



**Homeland
Security**

RECOMMENDATION FROM THE CIS OMBUDSMAN TO THE DIRECTOR, USCIS

To: Dr. Emilio T. Gonzalez, Director, US Citizenship and Immigration Services
Cc: Michael P. Jackson, Deputy Secretary, Department of Homeland Security
From: Prakash Khatri, CIS Ombudsman
Date: July 12, 2006
Re: Recommendation to USCIS to improve Freedom of Information Act operations while ensuring that information is provided timely by implementing seventeen actions and requirements which will result in a substantially reduced backlog.

I. RECOMMENDATION

Recommendation to USCIS to improve Freedom of Information Act operations while ensuring that information is provided timely by implementing seventeen actions and requirements which will result in a substantially reduced backlog.

II. BACKGROUND

A. General Information on the Freedom of Information Act (FOIA)

The Freedom of Information Act (FOIA), 5 U.S.C. § 552, was enacted in 1966 and generally provides that any person has the right, enforceable in court, to request access to federal agency records or information. All agencies of the Executive Branch of the United States Government are required to disclose records upon receiving a written request for them, except for those records (or portions of them) that are protected from public disclosure by one of the nine exemptions or three special law enforcement record exclusions of the FOIA. *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 136 (1975).

The purpose of FOIA is to make federal agencies accountable for information disclosure policies and practices. While the FOIA does not grant an absolute right to examine government documents, it does establish the right to request records and to receive a response to the request. If a record cannot be released, the requester is entitled to be formally advised of the reason for the denial. The requester has a right to appeal the denial and to challenge it in court.

Under the FOIA statute, all federal agencies must respond to a FOIA request within twenty business days, excluding Saturdays, Sundays, and legal holidays. This time period does not begin until the request is actually received by the FOIA office that maintains the records sought. An agency is not required to send out the releasable documents by the last business day; it can send a letter informing of its decision and then send the documents within a reasonable time afterward. Under the FOIA, a component may extend the initial response time for an

additional ten business days when: (1) the component needs to collect responsive records from field offices; (2) the request involves a "voluminous" amount of records that must be located, compiled, and reviewed; or (3) the component needs to consult with another agency or other components that have a substantial interest in the responsive information. When such a time extension is needed, the component may notify the requester in writing and offer the opportunity to modify or limit the request.

In March 2005, Congress introduced the Faster FOIA Act of 2005 that would establish a 16 member commission responsible for finding ways to reduce delays. S. 589. The Senate Judiciary Committee has approved the legislation, but still awaits full Senate consideration. On December 14, 2005, President George W. Bush issued Executive Order 13392 entitled Improving Agency Disclosure of Information in a move prompted by pending legislation. 70 Fed. Reg. 75373. On December 30, 2005, the Office of Management and Budget (OMB) issued a Memorandum for Heads of Department and Agencies that called for agencies to name a Chief FOIA Officer, to review agency FOIA operations and compile a plan to improve agency FOIA operations. M-06-04.

The Executive Order called on federal agencies to name a Chief FOIA Officer at the Assistant Secretary Level or equivalent by January 13, 2006. This individual's name should be posted on the agency's website. The Chief FOIA Officer should conduct a review of agency FOIA operations within certain timelines, and draft a plan with "concrete milestones for FY06 and FY07." The findings and the improvement plan should be sent to the Department of Justice (DOJ) and OMB and posted on agency websites by June 14, 2006. These improvement plans should not only "seek additional funding for FOIA operations," but actually address FOIA operations by making employees responsible for aiding FOIA Offices in processing documents and for reassigning existing resources to FOIA operations¹. These plans should actually improve FOIA operations and supply FOIA employees with the financial and managerial support to process requests in a timely manner.

The Executive Order also called on federal agencies to include information on how well they have met the milestones of the plan in their FOIA reports to DOJ for FY 2006 and FY 2007. Agencies should establish a FOIA Requester Service Center that "will enable FOIA requesters to seek information concerning the status of their FOIA request and appropriate information about the agency's FOIA response." Agencies should also designate public liaisons who "will serve as supervisory officials to whom a FOIA requester can raise concerns about the service the FOIA requester has received from the Center, following an initial response from the Center staff."

B. USCIS Administration of FOIA and Privacy Act (PA)

The United States Citizenship and Immigration Services (USCIS) implemented a FOIA centralized processing program in 1997 called the FOIA and Privacy Act Information Processing

¹ Pursuant to Executive Order 13392, USCIS submitted its FOIA Operations Review Report through the Director of Departmental Disclosure & FOIA for the Chief Freedom of Information Act Officer on March 17, 2006.

System (FIPS). FIPS was created as an imaging, workflow, and case tracking system that provides online processing, redaction and release (on paper or CD) of documents for efficient movement of cases to ensure compliances with all mandates and rapid release of documents requested. FIPS was deployed for 260 users at 48 locations across the country and supports all the required processing in two shifts (20 hours per day) for more than 130,000 requests per year.²

The USCIS National Records Center (NRC) opened on November 15, 1999, and processes applicants' direct FOIA requests for alien records as well as requests received by USCIS field offices. Because FIPS can be accessed from any location, the NRC processes the primary FOIA/PA workload, while the USCIS FOIA/PA in Burlington, Vermont (Vermont) processes personnel-related and contract related requests, and the USCIS Headquarters (HQ) processes sensitive or high-profile records. The NRC indicated in January 2006 that they are processing 4,000 to 6,000 FOIA requests per month. The expectation is that processing times will be reduced due to processing streamlining, total dedication of FOIA/PA staff to processing, and the ability to electronically shift workload and files. However, the USCIS process of FOIA is multi-leveled. Although the FOIA request is submitted to USCIS, the request may involve other agencies, such as DOJ, Immigration and Customs Enforcement (ICE) or Customs and Border Patrol (CBP). USCIS does not have jurisdiction over other agencies, and has limited, if any, access to their databases. Thus, the acquisition of information between agencies causes delay and results in an unmet statutory mandate to process FOIA requests within 20 days.

C. DHS Privacy Office Analysis of USCIS FOIA/PA Requests for FY 2005

In April 2006, the Department of Homeland Security's (DHS) Privacy Office released its Freedom of Information Act Annual Report for Fiscal Year (FY) 2005.³ During FY 2005, 126,126 DHS FOIA and Privacy Act requests were processed as compared to 152,027 requests processed in FY 2004, reflecting a 17% decrease in requests processed. The decrease in DHS processing rates is due to several factors including complex requests, working FOIA searches into operational workload requirements, varying levels of technology used in FOIA processing and experienced staff turnover.⁴

² [IMC Develops Award-winning FOIA Case Management System](http://www.imc.com/content.aspx?content_id=31) http://www.imc.com/content.aspx?content_id=31

³ Department of Homeland Security FOIA Annual Report for 2005, published April 2006.

⁴ Id, p. 11, chart a, annual workload, staffing levels, and estimated processing cost comparisons.

<u>Annual Workload, Staffing Levels, and Estimated Processing Cost Comparisons</u>				
	FY 2003	FY 2004	FY 2005	Percentage of change FY2004-FY2005
Requests Received + FY carryover	189,860	197,728	208,717	5.6%
Requests Processed	160,902	152,027	126,126	-17.0%
Expedited Requests Processed	187	692	1,016	46.8%
End of Year Pending Requests	29,007	45,701	82,591	80.7%
Staffing Levels (full time)	334	340.1	345	1.4%
Estimated Processing Costs (total)	\$21,924,851	\$21,148,318	\$28,824,858	36.3%

The following charts are developed from DHS Component FOIA/PA Statistical Charts to compare USCIS FOIA/PA agency requests to DHS FOIA/PA requests in an entirety:

<u>Process and Receipt of FOIA Requests</u>						
FOIA/PA Components	Pending End of 2004	Received FY 2005	Requests available for processing FY 2005	Processed FY 2005	Pending End of FY 2005	Median Number of Days Pending
DHS TOTAL	45,701	163,016	208,717	126,126	82,591	n/a
USCIS	41,197	138,678	179,875	104,934	74,941	73

The estimated costs for the decentralized DHS FOIA Program preclude an accurate accounting of search, duplication, administrative, transferal and transmitting costs.⁵

⁵ Id, p. 12, chart c, Processing Costs.

<u>FOIA Processing Costs</u>					
FOIA Components	Processing Costs				
	Processing (including Appeals)	Litigation Related Activities	Total Costs	Estimated Part- time FOIA/PA Support	Estimated Total Costs
DHS TOTAL	17,992,169	481,784	18,473,953	10,350,905	28,824,858
USCIS	11,352,633	67,755	11,420,388	0	11,420,388

USCIS maximized FOIA/PA resources and increased uniformity of processing by centralizing the entire workload from 46 offices to 3 (NRC; USCISHQ; USCIS FOIA/PA Office, Burlington, Vermont).⁶

<u>Disposition of Initial Requests</u>				
FOIA/PA Components	Full Release	Partial Release	Denied	No Records
DHS TOTAL	28,631	48,564	894	11,855
USCIS	19,851	43,921	221	9,908

<u>Median Response Times</u>						
FOIA/PA Components	Simple Requests		Complex Requests		Expedited Requests	
	Processed	Median Days to Process	Processed	Median Days to Process	Processed	Median Days to Process
DHS TOTAL	95,993		29,117		1,016	
USCIS	85,307	45	19,532	55	95	15

⁶ Id, p. 17, DHS Component FOIA/PA Statistical Charts, chart b, Disposition of Initial Requests.

<u>FOIA/PA Staffing Level</u>			
FOIA/PA Components	FY 05 FOIA Staffing Levels		
	Full-Time Employee (federal & contractor)	Part-time FOIA/PA Admin Support	Total Work Years
DHS TOTAL	345	276.6	621.6
USCIS	265	0	265

The existing USCIS FOIA program results show that FOIA processing is given low priority without clearly delineated accountability; thus backlogs develop or litigation ensues because of errors in processing. Oversight, insufficient resources, and budget problems have led to deficiencies such as:

- Lack of management support and accountability for the FOIA program;
- Outdated USCIS procedures and regulations implementing the FOIA;
- Lack of frequent and useful training for new and existing FOIA employees; and
- Lack of effective leadership of the national FOIA program addressing oversight, training, and policy, coordination/centralization of complex FOIA requests and billing, and determinations on requests for expedited processing and fee waivers.

Managers do not set production goals for employees. FOIA procedures do not require federal agencies to penalize employees for missing statutory deadlines. There is an absence of serious consequence either for an individual federal employee responding to a FOIA request or the federal agency. While an overhaul of the FOIA program is not required, changes should be made immediately to ensure USCIS compliance under the FOIA and the Executive Order.

III. JUSTIFICATION

A. Accountability

Accountability and effective prioritization are lacking. Accountability throughout USCIS is imperative for compliance with FOIA. There should be increased efforts to reduce the backlog of outstanding FOIA requests. USCIS Office of Record Services (ORS) should be designated as the lead office to oversee and administer FOIA because of its current responsibilities for FOIA policy, records management, and Privacy Act matters. Supervisors should be held responsible for ensuring compliance with the statutory requirements of FOIA. Structurally, new roles and responsibilities should be integrated into the FOIA program, and the role and importance of personnel with FOIA responsibilities should be enhanced.

i. Systems Issues (#1 and #2)

1. **Develop a web-enabled USCIS-wide FOIA Tracking System that meets statutory requirements of E-FOIA and provides document management and workflow for simultaneous reviews and multi-track assignment of FOIA requests.**

Reason: FIPS is not web-enabled.⁷ The E-FOIA amendments provide for increased accountability in the tracking of USCIS FOIA requests and for a process to manage those requests on a first-in, first-out basis. This accounting should be 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 in the Electronic Reading Room. USCIS has no system that meets these requirements and that generates an accurate report within a reasonable period of time. FIPS should incorporate a comprehensive FOIA tracking system, and USCIS FOIA staff should be vigilant about tracking and systematically processing all FOIA requests. There should also be identification elements to correctly verify FOIA requestors conducting personal status checks in compliance with Privacy Act issues.

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

Reason: FIPS may be the USCIS FOIA/PA system, but it is unclear whether employees use the system to enter and respond to all requests, or if managers can track the status of requests and check employee responses times. Due to the large volume of FOIA requests that USCIS receives and its backlog of unanswered requests, many program offices have expended funds for developing their own FOIA systems to track requests.⁸ An efficient and effective centralized FOIA system would provide for accurate tracking and reporting of requests. USCIS recently centralized the primary FOIA workload from 46 offices to 3 (NRC; USCISHQ; Vermont). As of the date of this recommendation, only 4 field offices (Omaha, NE; El Paso, TX; San Antonio, TX, and Halingen, TX) remain to have their FOIA workload be centralized.

ii. Reports and Pending Backlog (#3, #4, and #5)

3. **Provide FOIA Supervisors in each program with a copy of a monthly list of overdue FOIA requests and a bi-weekly list of pending requests,**

⁷ USCIS ORS "FIPS Demonstration" to CISO, November 10, 2005.

⁸ GAO Exit Conference Review of USCIS Management of A-File Automation Project, January 27, 2006.

with a copy of both lists sent to the Senior Management of the FOIA/PA program.

Reason: FIPS generates reports that give overdue and outstanding FOIA requests.⁹ However, it is unclear how often these reports are generated and submitted. 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 USCIS needs to answer. Both reports will be passed on to the appropriate Senior Manager for the affected program for action.

- 4. Require FOIA management to review the list of overdue FOIA requests, verify the number of outstanding requests, and commit efficient resources to reduce the backlog. The status of this backlog-reduction effort should be reported to the ORS FOIA Office monthly.**

Reason: USCIS has a significant backlog of initial FOIA requests. USCIS indicated developments of a FOIA backlog reduction plan, but has not provided the CISO with any concrete details regarding these developments.¹⁰ FOIA supervisors are aware of outstanding requests and allocate resources as necessary, but it is unclear whether these resources are efficiently and effectively resolving the pervasive problems. HQFOIA/PA and ORS are aware of the status of pending FOIA/PA requests nationwide, but it is unclear whether their backlog-reduction efforts are reported consistently to ORS. Failure to answer requests within the statutory time limits exposes USCIS to litigation and unfavorable publicity.

- 5. Require each FOIA supervisor 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: FOIA/PA supervisors address FOIA/PA requests according to the standards and guidelines provided by DHS and DOJ as well as specified in the FOIA.¹¹ However, it is unclear whether the same high priority is given. It is imperative that USCIS establish at least the sensitivity to responding timely to FOIA requests as it does for controlled correspondence and congressional inquiries. Offices should be held accountable for responses to FOIA requests as they are held accountable for controlled and congressional correspondences.

⁹ USCIS ORS "FIPS Demonstration" to CISO, November 10, 2005.

¹⁰ USCIS Briefing on FOIA to CISO, August 17, 2005; CISO Issues List to USCIS, November 7, 2005; GAO Exit Conference Review of USCIS Management of A-File Automation Project, January 27, 2006.

¹¹ USCIS Response to CISO First Request For Information List on FOIA, September 16, 2005.

iii. Performance Issues (#6 and #7)

6. **Add clearly-defined FOIA responsibilities to the performance standards as a critical element of all USCIS managers and supervisors.**

Reason: The responsible parties (District Directors, Deputy District Directors, record supervisors) all have FOIA and PA reflected in their Performance Work Plans.¹² However, it is unclear whether these production duties have strict accountability and target dates. Incorporating strict FOIA responsibilities into the performance standards of USCIS managers, supervisors and FOIA staff ensures that appropriate attention will be given to compliance with the requirements of FOIA. This increases the importance that USCIS has placed on FOIA compliance by clearly stating the performance expected of all USCIS employees.

7. **Revise job position descriptions for FOIA Officers and personnel to define the specific skills required to effectively perform the duties of the position (e.g., ability to communicate effectively in writing and orally, ability to make sound decisions and resolve complex issues, and ability to conduct legal research).**

Reason: These skills are a part of the knowledge, skills, and abilities for the journeymen level FOIA/PA staff.¹³ However, a strong base line of uniform skills and knowledge should be established for all FOIA personnel. FOIA duties should only be assigned to employees who have received FOIA training and possess the institutional USCIS knowledge, experience, and communication skills to successfully fulfill these duties. Placing highly trained and skilled persons in FOIA roles provides resources to resolve complex issues while ensuring compliance with FOIA.

iv. Actions to improve FOIA training, upgrade IT, and address accountability (#8, #9, and #10)

¹² USCIS Briefing on FOIA to CISO, August 17, 2005.

¹³ <http://www.usajobs.opm.gov/>, Vacancy Announcements for FOIA/Paralegal Specialist, last checked May 2006.

8. **Designate ORS as the lead office to administer and oversee USCIS National FOIA/PA program – to include issuing USCIS-wide guidance, procedures, policies, and operations consistent with DHS FOIA/PA, updating websites, and conducting periodic audits/inspections of FOIA processes in the program, NRC, HQ, and Vermont.**

Reason: The USCIS FOIA/PA Program is organizationally situated under ORS.

¹⁴ The USCIS FOIA/PA Program receives guidance, regulations, and policy from DHS and DOJ¹⁵, and ensures that the policy from those organizations is interpreted and disseminated throughout USCIS. However, there should be increased accountability for the FOIA program and assurances that this accountability is at the highest levels. When it was created, ORS was given the responsibility for oversight of FOIA policy (but not FOIA operations), records management, Privacy Act, and information resource management programs. ORS should have the responsibility to coordinate the USCIS National FOIA/PA program and provide central management control and accountability.

9. **Require management to submit a written verification to the ORS FOIA Office that FOIA Supervisors have received FOIA training and that they possess the skills and expertise required of the position. Where the FOIA Supervisor has not received FOIA training, the office must demonstrate that the Supervisor will obtain appropriate training within a reasonable period of time.**

Reason: All FOIA/PA supervisors are responsible for the requirements of the FOIA.¹⁶ However, it is unclear whether ORS receives actual verification that FOIA supervisors adhere to the 20-day response period. This increases management accountability by ensuring critical assessment of employees' abilities prior to assigning FOIA duties. Management should ensure that personnel with FOIA job responsibilities adhere to FOIA regulations and possess the skills needed to effectively perform the duties of the position. Knowledgeable and trained personnel should significantly improve the overall efficiency and timeliness of the program's FOIA activities.

10. **USCIS shall conduct a 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 backlog of outstanding FOIA requests, and to improve overall**

¹⁴ "USCIS Approach to Records Management" Presentation to CISO, October 19, 2005.

¹⁵ DOJ FOIA Reference Guide, <http://www.uscis.gov/graphics/aboutus/foia>, last modified May 2, 2006.

¹⁶ USCIS Briefing on FOIA to CISO, August 17, 2005.

response times. Every office should have staffing levels sufficient to allow for timely processing of requests.

Reason: USCIS indicated that an updated analysis¹⁷ is being conducted in the development of the backlog reduction plan. Pursuant to Executive Order 13392, USCIS submitted its FOIA Operations Review Report through the Director of Departmental Disclosure & FOIA for the Chief Freedom of Information Act Officer on March 17, 2006. The report includes an assessment of USCIS FOIA operations, and includes the use of information technology, practices with respect to requests for expedited processing, implementation of multi-track processing, and availability of public information through websites and other means. The report also identifies ways to eliminate or reduce the FOIA backlog¹⁸. USCIS should use this report and this recommendation to develop a comprehensive FOIA backlog reduction plan to streamline this enormous operation and make it more responsive to its requesters and to the American People.

B. Centralization

FOIA policy and operations in HQ should be consolidated and joined organizationally with the USCIS records management program and its Privacy Officer function in ORS. A web-enabled tracking and coordinating system should be developed, which will correct problems encountered with the current system, and comply with E-FOIA. The transition to the new system should be managed in accordance with standard information technology practices. 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.

11. Consolidate HQ FOIA Policy Branch with HQ FOIA Operations Branch. Move entire FOIA Program to ORS and the HQ FOIA Supervisors to the units within the programs that provide the information resource management functions, such as records management and computer support services.

Reason: Although NRC and Burlington currently report to HQ FOIA, USCIS indicated that FOIA/PA will not consider any organizational changes at this time because the FOIA/PA Program is part of the USCIS Domestic Operations Program.¹⁹ However, with the separation of the FOIA policy unit from FOIA Operations, there is no clear responsibility for managing the USCIS FOIA program. It is unclear how USCIS operations interact with the FOIA program to respond to the backlogged requests. Severe coordination problems have resulted from the separation. FOIA personnel responsible for the day-to-day processing of

¹⁷ USCIS Response to CISO Second Request For Information List on FOIA, December 14, 2005.

¹⁸ USCIS FOIA Operations Review Report, March 17, 2006

¹⁹ USCIS Response to CISO Second Request For Information List on FOIA, December 14, 2005.

requests have indicated that they lack clear direction and guidance on many issues. The separation of functions has resulted in a lack of consistency and an inability to address issues in a timely manner.

12. Shift all Regional FOIA Officers and FOIA Supervisors within programs to the FOIA offices that provide the information resource management functions, such as records management and computer support services.

Reason: In the DHS FOIA 2004 Annual Report²⁰, USCIS indicated that it was poised to implement a FOIA centralized processing system. The centralization project was proposed in July 2001 and approved 2002. After USCIS transferred to DHS, the DHS Privacy Officer endorsed the June 2002 proposal. However, the centralization still remains to be completed. To effectively administer USCIS responsibilities under FOIA for identifying and managing records, and under E-FOIA for posting certain categories of records to the USCIS website, there should be a partnership between the FOIA personnel, records management, and information resources management staff with the Privacy Act to ensure compliance with that statute and regulations.

13. Require all USCIS programs with FOIA web sites to provide a link to NRC/ HQ/ Vermont web pages for submission of electronic FOIA requests.

Reason: This will provide the public with an efficient and convenient way to electronically send in a request to the appropriate source for a response.²¹

C. Update/Amend Current Policies, Regulations, and Guidance

Policies, regulations, and guidance should be frequently updated or developed to provide reliable USCIS-wide resources and address commonly encountered problems, particularly for electronic records. A FOIA training program should be uniformly developed and implemented for all employees to ensure effective compliance with FOIA and E-FOIA.

i. Training (#14 and #15)

14. Develop an Annual Mandatory comprehensive and uniform National FOIA Training Program for all USCIS employees to include training for USCIS program staff on their FOIA responsibilities.

Reason: USCIS indicated that there is a national training program available for its program staff: there are four courses on the virtual university and classroom instruction bi-annually, and Program Office staff has training on responsibilities

²⁰ Department of Homeland Security FOIA Annual Report for 2004, published April 2005, p. 8.

²¹ USCIS ORS "FIPS Demonstration" to CISO, November 10, 2005.

under the FOIA and the PA.²² However, USCIS should have workshops on FOIA exemptions that emphasize the criteria for making information-disclosure determinations and address procedural issues. There should be workshops on the Privacy Act of 1974, addressing definitions, restrictions on disclosure, requests for record access and amendment, and fair information practices.

USCIS officials who need periodic updates on FOIA case law and policy guidance developments should attend government wide FOIA programs. USCIS should hold agency wide FOIA conferences for all employees with specific emphasis on USCIS related issues, such as critical discretion when disclosing applicant immigration status information. 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 USCIS records practices for the purpose of locating and providing responsive FOIA records. USCIS FOIA staff should have a thorough knowledge of FOIA resource materials, background and legislative history, disclosure mandates, exemptions to mandatory disclosure, administrative considerations, and the relationship of the FOIA to the Privacy Act of 1974. All USCIS staff should have a required annual certification of FOIA training and course completion, similar to the DHS employee required annual certification of Security training.

- 15. Develop new standard operating procedures (FOIA Manual) that focuses on 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 separating the releasable from withheld FOIA records at the time of initial processing to comply with FOIA and records management guidelines. Post these procedures on the USCIS intranet websites for reference by all employees.**

Reason: USCIS indicated that it has an online FOIA/PA handbook, but this is an old reference guide from when legacy INS belonged to DOJ.²³ USCIS also has not developed any reference guides to govern FOIA operations, but instead uses the DOJ guide as its basis. To be consistent, all USCIS FOIA programs should require the most recent standard operating procedures and guidelines. This is 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.

²² USCIS Response to CISO Second Request For Information List on FOIA, December 14, 2005.

²³ DOJ FOIA Reference Guide, <http://www.uscis.gov/graphics/aboutus/foia>, last modified March 2, 2006.

ii. Processing (#16 and #17)

- 16. Require each program to develop a plan to process FOIA requests within its respective offices that conforms with DHS and USCIS guidelines.**

Reason: This action will coordinate requests with consistent application of FOIA provisions, and compliance with DHS and USCIS guidelines.²⁴

- 17. Require that all USCIS 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 decision letter.**

Reason: USCIS currently outlines in each letter that the requester has the right to appeal a decision and provides the deadlines for such an appeal.²⁵ However, USCIS does not send its responses by certified mail or confirm a dated receipt of response, and thus is forced to accept FOIA appeals beyond the 30-day deadline. This requested process may significantly reduce the number of FOIA appeals.

IV. BENEFITS FOR USCIS AND DHS

A. Customer Service

- i. Timely Receipt of Information* - Improved customer service will be realized when USCIS can deliver the FOIA product in a manner that is consistent with law and regulation and meets the requirements and expectations of the customer.
- ii. Reduced Cost- a. financially (less litigation); b. time (additional contact, follow-up, and paperwork)* - Many lawsuits are brought, not because of a denial of the request, but because USCIS failed to communicate with the requesters on a timely basis on where the request is in the FOIA process. As of November 30, 2005, USCIS has 13 FOIA cases in different stages of litigation²⁶. DOJ attorneys should not have to defend lawsuits where the information fits that category.
- iii. Improved communication between CIS and customer (more contact creates less frustration)* - USCIS’ failure of adequate communication with FOIA requesters on a timely basis is the single biggest frustration that people have

²⁴ USCIS Response to CISO First Request For Information List on FOIA, September 16, 2005.

²⁵ USCIS Response to CISO Second Request For Information List on FOIA, December 14, 2005.

²⁶ Id.

with the FOIA. Customer service will vastly improve when USCIS creates a FOIA designated officer to mediate disputes between FOIA requesters and agencies.

B. USCIS and DHS Efficiency

- i. Reduce backlog** - Actions to improve USCIS FOIA operations will substantially reduce the backlog by not allowing USCIS to utilize certain FOIA exemptions when it fails to respond to requests within the statutorily mandated response time.
- ii. Decrease cost- litigation** - While any improvements in the USCIS FOIA system will cost money initially, substantial money will be saved by decreased litigation costs over the long run.
- iii. Streamlined process and consistency in responses** – USCIS will streamline responses by creating a database to contact requesters on a thirty day cycle that reports the status of the FOIA request.
- iv. Increased efficiency because of skilled and trained FOIA officers-** Comprehensive education and training of USCIS FOIA staff will develop proficient expertise in FOIA operations that will increase performance accountability, and thus, improve efficiency.
- v. Improved technology increases operational efficiency** –The implementation of the seventeen actions will improve operational efficiency and significantly streamline the USCIS FOIA/PA Program, thereby strengthening the efficacy of the overall Departmental Disclosure and FOIA operations in the DHS Privacy Office.

C. National Security

Adoption of this recommendation will not adversely impact national security.