



U.S. Citizenship
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Services

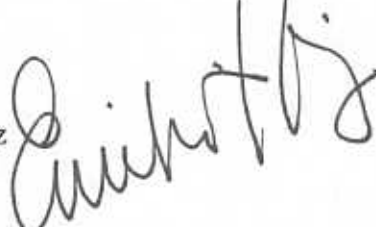
Interoffice Memorandum

To: Prakash Khatri
USCIS Ombudsman

From: Dr. Emilio T. Gonzalez
Director, USCIS

Date: October 5, 2006

Subject: Response to Recommendation #30, To Improve Freedom of Information Act Operations



This is in response to your office's recommendation to improve Freedom of Information (FOIA) operations, by implementing 17 actions and requirements. In your recommendation, you state the following:

"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..."

In 2003, when USCIS was formed, we recognized that our FOIA process was inefficient and developed a more centralized and accountable process. We are absolutely confident in the capabilities of the primary central location, the National Records Center (NRC) and their approach to streamlined, automated, accountable, FOIA processing. There is no doubt they can timely and very expediently manage the approximately 120,000 current FOIA cases received annually by USCIS. The main issue for us now is the backlog of approximately 82,000 cases.

Specific Recommendations:

Of your 17 specific recommendations, 10 have previously been accomplished by the USCIS FOIA Program, largely due to the centralization of the work; four represent work we have already started and are on track to complete; one is no longer applicable, again, due to centralization; and finally, two of the recommendations we do not agree with. In summary, we view this as a positive indication that the USCIS initiatives towards FOIA improvements are being recognized by others as

things that needed to be done and are supportive of our efforts. Each recommendation is addressed below:

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.

USCIS Response: USCIS' electronic system, Freedom of Information and Privacy Acts Processing System (FIPS), is not presently a web enabled system, but does meet the statutory requirements for E-FOIA and reporting requirement to Congress and Executive Branch components. As with many older technologies, we are in the process of converting them where appropriate to web-enabled technologies. In the case of FIPS, it is a valuable and critical tool in the processing of FOIA and we have a request for investment pending before our Senior Review Board for the transition to a web-enabled FIPS system. We anticipate that the request will be approved and FIPS will be web-enabled by the end of Fiscal Year (FY) 2007.

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.

USCIS Response: FIPS is USCIS' only FOIA/PA processing system. There are no stand-alone FOIA systems. Prior to the decision to centralize FOIA, each field office had its own FIPS access, but it was tied to the main FIPS server. As the USCIS FOIA/PA program is now centralized, there is no need for FIPS stations or access at the field offices. The access to FIPS at the central locations is widely available to those who need it, from FOIA officers, to supervisors and for management reports.

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

USCIS Response: Since centralization is almost complete, the majority of the requests are processed by the National Records Center (NRC). The NRC, using FIPS report engine, does generate monthly reports (at times more often) informing the various Program and field offices of the status of the requests for responsive records. The reports are sent to the program heads and the regional records managers.

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.

USCIS Response: The NRC does track all FOIA processing, including backlog work. USCIS is committing additional resources where it is financially able to do so in

conjunction with other agency priorities. We recently had a staffing model created for the FOIA/PA program to determine how many resources were required to deal with the backlog and how many were needed to keep up with receipts.

USCIS is not currently funded for any of the FOIA work, since approximately 98% of the agency's budget is derived from fee revenue. Since we do not currently charge applicants for FOIA as part of any fee, and we do not get appropriated funds for this purpose, any funding USCIS is able to divert to FOIA, is at the expense of some other activity. We have requested a fee for FOIA requests as part of the FY08 fee review process.

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.

USCIS Response: As previously stated, USCIS has improved the FOIA process and is giving it a much higher priority than was done in previous years. If the program begins to receive a fee for the service given, it will greatly enhance the ability of the program to respond timely to requests.

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

USCIS Response: This will be accomplished as management prepares its cascading goals under MAXHr.

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).

USCIS Response: This has been accomplished.

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.

USCIS Response: This has been accomplished as part of the centralization of FOIA under the Records Division and primarily at the NRC and Headquarters components.

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.

USCIS Response: The FOIA/PA Program office has conducted training throughout the year. FOIA and PA training have been afforded to both the FOIA/PA professionals and the non-FOIA/PA professionals. Additionally, USCIS will be issuing periodic electronic broadcasts reminding the workforce of its responsibilities under the PA.

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

USCIS Response: This has been accomplished as part of the centralization of FOIA under the Records Division and primarily at the NRC and Headquarters components.

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.

USCIS Response: This has been accomplished as part of the centralization of FOIA under the Records Division and primarily at the NRC and Headquarters components.

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.

USCIS Response: This has been accomplished as part of the centralization of FOIA under the Records Division and primarily at the NRC and Headquarters components.

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.

USCIS Response: FOIA has a web link on the main USCIS web-page. USCIS HQ will ensure that there is a connection with the NRC web page. Vermont does not have a separate webpage.

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.

USCIS Response: This has been accomplished as part of the centralization of FOIA under the Records Division and primarily at the NRC and Headquarters components. Training is updated periodically and we will continue to refine as improvements are made to automation.

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.

USCIS Response: USCIS does use the Department of Justice (DOJ) reference guide as the basis for the processing. Each FOIA/PA office receives sufficient copies of the DOJ reference guide on a biannual basis as they are produced. USCIS also has an on-line handbook (available on the Intranet) that is being updated. Each student who attends the formal classroom training receives a student guide that incorporates the requirements stated above. The instructor provides the students with a phone number and name of individuals who can answer their questions on a daily basis or as needed. Training is updated periodically and we will continue to refine as improvements are made.

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

USCIS Response: Under the centralization plan, all FOIA/PA requests will be processed at the NRC, HQ and Vermont. Only the 4 service centers remain to be centralized. These offices have staffs dedicated exclusively to the processing of FOIA/PA requests. All CIS FOIA requests are processed by one of these offices.

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.

USCIS Response: This requirement will be cost prohibitive given the number of requests that the agency receives, an average of approximately 120,000 cases annually. Had we provided this service to-date this fiscal year, we would have incurred an over \$190,000 expense just to receipt acknowledge those requests that might result in an appeal or litigation. Given that less than 2% of our requests are appealed (and these are primarily because the client feels we have not disclosed sufficient information), this expense is cost-prohibitive.

We also concur with your assessment of the benefits to be realized for USCIS and all our customers in terms of increased customer service, reduced costs, improved communication, increased efficiency, improved technology and decreased (hopefully eliminated) litigation.

In conclusion, our main issue is the backlog. We are confident of the team, technology, and leadership going forward, but it is the backlog that remains the chokepoint. We recognize this problem and are taking steps to address it as quickly as possible, as evidenced above. Process and technology improvements alone will not suffice to eliminate the backlog - resources and funding are also needed. We are hopeful that this issue will also be resolved in the near future.

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If you have any questions, or would like to discuss this further, please contact Dominick Gentile, Chief, Records Division at 202 272 8686.