The agency will also hold periodic training as necessary to keep the liaisons apprised of any procedural changes or to address any problems or complications that arise.

Timetable:

This training is preliminarily planned for the fourth quarter of CY2006.

Improvement 3.C: Continuing Staff Training Evaluation

Goals and Objectives:

The FEC intends to continually examine whether the training discussed above sufficiently reduces the agency's occasional delays. If the agency determines that additional training is necessary to help reduce delays, OGC has considered two additional training possibilities. The first would be to train a group of OGC attorneys who would be available to assist with FOIA processing on a case-by-case basis. An alternative would

be to provide the division liaisons with additional training in FOIA processing to assist on a case-by-case basis. Both of these possible courses of action remain available to the agency in the future, and will be explored further if necessary.

Timetable:
Ongoing.

AREA 4: FOIA WEBSITE

Improvement 4.A: Centralized Links

Goals and Objectives:

The FEC will provide direct, centralized links from the agency's FOIA website to the publicly available materials located elsewhere on the FEC website. This will be a "one stop shopping" list of all of the available disclosure materials on the website including but not limited to closed compliance matters, advisory opinion files, FEC newsletters and annual reports.

Timetable:

The FEC will complete the website link project by the end of CY2006.

Improvement 4.B: Detailed FOIA Instructions

Goals and Objectives:

The FEC's FOIA webpage will have more detailed instructions for making FOIA requests and appeals, as well as information for following up on requests with the FOIA Requester Service Center and FOIA Public Liaison. The website also will include a more detailed description of the types of materials the agency maintains in its archives or closed files - the types of records which can only be accessed based upon a FOIA request. The FEC's FOIA website will link to relevant FOIA websites maintained by the Department of Justice that can provide Requesters with additional assistance. The agency is also considering publishing its schedule of fees and fee waiver application information. The information provided on the FEC's website will satisfy the FOIA Reference Guide requirements outlined in 5 U.S.C. § 552(g).

Timetable:

These changes will go online in stages beginning immediately and continuing throughout the third and fourth quarters of CY2006. Additionally, the FEC will continue to monitor

feedback from the public regarding the user-friendliness of the agency's FOIA webpage and make upgrades as necessary.

Improvement 4.C: Online FOIA Request Form

Goals and Objectives:

The FEC plans to work with its Information Technology department to develop an online FOIA request form. The agency envisions that such a form would serve a two-fold purpose. First, an online form would make it easier for the public to make FOIA requests for FEC materials by removing an added step in the process and clarifying what information is necessary. Second, an online form would improve the agency's processing of requests by standardizing the Requesters' information into a format that is easily exportable to the standard intake discussed above. Additional features, such as an online "track your request" function may also be considered.

Timetable:

The agency plans to undertake this task in CY2007.

Improvement 4.D: Customer Service Feedback Form

Goals and Objectives:

The FEC will create an online customer service feedback form where requesters can comment on the FEC's handling of FOIA matters, make suggestions for improvements, or compliment agency personnel on their efforts in processing FOIA requests. The FOIA Public Liaison and Chief FOIA Officer will review the information submitted on the form in order to make changes or improvements as necessary.

Timetable:

The agency plans to undertake this task in CY2007.

AREA 5: MULTI-TRACK AND EXPEDITED PROCESSING

Improvement 5.A: Clarify Tracks

Goals and Objectives:

In order to more effectively and uniformly apply the Commission's Regulations for multi-track and expedited processing, the agency has more clearly defined the three available processing tracks as follows: expedited 10-day; intermediate 20-day; and extended 20+day. On its standard intake form the agency will create a track selection area to clearly show the track(s) to which a given request is assigned.

Timetable:

This task will be completed by the end of the second quarter of CY2006.

Improvement 5.B: Clarify Criteria for Expedited Processing

Goals and Objectives:

The FEC has also reviewed the language of 11 C.F.R. § 4.7(g) with a goal of clarifying the criteria for expedited processing. This information will be included on the FEC's standard intake form as a checkbox area for the expedited processing criteria.

Timetable:

This task will be completed by the end of the second quarter of CY2006.

AREA 6: FOIA and E-FOIA READING ROOM

Improvement 6.A.: FOIA Reading Room Signage

Goals and Objectives:

OGC is working with the Public Records Office to establish clearer signage for the FOIA Reading Room. This will eliminate any confusion the public may have about the location and accessibility of the FOIA materials.

Timetable:

The FEC intends to complete this task by the end of the third quarter of CY2006.

Improvement 6.B.: Frequently Requested Records

Goals and Objectives:

Pursuant to E-FOIA amendment 5 U.S.C. § 552 (a)(2)(D), the agency has developed a protocol for determining which frequently requested records should be made publicly available. Under the Act, the agency is directed to make available to the public copies of all records which have been requested and which, due to their nature or subject matter, are likely to be the subject of subsequent requests for substantially the same records. OMB has recommended that a maximum of three (3) requests for the same documents should trigger this provision of the FOIA. The FEC plans to evaluate its records of FOIA requests to determine whether to adopt the OMB's recommendation or adopt a lower threshold for disclosure of documents produced in response to a FOIA request. To facilitate the disclosure, the FOIA Requester Service Center is working on developing a system for tracking and calling up

processed FOIA requests. The FEC will also begin reviewing its past FOIA request responses to determine which document productions, if any, warrant disclosure based upon the criteria that the agency will establish. GLA will work with the agency's Information Technology Division to create a separate area on the agency's website to compile electronic versions of the document productions for public review, and will create a direct link from the agency's FOIA website to this new webpage. The FEC may include hardcopies of the documents in the FOIA Reading Room, or in the alternative, direct visitors in the FOIA Reading Room to the online location of the documents.

Timetable:

The agency plans to establish its "frequently requested records" disclosure policy by the end of the fourth quarter of CY2006 and begin implementing it by the end of the first quarter of CY2007.

CONSOLIDATED TIMETABLE

Areas anticipated to be completed by December 31, 2006

- Improvement 1.A.: Correspondence Library
- Improvement 1.B.: Program Personnel Liaisons
- Improvement 2.A.: FOIA Staff Resource Review Methodology
- Improvement 2.B.: FOIA Staff Resource Review
- Improvement 3.A.: FOIA Awareness Training
- Improvement 3.B.: Program Personnel Liaison Training
- Improvement 4.A.: Centralized Links
- Improvement 4.B.: Detailed FOIA Instructions
- Improvement 5.A.: Clarify Tracks
- Improvement 5.B.: Clarify Criteria for Expedited Processing
- Improvement 6.A.: FOIA Reading Room Signage
- Improvement 6.B.: Frequently Requested Records

Areas anticipated to be completed by December 31, 2007

- Improvement 1.C.: FOIA Request Tracking and Processing
- Improvement 4.C.: Online FOIA Request Form
- Improvement 4.D.: Customer Service Feedback Form

Areas anticipated to be completed after December 31, 2007

- Improvement 3 .C.: Continuing Staff Training Evaluation

CONCLUSION

The Federal Election Commission has already made and continues to make excellent progress in its implementation of EO 13392. The agency has identified several areas of improvement as outlined above, and has created concrete and realistic timetables for implementing those

goals. Reports on the FEC's progress will be included in the agency's FY06 and FY07 FOIA Annual Reports.

[Code of Federal Regulations]

[Title 11, Volume 1]

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TITLE 11--FEDERAL ELECTIONS

CHAPTER I--FEDERAL ELECTION COMMISSION

PART 4_PUBLIC RECORDS AND THE FREEDOM OF INFORMATION ACT--Table of Contents

Sec.

4.1 Definitions.

4.2 Policy on disclosure of records.

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4.9 Fees.

Authority: 5 U.S.C. 552, as amended.

Source: 44 FR 33368, June 8, 1979, unless otherwise noted.

Sec. 4.1 Definitions.

As used in this part:

(a) Commission means the Federal Election Commission, established by the Federal Election Campaign Act of 1971, as amended.

(b) Commissioner means an individual appointed to the Federal Election Commission pursuant to 2 U.S.C. 437c(a).

(c) Request means to seek the release of records under 5 U.S.C. 552.

(d) Requestor is any person who submits a request to the Commission.

(e) Act means the Federal Election Campaign Act of 1971, as amended by the Federal Election Campaign Act Amendments of 1974, 1976, and 1979, and unless specifically excluded, includes chapters 95 and 96 of the Internal Revenue Code of 1954 relating to public financing of Federal elections.

(f) Public Disclosure Division of the Commission is that division which is responsible for, among other things, the processing of requests for public access to records which are submitted to the Commission pursuant to 2 U.S.C. 437f(d), 437g(a)(4)(B)(ii), and 438(a).

(g) Direct costs means those expenditures which the Commission actually incurs in searching for and duplicating (and, in the case of commercial use requestors, reviewing) documents to respond to a FOIA request. Direct costs include the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating equipment. Direct costs do not include overhead expenses such as the cost of space and heating or lighting the facility in which the records are stored.

(h) Search means all time spent reviewing, manually or by automated means, Commission records for the purpose of locating those records that are responsive to a FOIA request, including page-by-page or line-by-line identification of material within documents. Search time does not include review of material in order to determine whether the material is exempt from disclosure.

(i) Review means the process of examining a document located in response to a commercial use request to determine whether any portion of the document located is exempt from disclosure. Review also refers to processing any document for disclosure, i.e., doing all that is necessary to excise exempt portions of the document and otherwise prepare the document for release. Review does not include time spent by the Commission resolving general legal or policy issues regarding the application of exemptions.

(j) Duplication means the process of making a copy of a document necessary to respond to a FOIA request. Examples of the form such copies can take include, but are not limited to, paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk).

(k) Commercial use means a purpose that furthers the commercial,

trade, or profit interests of the requestor or the person on whose behalf the request is made. The Commission's determination as to whether documents are being requested for a commercial use will be based on the purpose for which the documents are being requested. Where the Commission has reasonable cause to doubt the use for which the requestor claims to have made the request or where that use is not clear from the request itself, the Commission will seek additional clarification before assigning the request to a specific category.

(l) Educational institution means a preschool, a 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 program or programs of scholarly research.

(m) Non-commercial scientific institution means an organization that is not operated on a commercial basis, as that term is defined in paragraph (k) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(n) Representative of the news media means a person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term news means information that is about current events or that would be of current interest to the public. Examples of news media entities include, but are not limited to, television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of news, as defined in this paragraph) who make their products available for purchase or subscription by the general public. A freelance journalist may be regarded as working for a news organization and therefore considered a representative of the news media if that person can demonstrate a solid basis for expecting publication by that news organization, even though that person is not actually employed by that organization. The best means by which a freelance journalist can demonstrate a solid basis for expecting publication by a news organization is by having a publication contract with that news organization. When no such contract is present, the Commission will look to the freelance journalist's past publication record in making this determination.

(o) Record and any other term used in this part in reference to

information includes any information that would be a Commission record subject to the requirements of this part when maintained by the Commission in any format, including an electronic format.

[44 FR 33368, June 8, 1979, as amended at 45 FR 31291, May 13, 1980; 52 FR 39212, Oct. 21, 1987; 65 FR 9206, Feb. 24, 2000]

Sec. 4.2 Policy on disclosure of records.

(a) The Commission will make the fullest possible disclosure of records to the public, consistent with the rights of individuals to privacy, the rights of persons contracting with the Commission with respect to trade secret and commercial or financial information entitled to confidential treatment, and the need for the Commission to promote free internal policy deliberations and to pursue its official activities without undue disruption.

(b) All Commission records shall be available to the public unless they are specifically exempt under this part.

(c) To carry out this policy, the Commission shall designate a Freedom of Information Act Officer.

Sec. 4.3 Scope.

The regulations in this part implement the provisions of the Freedom of Information Act, 5 U.S.C. 552, with respect to the availability of records for inspection and copying.

[44 FR 33368, June 8, 1979, as amended at 45 FR 31291, May 13, 1980]

Sec. 4.4 Availability of records.

(a) In accordance with 5 U.S.C. 552(a)(2), the Commission shall make the following materials available for public inspection and copying:

(1) Statements of policy and interpretation which have been adopted by the Commission;

(2) Administrative staff manuals and instructions to staff that affect a member of the public;

(3) Opinions of Commissioners rendered in enforcement cases, General Counsel's Reports and non-exempt 2 U.S.C. 437g investigatory materials shall be placed on the public record of the Agency no later than 30 days from the date on which all respondents are notified that the Commission has voted to close such an enforcement file;

(4) Copies of all records, regardless of form or format, which have been released to any person under this paragraph (a) and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records; and

(5) A general index of the records referred to in paragraph (a)(4) of this section.

(b) In accordance with 5 U.S.C. 552(a)(3), the Commission shall make available, upon proper request, all non-exempt Agency records, or portions of records, not previously made public pursuant to 5 U.S.C. 552(a)(1) and (a)(2).

(c) The Commission shall maintain and make available current indexes and supplements providing identifying information regarding any matter issued, adopted or promulgated after April 15, 1975 as required by 5 U.S.C. 552(a)(2)(C) and (E). These indexes and supplements shall be published and made available on at least a quarterly basis for public distribution unless the Commission determines by Notice in the Federal Register that publication would be unnecessary, impracticable, or not feasible due to budgetary considerations. Nevertheless, copies of any index or supplement shall be made available upon request at a cost not to exceed the direct cost of duplication.

(d) The Freedom of Information Act and the provisions of this part apply only to existing records; they do not require the creation of new records.

(e) If documents or files contain both disclosable and nondisclosable information, the nondisclosable information will be deleted and the disclosable information released unless the disclosable portions cannot be reasonably segregated from the other portions in a manner which will allow meaningful information to be disclosed.

(f) All records created in the process of implementing provisions of 5 U.S.C. 552 will be maintained by the Commission in accordance with the

authority granted by General Records Schedule 14, approved by the National Archives and Records Service of the General Services Administration.

(g) The Commission encourages the public to explore the information available on the Commission's World Wide Web site, located at <http://www.fec.gov>. The site includes a Commission publication, Availability of FEC Information, which provides a detailed listing of the types of documents available from the FEC, including those available under FOIA, and directions on how to locate and obtain them.

[44 FR 33368, June 8, 1979, as amended at 45 FR 31291, May 13, 1980; 65 FR 9206, Feb. 24, 2000]

Sec. 4.5 Categories of exemptions.

(a) No requests under 5 U.S.C. 552 shall be denied release unless the record contains, or its disclosure would reveal, matters that are:

(1) Specifically authorized under criteria established by an executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of the Commission;

(3) Specifically exempted from disclosure by statute, provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person which are privileged or confidential. Such information includes confidential business information which concerns or relates to the trade secrets, processes, operations, style of works, or apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers, inventories, or amount of source of income, profits, losses, or expenditures of any person, firm, partnership, corporation, or other organization, if the disclosure is likely to have the effect of either impairing the Commission's ability to obtain such

information as is necessary to perform its statutory functions, or causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained, unless the Commission is required by law to disclose such information. These procedures shall be used for submitting business information in confidence:

(i) A request for confidential treatment shall be addressed to the FOIA officer, Federal Election Commission, 999 E Street, NW., Washington, DC 20463, and shall indicate clearly on the envelope that it is a request for confidential treatment.

(ii) With each submission of, or offer to submit, business information which a submitter desires to be treated as confidential under paragraph (a)(4) of this section, the submitter shall provide the following, which may be disclosed to the public: (A) A written description of the nature of the subject information, and a justification for the request for its confidential treatment, and (B) a certification in writing under oath that substantially identical information is not available to the public.

(iii) Approval or denial of requests shall be made only by the FOIA officer or his or her designees. A denial shall be in writing, shall specify the reason therefore, and shall advise the submitter of the right to appeal to the Commission.

(iv) For good cause shown, the Commission may grant an appeal from a denial by the FOIA Officer or his or her designee if the appeal is filed within fifteen (15) days after receipt of the denial. An appeal shall be addressed to the FOIA Officer, Federal Election Commission, 999 E Street, NW., Washington, DC 20463 and shall clearly indicate that it is a confidential submission appeal. An appeal will be decided within twenty (20) days after its receipt (excluding Saturdays, Sundays and legal holidays) unless an extension, stated in writing with the reasons therefore, has been provided the person making the appeal.

(v) Any business information submitted in confidence and determined to be entitled to confidential treatment shall be maintained in confidence by the Commission and not disclosed except as required by law. In the event that any business information submitted to the Commission is not entitled to confidential treatment, the submitter will be permitted to withdraw the tender unless it is the subject of a request under the Freedom of Information Act or of judicial discovery

proceedings.

(vi) Since enforcement actions under 2 U.S.C. 437g are confidential by statute, the procedures outlined in Sec. 4.5(a)(4) (i) thru (v) are not applicable.

(5) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party in litigation with the Commission.

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(b) Whenever a request is made which involves access to records described in 11 CFR 4.5(a)(7): and

(1) The investigation or proceeding involves a possible violation of criminal law; and

(2) There is reason to believe that--

(i) The subject of the investigation or proceeding is not aware of

its pendency, and

(ii) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings;

The agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of the Freedom of Information Act.

(c) Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt. The amount of information deleted shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by an exemption in paragraph (a) of this section under which the deletion is made. If technically feasible, the amount of the information deleted shall be indicated at the place in the record where such deletion is made.

(d) If a requested record is one of another government agency or deals with subject matter to which a government agency other than the Commission has exclusive or primary responsibility, the request for such a record shall be promptly referred by the Commission to that agency for disposition or guidance as to disposition.

(e) Nothing in this part authorizes withholding of information or limiting the availability of records to the public, except as specifically provided in this part; nor is this part authority to withhold information from Congress.

[44 FR 33368, June 8, 1979, as amended at 50 FR 50778, Dec. 12, 1985; 52 FR 23638, June 24, 1987; 52 FR 39212, Oct. 21, 1987; 65 FR 9206, Feb. 24, 2000]

Sec. 4.6 Discretionary release of exempt records.

The Commission may, in its discretion, release requested records despite the applicability of the exemptions in Sec. 4.5(a), if it determines that it is in the public interest and that the rights of third parties would not be prejudiced.

Sec. 4.7 Requests for records.

(a) [Reserved]

(b)(1) Requests for copies of records pursuant to the Freedom of Information Act shall be addressed to FOIA officer, Federal Election Commission, 999 E Street, NW., Washington, DC 20463. The request shall reasonably describe the records sought with sufficient specificity with respect to names, dates, and subject matter, to permit the records to be located. A requester will be promptly advised if the records cannot be located on the basis of the description given and that further identifying information must be provided before the request can be satisfied.

(2) Requests for Commission records and copies thereof shall specify the preferred form or format (including electronic formats) of the response. The Commission shall accommodate requesters as to form or format if the record is readily available in that form or format. When requesters do not specify the form or format of the response, the Commission shall respond in the form or format in which the document is most accessible to the Commission.

(c) The Commission shall determine within twenty working days after receipt of a request, or twenty working days after an appeal is granted, whether to comply with such request, unless in unusual circumstances the time is extended or subject to Sec. 4.9(f)(3), which governs advance payments. In the event the time is extended, the requestor shall be notified of the reasons for the extension and the date on which a determination is expected to be made, but in no case shall the extended time exceed ten working days. An extension may be made if it is--

(1) Necessary to locate records or transfer them from physically separate facilities; or

(2) Necessary to search for, collect, and appropriately examine a large quantity of separate and distinct records which are the subject of a single request; or

(3) Necessary for consultation with another agency which has a substantial interest in the determination of the request, or with two or more components of the Commission which have a substantial subject matter interest therein.

(d) If the Commission determines that an extension of time greater than ten working days is necessary to respond to a request satisfying the "unusual circumstances" specified in paragraph (c) of this

section, the Commission shall so notify the requester and give the requester an opportunity to limit the scope of the request so that it may be processed within the time limit prescribed in paragraph (c) of this section, or arrange with the Commission an alternative time frame for processing the request or a modified request.

(e) The Commission may aggregate and process as a single request requests by the same requester, or a group of requesters acting in concert, if the Commission reasonably believes that the requests actually constitute a single request that would otherwise satisfy the unusual circumstances specified in paragraph (c) of this section, and the requests involve clearly related matters.

(f) The Commission uses a multitrack system to process requests under the Freedom of Information Act that is based on the amount of work and/or time involved in processing requests. Requests for records are processed in the order they are received within each track. Upon receipt of a request for records, the Commission shall determine which track is appropriate for the request. The Commission may contact requesters whose requests do not appear to qualify for the fastest tracks and provide such requesters the opportunity to limit their requests so as to qualify for a faster track. Requesters who believe that their requests qualify for the fastest tracks and who wish to be notified if the Commission disagrees may so indicate in the request and, where appropriate and feasible, shall also be given an opportunity to limit their requests.

(g) The Commission shall consider requests for the expedited processing of requests in cases where the requester demonstrates a compelling need for such processing.

(1) The term compelling need means:

(i) That a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal government activity.

(2) Requesters for expedited processing must include in their requests a statement setting forth the basis for the claim that a "compelling need" exists for the requested information, certified by the requester to be true and correct to the best of his or her knowledge and belief.

(3) The Commission shall determine whether to grant a request for expedited processing and notify the requester of such determination within ten days of receipt of the request. Denials of requests for expedited processing may be appealed as set forth in Sec. 4.8. The Commission shall expeditiously determine any such appeal. As soon as practicable, the Commission shall process the documents responsive to a request for which expedited processing is granted.

(h) Any person denied access to records by the Commission shall be notified immediately giving reasons therefore, and notified of the right of such person to appeal such adverse determination to the Commission.

(i) The date of receipt of a request under this part shall be the date on which the FOIA Officer actually receives the request.

[44 FR 33368, June 8, 1979, as amended at 45 FR 31292, May 13, 1980; 50 FR 50778, Dec. 12, 1985; 52 FR 39213, Oct. 21, 1987; 65 FR 9206, Feb. 24, 2000]

Sec. 4.8 Appeal of denial.

(a) Any person who has been notified pursuant to Sec. 4.6(d) of this part that his/her request for inspection of a record or for a copy has been denied, or who has received no response within ten working days (or within such extended period as is permitted under Sec. 4.7(c) of this part) after the request has been received by the Commission, may appeal the adverse determination or the failure to respond by requesting the Commission to direct that the record be made available.

(b) The appeal request shall be in writing, shall clearly and prominently state on the envelope or other cover and at the top of the first page "FOIA Appeal", and shall identify the record in the form in which it was originally requested.

(c) The appeal request should be delivered or addressed to the FOIA Officer, Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

(d) The requestor may state facts and cite legal or other authorities as he/she deems appropriate in support of the appeal request.

(e) For good cause shown, the Commission may disclose a record which

is subject to one of the exemptions listed in Sec. 4.5 of this part.

(f) The Commission will make a determination with respect to any appeal within twenty days (excluding Saturdays, Sundays and legal holidays) after receipt of the appeal (or within such extended period as is permitted under Sec. 4.7(c) of this part). If on appeal, the denial of the request for a record or a copy is in whole or in part upheld, the Commission shall advise the requestor of the denial and shall notify him/her of the provisions for judicial review of that determination as set forth in 5 U.S.C. 552(a)(4).

(g) Because of the risk of misunderstanding inherent in oral communications, the Commission will not entertain any appeal from an alleged denial or failure to comply with an oral request. Any person who has orally requested a copy of a record that he/she believes to have been improperly denied should resubmit the request in writing as set forth in Sec. 4.7.

[44 FR 33368, June 8, 1979, as amended at 50 FR 50778, Dec. 12, 1985]

Sec. 4.9 Fees.

(a) Exceptions to fee charges--(1) General. Except for a commercial use requester, the Commission will not charge a fee to any requester for the first two hours of search time and the first 100 pages of duplication in response to any FOIA request.

(2) Free computer search time. For purposes of this paragraph, the term search time is based on the concept of a manual search. To apply this to a search conducted by a computer, the Commission will provide the equivalent dollar value of two hours of professional staff time, calculated according to paragraph (c)(4) of this section, in computer search time. Computer search time is determined by adding the cost of the computer connect time actually used for the search, calculated at the rate of \$25.00 per hour, to the cost of the operator's salary for the time spent conducting the computer search, calculated at the professional staff time rate set forth at paragraph (c)(4) of this section.

(3) Definition of pages. For purposes of this paragraph, the word pages refers to paper copies of a standard agency size which will normally be 8 1/2" x 11" or 8 1/2" x

14<gr-thn-eq>. Thus, while a requester would not be entitled to 100 free computer disks, for example, a requester would be entitled to 100 free pages of a computer printout.

(4) Minimum charge. The Commission will not charge a fee to any requester when the allowable direct cost of that FOIA request is equal to or less than the Commission's cost of routinely collecting and processing a FOIA request fee.

(b) Fee reduction or waiver--(1) The Commission will consider requests for the reduction or waiver of any fees assessed pursuant to paragraph (c)(1) of this section if it determines, either as a result of its own motion or in response to a written submission by the requester, that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and that disclosure of the information is not primarily in the commercial interest of the requester.

(2) A request for a reduction or waiver of fees shall be made in writing by the FOIA requestor; shall accompany the relevant FOIA request so as to be considered timely; and shall include a specific explanation as to why the fee for that FOIA request should be reduced or waived, applying the standard stated in paragraph (b)(1) of this section to the facts of that particular request. In addition, the explanation shall include: the requester's (and user's, if the requester and the user are different persons or entities) identity, qualifications and expertise in the subject area, and ability and intention to disseminate the information to the public; and a discussion of any commercial or personal benefit that the requestor (and user, if the requestor and user are different persons or entities) expects as a result of disclosure, including whether the information disclosed would be resold in any form at a fee above actual cost.

(c) Fees to be charged. (1) The FOIA services provided by the Commission in response to a FOIA request for which the requestor will be charged will depend upon the category of the requestor. The categories of FOIA requestors are as follows:

(i) Commercial use requestors. A requestor of documents for commercial use will be assessed reasonable standard charges for the full allowable direct costs of searching for, reviewing for release and duplicating the records sought, according to the Commission's schedule

of fees for those services as set forth at paragraph (c)(4) of this section. A commercial use requestor is not entitled to two hours of free search time nor 100 free pages of duplication of documents.

(ii) Educational and non-commercial scientific institution requestors. The Commission will provide documents to requestors in this category for the cost of duplication of the records provided by the Commission in response to the request, according to the Commission's schedule of fees as set forth at paragraph (c)(4) of this section, excluding charges for the first 100 pages of duplication. Requestors in this category will not be charged for search time. To be eligible for inclusion in this category, requestors must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a 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.

(iii) Requestors who are representatives of the news media. The Commission will provide documents to requestors in this category for the cost of duplication of the records provided by the Commission in response to the request, according to the Commission's schedule of fees as set forth at paragraph (c)(4) of this section, excluding charges for the first 100 pages of duplication. Requestors in this category will not be charged for search time. To be eligible for inclusion in this category, the requestor must meet the criteria listed at 11 CFR 4.1(n) and his or her request must not be made for a commercial use. A request for records supporting the news dissemination function of the requestor shall not be considered to be a request that is for a commercial use.

(iv) All other requestors. The Commission will charge requestors who do not fit into any of the categories listed in paragraph (c)(1)(i), (ii) or (iii) of this section the full direct costs of searching for and duplicating records in response to the request, according to the Commission's schedule of fees as set forth at paragraph (c)(4) of this section, excluding charges for the first two hours of search time and the first 100 pages of duplication. Requests from record subjects for records about themselves will continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for duplication.

(2) The Commission may assess fees for the full allowable direct costs of searching for documents in response to a request even if the Commission fails to locate any documents which are responsive to that request and, in the case of commercial use requestors, of reviewing documents located in response to a request which the Commission determines are exempt from disclosure.

(3) If the Commission estimates that search or duplication charges are likely to exceed \$25.00, it will notify the requestor of the estimated amount of the fee unless the requestor has indicated in advance a willingness to pay a fee as high as that estimated by the Commission. Through this notification, the Commission will offer the requestor the opportunity to confer with Commission staff to reformulate the original request in order to meet the requestor's needs at a lower cost.

(4) The following is the schedule of the Commission's standard fees. The cost of staff time will be added to all of the following fees, generally at the Professional rate listed below, except for the cost of Photocopying from photocopying machines which has been calculated to include staff time.

Photocopying

Photocopying from photocopying machines--\$.07 per page

Photocopying from microfilm reader-printer--\$.15 per page

Paper copies from microfilm-paper print machine--\$.05 per frame page

Reels of Microfilm

Daily film (partial or complete roll)--\$2.85 per roll

Other film (partial or complete roll)--\$5.00 per roll

Publications: (new or not from available stocks)

Cost of photocopying document--\$.07 per page

Cost of binding document--\$.30 per inch

Publications: (available stock)

If available from stock on hand, cost is based on previously calculated cost as stated in the publication (based on actual cost per copy, including reproduction and binding). Commission publications for which fees will be charged include, but are not limited to, the following: Advisory Opinion Index, Report on Financial Activity, Financial Control and Compliance Manual, MUR Index, and Guideline for Presentation in Good Order.

Computer Tapes

Cost to process the request at the rate of \$25.00 per hour connect time plus the cost of the computer tape (\$25.00) and professional staff time (see Staff Time).

Computer Indexes (including Name Searches)

Cost to process the request at the rate of \$25.00 per hour connect time plus the cost of professional staff time (see Staff Time).

Staff Time

Clerical: \$4.50 per each half hour (agency average of staff below a GS-11) for each request.

Professional: \$12.40 per each half hour (agency average of staff at GS-11 and above) for each request.

Other Charges

Certification of a Document: \$7.35 per quarter hour.

Transcripts of Commission meetings not previously transcribed: \$7.50 per half hour (equivalent of a GS-11 executive secretary).

The Commission will not charge a fee for ordinary packaging and mailing of records requested. When a request for special mailing or delivery services is received the Commission will package the records requested.

The requestor will make all arrangements for pick-up and delivery of the requested materials. The requestor shall

pay all costs associated with special mailing or delivery services directly to the courier or mail service.

(5) Upon receipt of any request for the production of computer tape or microfilm, the Commission will advise the requestor of the identity of the private contractor who will perform the duplication services. If fees are charged for the production of computer tape or microfilm, they shall be made payable to that private contractor and shall be forwarded to the Commission.

(d) Interest charges. FOIA requestors should pay fees within 30 days following the day on which the invoice for that request was sent to the requestor. If the invoice is unpaid on the 31st day following the day on which the invoice was sent, the Commission will begin assessing interest charges, which will accrue from the date the invoice was mailed. Interest will be charged at a rate that is equal to the average investment rate for the Treasury tax and loan accounts for the 12-month period ending on September 30 of each year, rounded to the nearest whole percentage point, pursuant to 31 U.S.C. 3717. The accrual of interest will be stayed by the Commission's receipt of the fee, even if the fee has not yet been processed.

(e) Aggregating requests. A requestor may not file multiple requests, each seeking portions of a document or documents, in order to avoid payment of fees. When the Commission reasonably believes that a FOIA requestor or group of requestors acting in concert is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Commission will aggregate any such requests and charge the appropriate fees. In making this determination, the Commission will consider the time period in which the requests have occurred, the relationship of the requestors, and the subject matter of the requests.

(f) Advance payments. The Commission will require a requestor to make an advance payment, i.e., a payment before work is commenced or continued on a request, when:

(1) The Commission estimates or determines that allowable charges that a requestor may be required to pay are likely to exceed \$250. In such a case, the Commission will notify the requestor of the likely cost and, where the requestor has a history of prompt payment of FOIA fees, obtain satisfactory assurance of full payment, or in the case of a

requestor with no FOIA fee payment history, the Commission will require an advance payment of an amount up to the full estimated charges; or

(2) A requestor has previously failed to pay a fee in a timely fashion (i.e., within 30 days of the date of the billing). In such a case, the Commission may require that the requestor pay the full amount owed plus any applicable interest or demonstrate that the fee has been paid and make an advance payment of the full amount of the estimated fee before the Commission begins to process a new request or a pending request from that requestor.

(3) If the provisions of paragraph (f) (1) or (2) of this section apply, the administrative time limits prescribed in 11 CFR 4.7(c) will begin only after the Commission has received the payments or the requestor has made acceptable arrangements to make the payments required by paragraph (f) (1) or (2) of this section.

[52 FR 39213, Oct. 21, 1987]