

September 17, 2007

**ANNUAL REPORT OF COMPLIANCE WITH
FREEDOM OF INFORMATION ACT (FOIA) (RCN 72-0408)**

1. PURPOSE: This Veterans Health Administration (VHA) Directive solicits data on Freedom of Information Act (FOIA) activities for Fiscal Year (FY) 2007, which will be used to compile the Department's annual FOIA report to the Attorney General of the United States.

2. BACKGROUND: Title 5 United States Code (U.S.C.) § 552 (e), as amended by Electronic Freedom of Information Act (EFOIA) Amendments of 1996, requires the Department of Veterans Affairs (VA) to provide the Attorney General of the United States with a detailed annual report on, or before, February 1 each year.

3. POLICY: It is VHA policy that each VHA element is required to submit an annual FOIA report under the provisions of VA Handbook 6300.3, "Procedures for Implementing the Freedom of Information Act."

4. ACTION: VHA Facility Directors, Network Directors, and the top management official of other outlying VHA components are responsible for preparing and submitting a report of FOIA activity for FY 2007, October 1, 2006 through September 30, 2007, electronically through the VA Intranet URL <http://vaww.oit.aac.va.gov/foia/>. *NOTE: These submissions are then combined with other VHA Central Office data and a total report for VHA is included in the Departmental report to the Department of Justice.* The database will be available October 1, 2007.

a. Instructions for submitting the report electronically are in Attachment A to this Directive. Parts I, IV, V, VII, VIII, IX, and X must be completed.

b. The reports are due in the database no later than October 16, 2007. Negative reports must be submitted, if applicable.

NOTE: Questions concerning the report may be addressed to Veronica Graves at (202) 461-5879 or Clay Johnson at (202) 461-5876 or e-mailed to Ms. Graves or Mr. Johnson over MS Exchange.

5. REFERENCES

- a. VA Handbook 6300.3, Procedures for Implementing the Freedom of Information Act.
- b. Title 5 U.S.C. § 552.
- c. Title 38, Code of Federal Regulations, Sections 1.550 through 1.559.
- d. VHA Handbook 1605.1.

THIS VHA DIRECTIVE EXPIRES DECEMBER 31, 2007

VHA DIRECTIVE 2007-027
September 17, 2007

6. FOLLOW-UP RESPONSIBILITY: The VHA FOIA Officer (19E) is responsible for the contents of this Directive. Questions concerning the report may be addressed to Clay Johnson at (202) 461-5876.

7. RESCISSION: VHA Directive 2006-053 is rescinded. This VHA Directive will expire on December 31, 2007.

Michael J. Kussman, MD, MS, MACP
Under Secretary for Health

Attachment

DISTRIBUTION: CO: E-mailed 9/19/2007
FLD: VISN, MA, DO, OC, OCRO, and 200 – E-mailed 9/19/07

ATTACHMENT A

INSTRUCTIONS FOR COMPLETING VA FORM 0712, ANNUAL FOIA REPORT

1. GENERAL INSTRUCTIONS

a. Each Department of Veterans Affairs (VA) Central Office element is required to submit an annual Freedom of Information Act (FOIA) report under the provisions of VA Handbook 6300.3, Procedures for Implementing the Freedom of Information Act. Administrations and/or staff offices with field facilities must ensure that data from their respective field facilities is placed in the database and validated. VA Form 0712, Annual FOIA Report (Report Control Number (RCN) 72-0408), must be used to collect information for the annual report. Field facilities with access to the Internet must submit their information (including negative responses) directly to the FOIA database through the use of the electronic VA Form 0712.

b. The report is prepared annually covering data on a fiscal year basis, e.g., Fiscal Year (FY) 2007 (October 1, 2006 - September 30, 2007), FY 2008 (October 1, 2007 - September 30, 2008), etc.

c. Report submissions must be electronically submitted to the FOIA database beginning with the first workday of October each year. The Intranet address for the FOIA report database is <http://vaww.oit.aac.va.gov/foia/>. All data must be in the database by October 16, 2007.

d. In order to create a record, each user must establish a logon username and password to access the database (<http://vaww.oit.aac.va.gov/foia/>). This same logon username and password must be used to make any changes to the record. ***NOTE: As part of creating the username and password, complete the registration section.*** For security reasons, 30 minutes are allotted to input data before the system logs the user off.

e. Each VA Central Office organizational element with field facilities must review and certify the data for each VA facility under their jurisdiction as well as their VA Central Office elements in the database. The review must be completed by November 6, 2007.

f. The VA Central Office FOIA Officers must certify their organization's submission.

g. Records Management Service (RMS) is to review the consolidated reports from all organizational components and link the Departmental annual report to the Internet for access by the Department of Justice and the public by February 1 of each year.

2. REPORT ITEMS FOR THE PRINTED AND ELECTRONIC DATABASE (VA FORM 0712, ANNUAL FOIA REPORT)

NOTE: The paragraphs in Attachment A are numbered to coincide with VA Form 0712 as found in the Intranet database.

VHA DIRECTIVE 2007-027
September 17, 2007

a. **Part I. Basic Information Regarding Report.** To be completed by all VA organizational elements (including field facilities).

1. Name of Preparing Facility (select from facility table). If the facility is not listed in the table, send an e-mail message to foia@mail.va.gov.
2. Locality of preparing facility (i.e., street address and ZIP Code).
3. Facility number and mail routing symbol of the FOIA Officer.
4. Name and title of the FOIA Officer.
5. Commercial telephone number for the FOIA Officer.
6. Date of submission.

NOTE: The electronic address for the consolidated Departmental report on the World Wide Web and how to obtain a copy of the report in paper form will be provided by RMS (005R1B).

b. **Part II. How to Make a FOIA Request Will Be Provided by RMS (005R1B)**

c. **Part III. Definitions of Terms and Acronyms Used in the Report**

A. **Agency-specific acronyms or other terms.** Each organization must provide any acronyms and definitions that are specific to their organization.

B. **Basic Terms, Expressed in Common Terminology.** Use the following definitions when submitting data for the report:

NOTE: The database will generate the following definitions in each report.

1. **FOIA and/or Privacy Act (PA) Request.** A FOIA request is generally a request for access to records concerning a third party, an organization, or a particular topic of interest. A PA request is a request for records concerning oneself; such requests are also treated as FOIA requests.

NOTE: All requests for access to records, regardless of which law is cited by the requester, are included in this report.

2. **Initial Request.** An initial request is a request to a Federal agency for access to records under FOIA.

3. **Appeal.** An appeal is a request to a Federal agency asking that it review, at a higher administrative level, a full denial or partial denial of access to records under FOIA, or any other FOIA determination, such as a matter pertaining to fees.

4. **Processed Request or Appeal.** A processed request or appeal is a request or appeal for which an agency has taken a final action on the request or the appeal in all respects.
5. **Multi-track Processing.** Multi-track processing is a system in which simple requests requiring relatively minimal review are placed in one processing track and more voluminous and complex requests are placed in one or more other tracks. Requests in each track are processed on a first-in, first-out basis. A requester who has an urgent need for records may request expedited processing.
6. **Expedited Processing.** An agency will process a FOIA request on an expedited basis when a requester has shown a compelling need for the records that warrants prioritization of this request over other requests that were made earlier. A compelling need is defined as involving an imminent threat to the life or physical safety of an individual, or a request made by a person primarily engaged in disseminating information which involves urgency to inform the public concerning actual or alleged Federal Government activity.
7. **Simple Request.** A simple request is a FOIA request that an agency using multi-track processing places in its fastest track based on the volume and/or simplicity of records requested. Requests afforded expedited processing (see definition in subpar.2cB6) are not considered simple requests.
8. **Complex Request.** A complex request is a FOIA request that an agency using multi-track processing places in a slower track based on the volume and/or complexity of records requested.
9. **Grant.** A grant is an agency decision to disclose all records in full in response to a FOIA request.
10. **Partial Grant.** A partial grant is an agency decision to disclose a record in part in response to a FOIA request, deleting information determined to be exempt under one or more of the FOIA's exemptions; or a decision to disclose some records in their entireties, but to withhold others in whole or in part because of an exemption or the record was not located.
11. **Denial.** A denial is an agency decision not to release any part of a record or records in response to a FOIA request because all the information in the requested records is determined by the agency to be exempt under one or more of the FOIA's exemptions, or for some procedural reason (for example: because no record is located in response to a FOIA request).
12. **Time Limit.** The time limit is the time period within which the FOIA requires an agency to respond to a FOIA request (ordinarily 20 working days from proper receipt of a "perfected" FOIA request).
13. **"Perfected" Request.** A "perfected" request is a FOIA request for records which adequately describes the records sought, which has been received by the FOIA office of the agency or agency component in possession of the records, and for which there is no remaining question about the payment of applicable fees.

VHA DIRECTIVE 2007-027
September 17, 2007

14. **Exemption 3 Statute.** An exemption 3 statute is a separate Federal statute prohibiting the disclosure of a certain type of information and authorizing its withholding under FOIA subsection (b)(3). The exemption 3 statutes routinely cited by VA include Title 38 United States Code (U.S.C.) §§ 5701, 5705, and 7332, and 35 U.S.C. § 205.

15. **Median Number.** A median number is the middle, not average, number. For example, of 3, 7, and 14, the median number is 7.

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

d. **Part IV. Exemption 3 Statutes.** Authority relied upon for determination during the current fiscal year. The data to be reported will provide a complete list of all statutes relied upon for determination to withhold information under FOIA subsection (b)(3).

A. **Exemption 3 Statutes Relied Upon.** Check each statute relied upon to withhold information under FOIA subsection (b)(3) during the current fiscal year. If other statutes were used to withhold records under Exemption 3, check other and cite the applicable statutes. If any statutes are cited in this section, a number must be entered in the Exemption 3 box in section V.B.3.a.

1. Give a brief description of type or types of information withheld under each statute. ***NOTE: To be completed by General Counsel only.***

2. Provide a statement of whether a court has upheld the use of each statute. If so, cite an example. ***NOTE: To be completed by General Counsel only.***

e. **Part V. Initial FOIA and/or PA Access Requests.** Include all access requests, whether first or third party requests. ***NOTE: All PA requests such as first or third-party requests to Release of Information (ROI) Units for VA patient medical records are to be included in this count. Do not include any requests made by VA components or employees in the conduct of agency business or from other Federal agencies such as the Social Security Administration (SSA) or the Department of Defense (DOD).***

A. Number of Initial Requests

1. Enter the number of requests pending as of the end of the preceding fiscal year. This is the number of requests pending as of September 30 each year. ***NOTE: This number is system generated when submitting reports online.***

2. Enter the number of requests received during the current fiscal year. This information should be readily available since VA Regulation Title 38 Code of Federal Regulations (CFR) § 1.556, Request for Other Reasonably Described Records, and VA Handbook 6300.3 require all

organizational elements to maintain a uniform listing of such requests. *NOTE: Include PA "access" request only. Do not include PA "amendment of record" requests.*

3. The number of requests processed during the current fiscal year is calculated by the system after the "Save" button is selected at the end of the data entry process (see definition in subpar. 2cB4).

4. The number of requests pending as of the end of the current fiscal year equals the sum of lines 1 and 2 minus line 3. *NOTE: When entering data directly into the FOIA database, the system will calculate this figure after the "Save" button is selected at the end of the data entry process.*

B. Disposition of Initial Requests

1. Enter the number of total grants for the current fiscal year.

2. Enter the number of partial grants for the current fiscal year.

3. Enter the number of complete denials (in whole) for the current fiscal year. The number of times each FOIA exemption was used during the current fiscal year (counting each exemption, 1 through 9, only once per request) is to be entered. *NOTE: These exemptions may have been claimed when withholding records for either a partial grant or a complete denial.*

4. Other Reasons for Nondisclosure (total). *NOTE: This total must equal the sum of the following lines a through i for the current fiscal period and will be calculated by the system after the "Save" button is selected at the end of the data entry process.*

a. No records.

b. Referrals.

c. Request withdrawn.

d. Fee-related reason.

e. Records not reasonably described.

f. Not a proper FOIA request for some other reason.

g. Not an agency record.

h. Duplicate request.

i. Other. In the Description of Other box, enter the description of each reason for nondisclosure that does not fall within one of the categories listed in preceding subparagraphs 4a

VHA DIRECTIVE 2007-027
September 17, 2007

through 4h. Precede each reason listed with the total number of times records were withheld for that reason. The total of each of the reasons listed in the Description of Other box must equal the number entered in the Other box of subparagraph 4i. If using the hardcopy VA Form 0712, specify and/or describe in Part XII, Remarks.

***NOTE:** The total of Parts V.B.1, 2, 3 (excluding 3.a.), and 4 must equal the total of Parts VII A.2.a. and 3.a. These figures constitute the total number of requests processed during the fiscal year and will be used to populate that same data element in Part V.A.3 after the “Save” button is selected at the end of the data entry process. **Each request is to be counted only once** in the mutually exclusive “total grants,” “partial grants,” “denials,” and “other reasons for nondisclosure” categories of Section V. The determining factor in deciding which category to place a request, where more than one category applies, is the predominant basis for a request’s disposition. For example, if a request is made for four distinct agency documents and a partial grant is made for one of the documents but no records are located for the other three, then the correct category to place the request into would be “no records” under “other reasons for nondisclosure,” because that is the predominant determination made for that request.*

f. **Part VI. Appeals of Initial Denials of FOIA and/or PA Requests.** ***NOTE:** This section is to be completed only by VA Central Office General Counsel. Include all access requests, whether first or third party requests. All PA requests are to be included in this count.*

A. Number of appeals

1. Enter the number of appeals received during the current fiscal year.
2. Enter the number of appeals processed during the current fiscal year. ***NOTE:** See definition in subparagraph 2cB4.*

B. Disposition of Appeals

1. Enter the number of appeals completely upheld during the fiscal year.
2. Enter the number of appeals partially reversed during the fiscal year.
3. Enter the number of appeals completely reversed during the fiscal year.
 - a. Enter the number of times each FOIA exemption was used during the fiscal year (counting each exemption (1 through 9) once per appeal).
4. Other Reasons for Nondisclosure of FOIA appeals equals the sum of following lines a through i.
 - a. No records.
 - b. Referrals.

- c. Request withdrawn.
- d. Fee-related reason.
- e. Records not reasonably described.
- f. Not a proper FOIA request for some other reason.
- g. Not an agency record.
- h. Duplicate request.
- i. Other.

g. **Part VII. Compliance With Time Limits and the Status of Pending Requests**

A. **Median processing time for requests processed during the year.** To find the number of working days it takes to process a request, offices should count the working days from the time at which a request is perfected (see definition in subpar. 2cB13). *NOTE: For requests where records were released to a requestor over time in batches, processing time is counted from the receipt of a perfected request to the final batch released.*

Examples for calculating the median

(1) **Odd number of requests:** Given 7 requests completed during the current fiscal year, aged 10, 25, 35, 65, 75, 80, and 400 working days from date of perfection to date of completion, the total number of requests completed during the fiscal year would be 7, and the median age of the completed requests would be 65 working days.

(2) **Even number of requests:** Given 6 requests completed during the current fiscal year, aged 10, 20, 30, 50, 120, and 200 working days from the date of perfection to date of completion, the total number of requests completed during the fiscal year would be 6, and the median age of the completed requests would be 40 working days (the average of the two middle numbers). If the result comes out to a decimal, round to one decimal. For example, if the middle number adds to an odd number such as 85, the average is 42.5. Express the median to one decimal.

1. **Simple Requests.** Enter data if multiple tracks were used during the current fiscal year. **Do not complete** since multiple tracks were not used during the fiscal year.

- a. Enter the number of requests processed (if multiple tracks were used). **Leave blank.**
- b. Enter the median number of working days to process simple requests. **Leave blank.**

2. **Complex Requests.** Enter data for any and all tracks used.

VHA DIRECTIVE 2007-027
September 17, 2007

- a. Enter the number of requests processed.
- b. Enter the median number of working days to process.

3. Requests Accorded Expedited Processing

a. Enter the number of granted requests processed. **NOTE:** *Do not include requests that fail to meet the criteria given in the definition of Expedited Processing under subparagraph 2cB6.*

- b. Enter the median number of working days to process.

NOTE: *The total of the number of complex requests processed (in preceding line 2a.) and the number of expedited requests processed (in preceding line 3a.) must equal the number of requests processed during the current fiscal year which will be shown in Part V, line A3 after the “Save” button is selected at the end of the data entry process.*

B. Status of Pending Requests

1. The number of pending requests as of the end of the current fiscal year will be calculated by the system after the “Save” button is selected at the end of the data entry process.

2. Enter the median number of working days that such requests were pending as of the end of the current fiscal year.

h. Part VIII. Expedited Processing

A. Enter the number of requests asking for expedited processing.

B. Number of requests granted expedited processing. **NOTE:** *This number is generated by the system when Part VII.A.3.a. is entered.*

i. **Part IX. Costs and FOIA Staffing.** Offices must include total amount of FOIA staffing costs and total time expended for processing FOIA requests. Staffing must include the number of full-time employees devoted to processing requests for records under FOIA.

A. **Staffing Levels.** Staffing must be expressed in work-years. The standard work year is 2080 hours.

1. **Full-time FOIA Personnel.** Enter the number of full-time employees used to process FOIA requests during the current fiscal year. **NOTE:** *This should be the number of staff (expressed in a whole number, i.e., 1, 2, 3, etc.) who worked on FOIA processing on a full-time basis during the fiscal year. For VHA field facilities, this number usually reflects the number of full-time ROI Clerks employed.*

2. Part-time FOIA Personnel. Enter the percentage of time, expressed in two decimal places, spent by all employees used to process FOIA requests during the current fiscal year who do not process requests full-time. **NOTE:** *These staff are usually the facility's FOIA Officer and/or any part-time ROI Clerks and/or the staff who supervise the ROI Clerks. For example, if a part-time employee spends 25 percent of on-duty time on FOIA issues, enter .25 for that employee. For multiple part-time personnel, total the individual decimal amounts before entering. The decimal amount entered is converted into work-years by the system after the "Save" button is selected at the end of the data entry process.*

3. Total Personnel (Work-Years). This is the sum of full-time FOIA personnel and part-time FOIA personnel. **NOTE:** *The system calculates this figure by adding the amounts entered for full-time and part-time personnel after the "Save" button is selected at the end of the data entry process.*

B. Total Costs (including staff and all resources). All FOIA activities conducted by VA employees will result in costs to the Department. Even negative responses to requests for information result in measurable costs. This administrative cost is calculated by multiplying the estimated number of staff-hours expended annually on FOIA activities by the hourly wage for the grade and step of the employee(s) who performed the work (where several grades and steps are involved, an average grade and step may be used) and increasing that figure by 85 percent for overhead. Personnel overhead costs equal 85 percent of direct personnel costs. Personnel overhead includes approximately 9 percent in retirement and insurance benefits, 36 percent in nonproductive time (sick leave, annual leave, or other leave), 25 percent for supervision and space, 10 percent for administrative support, and 5 percent for equipment.

1. FOIA processing (including appeals). Enter the total cost for processing FOIA requests, including staff and all resources during the current fiscal year. This cost must include appeals. Express in dollars and cents. **NOTE:** *The staffing cost is the annual salary rate x 1.85 of each individual identified and counted under staffing levels as full-time personnel, plus the annual salary rate x 1.85 x the percentage of time spent on FOIA processing of all staff identified and counted under staffing levels as part-time staff.*

2. Cost of litigation-related activities (estimated) (General Counsel only). Enter total amount for litigation-related activities during the current fiscal year. Express in dollars and cents. **NOTE:** *Leave this blank.*

3. Total cost. Total cost equals the cost of FOIA processing (including appeals) plus the cost of litigation-related activities during the current fiscal year. **NOTE:** *The system calculates this figure after the "Save" button is selected at the end of the data entry process.*

j. **Part X. Fees.** Fees will be charged for processing FOIA requests for records, or fees will be waived in accordance with VA Regulation 38 CFR § 1.555.

a. Enter the total amount of fees collected by the agency for processing requests during the current fiscal year. This includes charges for search, review, document duplication and any other

VHA DIRECTIVE 2007-027
September 17, 2007

direct costs permitted by VA regulations. Express in dollars and cents.

b. Percentage of total cost equals the amount of fees collected for processing requests divided by the cost of FOIA processing (including appeals) plus the cost of litigation-related activities. Express in three decimals. **NOTE:** *The system calculates this figure after the “Save” button is selected at the end of the data entry process.*

NOTE: *Parts XI and XII do not appear in the electronic database.*

k. **Part XI. FOIA Regulations (including fee schedule).** The Internet (URL) address is entered by VA Central Office (005R1B).

l. **Part XII. Remarks.** Enter remarks as appropriate from Parts V and VI. **NOTE:** *For hardcopy version of VA Form 0712 only.*