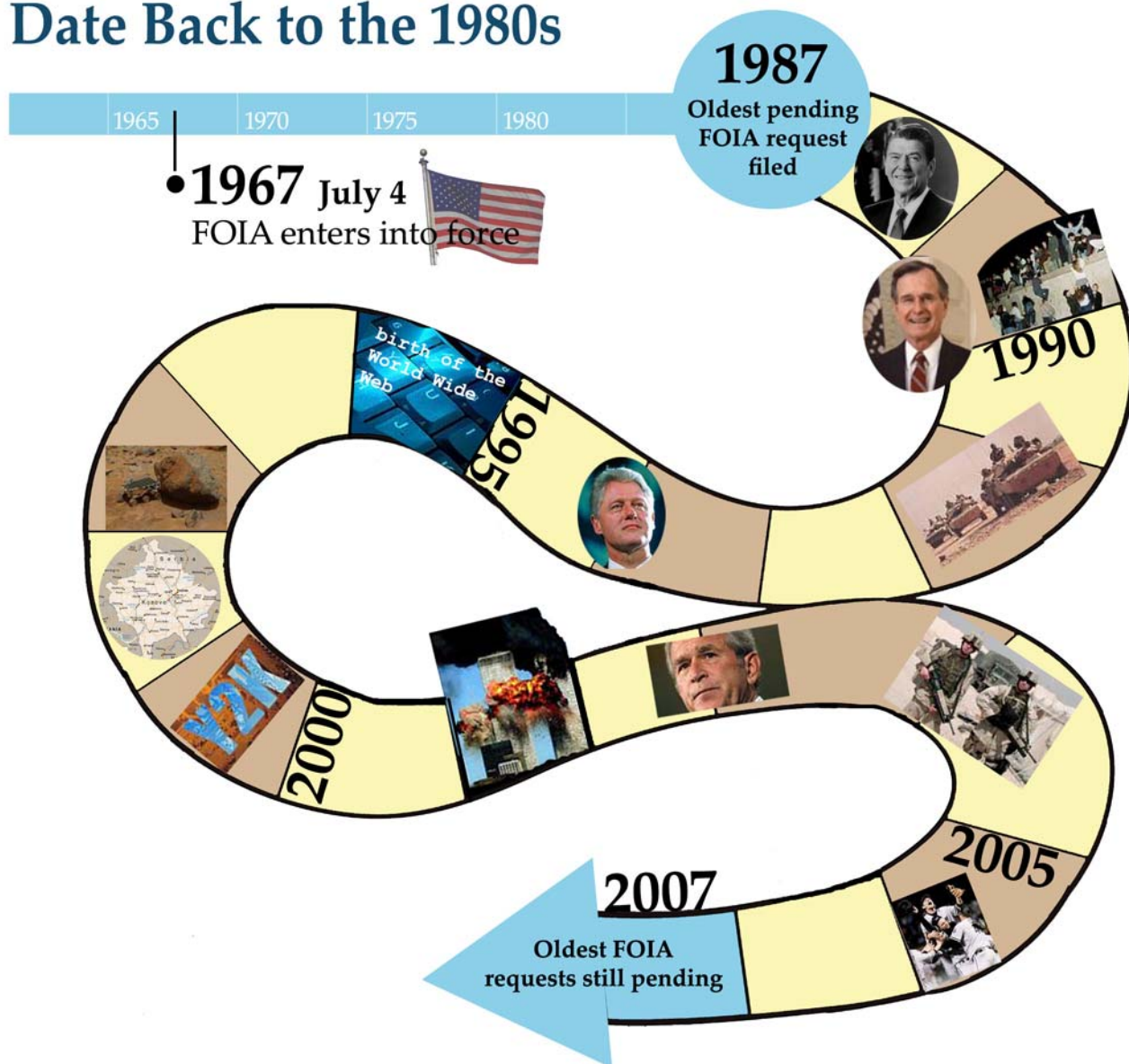


40 Years of FOIA, 20 Years of Delay:

Oldest Pending FOIA Requests Date Back to the 1980s



THE KNIGHT OPEN GOVERNMENT SURVEY

CONDUCTED BY

THE NATIONAL SECURITY ARCHIVE

THE GEORGE WASHINGTON UNIVERSITY

www.nsarchive.org

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HIGHLIGHTS

Forty years since the Freedom of Information Act (FOIA) went into effect on July 4, 1967, the FOIA system continues to be plagued by delay. According to the Archive's latest Knight Open Government Survey, "40 Years of FOIA, 20 Years of Delay: Oldest Pending Freedom of Information Requests Date Back to the 1980s," which reviewed 87 agencies and major components, extensive backlogs persist. Highlights of the report include:

- The oldest pending FOIA requests in the federal government date back to the 1980s—one from 1987, two from 1988, and three from 1989.
- Five agencies—State, Air Force, CIA, the Criminal Division and FBI at Department of Justice—reported FOIA requests that have been pending 15 years or more.
- One of the oldest requests was filed in 1991 by Don Stillman with the State Department for documents that asked the Overseas Private Investment Corporation (OPIC) to cut off programs involving the then military regime in South Korea. These documents were related to an OPIC case brought by the United Auto Workers union. Although Mr. Stillman won his case in 1991, his FOIA request remains unprocessed.
- Ten agencies misreported their oldest pending FOIA requests to Congress in their FY 2006 Annual FOIA Reports, which are required by law. These agencies include Agriculture's Animal and Health Inspection Service (APHIS), Air Force, Commerce, CIA, Director of National Intelligence, FBI, National Science Foundation, State, Treasury, and Justice's Office of Information and Privacy (OIP).^{*} OIP is the office that is supposed to provide FOIA guidance to the rest of the federal government.
- The CIA said the release last week of its "Family Jewels" was in response to a 1992 Archive FOIA request that "was, in fact, the oldest in [their] backlog." However, the "Family Jewels" request was *not* the oldest; the oldest request, also filed by the Archive, has been pending since 1989.
- Justice has led the opposition to FOIA reform legislation currently pending in Congress, including provisions for improved reporting and tracking. Yet, two Justice components misreported their oldest pending requests to Congress. In addition, several Justice components' responses for this audit were inconsistent with the responses for previous Archive audits.
- Justice claims reform legislation is unnecessary because President Bush's E.O. 13,392 will fix the broken FOIA system. Yet, 18 months after the order, agencies are still ignoring their obligations under the law.
- More than five months after the Archive asked federal agencies for copies of their ten oldest pending FOIA requests, one-third have yet to respond. Twelve federal agencies still have not responded to a similar Archive request from 2005, which has been pending 550 business days. (The law requires agencies to respond within 20 business days.)

^{*} CLARIFICATION: The Department of Justice's Office of Information and Privacy (OIP) has informed the Archive that the October 22, 2001 request reported as OIP's oldest was first received by the DOJ-OIP on February 5, 2002. OIP indicated that the request was not delayed by intra-agency routing, but likely was delayed as a result of the Anthrax mail screening program that took place in 2001-2002. Because agencies calculate their response time from the date of receipt of the request, OIP's report to Congress listing its oldest pending request as dating from February 5, 2002 is not inaccurate.

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Previous National Security Archive audits and Knight Open Government Surveys include:

- File Not Found: 10 Years After E-FOIA, Most Federal Agencies are Delinquent (March 12, 2007). <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB216/index.htm>
- Pseudo-Secrets: A Freedom of Information Audit of the U.S. Government's Policies on Sensitive Unclassified Information (March 14, 2006). <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB183/press.htm>
- A FOIA Request Celebrates Its 17th Birthday: A Report on Federal Agency FOIA Backlog (March 12, 2006). <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB182/press.htm>
- Justice Delayed is Justice Denied: The Ten Oldest Pending FOIA Requests (November 17, 2003). <http://www.gwu.edu/%7Ensarchiv/NSAEBB/NSAEBB102/press.htm>
- The Ashcroft Memo: "Drastic" Change or "More Thunder Than Lightning"? (March 14, 2003). <http://www.gwu.edu/%7Ensarchiv/NSAEBB/NSAEBB84/press.htm>

INTRODUCTION: THE WAITING GAME

It has been forty years since the Freedom of Information Act (FOIA) went into effect, yet the FOIA system continues to be plagued by delay and backlogs. When Congress passed the FOIA in 1966, the law did not set a deadline for agencies to respond to FOIA requests. In 1974, after years of agencies failing to process FOIA requests, Congress amended the FOIA to require agencies to respond in ten business days. Even then, courts routinely allowed agencies to delay processing under *Open America v. Watergate Special Prosecution Force*¹ and subsequent cases. Agencies' persistent failure to meet the ten-day deadline led Congress to extend it to 20 business days in 1996.² The legislative history reflects Congressional disapproval of the *Open America* case. Nevertheless, the courts have continued to allow agencies to delay processing for several years. Congress has never approved of agencies delaying responses as long as five, ten, fifteen, or even twenty years, as has been the case. For most federal agencies, meeting the statutory 20 business day response time is an exception rather than a standard practice.

The extent of the delay problem has always been difficult to ascertain, despite congressionally mandated annual reports about FOIA processing. The National Security Archive (the Archive) set out in 2003 to determine just how bad the government-wide backlog had become by looking at the ten oldest pending FOIA requests at 52 federal agencies and components. The Archive's first report, "Justice Delayed is Justice Denied: The Ten Oldest Pending FOIA Requests," was released in November 2003, and found requests as old as *16 years*. The second report, "A FOIA Request Celebrates its 17th Birthday: A Report on Federal Agency FOIA Backlogs," issued in March 2006, followed the same methodology to determine whether any progress had been made in backlog reduction. The 2006 audit found that, in some cases, agency backlogs were worse than in 2003; in others, requests that agencies reported as their oldest in 2003 were still pending three years later.³ Both audits demonstrated that agencies' annual reports to Congress failed to convey the scale of the backlog problem.

On December 14, 2005, President Bush issued Executive Order 13,392 on "Improving Agency Disclosure of Information." Among other mandates, the Order calls for Agencies to review their FOIA programs and "identify ways to eliminate or reduce [their] FOIA backlog, consistent with available resources and taking into consideration the volume and complexity of the FOIA requests pending with the agency."⁴ The Executive Order directed agencies to develop plans and establish goals to improve FOIA processing. In its guidance on E.O. 13,392 implementation, the Department of Justice's Office of Information and Privacy stressed that the reduction or elimination of backlogs should be a "major underpinning" of the improvement plans for those agencies with FOIA request backlogs.⁵ The guidance also instructed agencies to include in their annual FOIA reports to Congress information on the time range of their pending requests.⁶

A review of the FOIA improvement plans drafted pursuant to the Executive Order shows that the Archive's previous "Ten Oldest" audits had an impact on agency backlog goals. Some agencies

¹ 547 F.2d 605 (D.C. Cir. 1976).

² Electronic Freedom of Information Act Amendments of 1996, P.L. 104-231.

³ See "Justice Delayed is Justice Denied: The Ten Oldest Pending FOIA Requests," The National Security Archive, November 17, 2003; and "A FOIA Request Celebrates its 17th Birthday: A report on Federal Agency FOIA Backlogs," The National Security Archive, March 2006.

⁴ E.O. 13,392, "Improving Agency Disclosure of Information," December 14, 2005.

⁵ See Department of Justice, Office of Information and Privacy, "Executive Order 13,392 Implementation Guidance," *FOIA Post*, 2006.

⁶ *Ibid.*

specifically stated they would try to close their ten oldest pending FOIA requests annually.⁷ Additionally, in his report to the President on the agencies' FOIA improvement plans, the Attorney General cited the Archive's Ten Oldest audits and reported on the progress made by agencies in closing the oldest requests exposed by the Archive.⁸

The Archive's latest "Ten Oldest" audit, "40 Years of FOIA, 20 Years of Delay: Oldest Pending Freedom of Information Requests Date Back to the 1980s," surveys 87 agencies and major components and finds that extensive backlogs persist. Requests from as early as 1987 are still waiting to be processed 20 years later. Additionally, some agencies have located pending requests older than those reported to the Archive in 2003 and those reported to Congress as recently as this year, suggesting not only a broken system, but one immersed in confusion and disarray.

⁷ These include the Department of Education, Department of Commerce, Department of Justice, Department of the Treasury, Department of Veterans Affairs, and the Social Security Administration. The Office of the U.S. Trade Representative set as one of its goals closing its three oldest requests annually, and the National Aeronautics and Space Administration indicated it would strive to close its five oldest requests each year.

⁸ The "Attorney General's Report to the President Pursuant to Executive Order 13,392, Entitled 'Improving Agency Disclosure of Information'" failed to address adequately many of the problems and challenges facing the FOIA program and the improvement plan process. The National Security Archive responded to the report by providing the Attorney General and Congress with a critical assessment of some of the serious challenges not acknowledged in the Report and calling for congressional oversight hearings to make optimistic FOIA processing goals a reality. (The Archive's response can be viewed at: www.gwu.edu/~nsarchiv/news/20061019/index.htm)

FINDINGS: FOIA BACKLOGS OUT OF CONTROL

Even though President Bush directed agencies in Executive Order 13,392 more than 18 months ago to reduce FOIA backlogs, the Archive's analysis of the ten oldest FOIA requests pending at 87 federal agencies and components found that not much has changed. Some agencies have closed old cases, but several agency FOIA programs are still mired in backlogs. Despite the Executive Order, little progress has been made since our last audit with respect to the age of the oldest requests. Specific findings include:

Agency backlogs are significant; the oldest FOIA request in the federal government has now been pending for more than 20 years.

- Of the 57 agencies and components that responded to our January 29, 2007, FOIA request, 53 reported backlogs.⁹ Twelve of the agencies that responded had requests pending ten years or more.¹⁰ Of those 12, five had requests pending 15 years or more.¹¹
- Of the 507 requests provided to the Archive in response to its 2007 FOIA request, only 20 had been pending 20 business days or less. The remainder had been pending anywhere from 21 business days to over 4,000 business days, well beyond the statutory response time of 20 business days. The majority of the agencies' oldest requests were filed between 2000 and 2006. However, we also identified 97 requests filed in the 1990s and seven requests filed in the 1980s. (See Appendix 2.) These results include only the ten oldest pending at each agency. The total number of requests still pending from each of those decades may be significantly higher.
- The oldest pending FOIA request we identified was submitted to the Department of State on May 5, 1987.¹² This now 20-year-old FOIA request, filed on behalf of the Church of Scientology, sought all documents from the State Department offices responsible for the Vatican and Italy related to the Church of Scientology or "cults."
- Other requests pending for several years were for documents related to the steel industry in Luxembourg, the 1986 Nobistor incident in which a ship containing U.S. mercenaries on a mission to Ghana was intercepted, the 1961 Berlin Crisis, the South African steel industry, the Iran-Contra Affair, and Armenian genocide during WWI. (See Appendix 5.) One requester, Don Stillman, filed his request in 1991 with the State Department for documents that asked the Overseas Private Investment Corporation (OPIC) to cut off programs involving the then military regime in South Korea. These documents were related to an OPIC case brought by the United Auto Workers union. Although Mr. Stillman won his case in 1991, his FOIA request remains unprocessed.

⁹ Only four agencies reported no backlog of pending FOIA requests. They are: Small Business Administration, Department of Army Materiel Command, Naval Education and Training Command, and Department of Labor Employee Benefits Security Administration.

¹⁰ Department of Defense, Department of the Air Force, Defense Intelligence Agency, Department of Justice Criminal Division, Department of State, Department of the Treasury, and the National Archives and Records Administration each had ten requests pending ten years or more. The Federal Bureau of Investigation had seven requests pending 10 years or more. The Central Intelligence Agency and the Department of the Air Force's Air Combat Command each had three requests pending ten years or more. The United States Army Intelligence and Security Command and the Environmental Protection Agency each had one request pending ten years or more.

¹¹ The Department of State had ten requests pending 15 years or more. The Department of Justice's Criminal Division had three requests pending 15 years or more. The Department of the Air Force had two requests pending 15 years or more. The Central Intelligence Agency and the Federal Bureau of Investigation each had one request pending 15 years or more.

¹² In our previous "Ten Oldest" audit, we identified the Department of Defense (DOD) as the Agency with the oldest pending FOIA request in the federal government. We are pleased to note that DOD completed processing of this January 31, 1987, FOIA request in December 2006. The Department of State did not respond to our requests submitted in 2003 and 2005, so its now 20-year-old request is first reported here.

Five agencies are responsible for the 17 FOIA requests that have been pending 15 years or more.

- Ten of the 17 requests pending 15 years or more were originally sent to the Department of State. All of these cases are pending consultation with other agencies. This illustrates the difficulty many agencies face when they are forced to send documents to other agencies for review: requests can languish for years because the sending agency has no way to compel the receiving agency to respond in a timely manner.
- The Department of Justice, which has been charged with general oversight of FOIA government-wide and has been highly critical of the need for legislative solutions to reform FOIA, is responsible for four of the 17 requests. Three of the requests were sent to Department of Justice's Criminal Division, and one was sent to the Federal Bureau of Investigation.
- The Department of the Air Force is responsible for two of the 17 requests, both of which are National Security Archive requests. In 2005, the Archive sued the Air Force over its poor FOIA responsiveness. Judge Rosemary Collyer of the federal district court in Washington, D.C. concluded in her April 2006 decision that the Air Force had "failed miserably to handle Archive FOIA requests in a timely manner" and "engaged in a pattern or practice of failing to make timely determinations on its FOIA requests and appeals."¹³
- The Central Intelligence Agency is responsible for one of the 17 requests pending 15 years or more. In its FY 2006 Annual FOIA Report to Congress, the CIA reported that its oldest pending FOIA request was from February 1992; however, in response to the Archive's "Ten Oldest" FOIA request, the CIA reported that its oldest pending request was filed on July 7, 1989. Interestingly, five days after providing its "Ten Oldest," to the Archive, the CIA fulfilled a 1992 Archive request for the CIA's "Family Jewels," stating in its response letter that this request "was, in fact, the oldest in [their] backlog."¹⁴

Agencies with requests older than the range reported to Congress

- Air Force
- Central Intelligence Agency
- Department of Agriculture—APHIS
- Department of Commerce
- Department of Justice—Office of Information and Privacy¹⁵
- Department of State
- Department of Treasury
- Federal Bureau of Investigation
- National Science Foundation
- Office of the Director of National Intelligence

Mandatory agency reports to Congress about their range of pending requests failed to disclose some of the oldest requests.

- Requests reported to the Archive in 2007 by ten agencies were older than the range of pending requests reported to Congress in the agencies' FY 2006 FOIA Annual Reports. These agencies include: Department of Agriculture APHIS, Department of Commerce, Central Intelligence Agency, Department of the Air Force, Federal Bureau of Investigation, Department of Justice Office of Information and Privacy¹⁵, Department of State, Department of the Treasury, National Science Foundation, and the Office of the Director of National Intelligence. (See Appendix 4.)

¹³ For information on the Archive's lawsuit against the Air Force, see www.gwu.edu/~nsarchiv/news/20050318/index.htm. For information on Judge Collyer's decision, see www.gwu.edu/~nsarchiv/news/20060419a/index.htm

¹⁴ Letter from Scott Koch to Malcolm Byrne, National Security Archive, June 25, 2007.

¹⁵ CLARIFICATION: The Department of Justice's Office of Information and Privacy (OIP) has informed the Archive that the October 22, 2001 request reported as OIP's oldest was first received by the DOJ-OIP on February 5, 2002. OIP indicated that the request was not delayed by intra-agency routing, but likely was delayed as a result of the Anthrax mail screening program that took place in 2001-2002. Because agencies calculate their response time from the date of receipt of the request, OIP's report to Congress listing its oldest pending request as dating from February 5, 2002 is not inaccurate.

Agencies found older requests than those they had reported to the Archive two years ago.

- Of the 40 agencies that responded to both the Archive's 2005 and 2007 FOIA requests, four agencies reported requests in 2007 that were *older* than those identified two years ago.¹⁶ Additionally, 17 agencies provided requests that were within the range of dates of those requests provided to the Archive two years ago, and so should have been reported for the 2005 audit, but were not.¹⁷ These discrepancies indicate a larger problem with how agencies track their FOIA requests. If agencies are unable to locate and provide information about pending requests, some nearly two decades old, this raises questions on how these agencies could be effectively processing these requests.

Executive Order 13,392 has not fixed the problem of FOIA backlogs.

- Although E.O. 13,392 has raised the profile of the FOIA backlog problem within agencies, its impact on improving FOIA processing and reducing backlogs government-wide has so far proved negligible. The FOIA improvement process is self-directed by the very agencies who failed to design adequate FOIA programs and includes no mandates or enforcement mechanisms. The Department of Justice has reported that 41% of agencies have failed to meet one or more of the milestones set under the Executive Order.¹⁸
- Of the 26 agencies that set backlog reduction goals for 2006, seven failed to meet at least one of their goals.¹⁹
- The Archive reviewed all 90 FOIA improvement plans issued under E.O. 13,392 and found that several plans included backlog reduction goals that were overly simple or lacked actual long-term goals, such as evaluating the FOIA backlog situation and considering approaches to reduce the backlog (Environmental Protection Agency), or reviewing and analyzing the FOIA backlog at the end of each year (National Science Foundation). Other goals were significantly more ambitious: reducing the backlog of FOIA cases over one year old by 50% (Department of Energy), or eliminating the FOIA backlog by 2008 (Department of Homeland Security and Department of the Interior.)

¹⁶ Transportation Security Administration (one request), the Department of Navy's Pacific Command (five requests), the Federal Bureau of Investigation (two requests), and the Environmental Protection Agency (one request).

¹⁷ Transportation Security Administration (three requests), Department of Agriculture APHIS (nine requests), Department of Commerce (one request), Department of Defense (one request), Department of the Air Force (three requests), Department of the Air Force's Air Combat Command (two requests), Department of the Air Force's Air Mobility Command (six requests), United States Central Command (one request), United States Army Intelligence and Security Command (nine requests), Defense Intelligence Agency (two requests), Department of the Navy Pacific Command (ten requests), Federal Bureau of Investigation (seven requests), Department of Justice Office of Information and Privacy (one request), Department of Homeland Security Federal Emergency Management Agency (one request), Department of the Treasury (eight requests), General Services Administration (three requests), National Archives and Records Administration (four requests).

¹⁸ Attorney General's Report to the President Pursuant to Executive Order 13,392, Entitled "Improving Agency Disclosure of Information," June 1, 2007.

¹⁹ The Agency for International Development planned to eliminate its entire pre-2005 backlog. Due to contracting issues, it was able to close only 87% of its pre-2005 cases. The Central Intelligence Agency set a goal of closing 10% of its overall backlog by the end of FY 2006. It eliminated 8% of the backlog. The Drug Enforcement Agency planned to reduce its backlog by 2%. However, due to budget constraints and a lack of human resources, it was unable to meet this goal. The Department of Transportation's Federal Motor Carrier Safety Administration set a goal of closing out requests from 2005 and earlier by the end of FY 2006. Due to the complexity of one of the cases, it has been unable to meet this goal. The Department of Education (ED) planned to implement a policy of closing its ten oldest FOIA requests annually. This goal was pushed back to March 2007. It is not clear whether ED has since implemented this policy. The Office of Science and Technology Policy planned to eliminate its FOIA backlog by the end of FY 2006. This goal has been pushed to August 31, 2007. The Department of Health and Human Services (HHS) planned to complete processing of all FOIA requests from FY 2004 and earlier. Of all the HHS components, only the National Institutes of Health was able to meet this goal.

- Some agencies are taking a “wait out the requester” approach to backlog reduction. Rather than processing older requests, some agencies may simply be hoping requesters will lose interest and eventually withdraw their requests. In some cases, agencies expend time and resources reaching out to determine whether the requester has lost interest in their request rather than actually processing the request.²⁰ The longer a request languishes without being processed, the more likely the requester will no longer need or be interested in the data sought. A FOIA program that simply pushes papers and does not release any information of significance costs the taxpayer money without providing the desired benefit of improved government accountability. Administrative closures do not fix FOIA processing deficiencies.²¹

Wait out the Requester: Department of Treasury Approach to the FOIA Backlog

Oldest pending FOIA request reported to the Archive in 2005: 5/20/1992

Oldest pending FOIA request reported to the Archive in 2007: 5/20/1992

Oldest pending FOIA request reported to Congress, FY 2006: 3/5/1993

Oldest pending Archive FOIA request to Treasury: 3/17/1987

Number of requests for which Treasury asked the Archive two or more times if it was still interested: 27

Number of times Treasury has asked the Archive to re-send a copy of the pending FOIA request since the “request letters may have been among files that were destroyed in error”: 42

Interagency delays contribute to the ongoing backlog problem.

- Consultations with and referrals to other agencies and components continue to add significant delays to the FOIA process. Based on the data provided in agencies’ FY 2006 FOIA Annual Reports to Congress, 25 agencies had a backlog of requests pending consultations with other agencies. Of these, 14 had requests pending one year or more. One agency, the Department of State, has a request that has been pending for 18 years and is awaiting consultation with another agency.²² Often in the same position as requesters, agency FOIA officials have no way to compel other agencies or components to process requests that they have forwarded for consultation. Requests languish awaiting a response from another agency, and the delays experienced by requesters are compounded.

²⁰ For example, the Department of the Treasury (TRE) FOIA Improvement Plan indicates that TRE planned to tackle both the front end (incoming requests) and back end (administratively stagnant requests) of its backlog with the goal of reducing the backlog ten percent by January 1, 2007. Success is to be measured by the number of closed cases. Over the course of the past year, the Archive has received several letters from TRE asking the Archive to inform TRE whether it is still interested in its long-pending requests. The letters stated that if TRE did not receive a response within 15 business days, the requests would be closed. For 27 of these requests, this was the second time TRE had inquired whether the Archive was still interested; and for one of the cases, it was the third time. In at least 42 instances, TRE asked the Archive to resubmit the original FOIA request because our “request letters may have been among files that were destroyed in error.” This seems to indicate that, rather than processing the “administratively stagnant” requests, Treasury hopes to deal with these requests by simply closing them. In its FY 2006 Annual Report to Congress, TRE reported that sixty requests were withdrawn by requesters and 48 were closed because of “no response from requester.” (The “no response from requester” category is new to TRE’s FOIA annual reports.)

²¹ It is difficult to determine exactly how many requests government-wide have been closed due to lack of requester interest after several years. This is a study that could be conducted by the Government Accountability Office.

²² The Department of State did not include in its FY 2006 annual FOIA report to Congress the May 5, 1987, request reported to the Archive. This request has been pending consultation with other agencies for over 20 years.

One-third of agencies failed to respond to the Archive's 2007 FOIA request, and some still have not responded to the Archive's 2005 request.

- Though the Archive's Ten Oldest FOIA request is a simple request that asks for information agency FOIA offices should be tracking and have at their disposal, several agency responses to our FOIAs are long overdue. Twenty-six agencies failed to respond to the Archive's January 2007 FOIA request, and 12 agencies have yet to respond to the Archive's April 22, 2005, FOIA request.²³ Of the 57 agencies that responded to our 2007 request, less than half (20 agencies) responded within 20 business days of the date of our request. For example, though the Department of Veterans Affairs claimed in its FY 2006 annual FOIA report to Congress a median processing time of 73 business days for complex requests, it has never responded to the Archive's 2005 FOIA request and took 84 business days to respond to the Archive's 2007 FOIA request. The U.S. Coast Guard claims a median processing time of 12 business days for simple requests and 46 business days for complex requests, yet it failed to respond to the Archive's 2005 and 2007 FOIA requests, which have been pending 550 and 105 business days, respectively.

Agencies that failed to respond to the Archive's 2007 FOIA request

- | | |
|---|---|
| <ul style="list-style-type: none"> • Agency for International Development • Army Chief of Engineers (DOD) • Army Criminal Investigation Command (DOD) • Citizenship and Immigration Services (DHS) • Coast Guard (DHS) • Customs & Border Protection (DHS) • Department of Education • Department of Energy • Department of Transportation • Drug Enforcement Agency (DOJ) • Employment and Training Administration (DOL) • Employment Standards Administration (DOL) • Federal Railroad Administration (DOT) • Immigration & Customs Enforcement (DHS) | <ul style="list-style-type: none"> • Legal Services Corporation • Maritime Administration (DOT) • Marine Corps (DOD) • National Geospatial Intelligence Agency • National Institutes of Health • National Nuclear Security Administration (DOE) • National Transportation Safety Board • Naval Air Systems Command • Naval Facilities Engineering Command (DOD) • Occupational Safety and Health Administration (DOL) • Office of Personnel Management • Office of Science and Technology (EOP) • Secret Service (DHS) |
|---|---|

²³ These agencies are: the U.S. Agency for International Development, Citizenship and Immigration Services (DHS), Customs & Border Protection (DHS), U.S. Coast Guard (DHS), Immigration and Customs Enforcement (DHS), U.S. Army Materiel Command (DOD), U.S. Army Criminal Investigation Command (DOD), Employment and Training Administration (DOL), Occupational Safety and Health Administration (DOL), Department of State, Department of Health and Human Services, and the Office of Personnel Management.

CONCLUSION: FOIA NEEDS REFORM

Backlogs continue to plague FOIA programs across the government. Despite some agencies' recent efforts to close out old FOIA cases, the oldest requests continue to be left behind. And although a case that has been pending for one or two years is not as shocking as a case that has been pending five, ten, or even fifteen years, it is still well beyond the statutory 20 business days response time. The extensive backlogs of both older and newer requests call attention to the disturbing fact that many requesters wait more time for a response than Congress prescribed. Not even an Executive Order from the President has the power to overcome decades of bureaucratic neglect. Agencies should not be focusing on eliminating older cases at the expense of processing newer FOIA requests. Comprehensive backlog reduction plans should both aim to complete processing of old cases as well as improving FOIA processing overall in order to stem the growing backlog of more recent cases.

Agencies also need to improve FOIA tracking. Our audit found several discrepancies in the data that agencies have reported about their own FOIA programs. If agencies are unable to accurately track pending FOIA requests, there is an increased risk of requests falling through the cracks or languishing for months or years awaiting consultation with other agencies or components. To this end, FOIA reform legislation pending in Congress²⁴ includes provisions to compel agencies to track FOIA requests more accurately and keep tabs on their oldest pending cases.²⁵ The Department of Justice has objected to this provision in the proposed legislation.²⁶ Yet, as this report and the two prior Ten Oldest audits show, many agencies do not adequately keep track of FOIA requests.

It is also clear that insufficient reporting requirements have allowed agencies to conceal severe deficiencies in FOIA processing for far too long. Both S. 849 and H.R. 1309 would require agencies to report "data on the ten active requests with the earliest filing dates pending at each agency, including the amount of time that has elapsed since each request was originally received by the agency,"²⁷ thus making the metric pioneered by the Archive's Ten Oldest Audits standard reporting procedure. This important step forward in reporting would help both Congress and the public understand the scope of agency backlogs and hold agencies accountable for the performance of their FOIA programs.

Although E.O. 13,392 has been instrumental in raising the profile of FOIA and FOIA backlogs at federal agencies, it is far from a comprehensive solution to the problem. Many of the agencies reviewed for this audit included backlog reduction as part of their improvement plan goals. As indicated by some of the goals already missed, lack of adequate personnel and insufficient resources are roadblocks agencies encounter in tackling their FOIA backlogs. In addition, currently there are no incentives in the FOIA to spur agencies to be timely. S. 849 and H.R. 1309 would alter the incentives to encourage agencies to process without delay. If agency FOIA programs cannot succeed during a period of intense public scrutiny under the mandate of a presidential executive order, then stronger legislation is necessary. The public already has been waiting 40 years for an effective access and disclosure law. Waiting longer in the hope that things will improve is not a solution to FOIA delay.

²⁴ *Freedom of Information Act Amendments of 2007*, HR 1309, 110th Cong., 1st sess., *Cong. Rec.* 153 (March 5, 2007): H2164 (passed by a vote of 308-117 in the House on March 14, 2007); *OPEN Government Act of 2007*, S 849, 110th Cong., 1st sess., *Cong. Rec.* 153 (March 13, 2007): S3066 (referred out of the Senate Committee on the Judiciary April 30, 2007, with bipartisan support).

²⁵ HR 1309, Sec. 7; S 846, Sec. 7.

²⁶ See Department of Justice, Office of the Assistant Attorney General, Letter from Acting Assistant Attorney General Richard A. Hertling to Chairman of the Senate Judiciary Committee the Honorable Patrick J. Leahy, March 26, 2007.

²⁷ HR 1309, Sec. 9; S 846, Sec. 9.

METHODOLOGY

In order to assess the backlog of Freedom of Information Act requests submitted to the Federal Government, the Archive submitted FOIA requests to 87 federal agencies and federal agency components on January 30, 2007. The request was submitted at the end of January in order to coincide with the data reported to Congress in the agencies' annual FOIA reports, which were due February 1, 2007. The agencies selected for the 2007 audit included those that were a part of the Archive's 2006 Ten Oldest Audit. Additional agencies were selected based on the ratio of the requests they processed to the requests received in FY 2005 (processing rate). Those agencies that had a processing rate of 50% or less—indicating more than half of the incoming FOIA requests were being added to their backlog—were included in the 2007 audit.²⁸

The Freedom of Information Act request asked for: *"Copies of the [Agency's] ten oldest open or pending Freedom of Information Act requests."*

The request went to the central FOIA processing office of each agency or agency component. The statutory 20-business day time limit for a FOIA response expired on February 28, 2007. Each of the agencies with an outstanding Ten Oldest FOIA request was contacted by telephone on March 28-29, 2007, to inquire as to the status of the request.

In calculating the number of business days a request was pending, the Archive used the date of the request letter.²⁹ In cases where the request was a referral from another agency or component, the Archive used the date the referral was received by the agency or component to which it was referred or, if the referral date was not available, the date of the original request letter.³⁰

It is possible that some of the requests provided to the Archive in response to its 2007 FOIA request have since been processed. The data provided in this audit is recorded as of February 1, 2007, since it is more than likely that all requests were still pending two days after the Archive's January 30, 2007, FOIA request. In cases where an agency provided the Archive with requests that were dated after February 1, 2007, these requests were not included in this report.

One additional caveat regarding decentralization and referrals is that some of the FOIA requests that the agencies identified as still-pending may have been completed to the satisfaction of the requester by a different component than the one that responded with a copy of the FOIA request. The Archive did not contact all of the individual requesters to determine whether they believe that their request remains pending, but rather relied on the data provided by the agencies.

Even though the Archive asked agencies for information they should be tracking and that should be readily available and in spite of repeated Archive inquiries, after more than 100 business days, the Archive never received a complete, substantive response from the following agencies:

²⁸ Agencies that had fewer than ten requests pending at the end of FY 2005 were not included. The Office of the Director of National Intelligence did not list a backlog in its FY 2005 annual report to Congress. However, since it is a relatively new agency (it began operations on April 22, 2005), we determined it likely to have a backlog in FY 2006. Therefore, it was included in our audit.

²⁹ Agencies vary in when they begin to calculate the number of business days a request as been pending. Some base it on the date the request was received, others on when it was finally forwarded to the correct office or component or when any issues regarding fees or fee status are resolved. Moreover, in some cases, agencies do not start the clock on a request until it has been "perfected" and any fee or other procedural disputes are resolved. The proposed FOIA reform legislation in both the House and the Senate included provisions that would require all agencies to begin the calculation the date the request is received by the agency.

³⁰ Some agencies provided the Archive with copies of pages from their FOIA tracking databases rather than copies of the original request letters. In some cases only the date the request was received was provided, or it was not clear whether the date on the spreadsheet was the date of the original request or the date received.

- Agency for International Development
- Army Chief of Engineers (DOD)
- Army Criminal Investigation Command (DOD)
- Citizenship and Immigration Services (DHS)
- Coast Guard (DHS)
- Customs & Border Protection (DHS)
- Department of Education
- Department of Energy
- Department of Transportation
- Drug Enforcement Agency (DOJ)
- Employment and Training Administration (DOL)
- Employment Standards Administration (DOL)
- Federal Railroad Administration (DOT)
- Immigration & Customs Enforcement (DHS)
- Legal Services Corporation
- Marine Corps (DOD)
- National Geospatial Intelligence Agency
- National Institutes of Health
- National Nuclear Security Administration (DOE)
- National Transportation Safety Board
- Naval Air Systems Command
- Naval Facilities Engineering Command (DOD)
- Occupational Safety and Health Administration (DOL)
- Office of Personnel Management
- Office of Science and Technology Policy (EOP)
- United States Secret Service (DHS)

APPENDIX 1

GLOSSARY OF ACRONYMS FOR AGENCIES INCLUDED IN THE ARCHIVE'S 2007 TEN OLDEST AUDIT

AID	Agency for International Development
APHIS (USDA)	Animal & Plant Health Inspection Service
CBP (DHS)	Customs & Border Protection
CEN (DOD)	U.S. Central Command
CIA	Central Intelligence Agency
CIS (DHS)	Citizenship and Immigration Services
CRIM (DOJ)	Criminal Division
DA (DOD)	United States Army
DA-AMC	United States Army, Materiel Command
DA-CID	United States Army, Criminal Investigation Command
DA-Eng	United States Army, Chief of Engineers
DA-HRC	United States Army, Human Resources Command
DA-INSCOM	United States Army, Intelligence and Security Command
DEA (DOJ)	Drug Enforcement Administration
DHS (main)	Department of Homeland Security
DHS-OIG	Department of Homeland Security, Office of the Inspector General
DHS-Sci & Tech	Department of Homeland Security, Directorate for Science and Technology
DIA (DOD)	Defense Intelligence Agency
DOC (main)	Department of Commerce
DOD (main)	Department of Defense
DOE (main)	Department of Energy
DOI (main)	Department of Interior
DOJ (main)	Department of Justice
DOJ-OIP	Department of Justice, Office of Information and Privacy
DOL (main)	Department of Labor
DOS	Department of State
DOT (main)	Department of Transportation
EBSA (DOL)	Employee Benefits Security Administration
ED	Department of Education
EPA (main)	Environmental Protection Agency
ESA (DOL)	Employment Standards Administration
ETA (DOL)	Employment and Training Administration
FAA (DOT)	Federal Aviation Administration
FBI (DOJ)	Federal Bureau of Investigation
FDA (HHS)	Food & Drug Administration
FEMA (DHS)	Federal Emergency Management Agency
FHWA (DOT)	Federal Highway Administration
FinCEN (TRE)	Financial Crimes Enforcement Network
FMCSA (DOT)	Federal Motor Carrier Safety Administration
FRA (DOT)	Federal Railroad Administration
GSA	General Services Administration
HHS (main)	Department of Health and Human Services

HUD	Department of Housing and Urban Development
ICE (DHS)	Immigration & Customs Enforcement
LSC	Legal Services Corporation
MARAD (DOT)	Federal Maritime Administration
MSHA (DOL)	Mine Safety and Health Administration
NARA	National Archives and Records Administration
NASA	National Aeronautics and Space Administration
NGA (DOD)	National Geospatial Intelligence Agency
NIH (HHS)	National Institutes of Health
NNSA (DOE)	National Nuclear Security Administration
NRC	Nuclear Regulatory Commission
NRO (DOD)	National Reconnaissance Office
NSF	National Science Foundation
NTSB	National Transportation Safety Board
ODNI	Office of the Director of National Intelligence
OMB	Office of Management and Budget
OPM	Office of Personnel Management
OSHA (DOL)	Occupational Safety and Health Administration
OSTP	Office of Science and Technology Policy
SBA	Small Business Administration
SEC	Securities and Exchange Commission
SSA	Social Security Administration
TRE (main)	Department of the Treasury
TSA (DHS)	Transportation Security Administration
USAF (DOD)	United States Air Force
USAF-ACC	United States Air Force, Air Combat Command
USAF-AMC	United States Air Force, Air Mobility Command
USAF-EDU	United States Air Force, Air Education & Training Command
USAF-MC	United States Air Force, Air Materiel Command
USCG (DHS)	United States Coast Guard
USDA (main)	Department of Agriculture
USMC (DOD)	United States Marine Corps
USN (DOD)	United States Navy
USN-CNET	United States Navy, Chief of Naval Education and Training
USN-NAVAIR	United States Navy, Naval Air Systems Command
USN-NAVFAC	United States Navy, Naval Facilities Engineering Command
USN-NAVSEA	United States Navy, Naval Sea Systems Command
USN-PAC	United States Navy, Pacific Command
USSS (DHS)	United States Secret Service
USTR	Office of the U.S. Trade Representative
US-VISIT (DHS)	US-VISIT Program
VA	Department of Veterans Affairs

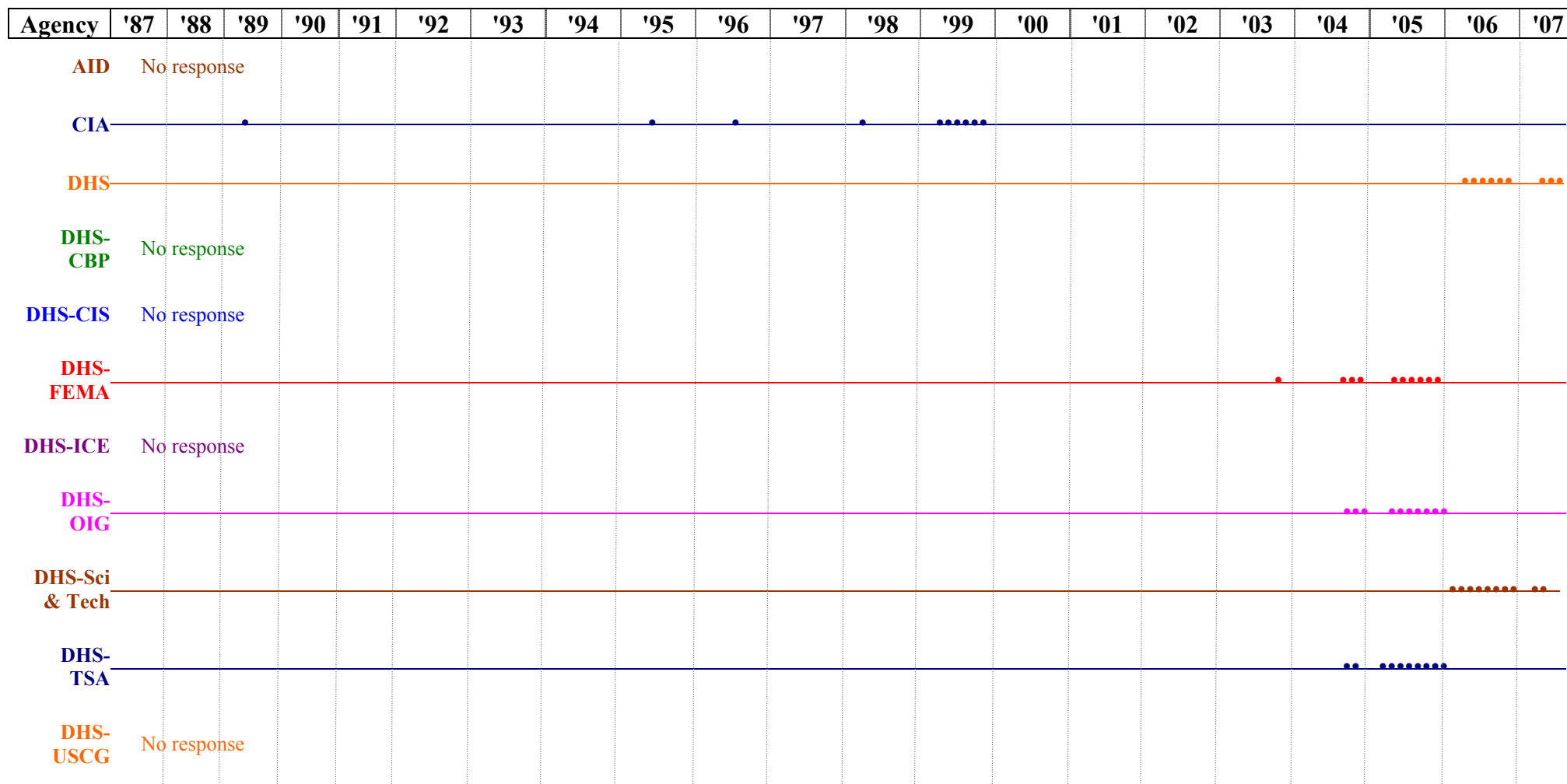
APPENDIX 2

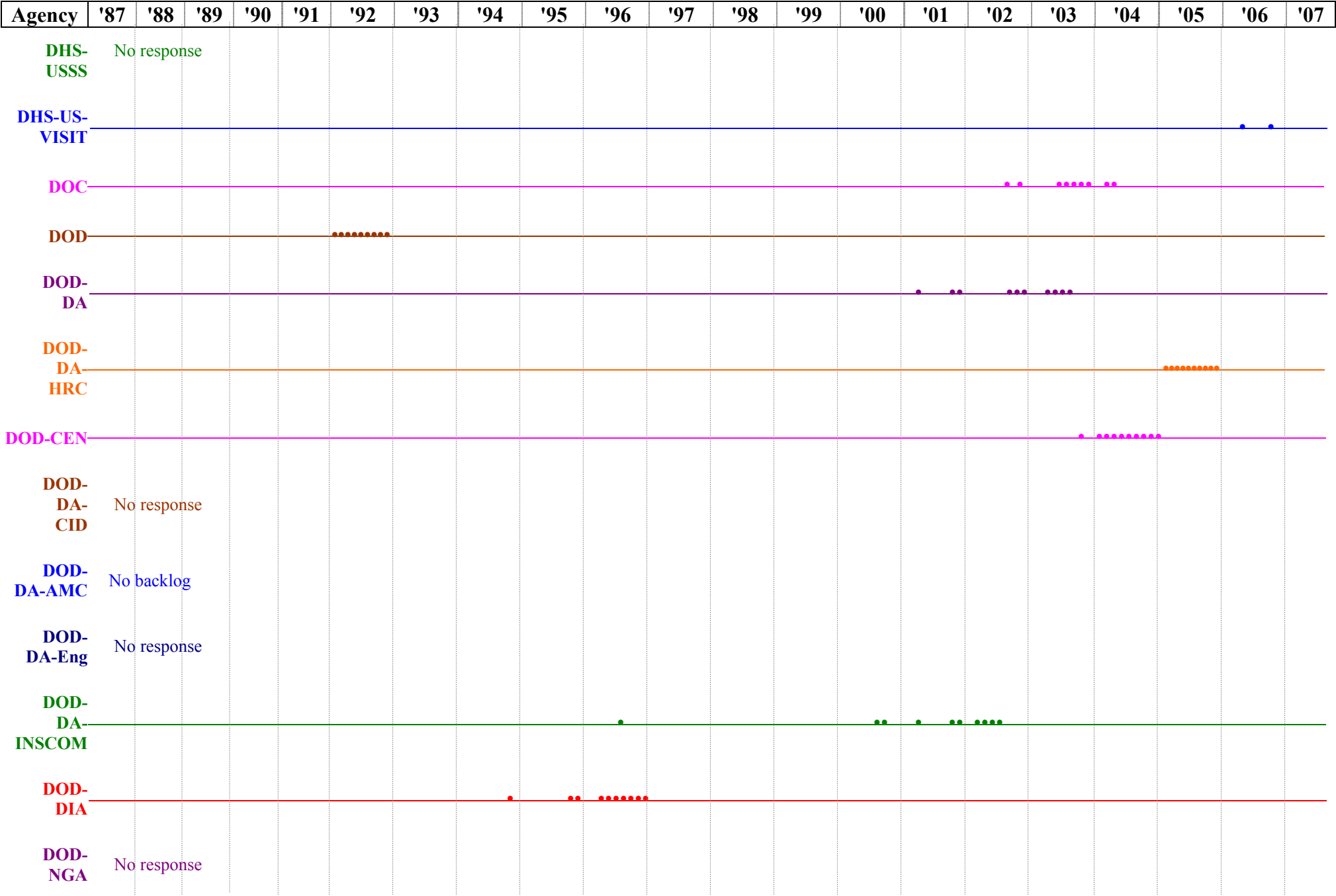
DISTRIBUTION OF THE TEN OLDEST FOIA REQUESTS BY AGENCY

The National Security Archive

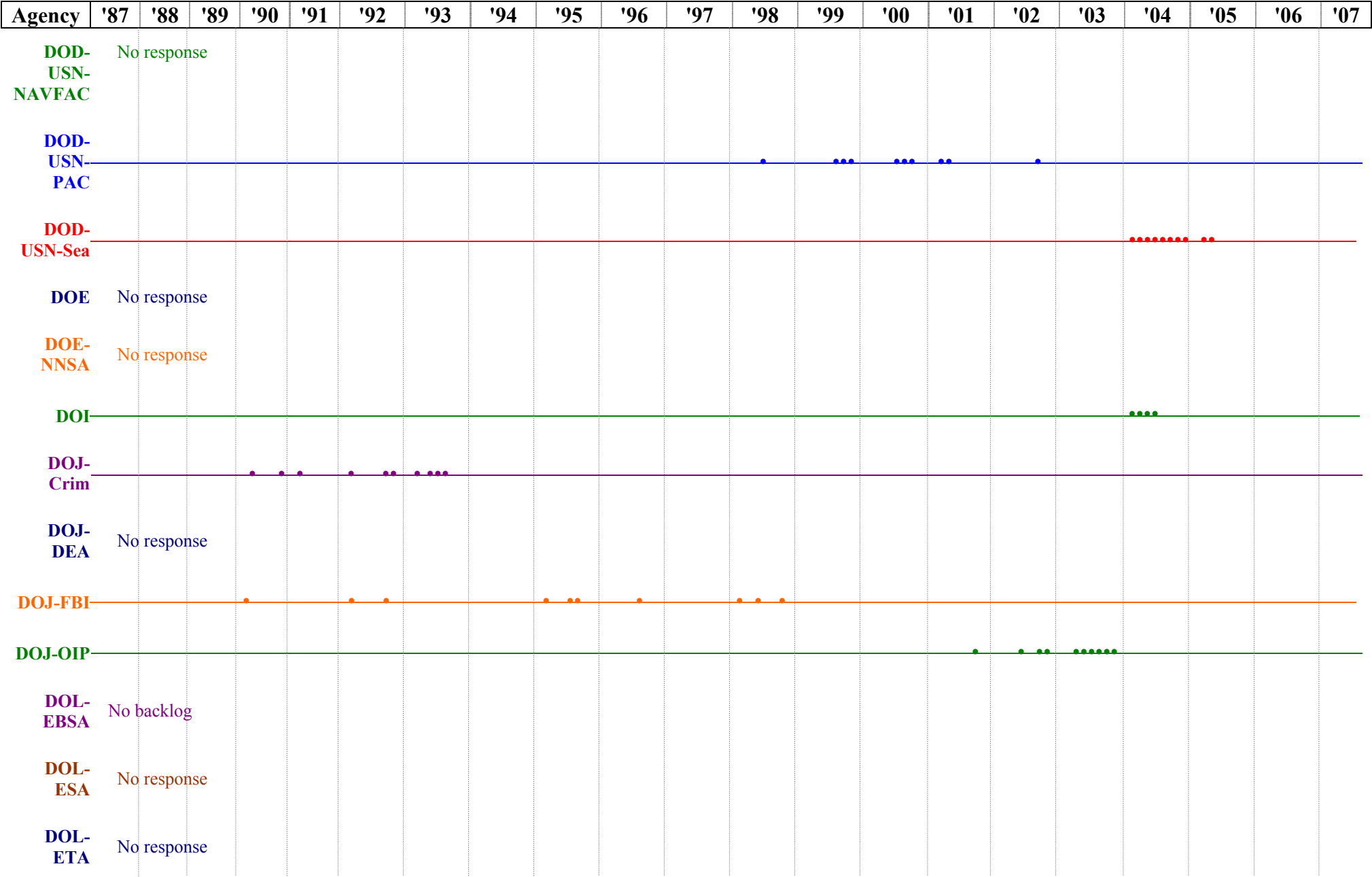
2007 Ten Oldest Audit

Distribution of Ten Oldest Requests





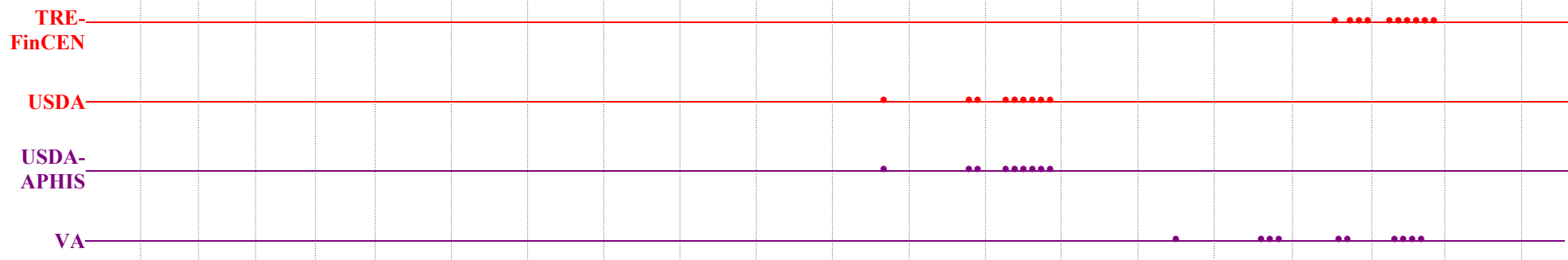
Agency	'87	'88	'89	'90	'91	'92	'93	'94	'95	'96	'97	'98	'99	'00	'01	'02	'03	'04	'05	'06	'07
DOD-NRO															.		. . . .	. .	. . .
DOD-USAF			.	.		. . .	.	. .	. .					
DOD-USAF-ACC										. . .			. .	. . . .	.
DOD-USAF-AMC																	.	.	. . . .	. . . .
DOD-USAF-EDU																					. . . . .
DOD-USAF-MC															. . .		.	. . .		. .	. .
DOD-USMC	No response																				
DOD-USN														.		. . .	.	. . . .	.
DOD-USN-CNET	No backlog																				
DOD-USN-NAVAIR																			. . .	. . . . .



Agency	'87	'88	'89	'90	'91	'92	'93	'94	'95	'96	'97	'98	'99	'00	'01	'02	'03	'04	'05	'06	'07
DOL-MSHA																				.	. . . . .
DOL-OSHA	No response																				
DOS	.	.	.	. . .	.	.	.	.					
DOT	No response																				
DOT-FAA														. . .	. . . . .	.		
DOT-FHWA																			. . .	. . . . .
DOT-FMSCA																				. . . . .
DOT-FRA	No response																				
DOT-MARAD	No response																				
EDU	No response																				
EOP-OMB																				. .	. . . . .
EOP-OSTP	No response																				
EOP-USTR																			. . .	. . . . .
EPA												

[illegible]

Agency	'87	'88	'89	'90	'91	'92	'93	'94	'95	'96	'97	'98	'99	'00	'01	'02	'03	'04	'05	'06	'07
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APPENDIX 3

COMPARISON OF 2005 AND 2007 TEN OLDEST

COMPARISON OF 2005 AND 2007 TEN OLDEST

Agency	2007 Range of Ten Oldest ⁱ	2005 Range of Ten Oldest	Number of Requests Still Pending since 2005 Audit
AID	No response	No response	-- ⁱⁱ
CIA	7/7/1989-11/22/1989	5/29/1987-4/28/1992	1
DHS—CBP	No response	No response	--
DHS—CIS	No response	No response	--
DHS—FEMA	10/7/2003-8/19/2005	10/26/2000-8/30/2004	1 ⁱⁱⁱ
DHS—ICE	No response	2/8/1994-6/19/2003	--
DHS—Office of the Secretary	6/9/2006-1/29/2007	6/14/2003-12/9/2003	0
DHS—OIG	10/1/2004-8/12/2005	N/A ^{iv}	--
DHS—Sci & Tech	6/22/2006-1/24/2007	N/A	--
DHS—TSA	8/13/2004-10/28/2005	10/21/2004-2/3/2005	0 ^v
DHS—USCG	No response	No response	--

ⁱ As of 2/1/2007

ⁱⁱ The Archive cannot provide this information either because the agency never responded to one or both of the Archive's 2005 and 2007 FOIA requests, or the Archive did not include this agency or agency component in the 2005 Ten Oldest Audit.

ⁱⁱⁱ FEMA's response to the Archive's 2007 Ten Oldest FOIA request included one request that was within the range of dates of those requests provided to the Archive two years ago, and so should have been reported for the 2005 audit, but was not.

^{iv} Agency or component not included in 2005 Ten Oldest Audit

^v Though none of the requests TSA provided in response to the Archive's 2005 Ten Oldest FOIA request are still pending, TSA's response to the Archive's 2007 Ten Oldest FOIA request included one request that was *older* than any of the requests in response to the 2005 FOIA as well as three requests that were within the range of dates of those requests provided to the Archive two years ago, and so should have been reported for the 2005 audit, but were not.

Agency	2007 Range of Ten Oldestⁱ	2005 Range of Ten Oldest	Number of Requests Still Pending since 2005 Audit
DHS—USSS	No response	N/A	--
DHS—US-VISIT	1/18/2006-8/9/2006 ^{vi}	N/A	--
DOC	7/24/2002-3/1/2004	5/11/1999-8/20/2004	2 ^{vii}
DOD	2/3/1992-12/1/1992	1/31/1987-2/3/1992	0 ^{viii}
DOD—CEN	12/18/2003-7/6/2004	6/23/2003-5/5/2004 ^{ix}	3 ^x
DOD—DA	1/11/2001-4/1/2003	N/A	--
DOD—DA-AMC	No backlog	No response	--
DOD—DA-CID	No response	No response	--
DOD—DA-Eng	No response	12/19/2003-8/26/2004	--
DOD—DA-HRC	1/25/2005-11/28/2005	12/6/2003-10/12/2004	0
DOD—DA-INSCOM	7/11/1996-2/7/2002	12/30/1996-5/4/2005	0 ^{xi}
DOD—DIA	12/16/1994-8/19/1996	12/16/1994-6/12/1996	8 ^{xii}

^{vi} US-VISIT only had two pending FOIA requests.

^{vii} DOC's response to the Archive's 2007 Ten Oldest FOIA request included one request that was within the range of dates of those requests provided to the Archive two years ago, and so should have been reported for the 2005 audit, but was not.

^{viii} Though none of the requests DOD provided in response to the Archive's 2005 Ten Oldest FOIA request are still pending, DOD's response to the Archive's 2007 Ten Oldest FOIA request included one request that was within the range of dates of those requests provided to the Archive two years ago, and so should have been reported for the 2005 audit, but was not.

^{ix} CEN responded to the Archive's FOIA request 12/27/2006

^x Central Command's response to the Archive's 2007 Ten Oldest FOIA request included one request that was within the range of dates of those requests provided to the Archive two years ago, and so should have been reported for the 2005 audit, but was not.

^{xi} Though none of the requests INSCOM provided in response to the Archive's 2005 Ten Oldest FOIA request are still pending, INSCOM's response to the Archive's 2007 Ten Oldest FOIA request included nine requests that were within the range of dates of those requests provided to the Archive two years ago, and so should have been reported for the 2005 audit, but were not.

^{xii} DIA's response to the Archive's 2007 Ten Oldest FOIA request included two requests that were within the range of dates of those requests provided to the Archive two years ago, and so should have been reported for the 2005 audit, but were not.

Agency	2007 Range of Ten Oldestⁱ	2005 Range of Ten Oldest	Number of Requests Still Pending since 2005 Audit
DOD—NGA	No response	7/26/2001-12/3/2004	--
DOD—NRO	9/29/2001-11/21/2005	7/19/2001-7/15/2004	6
DOD—USAF	1/2/1990-11/17/1995	1/2/1990-8/25/1994	4 ^{xiii}
DOD—USAF-ACC	5/7/1997-3/1/2001	6/6/1996-3/1/2001	7 ^{xiv}
DOD—USAF-AMC	5/25/2001-1/3/2007 ^{xv}	8/4/2000-2/5/2005	0 ^{xvi}
DOD—USAF-EDU	1/23/2007-1/31/2007 ^{xvii}	6/22/1994-4/11/2005	0
DOD—USAF-MC	12/28/2003-3/20/2006	5/12/1999-8/11/2003	0
DOD—USMC	No response	N/A	--
DOD—USN	10/30/2000-1/11/2005	N/A	--
DOD—USN-CNET	No backlog	No backlog	0
DOD—USN-NAVAIR	No response	8/4/2004-1/7/2005	--
DOD—USN-NAVFAC	No response	No backlog	--
DOD—USN-NAVSEA	6/2/2004-3/15/2005	12/7/1999-1/22/2003	0

^{xiii} Air Force's response to the Archive's 2007 Ten Oldest FOIA request also included three requests that were within the range of dates of those requests provided to the Archive two years ago, and so should have been reported for the 2005 audit, but were not.

^{xiv} Air Combat Command's response to the Archive's 2007 Ten Oldest FOIA request included two requests that were within the range of dates of those requests provided to the Archive two years ago, and so should have been reported for the 2005 audit, but were not.

^{xv} Several of Air Mobility Command's requests were referrals from other agencies. In cases where the referral date was not available, the date of the original request was used.

^{xvi} Though none of the requests Air Mobility Command provided in response to the Archive's 2005 Ten Oldest FOIA request are still pending, Mobility Command's response to the Archive's 2007 Ten Oldest FOIA request included six requests that were within the range of dates of those requests provided to the Archive two years ago, and so should have been reported for the 2005 audit, but were not.

^{xvii} Air Education and Training Command only had eight pending FOIA requests.

Agency	2007 Range of Ten Oldest ⁱ	2005 Range of Ten Oldest	Number of Requests Still Pending since 2005 Audit
DOD—USN-PACCOM	6/18/1998-9/17/2002	4/25/2000-5/5/2005	0 ^{xviii}
DOE—HQ	No response	7/16/1990-9/1/1998	--
DOE—NNSA	No response	N/A	--
DOI	1/12/2004-1/15/2004 ^{xix}	9/6/2000-8/20/2003	0
DOJ—CRIM	2/20/1990-5/25/1993	N/A	--
DOJ—DEA	No response	7/13/2004-2/25/2005	--
DOJ—FBI	3/16/1990-12/7/1998	12/8/1992-7/16/2003	0 ^{xx}
DOJ—OIP	10/22/2001-10/2/2003	8/18/1995-1/30/2002	0 ^{xxi}
DOL—EBSA	No backlog	7/13/2005-11/27/2006 ^{xxii}	0
DOL—ESA	No response	No backlog	--
DOL—ETA	No response	No response	--
DOL—MSHA	7/13/2005-5/24/2006	1/18/2005-4/6/2005	0

^{xviii} In addition, PACCOM 's response to the Archive's 2007 Ten Oldest FOIA request included five request that were *older* than any of the requests in response to the 2005 FOIA. All ten requests in the 2007 response were requests that were within the range of dates of those requests provided to the Archive two years ago, and so should have been reported for the 2005 audit, but were not.

^{xix} DOI only had seven pending requests.

^{xx} Though none of the requests the FBI provided in response to the Archive's 2005 Ten Oldest FOIA request are still pending, the FBI's response to the Archive's 2007 Ten Oldest FOIA request included two requests that were *older* than any of the requests in response to the 2005 FOIA. there were seven requests that were within the range of dates of those requests provided to the Archive two years ago, and so should have been reported for the 2005 audit, but were not.

^{xxi} CLARIFICATION: The Archive had initially reported that DOJ- OIP's response to the Archive's 2007 Ten Oldest FOIA request included one request that was within the range of dates of those requests provided to the Archive two years ago, and so should have been reported for the 2005 audit, but was not. However, the Department of Justice's Office of Information and Privacy (OIP) has informed the Archive that the October 22, 2001, request was first received by DOJ-OIP on February 5, 2002. OIP indicated that the request was not delayed by intra-agency routing, but likely was delayed as a result of the Anthrax mail screening program that took place in 2001-2002. Because agencies calculate their response time from the date of receipt of the request, the fact that OIP did not include this request in its response to the Archive's 2005 FOIA request is not inaccurate.

^{xxii} DOL-EBSA responded to the Archive's FOIA request 12/20/2006

Agency	2007 Range of Ten Oldest ⁱ	2005 Range of Ten Oldest	Number of Requests Still Pending since 2005 Audit
DOL—OSHA	No response	No response	--
DOS	5/5/1987-6/12/1991	No response ^{xxiii}	--
DOT—FAA	6/29/2000-1/10/2002	2/19/1997-3/19/1998	0
DOT—FHWA	2/14/2005-9/13/2006	7/19/2001	0
DOT—FMSCA	2/23/2006-9/8/2006	2/2/2004-3/22/2005	0
DOT—FRA	No response	12/10/2003-4/21/2005	--
DOT—MARAD	No response	N/A	--
DOT—OST	No response	3/15/2000-2/10/2003	--
ED	No response	12/10/2004-1/21/2005	--
EPA	5/23/1995-9/5/2003	4/24/1996-3/12/2001	0 ^{xxiv}
GSA	10/10/2006-1/3/2007	6/8/2005-7/14/2005	0
HHS—FDA	5/10/2000-9/22/2000	N/A	--
HHS—OS	7/7/2005-4/26/2006	No response	--
HUD	4/20/2004-1/27/2005	12/20/2002-7/28/2004	0 ^{xxv}

^{xxiii} On 2/9/07, the Archive agreed to close the 2003 and 2005 Ten Oldest FOIA requests so DOS could place priority on the 2007 request.

^{xxiv} Though none of the requests the EPA provided in response to the Archive's 2005 Ten Oldest FOIA request are still pending, the EPA's response to the Archive's 2007 Ten Oldest FOIA request included one request that was *older* than any of the requests in response to the 2005 FOIA.

^{xxv} Though none of the requests GSA provided in response to the Archive's 2005 Ten Oldest FOIA request are still pending, GSA's response to the Archive's 2007 Ten Oldest FOIA request included three requests that were within the range of dates of those requests provided to the Archive two years ago, and so should have been reported for the 2005 audit, but were not.

Agency	2007 Range of Ten Oldestⁱ	2005 Range of Ten Oldest	Number of Requests Still Pending since 2005 Audit
LSC	No response	N/A	--
NARA	8/13/1992-12/27/1993	3/9/1990-8/18/1993	2 ^{xxvi}
NASA	3/1/2005-6/13/2005	9/30/2004-12/27/2004	0
NIH	No response	7/11/2000-10/2/2002	--
NRC	7/3/2006-11/16/2006	3/29/2004-7/14/2004	0
NSF	11/10/2005-11/30/2006	12/21/2004-4/7/2005	0
NTSB	3/28/2000-6/14/2001	N/A	--
ODNI	11/14/2005-10/20/2006	N/A	--
OMB	11/15/2006-2/1/2007	1/27/2005-5/2/2005	0
OPM	No response	No response	--
OSTP	No response	N/A	--
SBA	No backlog	3/28/2005-4/22/2005	0
SEC	10/2/2003-12/10/2003	4/19/2002-8/7/2002	0
SSA	8/10/2005-9/25/2006	11/9/2004-2/28/2005	0
TRE—DO	5/20/1992-6/5/1996	11/11/1991-5/24/1995	2 ^{xxvii}

^{xxvi} In addition, NARA's response to the Archive's 2007 Ten Oldest FOIA request included four requests that were within the range of dates of those requests provided to the Archive two years ago, and so should have been reported for the 2005 audit, but were not.

^{xxvii} In addition, TRE 's response to the Archive's 2007 Ten Oldest FOIA request included eight requests that were within the range of dates of those requests provided to the Archive two years ago, and so should have been reported for the 2005 audit, but were not.

Agency	2007 Range of Ten Oldestⁱ	2005 Range of Ten Oldest	Number of Requests Still Pending since 2005 Audit
TRE—FinCEN	7/12/2004-6/20/2005	N/A	--
USDA	8/27/1998-7/26/2000 ^{xxviii}	2/11/1998-12/15/2004	0 ^{xxix}
USDA—APHIS	8/27/1998-7/26/2000	N/A	--
USTR	10/20/2005-6/12/2006	N/A	--
VA	3/6/2007-1/3/2007	No response	--

^{xxviii} All of USDA's ten oldest are requests to USDA-APHIS.

^{xxix} Though none of the requests USDA provided in response to the Archive's 2005 Ten Oldest FOIA request are still pending, USDA's response to the Archive's 2007 Ten Oldest FOIA request included nine requests that were within the range of dates of those requests provided to the Archive two years ago, and so should have been reported for the 2005 audit, but were not.

APPENDIX 4

OLDEST PENDING FOIA REQUESTS

*Comparison of data reported to Congress
and data reported to the National Security Archive*

Agency	Oldest Pending FOIA Request as Reported to Congress	Oldest FOIA Request Pending Consultation with Other Agencies as Reported to Congress	Oldest Pending FOIA Request as Reported to the National Security Archive
USAID	5/12/00	7/30/04	* ⁱ
Amtrak	3/1/06	Ø ⁱⁱ	-- ⁱⁱⁱ
BBG	10/1/05	Ø	--
CEQ	7/1/05	12/22/03	--
CFTC	5/24/06	Ø	--
CIA	2/1/92	6/01	7/7/89
CNS	N/A ^{iv}	N/A	--
Committee	9/30/05	Ø	--
CPSC	7/26/04	Ø	--
CSOSA	10/23/06	Ø	--
DHS-CBP	9/12/00	Ø	*
DHS-FEMA	10/14/03	Ø	10/7/03
DHS-FLETC	1/11/07	Ø	--
DHS-ICE	6/9/03	Ø	*
DHS-OGC	8/8/06	Ø	--
DHS-OIG	10/8/03	Ø	10/1/04
DHS-OPS	11/15/06	Ø	--
DHS-PREP	2/18/06	Ø	--
DHS-PRIV	8/10/06	Ø	--
DHS-S&T	7/1/06	Ø	6/22/06
DHS-TSA	2/17/06	Ø	8/13/04
DHS-USCG	N/A	Ø	*
DHS-USCIS	11/18/01	Ø	*
DHS-USSS	11/19/98	Ø	*
DHS-USVISIT	5/25/06	Ø	1/18/06
DOC-BTS	7/13/06	Ø	--
DOC-Census	9/11/06	Ø	--
DOC-EDA	9/14/06	Ø	--
DOC-ITA	7/21/06	Ø	--
DOC-NIST	4/28/05	8/4/05	--

ⁱ Agency has not responded to the Archive's FOIA request

ⁱⁱ Agency did not have any FOIA requests pending consultation with other agencies.

ⁱⁱⁱ Agency or component not included in the Archive's 2007 Ten Oldest Audit

^{iv} Agency did not provide data in FY 2006 FOIA Annual Report.

Agency	Oldest Pending FOIA Request as Reported to Congress	Oldest FOIA Request Pending Consultation with Other Agencies as Reported to Congress	Oldest Pending FOIA Request as Reported to the National Security Archive
DOC-NOAA	8/2/02	Ø	7/24/02 ^v
DOC-NTIA	9/20/06	12/19/06	--
DOC-OIG	3/10/06	1/2/07	--
DOC-OS	9/12/06	12/5/06	--
DOC-PTO	6/16/06	Ø	--
DOD	3/10/91	5/3/93	2/3/92
DOE	3/10/93	5/17/95	*
DOI-BIA	4/7/99	Ø	--
DOI-BLM	3/5/04	Ø	--
DOI-BOR	8/21/06	Ø	--
DOI-FWS	10/1/03	Ø	--
DOI-MMS	5/23/06	Ø	--
DOI-NPS	5/25/05	Ø	--
DOI-OIG	1/16/96	Ø	--
DOI-OS	1/13/04	Ø	1/12/04
DOI-OSM	6/21/06	Ø	--
DOI-SOL	3/6/06	Ø	--
DOI-USGS	9/26/06	Ø	--
DOJ-Antitrust	6/3/99	Ø	--
DOJ-ATF	6/12/06	Ø	--
DOJ-BOP	4/29/05	Ø	--
DOJ-Civil Division	10/24/06	8/7/06	--
DOJ-CRIM	7/10/89	8/2/01	2/2/90
DOJ-CRT	1/10/02	Ø	--
DOJ-DEA	11/5/05	1/3/03	*
DOJ-ENRD	8/11/05	Ø	--
DOJ-EOIR	6/20/04	Ø	--
DOJ-EOUSA	12/30/99	Ø	--
DOJ-EOUST	5/8/06	Ø	--
DOJ-FBI	12/18/92	1/8/02	3/16/90
DOJ-JMD	3/7/05	Ø	--
DOJ-NDIC	12/15/06	Ø	--
DOJ-OIG	12/28/05	6/15/06	--
DOJ-OIP	2/5/02	1/3/03	10/22/01 ^{vi}
DOJ-OIPR	2/21/06	3/24/06	--
DOJ-OJP	1/26/06	12/15/06	--
DOJ-OLC	5/20/05	Ø	--

^v DOC provided the ten oldest from all of its components. The oldest pending request at DOC overall was a request to NOAA.

^{vi} The Department of Justice's Office of Information and Privacy (OIP) has informed the Archive that the October 22, 2001 request reported as OIP's oldest was first received by the DOJ-OIP on February 5, 2002. OIP indicated that the request was not delayed by intra-agency routing, but likely was delayed as a result of the Anthrax mail screening program that took place in 2001-2002. Because agencies calculate their response time from the date of receipt of the request, OIP's report to Congress listing its oldest pending request as dating from February 5, 2002 is not inaccurate.

Agency	Oldest Pending FOIA Request as Reported to Congress	Oldest FOIA Request Pending Consultation with Other Agencies as Reported to Congress	Oldest Pending FOIA Request as Reported to the National Security Archive
DOJ-OPR	12/7/06	Ø	--
DOJ-OSG	10/6/06	11/27/06	--
DOJ-OWW	11/16/06	Ø	--
DOJ-USMS	4/20/05	1/4/03	--
DOJ-USPC	2/7/06	Ø	--
DOL	4/5/05	Ø	--
DOS	11/28/97	4/13/1989	5/5/87
DOT	8/29/00	Ø	*
ED	12/11/03	Ø	*
EEOC	10/13/05	Ø	--
EPA	5/23/95	12/13/06	5/23/95
EXIM	4/10/06	Ø	--
FCA	9/8/06	Ø	--
FCC	5/2/06	Ø	--
FDIC	11/14/06	Ø	--
FEC	8/8/06	Ø	--
FERC	8/30/06	Ø	--
FLRA	N/A	Ø	--
FMC	10/11/06	Ø	--
FRB	9/28/06	Ø	--
FTC	N/A	N/A	--
GSA	10/11/06	Ø	10/10/06
HHS	10/28/94	Ø	7/7/05
IMLS	N/A	Ø	--
LSC	N/A	N/A	*
MSPB	11/9/06	Ø	--
NARA	9/21/92	9/4/93	8/13/92
NASA	11/5/04	Ø	3/1/05
NCUA	12/26/06	Ø	--
NEH	2/27/04	Ø	--
NIGC	N/A	N/A	--
NLRB	10/11/06	Ø	--
NRC	7/3/06	Ø	7/3/06
NSF	1/13/06	Ø	11/10/05
NTSB	1/7/99	Ø	9/1/00
OA	N/A	Ø	--
ODNI	1/23/06	Ø	11/14/05
OFHEO	12/27/06	Ø	--
OGE	1/17/07	Ø	--
OMB	11/15/06	Ø	11/15/06
OPIC	8/21/06	Ø	--
OPM	1999 ^{vii}	Ø	*
OSC	4/11/05	Ø	--

^{vii} OPM did not provide the exact date of their oldest pending request. They reported they have 63 requests pending from 1999.

Agency	Oldest Pending FOIA Request as Reported to Congress	Oldest FOIA Request Pending Consultation with Other Agencies as Reported to Congress	Oldest Pending FOIA Request as Reported to the National Security Archive
OSTP	10/1/01	9/18/06	*
PBGC	8/21/06	Ø	--
Peace Corps	8/2/04	Ø	--
RRB	2/2/05	Ø	--
SBA	5/15/06	Ø	No backlog
SEC	10/4/02	Ø	10/2/03
SSA	8/10/05	Ø	8/10/05
STSB	1/24/07	Ø	--
TRE	3/5/93	Ø	5/20/92
TVA	6/29/06	Ø	--
USCO	1/25/07	Ø	--
USDA-AMS	7/25/06	Ø	--
USDA-APHIS	12/10/99	Ø	8/27/98
USDA-ASCR	8/4/05	Ø	--
USDA-DA	3/4/04	Ø	--
USDA-FAS	1/4/06	Ø	--
USDA-FNCS	8/9/06	Ø	--
USDA-FS	3/21/05	Ø	--
USDA-FSA	12/6/05	Ø	--
USDA-FSIS	7/23/02	Ø	--
USDA-GIPSA	10/2/06	Ø	--
USDA-NRCS	9/18/06	Ø	--
USDA-OBPA	1/3/07	1/9/07	--
USDA-OIG	9/6/05	Ø	--
USDA-OSEC	8/30/06	Ø	--
USDA-RD	10/2/06	Ø	--
USDA-REE	9/5/06	Ø	--
USPS	4/25/06	Ø	--
USTDA	4/28/06	Ø	--
USTR	8/10/05	N/A	10/20/2005
VA	3/6/2000	1/20/2004	7/3/2002

APPENDIX 5

FOIA REQUESTS PENDING 15 YEARS OR MORE (BY DATE)

Date	Agency	Requester	Subject of Request
5/5/1987	DOS	Bowles and Moxon (on behalf of the Church of Scientology International)	Scientology and cults
4/18/1988	DOS	USX Corporation	Steel industry in Luxembourg
11/2/1988	DOS	Not provided (private citizen)	NOBISTOR incident
7/7/1989	CIA	National Security Archive (Peter Kornbluh)	Manucher Gorbaniher and the Iran-Contra affair
8/2/1989	DOS	National Security Archive (Kenneth Mokoena)	Production, international marketing, and importation of Sought African steel to the United States during 1976-1987
10/11/1989	DOS	Armenian Assembly of America	Armenian genocide during WWI
1/2/1990	DOD-USAF	National Security Archive (Bill Burr)	Berlin Crisis
2/20/1990	DOJ-Criminal	Gordon Winslow	Foreign Agent Registration Files—Organizations
3/2/1990	DOS	Loyola Law School (Ann Snuggs)	GSP Subcommittee
3/7/1990	DOD-USAF	National Security Archive (Bill Burr)	Berlin Crisis
3/16/1990	DOJ-FBI	Not identified	Ronald Pelton
10/2/1990	DOJ-Criminal	David Wigdor	U.S. v. Paul Hughes
10/4/1990	DOS	National Security Archive (Malcolm Byrne)	U.S. assistance to Poland through the Commodity Credit Corporation (1977-1980)
2/25/1991	DOJ-Criminal	Edward W. Spannaus	Lyndon LaRouche
3/28/1991	DOS	Public Citizen	Assistant Secretary John Kelly's February 12, 1990, visit to Baghdad
6/12/1991	DOS	United Autoworkers Washington Report	Overseas Private Investment Corporations activities in and polices on the Republic of Korea
9/3/1991	DOS	National Security Archive (Joyce Battle)	Yemen Arms Deal and Ceasefire