

Day 4 – Thursday, 29 November 2007
Parallel Sessions – Session 2C 9.00am-10.30am

Speaker: Melanie-Ann Pustay, Director, Policy and Litigation,
Office of Information and Privacy.

Organisation: Office of Information & Privacy, Department of Justice, USA
Presentation Title: Managing responses to Freedom of Information Act requests

Question

How can government agencies improve their timeliness in responding to information requests in the face of the many practical constraints that work against that goal?

Abstract

In the United States, agencies confront a number of issues when managing responses to requests for information under the Freedom of Information Act (FOIA). In particular, the issue of timeliness in making a response has long been a concern. Congress, the Courts, and most recently the President, have all addressed this issue. Generally, they have attempted to find a balance between directing agencies to respond to requests as quickly as possible, while also recognizing the many practical constraints affecting an agency's response time.

Congress dealt with the issue of timeliness in responding to FOIA requests in the text of the FOIA itself. The statute provides an agency with twenty working days to respond to a request from the time of receipt, after which time the requester is considered to have constructively exhausted his administrative remedies. Once a requester has exhausted his administrative remedies, he may file a FOIA lawsuit. Within the statute, however, Congress has created exceptions for the twenty-day time limit where either unusual or exceptional circumstances exist. Congress specifically linked a court's ability to find "exceptional circumstances" with an agency's progress in backlog reduction.

Courts, recognizing the large volume of requests that certain agencies must respond to, readily grant "Open America" stays of proceedings at an agency's request when the statutory requirements for exceptional circumstances are met. Where agencies have failed to adequately demonstrate the necessity of such a stay, however, courts have been reluctant to find that exceptional circumstances existed.

The President has also affected the way agencies manage responses to FOIA requests. On December 14, 2005, the President issued Executive Order 13,392, entitled "Improving Agency Disclosure of Information." This Executive Order contained general statements of policy related to the FOIA as well as a number of specific requirements, including requirements related to backlog reduction. Executive Order 13,392 directed agencies to create an improvement plan for responding to FOIA requests. It further mandated that agencies identify ways to reduce or eliminate their backlogs, and to include specific activities that the agency would implement as part of its overall FOIA improvement plan. Executive Order 13,392 has had a measurable positive effect in reducing agencies' backlogs of requests.

Apart from statutory or other legal directives, there are a number of practical ways that an agency can improve its timeliness in responding to requests. Setting goals, acting transparently, and engaging in dialogue with requesters are all important steps that an agency can take to accomplish the overall goal of backlog reduction.