

FREEDOM OF INFORMATION ACT

FOIA TASK FORCE REPORT



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EXECUTIVE SUMMARY

The charge to the Freedom of Information Act (FOIA) Task Force was to review the Agency's current FOIA program, identify any significant weaknesses, and recommend improvements. The challenge faced by the Task Force in developing its recommendations was how to improve the efficiency and effectiveness of the Agency's FOIA operations while ensuring that information is provided to the American public in a timely fashion. The recommendations of the Task Force fall into three subject areas:

A. **Accountability** – There is a need to increase accountability throughout the Agency for compliance with FOIA. Because of its current responsibilities for FOIA policy, records management, and Privacy Act matters, the Office of Environmental Information (OEI), Office of Information Collection (OIC) should be designated as the lead office with responsibility for overseeing and administering the FOIA. The Agency must increase its focus on reducing the backlog of outstanding FOIA requests. Additionally, senior management must be held responsible for ensuring that each organization meets the statutory requirements of FOIA. Currently, accountability and effective prioritization are lacking. Structurally, new roles and responsibilities must be made part of the FOIA program in both EPA Headquarters (HQ) and the regions, and the role and importance of personnel with FOIA responsibilities must be enhanced.

B. **Centralization** – FOIA policy and FOIA operations in HQ should be consolidated and joined organizationally with the Agency's records management program and its Privacy Officer function in OEI/OIC. A web-enabled tracking and coordinating system needs to be developed, which will permit the correction of problems encountered with the current system as well as ensure compliance with the requirements of the Electronic FOIA Amendments of 1996 (E-FOIA). The transition to the new system should be managed in accordance with standard information technology practices. Certain complex FOIA requests, expedited processing, fee waiver determinations, and billing should have central oversight and a lead office designated as the point of contact with the requester.

C. **Updating/Amendment of Current Policies, Regulations, and Guidance** – Policies, regulations, and guidance need to be updated and/or developed to provide a reliable Agency-wide resource and to address commonly encountered problems, particularly in the area of electronic records. FOIA regulations should be updated to include E-FOIA. A FOIA training program needs to be developed and implemented for all employees to ensure compliance with FOIA and E-FOIA.

The Task Force first examined the existing FOIA program. Consensus emerged rapidly that accountability in the FOIA program was lacking. A thorough analysis of the FOIA workflow processes was performed by the Task Force. The Task Force discovered that FOIA processing is often given extremely low priority, and when backlogs develop or litigation ensues because of errors in processing, no one can be held accountable. In general, EPA has a highly decentralized operation, with separate responses and separate billing from different responding

offices. A few regions and HQ offices have centralized FOIA processing to varying degrees, and with varying results.

When analyzing current procedures, it became apparent that problems with communication and consistency are linked to decentralization. In particular, the separation of responsibilities for FOIA policy and FOIA operations is problematic. The Task Force recognized the close connection between records management policy and the ability to properly respond to FOIA requests. In addition, Agency policy and guidance in the FOIA area are out of date. The Agency's FOIA Manual was last amended in 1992. E-FOIA has not been fully implemented, although the FOIA regulations at 40 C.F.R. Part 2 are being revised. Agency employees have not been adequately trained in FOIA. Problems associated with the lack of training are further exacerbated by the common practice of most offices of assigning FOIA responsibilities to the newest employees.

In general, while a wholesale overhaul of the FOIA program is not required, changes must be made in key areas to ensure compliance with EPA's responsibilities under the FOIA.

Introduction

On April 27, 2001, Administrator Christine Todd Whitman established a Task Force to undertake a 90-day review of EPA's administration of the FOIA. The charge to the Task Force was to review the current FOIA program, identify significant weaknesses, and recommend improvements. Ray Spears, Deputy Chief of Staff, chaired the Task Force. Participants included senior representatives from OEI, the Office of General Counsel (OGC), and the Lead Region for Management (Region VII). Employees with FOIA responsibilities also participated from OEI, OGC, Office of Executive Secretariat, Office of Solid Waste and Emergency Response, Office of Pesticides, Pollution and Toxic Substances, Office of Water, Office of the Administrator, and Regions I and IV.

The Task Force first examined the current FOIA program. It quickly concluded that the lack of senior management involvement is a major factor in the Agency's poor FOIA performance. FOIA processing is often given extremely low priority, without clearly delineated accountability. As such, when backlogs develop or litigation ensues because of errors in processing, it is often difficult to determine who was responsible for resolving issues or problems. In general, EPA has a highly decentralized operation, with different responding offices providing separate responses and separate fee billings. A few regions and HQ Offices have centralized FOIA processing to varying degrees, and with varying results. When analyzing current procedures, it became apparent that problems with communication and consistency are linked to decentralization. In particular, the separation of responsibilities for FOIA policy and FOIA operations is problematic. The Task Force recognized the close connection between records management policy and the ability to properly respond to FOIA requests. In addition, Agency policy and guidance in the FOIA area are out of date. The Agency's FOIA Manual was last amended in 1992. E-FOIA has not been fully implemented, although the FOIA regulations at 40 C.F.R. Part 2 are being revised. Agency employees have not been adequately trained in FOIA. Problems associated with the lack of training are further exacerbated by the common practice of most offices of assigning FOIA responsibilities to the newest employees.

After identifying problem areas, the Task Force drew up a list of 18 recommendations. These recommendations generally fall into the following three areas:

A. Accountability – There is a need to increase accountability throughout the Agency for compliance with FOIA. Because of its current responsibilities for FOIA policy, records management, and Privacy Act matters, OEI/OIC should be designated as the lead office with responsibility for overseeing and administering the FOIA. The Agency must increase its focus on reducing the backlog of outstanding FOIA requests. Additionally, senior management must be held responsible for ensuring that each organization meets the statutory requirements of FOIA. Currently, accountability and effective prioritization are lacking. Structurally, new roles and responsibilities must be made part of the FOIA program in Headquarters (HQ) and the regions, and the role and importance of personnel with FOIA responsibilities must be enhanced.

B. Centralization – FOIA policy and FOIA operations in HQ should be consolidated and joined organizationally with the Agency’s records management program and its Privacy Officer function in OEI/OIC. A web-enabled tracking and coordinating system needs to be developed, which will permit the correction of problems encountered with the current system as well as ensure compliance with the requirements of E-FOIA. The transition to the new system should be managed in accordance with standard information technology practices. Certain complex FOIA requests, expedited processing, fee waiver determinations, and billing should have central oversight and a lead office designated as the point of contact with the requester.

C. Updating/Amendment of Current Policies, Regulations, and Guidance – Policies, regulations, and guidance need to be updated and/or developed to provide a reliable Agency-wide resource and to address commonly encountered problems, particularly in the area of electronic records. FOIA regulations should be updated to include E-FOIA. A FOIA training program needs to be developed and implemented for all employees to ensure compliance with FOIA and E-FOIA.

In the sections that follow, this Report details the findings of the Task Force regarding the current FOIA program at EPA, the problems identified, and the specific recommendations that the Task Force makes to improve the FOIA process. Lastly, the report sets out a plan for implementing these changes.

I. Background

The FOIA, as amended,¹ provides the public with the right to access certain records held by executive branch federal agencies, including EPA. It requires access in three ways: 1) publish certain information on EPA's organization, operations, and rules in the Federal Register; 2) provide continuous availability of information such as EPA final opinions and orders, certain administrative staff manuals, and "frequently requested records" for public inspection and copying; and 3) make records available upon written request subject to applicable exemptions or exclusions. EPA's regulations implementing the FOIA are found at 40 C.F.R. § 2.100, et seq. The U.S. Department of Justice, Office of Information and Privacy (OIP), provides government-wide guidance on FOIA implementation.

In 1996, Congress passed E-FOIA, which amended the FOIA to address a number of problem areas, including electronic records, processing time limits, backlog of requests, and annual reporting. One of the significant changes made by E-FOIA was an extension of the time limit for agencies to grant or deny FOIA requests. The time limit was extended from ten to twenty business days and could be extended for an additional ten working days for specified reasons. Where an agency failed to notify the requester of its decision to grant or deny access to the requested records within twenty business days or to grant or deny the request for expedited treatment within ten business days, the requester was authorized to file a complaint in the U.S. District Court. Where an agency denied a request for records, in whole or in part, it was required to inform the requester of its right to appeal the decision within the agency. Appeals were required to be decided within twenty working days after receipt by the agency. Where the requester was dissatisfied with an agency's decision on appeal, the requester was authorized to file a complaint in the U.S. District Court. Where the court finds that an agency improperly withheld requested records, it can require the agency to release the records and pay attorney fees or other litigation costs.²

FOIA Fees

The FOIA authorizes agencies, including EPA, to charge fees for searching, reviewing, and copying records provided in response to FOIA requests. Where fees are anticipated to exceed \$25, the Office of Management and Budget (OMB) requires agencies to notify requesters of the anticipated fees and to secure from the requester an agreement to pay the fees prior to an agency's beginning its search.³ EPA has adopted this procedure in its fee regulations. See 40 C.F.R. § 2.120. "Commercial" requesters must pay for search, review, and copying. "Non-

¹ See 5 U.S.C. § 552 (1994 & Supp. IV 1998).

² See 5 U.S.C. § 552(a)(4)(E).

³ Office of Management and Budget fee schedules and guidelines, 52 FR 10012, 10018-19 (March 27, 1987).

commercial” educational, scientific, or media requesters pay only for copying beyond the first 100 pages. “Other” requesters pay for search time beyond the first two hours and copying beyond the first 100 pages. The Agency charges 15 cents per page for paper copies. For electronic forms of duplication, requesters are charged the actual costs of the duplication, which includes the cost of the medium and the actual operator time and computer resource usage required to produce the copy. EPA, however, provides all requesters up to \$25 of search, review, and copy fees at no charge. The EPA’s Action Offices, as defined below, or, on occasion, the FOIA staff, calculate fees and bill requesters for these services. The requesters submit their payments to the EPA’s Financial Management Division, which then forwards the payments to the U.S. Treasury.

EPA can waive or reduce fees if disclosure of the requested records is likely to contribute significantly to public understanding of the operations or activities of the government and disclosure is not primarily in the commercial interest of the requester. OIP has established six factors, which requesters must address to qualify for a waiver or reduction of fees. The Agency is expected to employ these standards in reaching its decision on these matters. Requesters may also appeal denials of requests for fee waiver or fee reduction.

Responsibilities

- The **Agency FOIA Officer** coordinates and oversees the Agency’s FOIA program; processes, routes, and tracks FOIA requests filed with HQ; coordinates with the Action Office on initial fee-waiver decisions; develops and reviews FOIA procedures, policies, and guidance; provides advice to Agency FOIA personnel in the program and regional offices; prepares the Annual FOIA Report to Congress; maintains the official FOIA files for HQ; and provides training or training opportunities to Agency FOIA personnel.
- The **Regional FOIA Officer** routes requests to appropriate Action Office within his/her Region; tracks FOIA requests; provides guidance to regional personnel, in collaboration with the Agency FOIA Officer or OGC; coordinates with the Action Office on initial fee waiver decisions; submits materials for the Annual FOIA Report; maintains the official FOIA files for the Region; monitors quality and timeliness of responses; and provides training and current information to Regional FOIA personnel.
- The **FOIA Coordinator** routes requests to the appropriate Action Office within his/her program; tracks FOIA requests for timeliness; monitors quality responses; and provides guidance to program personnel, in collaboration with the Agency FOIA Officer or OGC.
- The **Action Office** analyzes requests, locates records, contacts requesters as needed, reviews records for possible release, deletes exempt material, prepares and issues responses, releases records, and issues initial fee waiver decisions. Certain senior-level personnel within the Action Offices have been delegated the authority to issue denials to requests for Agency records and to make fee waiver and expedited processing determinations.

- With the exception of matters within the Office of Inspector General (OIG), the **Office of General Counsel** (OGC) provides legal advice on FOIA matters; issues final decisions on FOIA appeals, final confidentiality determinations, and fee waiver appeal determinations; drafts FOIA regulations; provides concurrence on the use of “Glomar” responses and reliance on FOIA exclusions; and serves as co-counsel with Department of Justice attorneys in FOIA litigation. The Counsel to the Inspector General provides most of these services for the OIG.

FOIA Workflow

When a FOIA request is received at EPA Headquarters, it is date stamped and given to a FOIA Specialist for processing. The requests are divided equally among the Specialists, who carefully read and interpret each request. The FOIA Specialist then logs the request in the Agency’s FOIA tracking system, called FOIMATS, by entering the requester’s name, address, and telephone number, the subject of the request, and whether a fee waiver or expedited treatment is requested. The Regional FOIA Officers follow a similar process.

FOIMATS assigns the response due date and generates a control sheet for distribution to the appropriate Action Office. The Action Office independently interprets the request, searches for the requested records, reviews the records, makes a determination to release or withhold the records, and notifies the requester by letter of the decision. A staff person from the Action Office generally signs the determinations to release information, while only Division Directors or equivalent senior-level employees are authorized to sign denials. A copy of the decision letter is provided to the FOIA Officer for inclusion in the official FOIA request files. After reading the response letter, the FOIA Officer determines the disposition of the action and records the disposition in FOIMATS to close the assignment made to the Action Office.

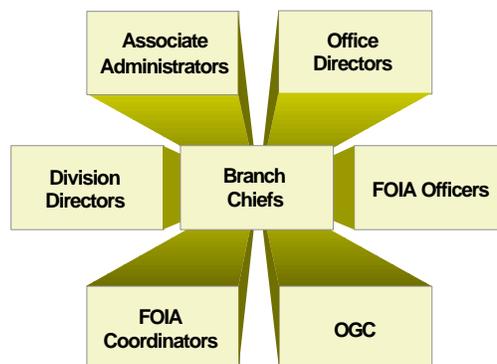
Each Action Office also communicates with the requester, as needed, to either modify or clarify the request, obtain additional justification to support a request for fee waiver or expedited processing, or obtain an extension of time. The Action Office is expected to document these communications by letter and send a copy of each letter to the FOIA Officer for proper disposition in FOIMATS.

II. Findings and Recommendations

The Task Force reviewed the Agency's current workflow for processing FOIA requests from initial receipt of the request through the final response to the requester. (See Exhibit #1). The Task Force studied closely each step in the process by dividing them into the following general functions: Initial Processing of FOIAs (Exhibit #2); Assignment and Routing (Exhibit #3); and Initial Processing and Appeals (Exhibit #4). The Task Force found several problems and challenges at every step of the process. For the most part, these deficiencies were found to stem from: 1) the lack of management support and accountability for the FOIA program; 2) outdated Agency-wide procedures and regulations implementing the FOIA; 3) the lack of frequent and useful training for new and existing Agency employees; and 4) the lack of designated leadership of the national FOIA program on matters such as oversight, training, and policy, coordination/centralization of complex FOIA requests and billing, and determinations on requests for expedited processing and fee waivers.

The Task Force developed 18 recommendations, which are grouped in three categories, to address the problems in the FOIA program. The problems, for which these recommendations are expected to correct, are cited in the attached exhibits to the report.

A. Accountability – There is a need to increase accountability throughout the Agency for compliance with FOIA. Because of its current responsibilities for FOIA policy, records management, and Privacy Act matters, OEI/OIC should be designated as the lead office with responsibility for overseeing and administering the FOIA. The Agency must increase its focus on reducing the backlog of outstanding FOIA requests. Additionally, senior management must be held responsible for ensuring that each organization meets the statutory requirements of FOIA. Currently, accountability and effective prioritization are lacking. Structurally, new roles and responsibilities must be made part of the FOIA program in HQ and the regions, and the role and importance of personnel with FOIA responsibilities must be enhanced.



1. Designate OEI as the lead office with responsibility for administering and overseeing the Agency's National FOIA program – to include issuing Agency-wide guidance, procedures, and policies, and conducting periodic audits/inspections of FOIA processes in the program and regional offices.

Reason: The Agency needs to focus on accountability for its FOIA program and ensure that this accountability is at the highest levels. When it was created, OEI was given the responsibility for oversight of FOIA policy (but not FOIA operations), records management, Privacy Act, and information resource management programs. These responsibilities give OEI the unique ability to coordinate the Agency's National FOIA program and to provide central management control and accountability.

2. Add FOIA responsibilities to the performance standards, as a critical element, of all Agency managers and supervisors. Ensure that FOIA Officers, FOIA Coordinators, and other FOIA personnel have clearly-defined critical FOIA job elements in their performance standards.

Reason: Incorporating FOIA responsibilities into the performance standards of Agency managers, supervisors and FOIA staff ensures that appropriate attention will be given, at all levels, to the need to timely comply with the requirements of FOIA. Additionally, this action serves to highlight the importance the Agency has placed on FOIA compliance by clearly setting out the performance expected of each manager, supervisor, and FOIA staff person.

3. Review the existing job series and position descriptions for FOIA Officers and other FOIA personnel and, if needed, rewrite the position descriptions to define the skills required to perform the duties of the position (e.g., the ability to communicate effectively in writing and orally, the ability to make sound decisions and resolve complex issues, and the ability to conduct legal research).

Reason: This recommendation establishes a base line of skills and knowledge for all FOIA personnel. FOIA duties should be assigned to employees who have received FOIA training and possess the institutional knowledge, experience, and communication skills to successfully fulfill these duties. Placing highly trained and skilled persons in FOIA roles gives offices the resources to resolve complex issues while ensuring compliance with the letter and the spirit of FOIA.

4. Require management in each office to submit a written verification to the OEI FOIA Office that its designated FOIA Coordinator has received FOIA training and possesses the skills and expertise required of the position. Where the FOIA Coordinator has not received FOIA training, the office must demonstrate that the Coordinator will obtain appropriate training within a reasonable period of time.

Reason: This procedure further adds to management accountability by ensuring that management has carefully considered the abilities of each employee prior to assigning FOIA duties.

Management should ensure that personnel with FOIA job responsibilities are knowledgeable of FOIA regulations and possess the skills needed to effectively carry out the duties of the position. Knowledgeable and trained personnel should significantly improve the overall efficiency and timeliness of the program's FOIA activities.

5. Provide FOIA Coordinators in each program with a copy of a monthly list of overdue FOIA requests and a bi-weekly list of pending requests, with a copy of both lists sent to the Division Director or Senior Management of the program.

Reason: The monthly report will serve as a reminder of requests that are overdue (i.e., an initial response was not sent within the 20-day time period and no formal extension of time or alternative due date was obtained from the requester). The bi-weekly report will serve as a forecast of requests that have not yet reached their due date, but which the Agency needs to answer. Both reports will be passed on to the appropriate Senior Manager for the affected program for action.

6. Require each Regional Administrator and Assistant Administrator to review the list of overdue FOIA requests, verify the number of outstanding requests, and commit the resources to reduce the backlog by 25% this calendar year, by another 25% by June 1, 2002, and by another 25% by December 31, 2002. The status of this backlog-reduction effort should be reported to the OEI FOIA Office monthly.

Reason: The Agency has a significant backlog of initial FOIA requests, some of which have been pending since 1993. Failure to answer requests within the statutory time limits exposes the Agency to litigation and unfavorable publicity.

7. Require each Regional Administrator and Assistant Administrator to review the bi-weekly list of pending FOIA requests and address other FOIA issues with the same high priority given to controlled correspondence and congressional inquiries.

Reason: Establish a sensitivity for the need to respond timely to FOIA requests with the same manner/procedures established for controlled correspondence and congressional inquiries. Offices should be held as accountable for responses to FOIA requests as they are held accountable for controlled/congressional correspondence.

8. Conduct Agency-wide needs analysis of all FOIA programs to consider the staff and monetary resources needed to comply with the recommendations of this and various congressional reports, to reduce the Agency's backlog of outstanding FOIA requests, and to improve the Agency's overall response times. At the minimum, every office should have staffing levels sufficient to allow for timely processing of requests.

Reason: This analysis should take place before implementation of any of the major/structural recommendations. Some of the proposals will have a major affect on the current workforce and

a review must be conducted to determine how feasible the proposed changes are as well as to determine what additional staffs are required. Modifications to these recommendations may be required following this assessment in order to effectively and efficiently improve the process.

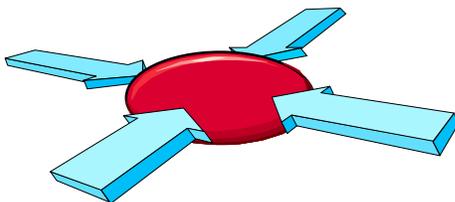
9. Develop a web-enabled Agency-wide FOIA Tracking System that meets all of the statutory requirements of E-FOIA and provides complete document management and workflow for simultaneous reviews and multi-track assignment of requests for the entire Agency FOIA program.

Reason: The E-FOIA amendments provide for increased accountability in the tracking of Agency FOIA requests and for a process to manage those requests on a first-in, first-out basis. This accounting is reported in the Annual FOIA Report to Congress. E-FOIA also requires that the Annual Report and certain categories of records, including those requested frequently, be placed on Agency web sites. The Agency presently has no system that meets these requirements and generates an accurate report.

10. Replace all existing Agency stand-alone FOIA systems, wherever possible, after either importing existing electronic files into the new Agency-wide FOIA system or establishing a link from the new system to the old system to make full use of the existing Agency technology and electronic records. Give FOIA Officers, FOIA Coordinators, and other FOIA personnel, access to the new FOIA system as needed.

Reason: Due to the large volume of FOIA requests that the Agency receives and its backlog of unanswered requests, many program offices have expended funds for developing their own FOIA systems to track requests. By developing a new National FOIA system and allowing the program offices access to the system as needed, the Agency would realize a substantial savings. In addition, a centralized FOIA system would provide for accurate tracking and reporting of requests.

B. Centralization – FOIA policy and FOIA operations in HQ should be consolidated and joined organizationally with the Agency’s records management program and its Privacy Officer function in OEI/OIC. A web-enabled tracking and coordinating system needs to be developed, which will permit the correction of problems encountered with the current system, as well as ensure compliance with E-FOIA. The transition to the new system should be managed in accordance with standard information technology practices. Certain complex FOIA requests, expedited processing, fee waiver determinations, and billing should have central oversight and a lead office designated as the point of contact with the requester.



1. Consolidate HQ FOIA Policy Branch, currently housed in OEI/OIC, with HQ FOIA Operations Branch, currently housed in Office of the Executive Secretariat (OEX). Move entire FOIA Program to OEI and the HQ FOIA Coordinators to the units within the programs that provide the information resource management functions, such as records management and computer support services. *See Diagram #1 below.*

Reason: With the separation of the FOIA policy unit from FOIA Operations, there has been no clear responsibility for managing the Agency’s FOIA program. Additionally, severe coordination problems have resulted from the separation. FOIA personnel responsible for the day-to-day processing of requests have indicated that they lack clear direction and guidance on a range of issues. The separation of functions has resulted in a lack of consistency and an inability to address issues in a timely manner.

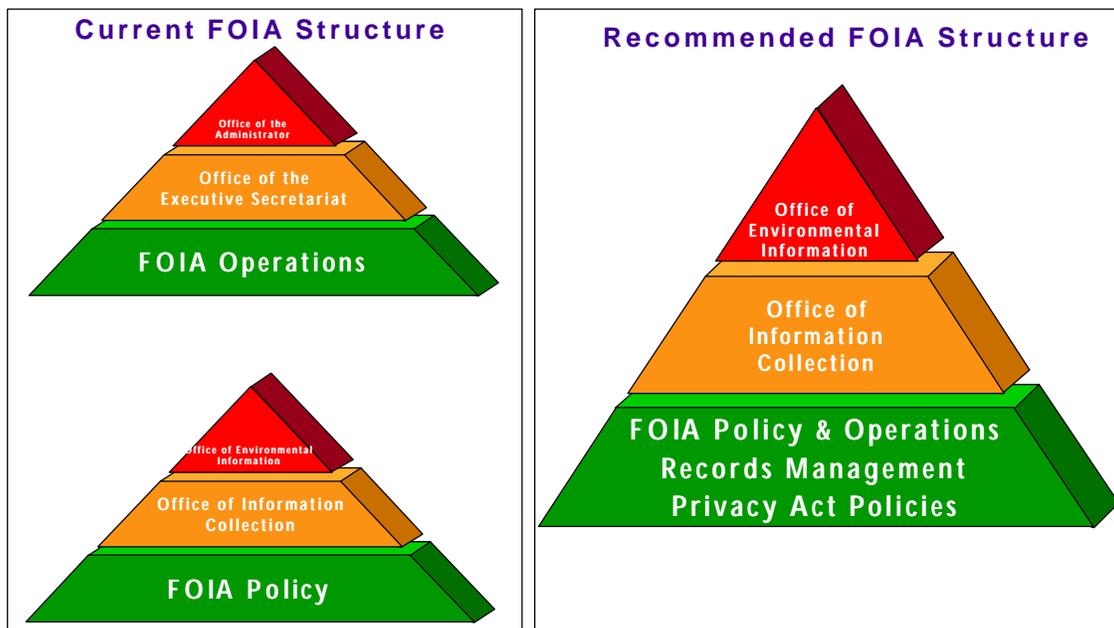


Diagram 1

2. Consider moving, wherever possible, all Regional FOIA Officers and FOIA Coordinators within the programs to the Regional organizations that provide the information resource management functions, such as records management and computer support services. *See Diagram #2 below.*

Reason: To effectively administer the Agency’s responsibilities under FOIA for identifying and managing records, and under E-FOIA for posting certain categories of records to the Agency’s website, there should be a partnership between the FOIA personnel and the records management and information resources management staff. Similarly, partnerships should be formed with the staff responsible for the Privacy Act to ensure compliance with that statute and regulations.

Regional FOIA Organizational Structure



Diagram 2

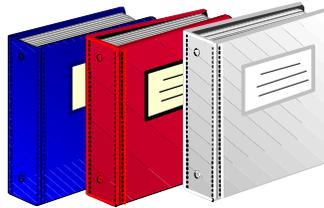
3. The new HQ FOIA Office, under the management of OEI/OIC, should receive verification from all EPA offices by a date certain that they are in compliance with E-FOIA and that an electronic reading room has been established and is open or “on line.” Each office should maintain an up-to-date index of all the files (requested more than three times) within its reading room and provide a copy or link to the HQ FOIA office for its web site. The Agency should explore the possibility of consolidating those resources into one central repository for such files (those requested more than three times) and have them readily available to the public.

Reason: The Agency’s failure to satisfy the requirements of E-FOIA has been highlighted in a report by the General Accounting Office. All programs must verify compliance with E-FOIA regarding the establishment of a reading room.

4. Require all Agency programs that have FOIA web sites to provide a link to the main HQ or Regional FOIA web page for the submission of electronic FOIA requests directly to the FOIA Officers.

Reason: Will provide the public with an efficient and convenient way to electronically send in a request to the appropriate source for a response.

C. Updating/Amendment of Current Policies, Regulations, and Guidance – Policies, regulations, and guidance need to be updated or developed to provide a reliable Agency-wide resource and address commonly encountered problems, particularly in the area of electronic records. FOIA regulations should be updated to include E-FOIA amendments. A FOIA training program needs to be developed and implemented for all employees to ensure compliance with FOIA and E-FOIA.



1. Develop a National FOIA Training Program for all Agency employees to include training by Agency program staff on their FOIA responsibilities.

Reason: A national training program ensures compliance with the FOIA, consistency in the application of its exemptions and in the responses to requests, and a clear understanding of the Agency records practices for the purpose of locating and providing responsive FOIA records.

2. Develop new Agency-wide standard operating procedures (FOIA Manual) that include procedures for processing complex requests, multiple-office or multiple-region requests, centralized billing, and decisions on fee waivers and expedited processing; performing searches within offices, reviewing responsive records, and certifying/documenting these steps; and for segregating the releasable from the withheld FOIA records at the time of the initial processing to comply with FOIA and records management guidelines. Post these procedures on the HQ and Regional intranet web sites for reference by all EPA employees.

Reason: In order to be consistent, all FOIA programs require standard operating procedures and guidelines. This is especially important in a decentralized FOIA operation where the searches and substantive reviews are made within the program offices by persons who are experts in the subject area of the requested records, but who may know little or nothing about the FOIA. This procedure would establish some basic requirements every employee should know before answering a FOIA request.

3. Require each program to develop a plan for processing FOIA requests within their respective offices that conforms with and implements the Agency-wide guidelines.

Reason: This procedure would ensure coordination of requests within the program, consistent application of the FOIA provisions, and compliance with Agency-wide guidelines.

4. Require that all Agency FOIA denial letters and “no records” responses include the procedures and deadline for filing an appeal and be sent to the FOIA requester by certified mail with return receipt requested to confirm receipt of the Agency’s decision letter.

Reason: The Agency’s FOIA regulations provide the requester 30 days by which to file an appeal of any adverse decision. However, the Agency presently takes no steps to confirm receipt. Therefore, the Agency is forced to accept FOIA appeals well beyond the 30-day deadline. This procedure may reduce the number of FOIA appeals.

Incentives

Finally, no FOIA program will succeed without the hard work and dedication of Agency employees. It is important to recognize the staff for their achievements. Therefore, the Task Force suggests that the Agency establish an award system to reward offices/regions/programs for their efforts in improving the FOIA program and implementing the recommendations of this report. Some examples may include an award for the “best practices” for management oversight and accountability; the “most improved” for administering the FOIA program; and “productivity” for reducing the backlog of FOIA requests and continuing to maintain an on-time response rate, consistent with the statutory guidelines. An awards system could serve as an incentive to the Actions Offices to become more diligent in carrying out the processes and improving their procedures on a continuous basis. It could also add to the spirit of competitiveness which could be a healthy attitude in developing a strong team approach in the development of “best practices”. These awards should be given annually, beginning in 2002.

III. Implementation Schedule

The following implementation schedule assigns target dates to the 18 recommendations identified in the FOIA Task Force Report. The schedule assumes that tasks are completed by EPA staff devoting at least 75% of their time to the designated task. OEI may make adjustments to this schedule based on available resources.

FOIA TASK FORCE REPORT RECOMMENDATIONS		
Number	Description of Recommendation	Target Date
(B1.)	Consolidate HQ FOIA Policy Branch, currently housed in OEI/OIC, with HQ FOIA Operations Branch, currently housed in Office of the Executive Secretariat (OEX). Move entire FOIA Program to OEI and the HQ FOIA Coordinators to the units within the programs that provide the information resource management functions, such as records management and computer support services.	Immediate Implementation
(B2.)	Consider moving, wherever possible, all Regional FOIA Officers and FOIA Coordinators within the programs to the Regional organizations that provide the information resource management functions, such as records management and computer support services.	Immediate Implementation Where Possible
(C4.)	Require that all Agency FOIA denial letters and “no records” responses include the procedure and deadline for filing an appeal and be sent to the requester by certified mail with return receipt requested to confirm receipt of the Agency’s decision letter.	Immediate Implementation
(A1.)	Designate OEI as the lead office with responsibility for administering and overseeing the Agency’s National FOIA program to include issuing Agency-wide guidance, procedures, and policies, and conducting periodic audits/inspections of FOIA processes in the program and regional offices.	Fall 2001

FOIA TASK FORCE REPORT RECOMMENDATIONS

Number	Description of Recommendation	Target Date
(A3.)	Review the existing job series and position descriptions for FOIA Officers and other FOIA personnel and, if needed, rewrite the position descriptions to identify the skills required for the positions (e.g., the ability to communicate effectively in writing and orally, the ability to make sound decisions and resolve complex issues, and the ability to conduct legal research).	Fall 2001
(A5.)	Provide FOIA Coordinators in each program with a copy of a monthly list of overdue FOIA requests and a bi-weekly list of pending requests, with a copy of both lists sent to the Division Director or Senior Management of the program.	Fall 2001
(A7.)	Require each Regional Administrator and Assistant Administrator to review the bi-weekly list of pending FOIA requests and address other FOIA issues with the same high priority given to controlled correspondence and congressional inquiries.	Fall 2001
(A4.)	Require management in each office to submit a written verification to the OEI FOIA Office indicating that its FOIA Coordinator possesses the skills, expertise, and FOIA training required for the position or will obtain appropriate training within a reasonable period of time. (Webmaster skills can be part of upper level certification so that FOIA oriented sites can be updated.)	Winter 2001
(A8.)	Conduct Agency-wide needs analysis of all FOIA programs to consider the staff and monetary resources required to implement the recommendations of this and various congressional reports, to reduce the Agency's backlog, and to improve the Agency's overall response times.	Winter 2001
(C1.)	Develop a National FOIA Training Program for all Agency employees to include training by Agency program staff on their FOIA responsibilities.	Winter 2001

FOIA TASK FORCE REPORT RECOMMENDATIONS

Number	Description of Recommendation	Target Date
(A2.)	Add FOIA responsibilities to the performance standards, as a <u>critical</u> element, of all Agency managers and supervisors. Ensure that FOIA Officers, FOIA Coordinators, and other FOIA personnel, as designated by the programs, also have clearly-defined <u>critical</u> FOIA job elements in their performance standards.	Spring 2002
(B4.)	Require all Agency programs that have FOIA web sites to provide a link to the main HQ or Regional FOIA web page for the submission of electronic FOIA requests directly to the FOIA Officers. (There are some links now that are misdirected.)	Spring 2002
(A6.)	Require each Regional Administrator and Assistant Administrator to review the list of overdue FOIA requests, verify the number of outstanding requests, and commit the resources to reduce the backlog by 25% this calendar year, by another 25% by June 1, 2002, and by another 25% by December 31, 2002. The status of this backlog-reduction effort should be reported to the OEI FOIA Office monthly.	Summer 2002 - 50% reduction Winter 2002 - 75% reduction
(A9.)	Develop a web-enabled Agency-wide FOIA Tracking System that meets all of the statutory requirements of E-FOIA and provides complete document management and workflow for simultaneous reviews and multi-track assignment of requests for the entire Agency FOIA program. (Three primary models exist and are being used at other agencies.)	Summer 2002

FOIA TASK FORCE REPORT RECOMMENDATIONS

Number	Description of Recommendation	Target Date
(A10.)	<p>Replace all existing Agency stand-alone FOIA systems, wherever possible, after either importing existing electronic files into the new Agency-wide FOIA system or establishing a link from the new system to the old system to make full use of the existing Agency technology and electronic records. Give FOIA Officers, FOIA Coordinators, and other FOIA personnel, access to the new FOIA system as needed.</p> <p>(Allowing time for the Agency-wide system to be put in place, debugged, and converted.)</p>	Summer 2002
(B3.)	<p>The new HQ FOIA Office, under the management of OEI/OIC, should receive verification from all EPA offices by a date certain that they are in compliance with E-FOIA and that an electronic reading room has been established and is open or “on line.” Each office should maintain an up-to-date index of all the files (requested more than three times) within its reading room and provide a copy or link to the HQ FOIA office for its web site. The Agency should explore the possibility of consolidating those resources into one central repository for such files (those requested more than three times) and have them readily available to the public.</p> <p>(Note that media dockets are being consolidated into Fed Triangle facilities around this time.)</p>	Summer 2002
(C2.)	<p>Develop new Agency-wide standard operating procedures (FOIA Manual) that include procedures for processing complex requests, multiple-office or multiple-region requests, centralized billing, and decisions on fee waivers and expedited processing; performing searches within offices, reviewing responsive records, and certifying/documenting these steps; and for segregating the releasable from the withheld FOIA records at the time of the initial processing to comply with FOIA and records management guidelines. Post these procedures on the HQ and Regional intranet web sites for reference by all EPA employees.</p>	Summer 2002

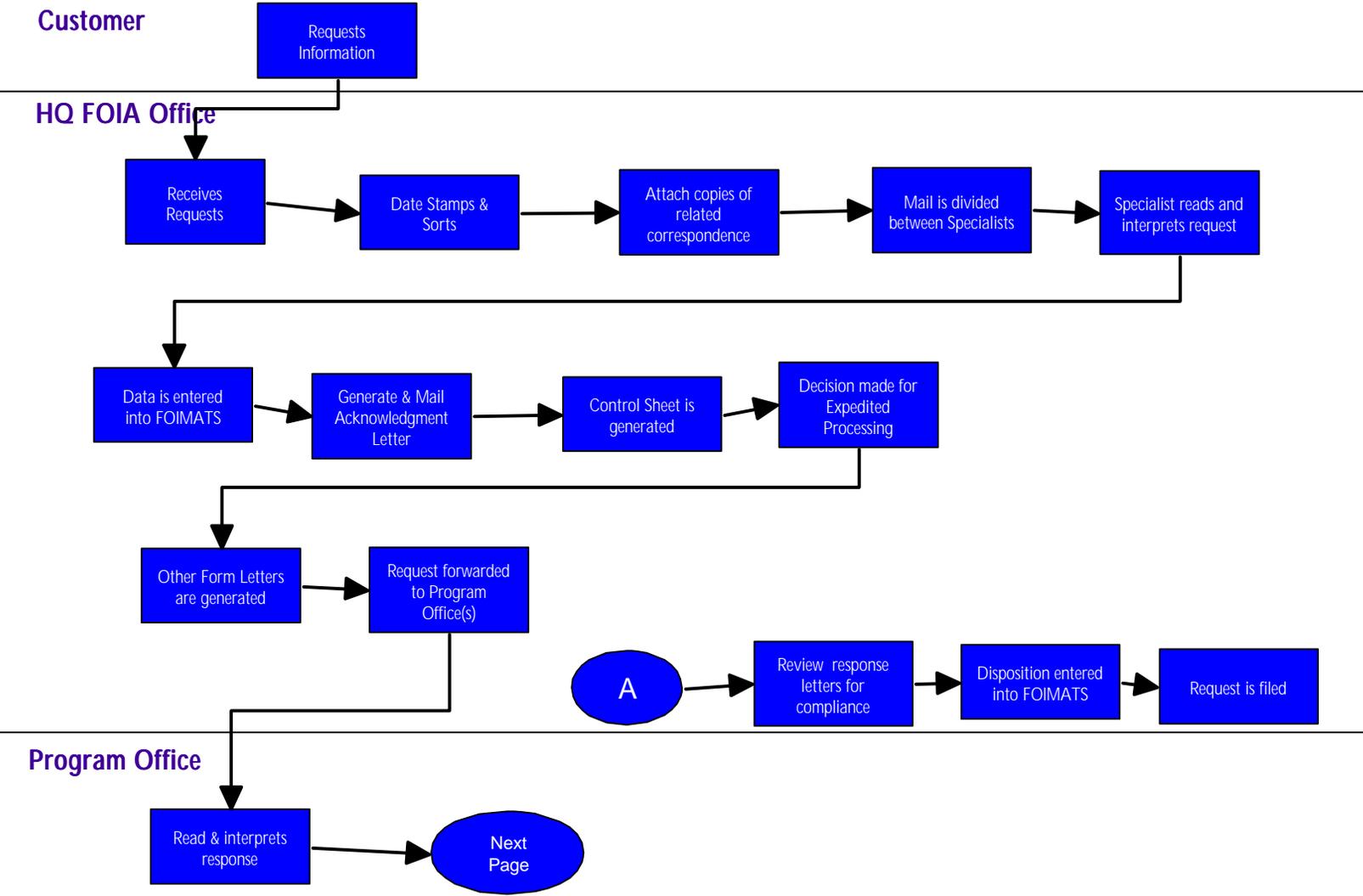
FOIA TASK FORCE REPORT RECOMMENDATIONS

Number	Description of Recommendation	Target Date
(C3.)	Require each program to develop a plan for processing FOIA requests within their respective offices that conforms with and implements the Agency-wide guidelines. (Allowing time for new systems to be installed.)	Fall 2002

EXHIBITS

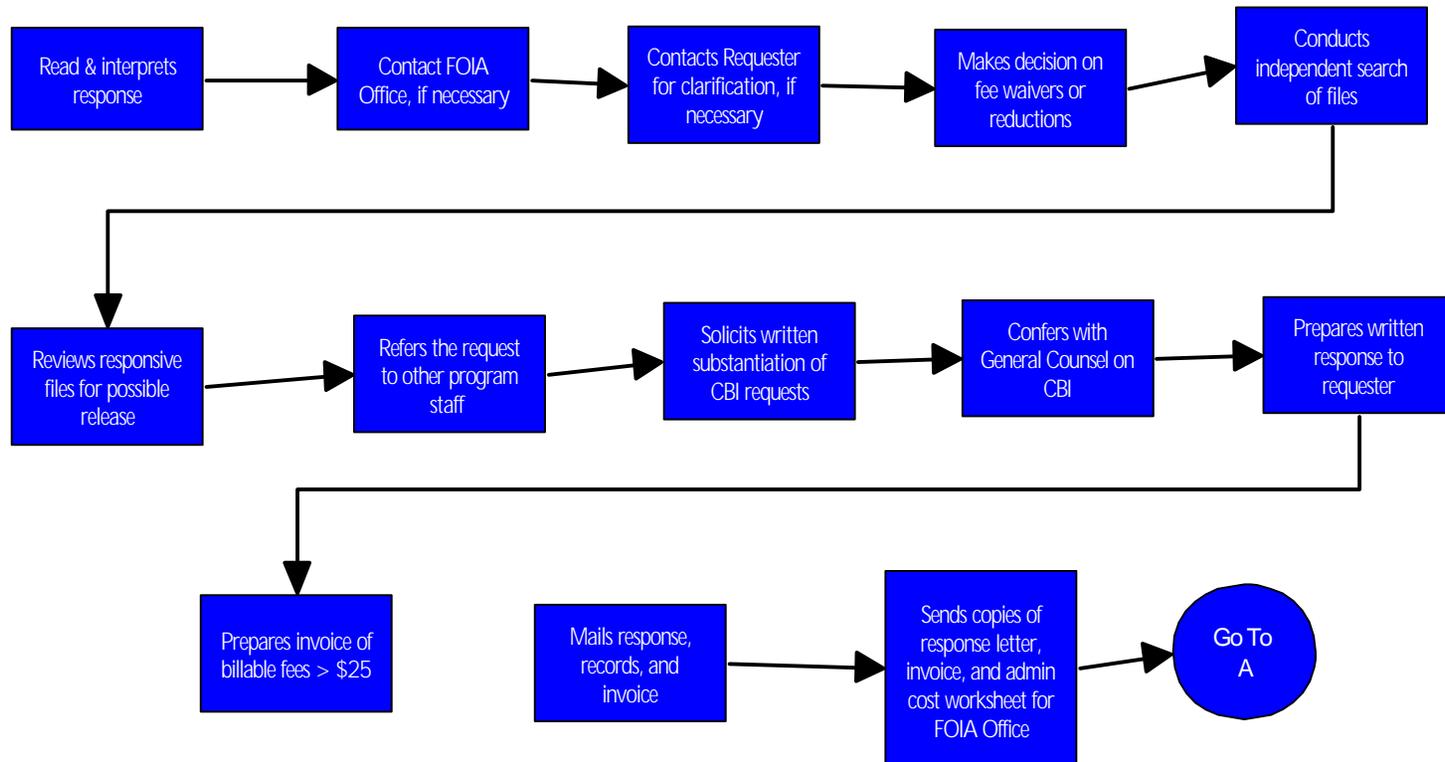
EXHIBIT 1

HQ FOIA Workflow

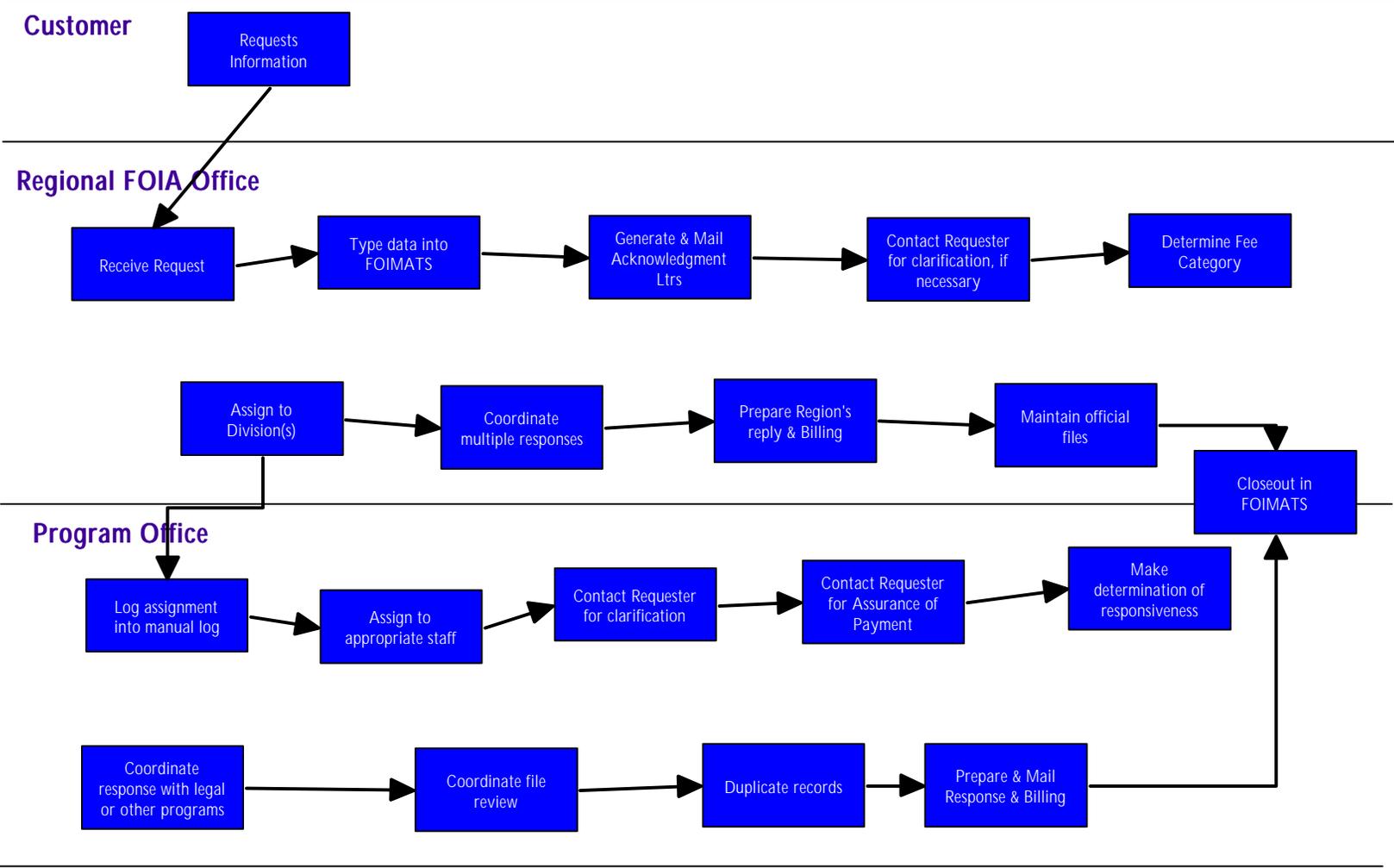


HQ FOIA Workflow

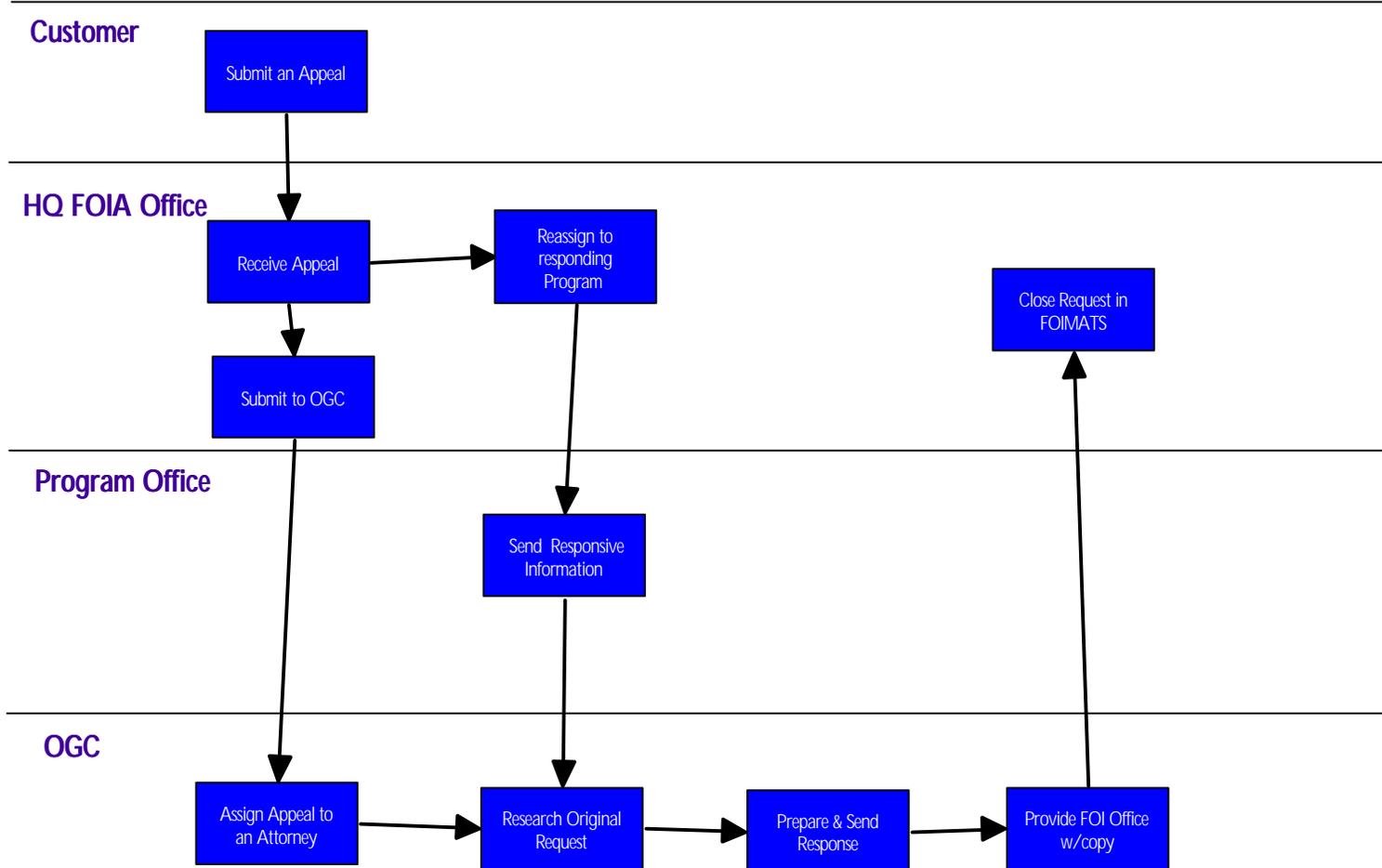
Program Office



Regional FOIA Workflow

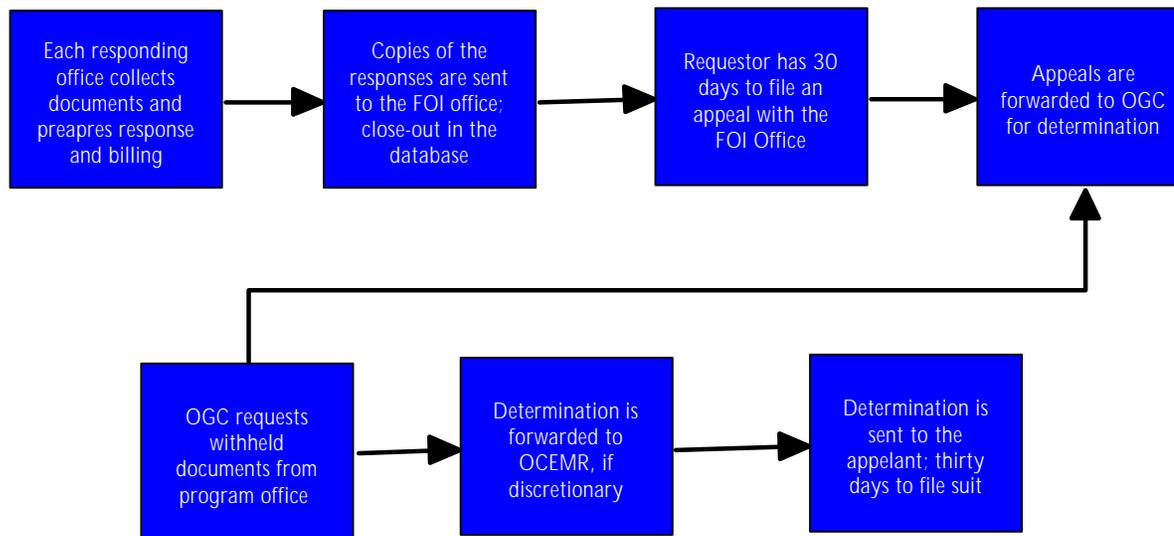


OGC FOIA Workflow*



*This excludes appeals filed with the Office of Inspector General

Initial Response and Appeals*



***This excludes appeals filed with the Office of Inspector General.**

EXHIBIT 2

Initial Processing of FOIAs

A. Receipt of FOIA Request

Current Policy: Request not properly received by agency until filed with the FOIA Officers at HQ or the Regions.

Problem	Solution	Benefit
1. Misdirected requests cause substantial delay in receipt.	A3 C2	Less delay in responding to the requester.
2. Staff invite the public to submit FOIA requests directly to program offices, or the program sends information to a requester “as a favor” and then requester thinks that “they” don't need to follow procedures.	A2 B4 C1 C3	Consistent responses and equal treatment of requesters.
3. Oral requests - some staff don't know what constitutes a FOIA request or what types of Agency are publicly available.	A2 B4 C1	Less confusion among the staff and less vulnerability to the security and integrity of the Agency FOIA and Records Management programs.

Initial Processing of FOIAs

B. Interpretation of FOIA Request

Current Practice: FOIA Officer screens request to determine if it is a “proper” request.

Problem	Solution	Benefit
1. The FOIA Officers may not always have the time to carefully read the request due to the enormous workload (e.g. some FOIA Officers also serve as CCP analysts, others are solely responsible for managing 3,000 or more requests per year).	A3 A8	FOIA Officers will have more time to focus on compliance with time limits and the accuracy and quality of the response letters and to learn and stay abreast of new FOIA procedures and regulations.
2. In the absence of written guidance or formal training on the role of the agency programs and Agency records, FOIA Officers must rely solely on their institutional knowledge, which may be limited, when making decisions on whether the description of the records is “reasonable”.	A3 A4 C1C2	Fewer vague or overly burdensome FOIA requests, requiring less effort from the program offices to consult requesters on modifying their requests.
3. In the absence of a centralized electronic FOIA reading room at Headquarters and in the Regions, the FOIA Officers cannot determine which records are publicly available.	A8 A9 B3 C1	Establishing electronic reading rooms are required by E-FOIA. This procedure would bring the Agency into compliance and result in fewer FOIA requests due to the immediate availability of public information.

Initial Processing of FOIAs

B. Interpretation of FOIA Request

Current Practice: FOIA Officer screens request to determine if it is a “proper” request.

Problem	Solution	Benefit
<p>4. Determining whether there will be “billable” fees (\$25 or more) requires the FOIA Officer to know if (1) the information is nonpublic, (2) the time to search for and review the records will exceed one hour, and (3) the volume will potentially fall within the billable rate for duplication. When requests are assigned to multiple programs under the existing process, each program often provides \$25 worth of records for free per office.</p>	<p>A9 C2 C3</p>	<p>Allows the Government to recoup some of the costs for running the FOIA program; ensures compliance with OMB Fee Guidelines.</p>
<p>5. In the past, the program offices have been slow to provide such guidance; therefore causing further Agency delays in processing. The program offices (namely FOIA Coordinators) face some of the same challenges cited above (<u>i.e.</u> limited understanding about the records and the location of the records, limited resources due to workload and other non-FOIA duties, etc.).</p>	<p>A2 A3 A7 C1</p>	<p>Notable improvement in overall response times.</p>

Initial Processing of FOIAs

C. Managing and Processing Duplicate Requests and Duplicate Records (Duplicate Requests filed with a *single* FOIA Office)

Current Practice: The FOIA Officers will search the FOIMATS system only if a request indicates that it was sent by fax and by mail or by email and by regular mail.

Problem	Solution	Benefit
<p>1. The FOIA Officers have no certain way of verifying duplicate requests. Even if the FOIA staff performs a search of the FOIMATS system before entering any new request, the system would only report data from the previous day. Therefore, if a request was assigned to the system that morning and the office receives another copy that afternoon, the system would not show the earlier request until the next business day.</p>	<h1>A9</h1>	<p>Eliminates the likelihood of misdirected requests and duplicate processing, and it saves staff time and Agency resources.</p>

Initial Processing of FOIAs

D. Managing and Processing Duplicate Requests and Duplicate Records (Duplicate Requests filed with *multiple* FOIA Offices)

Current Practice: The FOIA Officers in the Regions have access to request information assigned within their Regions only. By contrast, Headquarters has access, via the FOIMATS system, to general request data for all FOIA Offices. However, the information in FOIMATS is limited to an abbreviated subject, requester's name, address, etc.

Problem	Solution	Benefit
<p>1. Unless the FOIA Officers learn by chance that a duplicate or similar request was filed with Headquarters or another Region, they have no way of aggregating the requests for the purpose of assessing fees or making fee waiver determinations or coordinating the search and review to avoid duplication of the staff's efforts and to eliminate inconsistent decisions on the release or withholding of responsive records.</p>	<p>A9 A10</p>	<p>a. More likelihood of uncovering and tracking duplicate FOIAs filed with multiple FOIA Offices.</p> <p>b. Less confusion by the FOIA requester on administrative issues.</p> <p>c. Eliminates inconsistent determinations on release/withholding of Agency documents.</p>

Initial Processing of FOIAs

E. Compliance with Time Limits

Current Practice: FOIA Officers occasionally send overdue reports to the FOIA Coordinators in the programs. Due to the volume of requests and limited resources, FOIA Officers do not have the time to manage the time limits for each request, and the agency FOIMATS tracking system does not track requests which are approaching the deadline.

Problem	Solution	Benefit
<p>1. The overdue reports are generated so infrequently that the FOIA Coordinators and/or program staff don't feel a sense of urgency to respond to the FOIA Officers on the status of overdue requests, and there is little to no management attention to overdue FOIAs. "Overdue" reports do not help the staff answer requests on time.</p>	<p>A2 A6 A7</p>	<p>Notable improvement in overall response times; and fewer appeals and lawsuits based on "defacto" denials for failure to respond on time.</p>

EXHIBIT 3

Assignment and Routing of FOIAs

Problem	Solution	Benefit
1. FOIA policy and FOIA operations are disjointed and not coordinated with Records Management.	A1 B1	Agency better able to handle complex requests, less confusion, less duplication of effort.
2. Accountability lacking.	A1-A10	Better morale, better performance in meeting responsibilities, fewer problems with complex requests.
3. Accurate assignment and routing too dependent on personal knowledge of EPA organizational structure and responsibilities of various program offices.	C1	Consistent routing and assignment; better service to requesters.
4. No system in place to assign requests to multi-tracks for response	A9 A10	Better service to requesters.
5. No standard operating procedures for re-routing	A2	Less confusion and delay to requesters.
6. No consistent coordination among assigned offices.	A1 A2 C1 C2	More timely responses; better customer service.
7. Records management and systematic records organization is lacking in many offices.	A2 C1	Less delay in responding; less confusion in searching and reviewing records.

EXHIBIT 4

Initial Response and Appeals

Problem	Solution	Benefit
1. Where multiple program offices are responding to a request separately, often there is no coordination	A1 A9 C2	Consistent responses; less confusion for requester.
2. Uniform guidelines for responses are needed.	C2 C3	Consistent and timely responses.
3. Quality assurance efforts are inadequate to insure consistency of responses.	A2 C1-C3	Consistent responses; all requestor's treated equally.
4. Often program offices do not keep adequate records of what documents have been released or withheld, causing problems on appeal or when similar requests are received.	A2 C1-C3	Consistent responses; less delay in processing appeals.
5. The Office of General Counsel has difficulty obtaining withheld documents and justifications from the responding offices.	A2 C2 C3	Time for appeal process will be shorten.
6. There is a backlog of appeals in the Office of General Counsel; and the 20-day deadline is not consistently met.	A5-A10 C2 C4	Improvement in meeting 20-day limit, better service to appellants.
7. Databases used to manage and track FOIA request and appeal processing in the Agency are incompatible and in some cases inadequate for the Agency's needs.	A9 A10	Databases will track information for all EPA purposes; Annual Report, tracking, close-out.
8. Current regulation states time for appeal is 30 days from receipt of response, yet responses are not sent with return receipt. Holding requesters to time limit is difficult.	A9 C4	Certainty in calculating 30-day limit.