

When Exemptions Become the Rule

New CJOG Study Shows How Federal Agencies Use FOIA Exemptions to Step Up the Withholding of Information

Less information was released through the Freedom of Information Act in 2004 than in 2000, a new analysis shows. Even as requests processed by the agencies fell by 13 percent, the overall use of exemptions to screen information rose by 22 percent. In refusing to release information far more often, agencies relied on three exemptions pushed by the Bush administration.

The study of FOIA requests and denials in 2000 and 2004 by the Coalition of Journalists for Open Government shows how departments and agencies responded to Bush administration guidelines on withholding records issued in 2001 and 2002. It reveals agencies making far greater use of several FOIA exemptions that many open government advocates believe are widely abused.

The exemptions allow withholding of information regarding intra- and interagency memos, internal personnel rules and practices, and proprietary information or trade secrets.

Surprisingly, the analysis found a marked decline in the use of the exemption for information classified in the interest of national security, even though national security has been regularly cited since September 11, 2001 as justification for the increased safeguarding of records.

The findings make clear that the controversial 2001 memorandum from then-Attorney General John Ashcroft did in fact alter agency response to requests for public records. Ashcroft's memo reshaped the guidelines agencies use when considering FOIA requests.

His predecessor, Janet Reno, had advised federal departments that unclassified government information should be presumed public and released if disclosure of the information did "no foreseeable harm," even though the data might fall within one of the FOIA exemptions. In his October 2001 memo, Ashcroft said the administration was committed to the "fundamental values" expressed in the nine exemptions and that his department would support any agency offering a "sound legal basis" in denying a citizen's request. (See Attachment 1.)

Ashcroft specifically cited Exemption 5, covering interagency and intra-agency memoranda. Six months later, White House Chief of Staff Andrew Card sent all executive branch departments and agencies a memorandum on the handling of homeland security information. An attachment prepared by the Justice Department and the Information Security Oversight Office recommended use of Exemption 2, covering agency personnel rules and practices, and Exemption 4, covering proprietary interests, to protect “sensitive but unclassified” information.

The Coalition analysis focused on the use of FOIA exemptions to withhold information by the 22 of the 25 departments and agencies that handle the greatest number of third-party requests. We examined agency reports for the year 2000, the last complete fiscal year before the current administration, and for 2004, the last complete year for which records are currently available.

In assessing how agencies use exemptions to withhold information, we excluded the Department of Veterans Affairs, the Social Security Administration and the Department Health and Human Services. The three receive the greatest number of FOIA requests, and they also grant almost all of those requests. VA and SSA granted 99 percent of the requests in 2004, HHS 92 percent. In 2004, nearly 3.5 million requests were processed by those three agencies, compared to 522,000 by the 22 examined in detail in this report. The requests to the VA, SSA and HHS are primarily from individuals routinely seeking data in government files about themselves – so called first-party records. By comparison, the overall FOIA request approval rate for the 22 agencies studied was 67 percent.

Here’s what the study showed:

- There was a 10 percent decrease in FOIA requests overall from 2000 to 2004 and a 13 percent decrease in requests processed, the number used for comparative purposes throughout the study.
- The agencies responded with a flat “no” less frequently – on 3.4 percent of requests in 2000 but only 2.7 percent in 2004. However, requesters still wound up with significantly less information. That’s because full grants, where the requester gets all information sought, fell dramatically, from 55 percent of requests in 2000 to 45 percent in 2004. In real numbers, that’s 6,439 fewer denials and 96,021 fewer full grants. (Table 1)
- There was also an increase in what the government calls partial grants, in which the requester gets some but not all of the information sought. There were 44,464 more partial grants in 2004 than four years earlier. Or looked at another way, the government made partial grants in 12 percent of the cases in 2000 and in 22 percent of the 2004 cases. The government does not report the completeness of the partial grant by indicating what portion of the information sought was released and how much was withheld. But it is possible to make a qualitative inference from the agencies’ use of exemptions.

- The agencies called on one of the nine FOIA exemptions 22 percent more often to withhold information in 2004 than in 2000, despite handling fewer requests and issuing fewer full denials. Even that figure is only partially indicative of the increased withholding of information, because agencies report the use of an exemption a single time no matter how many times it is cited to seal information within any single request. (Table 2)
- Exemption 2, which exempts information about internal agency procedures, was cited three times more often in 2004 than in 2000. (Table 4)
- Exemption 5, which exempts interagency or intra-agency memos or letters, was applied almost twice as frequently. (Table 7)
- Exemption 4, protecting trade secrets and commercial and financial information, was used 68 percent more often. (Table 6)
- Even as national security was being cited after 9/11 as a reason for increased government secrecy, federal agencies used the national security exemption far less frequently in rejecting FOIA requests. The CIA cited the national security exemption 55 percent less frequently in 2004 than in 2000. The overall use of Exemption 1 fell 26 percent. (Table 3)
- The departments of Agriculture, Justice and State were twice as likely to deny a FOIA request in full in 2004.
- Use of Exemption 7, which covers six different categories of law enforcement related information, was down overall but increased in several significant areas (Table 9). Use of the sources and methods exemption, 7(e), nearly doubled. Exemption 7(c) protects information held by law enforcement that could intrude upon someone's privacy. Its use went up 29 percent. (Table 10)
- The 22 departments and agencies improved their efficiency in handling requests, but reported costs nonetheless soared. The average cost of handling a request in 2000, based on costs reported by the agencies, was \$300. In 2004, it was \$465, a 57 percent increase. (Table 11) Six agencies spent over \$1,000 per request and two, the State Department and CIA, spent over \$2,500. It cost the Small Business Administration almost four times more to process a request in 2004 and the Justice Department three times more.

This report was prepared by Coalition of Journalists for Open Government researcher Lacey Phillabaum. The Coalition of Journalists for Open Government is an alliance of more than 30 journalism-related organizations concerned about secrecy in government and the increasing closure of public records and meetings at all levels of government.

The coalition has released two other FOIA reports that are available on its website: www.cjog.net.

The coalition's coordinator is Pete Weitzel. For more information, contact CJOG, 1101 Wilson Blvd., Suite 1100, Arlington, VA 22209; pweitzel@rcfp.org, (703) 807-2100, ext. 105.

Table 1: FOIA Grants 2000 and 2004

Agency	Total Requests Processed			Requests Denied				Partial Grants				Full Grants			
	2000	2004	Change	2000	Percent of Total	2004	Percent of Total	2000	Percent of Total	2004	Percent of Total	2000	Percent of Total	2004	Percent of Total
Agriculture	139,503	61,209	-56%	1,686	1.2%	1,774	2.9%	2,043	1.5%	1,953	3.2%	111,263	80%	55,475	91%
Commerce	2,026	2,035	0%	215	10.6%	214	10.5%	200	9.9%	277	13.6%	1,189	59%	950	47%
Defense	96,479	77,256	-20%	2,367	2.5%	2,340	3.0%	11,551	12.0%	11,779	15.2%	56,836	59%	37,914	49%
DHS	—	152,027	—	—	—	955	0.6%	—	—	60,612	39.9%	—	—	49,835	33%
Education	1,695	2,082	23%	34	2.0%	61	2.9%	331	19.5%	659	31.7%	1,034	61%	1,007	48%
Energy	2,649	2,440	-8%	34	1.3%	59	2.4%	328	12.4%	258	10.6%	1,546	58%	1,590	65%
HUD	2,878	3,978	38%	473*	—	237	6.0%	—	—	587	14.8%	1,412	49%	1,824	46%
Interior	4,966	4,219	-15%	177	3.6%	183	4.3%	761	15.3%	854	20.2%	2,937	59%	1,809	43%
Justice	235,090	56,865	-76%	3,024	1.3%	2,136	3.8%	32,010	13.6%	8,495	14.9%	92,134	39%	19,186	34%
Labor	22,505	21,860	-3%	8,381	37.2%	1,931	8.8%	5,591	24.8%	7,551	34.5%	8,533	38%	7,378	34%
State	3,070	4,963	62%	93	3.0%	345	7.0%	822	26.8%	1,370	27.6%	850	28%	837	17%
Transport.	19,280	10,905	-43%	477	2.5%	292	2.7%	2,303	11.9%	2,170	19.9%	10,670	55%	4,345	40%
Treasury	1,597	64,570	3943%	73	4.6%	551	0.9%	234	14.7%	3,413	5.3%	696	44%	30,114	47%
CIA	4,490	3,336	-26%	769	17.1%	517	15.5%	1,287	28.7%	1,242	37.2%	1,084	24%	427	13%
CPSC	13,157	6,397	-51%	73	0.6%	53	0.8%	704	5.4%	385	6.0%	11,682	89%	5,755	90%
EEOC	16,060	17,485	9%	1,782	11.1%	1,427	8.2%	10,830	67.4%	12,385	70.8%	1,936	12%	1,109	6%
EPA	14,837	13,352	-10%	77	0.5%	120	0.9%	628	4.2%	635	4.8%	10,178	69%	7,540	56%
Archives	9,311	5,219	-44%	185	2.0%	22	0.4%	285	3.1%	110	2.1%	8,386	90%	476	9%
NASA	1,652	1,567	-5%	102	6.2%	27	1.7%	457	27.7%	390	24.9%	676	41%	579	37%
NLRB	5,418	5,295	-2%	382	7.1%	136	2.6%	551	10.2%	523	9.9%	4,418	82%	3,980	75%
SEC	2,854	3,830	34%	247	8.7%	499	13.0%	407	14.3%	209	5.5%	893	31%	1,080	28%
SBA	3,088	1,927	-38%	213	6.9%	73	3.8%	238	7.7%	168	8.7%	2,294	74%	1,416	73%
Total	602,605	522,817	-13%	20,391	3.4%	13,952	2.7%	71,561	11.9%	116,025	22.2%	330,647	55%	234,626	45%

The totals shown for the Requests Denied, Partial Grants and Full Grants do not add up to 100 percent of Requests Processed because the government lists a fourth category in reporting on the disposition of FOIA requests: "Other Reasons for Non-Disclosure." This includes "not an agency record," "duplicate request," "referral," "not a proper FOIA request" and several other explanations that do not go to the substance of the request.

In 2000, HUD listed only Requests Denied and Full Grants. Partial Denials were counted as Requests Denied.

The Department of Homeland Security (DHS) was created in 2002 by combining 22 agencies, including Immigration and Naturalization Services. That transfer resulted in a noticeable reduction of FOIA requests to the Department of Justice, and in a lesser reduction of requests to several other agencies.

The Department of Agriculture settled a class action suit brought by African-American farmers in April 1999. FOIA officers said this resulted in a several-year spike FOIA requests that explains the 78,000 difference in 2000 and 2004 requests processed.

The Treasury Department could offer no explanation for the dramatic increase in requests processed.

Table 2: FOIA Exemptions 2000 and 2004

Agency	Total Requests Processed			Full or Partial Denials				Total Exemptions Cited in Denying Requests		
	2000	2004	Change	2000	Percent of Total	2004	Percent of Total	2000	2004	Change
Agriculture	139,503	61,209	-56%	3,729	3%	3,727	6%	2,637	4,066	54%
Commerce	2,026	2,035	0%	415	20%	491	24%	482	575	19%
Defense	96,479	77,256	-20%	13,918	14%	14,119	18%	18,812	22,139	18%
DHS	—	152,027	—	—	—	61,567	40%	—	138,134	—
Education	1,695	2,082	23%	365	22%	720	35%	475	1,059	123%
Energy	2,649	2,440	-8%	362	14%	317	13%	393	348	-11%
HUD	2,878	3,978	38%	473*	16%	824	21%	649	601	-7%
Interior	4,966	4,219	-15%	938	19%	1,037	25%	1,047	1,385	32%
Justice	235,090	56,865	-76%	35,034	15%	10,631	19%	130,474	23,399	-82%
Labor	22,505	21,860	-3%	13,972	62%	9,482	43%	25,554	25,634	0%
State	3,070	4,963	62%	915	30%	1,715	35%	914	2,759	202%
Transport.	19,280	10,905	-43%	2,780	14%	2,462	23%	2,982	3,064	3%
Treasury	1,597	64,570	3943%	307	19%	3,964	6%	359	3,813	962%
CIA	4,490	3,336	-26%	2,056	46%	1,759	53%	3,791	2,554	-33%
CPSC	13,157	6,397	-51%	777	6%	438	7%	1,469	780	-47%
EEOC	16,060	17,485	9%	12,612	79%	13,812	79%	13,688	18,324	34%
EPA	14,837	13,352	-10%	705	5%	755	6%	1,064	1,306	23%
Archives	9,311	5,219	-44%	470	5%	132	3%	300	165	-45%
NASA	1,652	1,567	-5%	559	34%	417	27%	556	429	-23%
NLRB	5,418	5,295	-2%	933	17%	659	12%	1,397	1,701	22%
SEC	2,854	3,830	34%	654	23%	708	18%	955	778	-19%
SBA	3,088	1,927	-38%	451	15%	241	13%	382	274	-28%
Total	602,605	522,817	-13%	91,952	15%	129,977	25%	208,376	253,287	22%

The category, "Full or Partial Denials," is the sum of what the government agencies report as "Denials" and as "Partial Grants." Partial grants are, logically, also partial denials, and the government agencies combine the two categories in reporting on their use of exemptions to deny all or portions of FOIA requests. We have done the same here.

Table 3: Exemption 1, National Defense and Foreign Policy

Agency	Total Requests Processed			Exemption 1			
	2000	2004	Change	2000	Percent of Total	2004	Percent of Total
Agriculture	139,503	61,209	-56%	0	0.0%	9	0.0%
Commerce	2,026	2,035	0%	10	0.5%	6	0.3%
Defense	96,479	77,256	-20%	1,251	1.3%	1,132	1.5%
DHS	—	152,027	—	—	—	19	0.0%
Education	1,695	2,082	23%	0	0.0%	0	0.0%
Energy	2,649	2,440	-8%	6	0.2%	10	0.4%
HUD	2,878	3,978	38%	0	0.0%	0	0.0%
Interior	4,966	4,219	-15%	0	0.0%	0	0.0%
Justice	235,090	56,865	-76%	1,098	0.5%	580	1.0%
Labor	22,505	21,860	-3%	0	0.0%	0	0.0%
State	3,070	4,963	62%	349	11.4%	762	15.4%
Transportation	19,280	10,905	-43%	28	0.1%	3	0.0%
Treasury	1,597	64,570	3943%	3	0.2%	17	0.0%
CIA	4,490	3,336	-26%	1,771	39.4%	845	25.3%
CPSC	13,157	6,397	-51%	0	0.0%	0	0.0%
EEOC	16,060	17,485	9%	0	0.0%	0	0.0%
EPA	14,837	13,352	-10%	0	0.0%	3	0.0%
Archives	9,311	5,219	-44%	80	0.9%	24	0.5%
NASA	1,652	1,567	-5%	1	0.1%	0	0.0%
NLRB	5,418	5,295	-2%	0	0.0%	0	0.0%
SEC	2,854	3,830	34%	0	0.0%	0	0.0%
SBA	3,088	1,927	-38%	0	0.0%	0	0.0%
Total	602,605	522,817	-13%	4,597	0.8%	3,410	0.7%

Exemption 1 covers information "specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy..." DHS cited the national security exemption only 19 times in withholding requested information. The department cited non-security exemptions 61,567 times.

Table 4: Exemption 2, Internal Personnel Rules & Practices

Agency	Total Requests Processed			Exemption 2			
	2000	2004	Change	2000	Percent of Total	2004	Percent of Total
Agriculture	139,503	61,209	-56%	41	0.0%	198	0.3%
Commerce	2,026	2,035	0%	8	0.4%	21	1.0%
Defense	96,479	77,256	-20%	1,196	1.2%	1,944	2.5%
DHS	—	152,027	—	—	—	23,162	15.2%
Education	1,695	2,082	23%	5	0.3%	133	6.4%
Energy	2,649	2,440	-8%	2	0.1%	30	1.2%
HUD	2,878	3,978	38%	14	0.5%	25	0.6%
Interior	4,966	4,219	-15%	23	0.5%	46	1.1%
Justice	235,090	56,865	-76%	7,067	3.0%	3,577	6.3%
Labor	22,505	21,860	-3%	517	2.3%	403	1.8%
State	3,070	4,963	62%	23	0.7%	138	2.8%
Transportation	19,280	10,905	-43%	33	0.2%	85	0.8%
Treasury	1,597	64,570	3943%	11	0.7%	57	0.1%
CIA	4,490	3,336	-26%	8	0.2%	101	3.0%
CPSC	13,157	6,397	-51%	0	0.0%	0	0.0%
EEOC	16,060	17,485	9%	43	0.3%	17	0.1%
EPA	14,837	13,352	-10%	6	0.0%	44	0.3%
Archives	9,311	5,219	-44%	6	0.1%	6	0.1%
NASA	1,652	1,567	-5%	12	0.7%	29	1.9%
NLRB	5,418	5,295	-2%	71	1.3%	72	1.4%
SEC	2,854	3,830	34%	94	3.3%	29	0.8%
SBA	3,088	1,927	-38%	5	0.2%	3	0.2%
Total	602,605	522,817	-13%	9,185	1.5%	30,120	5.8%

Exemption 2 covers information "related solely to the internal personnel rules and practices of an agency." Both Homeland Security and Justice cited this exemption more than a third of the time in denying requested information in 2004.

Table 5: Exemption 4, Trade Secrets/Commercial Financial Info.

Agency	Total Requests Processed			Exemption 4			
	2000	2004	Change	2000	Percent of Total	2004	Percent of Total
Agriculture	139,503	61,209	-56%	314	0.2%	364	0.6%
Commerce	2,026	2,035	0%	80	3.9%	111	5.5%
Defense	96,479	77,256	-20%	1,075	1.1%	1,268	1.6%
DHS	—	152,027	—	—	—	285	0.2%
Education	1,695	2,082	23%	69	4.1%	351	16.9%
Energy	2,649	2,440	-8%	86	3.2%	75	3.1%
HUD	2,878	3,978	38%	135	4.7%	164	4.1%
Interior	4,966	4,219	-15%	149	3.0%	122	2.9%
Justice	235,090	56,865	-76%	405	0.2%	227	0.4%
Labor	22,505	21,860	-3%	2,055	9.1%	4,503	20.6%
State	3,070	4,963	62%	30	1.0%	126	2.5%
Transportation	19,280	10,905	-43%	232	1.2%	230	2.1%
Treasury	1,597	64,570	3943%	60	3.8%	354	0.5%
CIA	4,490	3,336	-26%	6	0.1%	22	0.7%
CPSC	13,157	6,397	-51%	414	3.1%	123	1.9%
EEOC	16,060	17,485	9%	21	0.1%	26	0.1%
EPA	14,837	13,352	-10%	381	2.6%	323	2.4%
Archives	9,311	5,219	-44%	5	0.1%	2	0.0%
NASA	1,652	1,567	-5%	452	27.4%	267	17.0%
NLRB	5,418	5,295	-2%	21	0.4%	24	0.5%
SEC	2,854	3,830	34%	142	5.0%	67	1.7%
SBA	3,088	1,927	-38%	132	4.3%	113	5.9%
Total	602,605	522,817	-13%	6,264	1.0%	9,147	1.7%

Exemption 4 protects "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

Table 6: Exemption 5, Inter/Intra-agency memos or letters

Agency	Total Requests Processed			Exemption 5			
	2000	2004	Change	2000	Percent of Total	2004	Percent of Total
Agriculture	139,503	61,209	-56%	273	0.2%	363	0.6%
Commerce	2,026	2,035	0%	100	4.9%	131	6.4%
Defense	96,479	77,256	-20%	1,933	2.0%	1,411	1.8%
DHS	—	152,027	—	—	—	29,233	19.2%
Education	1,695	2,082	23%	47	2.8%	55	2.6%
Energy	2,649	2,440	-8%	96	3.6%	57	2.3%
HUD	2,878	3,978	38%	179	6.2%	93	2.3%
Interior	4,966	4,219	-15%	299	6.0%	318	7.5%
Justice	235,090	56,865	-76%	13,625	5.8%	1,718	3.0%
Labor	22,505	21,860	-3%	5,083	22.6%	5,049	23.1%
State	3,070	4,963	62%	111	3.6%	377	7.6%
Transportation	19,280	10,905	-43%	495	2.6%	504	4.6%
Treasury	1,597	64,570	3943%	79	4.9%	203	0.3%
CIA	4,490	3,336	-26%	38	0.8%	65	1.9%
CPSC	13,157	6,397	-51%	186	1.4%	175	2.7%
EEOC	16,060	17,485	9%	9,501	59.2%	12,054	68.9%
EPA	14,837	13,352	-10%	288	1.9%	394	3.0%
Archives	9,311	5,219	-44%	5	0.1%	14	0.3%
NASA	1,652	1,567	-5%	22	1.3%	29	1.9%
NLRB	5,418	5,295	-2%	266	4.9%	292	5.5%
SEC	2,854	3,830	34%	107	3.7%	56	1.5%
SBA	3,088	1,927	-38%	121	3.9%	73	3.8%
Total	602,605	522,817	-13%	32,854	5.5%	52,664	10.1%

Exemption 5 covers information in "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." The overall totals reflect a 98 percent increase in the relative use of this exemption to withhold. DHS cited this exemption in 40 percent of its full and partial denials.

Table 7: Exemption 6, Privacy

Agency	Total Requests Processed			Exemption 6			
	2000	2004	Change	2000	Percent of Total	2004	Percent of Total
Agriculture	139,503	61,209	-56%	1,501	1.1%	1,790	2.9%
Commerce	2,026	2,035	0%	165	8.1%	154	7.6%
Defense	96,479	77,256	-20%	7,265	7.5%	8,990	11.6%
DHS	—	152,027	—	—	—	38,439	25.3%
Education	1,695	2,082	23%	185	10.9%	252	12.1%
Energy	2,649	2,440	-8%	120	4.5%	112	4.6%
HUD	2,878	3,978	38%	211	7.3%	238	6.0%
Interior	4,966	4,219	-15%	419	8.4%	478	11.3%
Justice	235,090	56,865	-76%	45,383	19.3%	2,791	4.9%
Labor	22,505	21,860	-3%	2,729	12.1%	2,062	9.4%
State	3,070	4,963	62%	196	6.4%	624	12.6%
Transportation	19,280	10,905	-43%	1,193	6.2%	1,407	12.9%
Treasury	1,597	64,570	3943%	62	3.9%	354	0.5%
CIA	4,490	3,336	-26%	95	2.1%	170	5.1%
CPSC	13,157	6,397	-51%	8	0.1%	30	0.5%
EEOC	16,060	17,485	9%	458	2.9%	1,406	8.0%
EPA	14,837	13,352	-10%	93	0.6%	210	1.6%
Archives	9,311	5,219	-44%	98	1.1%	56	1.1%
NASA	1,652	1,567	-5%	34	2.1%	42	2.7%
NLRB	5,418	5,295	-2%	97	1.8%	294	5.6%
SEC	2,854	3,830	34%	157	5.5%	53	1.4%
SBA	3,088	1,927	-38%	103	3.3%	74	3.8%
Total	602,605	522,817	-13%	60,572	10.1%	60,026	11.5%

Exemption 6 covers "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

Table 8: Exemption 7, Law Enforcement

Agency	Total Requests Processed			Exemption 7, Total Use			
	2000	2004	Change	2000	Percent of Total	2004	Percent of Total
Agriculture	139,503	61,209	-56%	441	0.3%	775	1%
Commerce	2,026	2,035	0%	42	2%	0	0%
Defense	96,479	77,256	-20%	4,750	5%	281	0%
DHS	—	152,027	—	—	—	46,543	31%
Education	1,695	2,082	23%	166	10%	14	1%
Energy	2,649	2,440	-8%	42	2%	11	0%
HUD	2,878	3,978	38%	79	3%	4	0%
Interior	4,966	4,219	-15%	134	3%	29	1%
Justice	235,090	56,865	-76%	62,144	26%	13,433	24%
Labor	22,505	21,860	-3%	14,578	65%	13,587	62%
State	3,070	4,963	62%	98	3%	37	1%
Transportation	19,280	10,905	-43%	856	4%	102	1%
Treasury	1,597	64,570	3943%	103	6%	115	0%
CIA	4,490	3,336	-26%	45	1%	50	1%
CPSC	13,157	6,397	-51%	170	1%	7	0%
EEOC	16,060	17,485	9%	2,298	14%	119	1%
EPA	14,837	13,352	-10%	280	2%	33	0%
Archives	9,311	5,219	-44%	67	1%	12	0%
NASA	1,652	1,567	-5%	20	1%	41*	3%
NLRB	5,418	5,295	-2%	942*	17%	268	5%
SEC	2,854	3,830	34%	400	14%	0	0%
SBA	3,088	1,927	-38%	17	1%	4	0%
Total	602,605	522,817	-13%	87,672	15%	75,425	14%

Although there is an overall decrease in the relative use of this exemption, there were significant shifts within the subcategories. (See Table 9.)

Table 9: Exemption 7, Law Enforcement

Agency	7(a) Interferes with Law Enforcement				7(b) Fair Trial		7(c) Privacy				7(d) Confidential Sources		7(e) Techniques and Procedures				7(f) Life/Safety	
	2000	% of Total	2004	% of Total	2000	2004	2000	% of Total	2004	% of Total	2000	2004	2000	% of Total	2004	% of Total	2000	2004
Agriculture	129	0.1%	173	0.3%	3	750	224	0.2%	298	0.5%	64	24	11	0.0%	23	0.0%	10	1
Commerce	7	0.3%	11	0.5%	1	0	28	1.4%	17	0.8%	2	0	4	0.2%	4	0.2%	0	0
Defense	229	0.2%	458	0.6%	20	14	3,638	3.8%	4,738	6.1%	583	245	248	0.3%	107	0.1%	32	22
DHS	—	—	4,828	3.2%	—	42	—	—	31,178	20.5%	—	982	—	—	9,415	6.2%	—	98
Education	49	2.9%	66	3.2%	6	11	100	5.9%	181	8.7%	5	3	6	0.4%	5	0.2%	0	0
Energy	12	0.5%	20	0.8%	0	8	25	0.9%	9	0.4%	4	2	1	0.0%	2	0.1%	0	1
HUD	39	1.4%	22	0.6%	4	1	29	1.0%	29	0.7%	3	3	3	0.1%	4	0.1%	1	0
Interior	31	0.6%	82	1.9%	6	5	83	1.7%	256	6.1%	0	13	13	0.3%	14	0.3%	1	11
Justice	10,173	4.3%	587	1.0%	76	24	37,122	15.8%	7,432	13.1%	6,378	2,519	6,314	2.7%	1,021	1.8%	2,081	1,850
Labor	2,670	11.9%	1,833	8.4%	0	9	5,885	26.1%	7,123	32.6%	5,419	3,857	601	2.7%	764	3.5%	3	1
State	15	0.5%	39	0.8%	1	2	35	1.1%	121	2.4%	16	27	20	0.7%	50	1.0%	11	8
Transport.	210	1.1%	170	1.6%	15	11	517	2.7%	481	4.4%	105	90	8	0.0%	8	0.1%	1	1
Treasury	7	0.4%	16	0.0%	0	3	77	4.8%	1,140	1.8%	3	99	14	0.9%	1,225	1.9%	2	13
CIA	2	0.0%	1	0.0%	0	0	13	0.3%	57	1.7%	10	46	20	0.4%	58	1.7%	0	4
CPSC	61	0.5%	65	1.0%	0	0	0	0.0%	-	0.0%	1	7	108	0.8%	18	0.3%	0	0
EEOC	899	5.6%	716	4.1%	0	0	1,295	8.1%	1,777	10.2%	90	119	14	0.1%	27	0.2%	0	0
EPA	180	1.2%	161	1.2%	1	3	57	0.4%	82	0.6%	26	28	14	0.1%	25	0.2%	2	2
NARA	10	0.1%	3	0.1%	0	0	23	0.2%	16	0.3%	6	12	16	0.2%	2	0.0%	12	0
NASA	5	0.3%	41*	—	0	—	13	0.8%	—	—	1	—	1	0.1%	—	—	0	—
NLRB	362	6.7%	350	6.6%	0	0	296	5.5%	345	6.5%	257	268	27	0.5%	56	1.1%	0	0
SEC	257	9.0%	496	13%	0	0	105	3.7%	29	0.8%	0	0	38	1.3%	6	0.2%	0	0
SBA	4	0.1%	1	0.1%	3	0	7	0.2%	5	0.3%	1	4	2	0.1%	0	0.0%	0	0
Total	15,351	2.5%	10,098	1.9%	136	883	49,572	8.2%	55,314	10.6%	12,974	8,348	7,483	1.2%	12,834	2.5%	2,156	2,012

Exemption 7 protects "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information **(A)** could reasonably be expected to interfere with enforcement proceedings, **(B)** would deprive a person of a right to a fair trial or an impartial adjudication, **(C)** could reasonably be expected to constitute an unwarranted invasion of personal privacy, **(D)** could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, **(E)** would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or **(F)** could reasonably be expected to endanger the life or physical safety of any individual."

*Although NASA reported Exemption 7 use by subcategory in 2000, NASA reported all Exemption 7 citations in a single category in 2004, shown here as 7(a).

Table 10: The Costs of FOIA

Agency	Total Requests Processed			Employees		Days Per Request		Total Processing Cost		Cost Per Request	
	2000	2004	Change	2000	2004	2000	2004	2000	2004	2000	2004
Agriculture	139,503	61,209	-56%	533.00	585.33	1.0	2.5	8,165,912	11,590,217	58.54	189.35
Commerce	2,026	2,035	0%	27.00	17.75	3.5	2.3	2,279,662	1,769,635	1,125.20	869.60
Defense	96,479	77,256	-20%	890.21	720.96	2.4	2.4	36,526,671	47,211,794	378.60	611.11
DHS	—	152,027	—	—	468.50	—	0.8	—	21,148,318	—	139.11
Education	1,695	2,082	23%	9.10	10.70	1.4	1.3	454,379	809,158	268.07	388.64
Energy	2,649	2,440	-8%	58.50	71.00	5.8	7.6	2,442,974	3,486,504	922.23	1,428.90
HUD	2,878	3,978	38%	40.00	41.00	3.6	2.7	2,191,000	2,017,600	761.29	507.19
Interior	4,966	4,219	-15%	131.00	114.00	6.9	7.1	5,190,926	7,610,439	1,045.29	1,803.85
Justice	235,090	56,865	-76%	1,069.10	562.52	1.2	2.6	69,269,121	66,926,196	294.65	1,176.93
Labor	22,505	21,860	-3%	229.00	190.84	2.7	2.3	5,700,000	14,805,397	253.28	677.28
State	3,070	4,963	62%	136.00	182.00	11.6	9.6	11,692,372	12,779,845	3,808.59	2,575.02
DOT	19,280	10,905	-43%	110.70	56.53	1.5	1.4	7,942,682	7,719,691	411.96	707.90
Treasury	1,597	64,570	3943%	15.58	145.89	2.5	0.6	328,662	13,985,612	205.80	216.60
CIA	4,490	3,336	-26%	77.80	75.70	4.5	5.9	9,800,000	8,880,000	2,182.63	2,661.87
CPSC	13,157	6,397	-51%	169.00	15.20	3.4	0.6	1,407,044	1,629,309	106.94	254.70
EEOC	16,060	17,485	9%	43.79	51.95	0.7	0.8	1,674,183	2,189,259	104.25	125.21
EPA	14,837	13,352	-10%	630.00	175.46	11.1	3.4	7,628,076	11,505,500	514.13	861.71
Archives	9,311	5,219	-44%	32.50	26.00	0.9	1.3	1,339,336	1,425,774	143.84	273.19
NASA	1,652	1,567	-5%	18.00	19.65	2.8	3.3	672,237	1,659,840	406.92	1,059.25
NLRB	5,418	5,295	-2%	10.50	8.88	0.5	0.4	443,340	753,008	81.83	142.21
SEC	2,854	3,830	34%	26.20	63.50	2.4	4.3	3,058,293	2,565,389	1,071.58	669.81
SBA	3,088	1,927	-38%	31.20	12.55	2.6	1.7	338,812	755,550	109.72	392.09
Total	602,605	522,817	-13%	4,288.18	3,615.91	1.9	1.8	178,545,681	243,224,035	296.29	465.22

*Days Per Request is calculated by multiplying the number of employees (reported by government agencies as Work Years) by the number of annual working days (261), then dividing by the number of requests processed.

Table 11: Exemptions 3 (Statutory), 8 (Finance) and 9 (Wells)

Agency	Total Requests Processed			Exemption 3		Exemption 8		Exemption 9	
	2000	2004	Change	2000	2004	2000	2004	2000	2004
Agriculture	139,503	61,209	-56%	58	73	0	0	0	0
Commerce	2,026	2,035	0%	77	120		0		0
Defense	96,479	77,256	-20%	1,342	1,627	0	3	0	180
DHS	—	152,027	—	—	453	—	0	—	0
Education	1,695	2,082	23%	3	2	0	0	0	0
Energy	2,649	2,440	-8%	41	22	0	0	0	0
HUD	2,878	3,978	38%	27	22	4	0		0
Interior	4,966	4,219	-15%	16	38	0	0	7	2
Justice	235,090	56,865	-76%	751	1,073	1	0	0	0
Labor	22,505	21,860	-3%	592	30	0	0	0	0
State	3,070	4,963	62%	107	485	0	0	0	0
DOT	19,280	10,905	-43%	145	74		0		0
Treasury	1,597	64,570	3943%	41	263	0	69	0	0
CIA	4,490	3,336	-26%	1,828	1,185	0	0	0	0
CPSC	13,157	6,397	-51%	691	362	0	0	0	0
EEOC	16,060	17,485	9%	1,367	2,182	0	0	0	0
EPA	14,837	13,352	-10%	15	26	0	1	1	4
NARA	9,311	5,219	-44%	39	28	0	2	0	0
Archives	1,652	1,567	-5%	15	21	0	0	0	0
NLRB	5,418	5,295	-2%	0	0	0	0	0	0
SEC	2,854	3,830	34%	1	9	54	33	0	0
SBA	3,088	1,927	-38%	4	1	0	0	0	0
Total	602,605	522,817	-13%	7,156	8,096	59	108	8	186

Exemption 3 covers information "specifically exempted from disclosure by statute, provided that such statute **(A)** requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or **(B)** establishes particular criteria for withholding or refers to particular types of matters to be withheld."

Exemption 8 covers information "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions."

Exemption 9 covers "geological and geophysical information and data, including maps, concerning wells."

Attachment 1: The Ashcroft Memo

Memorandum for Heads of all Federal Departments and Agencies
From: John Ashcroft, Attorney General
Subject: The Freedom of Information Act

As you know, the Department of Justice and this Administration are committed to full compliance with the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (2000). It is only through a well-informed citizenry that the leaders of our nation remain accountable to the governed and the American people can be assured that neither fraud nor government waste is concealed.

The Department of Justice and this Administration are equally committed to protecting other fundamental values that are held by our society. Among them are safeguarding our national security, enhancing the effectiveness of our law enforcement agencies, protecting sensitive business information and, not least, preserving personal privacy.

Our citizens have a strong interest as well in a government that is fully functional and efficient. Congress and the courts have long recognized that certain legal privileges ensure candid and complete agency deliberations without fear that they will be made public. Other privileges ensure that lawyers' deliberations and communications are kept private. No leader can operate effectively without confidential advice and counsel. Exemption 5 of the FOIA, 5 U.S.C. § 552(b)(5), incorporates these privileges and the sound policies underlying them.

I encourage your agency to carefully consider the protection of all such values and interests when making disclosure determinations under the FOIA. Any discretionary decision by your agency to disclose information protected under the FOIA should be made only after full and deliberate consideration of the institutional, commercial, and personal privacy interests that could be implicated by disclosure of the information.

In making these decisions, you should consult with the Department of Justice's Office of Information and Privacy when significant FOIA issues arise, as well as with our Civil Division on FOIA litigation matters. When you carefully consider FOIA requests and decide to withhold records, in whole or in part, you can be assured that the Department of Justice will defend your decisions unless they lack a sound legal basis or present an unwarranted risk of adverse impact on the ability of other agencies to protect other important records.

This memorandum supersedes the Department of Justice's FOIA Memorandum of October 4, 1993, and it likewise creates no substantive or procedural right enforceable at law.

(Posted Oct. 15, 2001.)

Attachment 2: The Andrew Card Memo

White House Chief of Staff Andrew Card issued this memorandum on Mar. 21, 2002. It forwards a memorandum from the Information Security Oversight Office and the Office of Information Privacy.

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: ANDREW H. CARD, JR.

Assistant to the President and Chief of Staff

SUBJECT: Action to Safeguard Information Regarding Weapons of Mass
Destruction and Other Sensitive Documents Related to Homeland
Security

As noted in many discussions during the past several months, you and your department or agency have an obligation to safeguard Government records regarding weapons of mass destruction. Weapons of mass destruction include chemical, biological, radiological, and nuclear weapons. Government information, regardless of its age, that could reasonably be expected to assist in the development or use of weapons of mass destruction, including information about the current locations of stockpiles of nuclear materials that could be exploited for use in such weapons, should not be disclosed inappropriately.

I asked the Acting Director of the Information Security Oversight Office and the Co-Directors of the Justice Department's Office of Information and Privacy to prepare guidance for reviewing Government information in your department or agency regarding weapons of mass destruction, as well as other information that could be misused to harm the security of our nation and the safety of our people. Their guidance is attached, and it should be distributed to appropriate officials within your department or agency, together with this memorandum, to assist in your undertaking an immediate reexamination of current measures for identifying and safeguarding all such information at your department or agency.

All departments and agencies should review their records management procedures and, where appropriate, their holdings of documents to ensure that they are acting in accordance with the attached guidance. They should report the completion, or status, of their review to this office through the Office of Homeland Security no later than 90 days from the date of this memorandum.

If agency officials need assistance in determining the classification status of records related to the development or use of weapons of mass destruction, they should contact the Information Security Oversight Office, at 202-219-5250. For assistance in determining the classification of nuclear and radiological weapons classified under the Atomic Energy Act, they should contact the Department of Energy's Office of Security, at 202-586-3345. If they need assistance in applying exemptions of the Freedom of Information Act (FOIA) to sensitive but unclassified information, they should contact the Justice Department's Office of Information and Privacy (OIP), at 202-514-3642, or consult OIP's FOIA Web site at www.usdoj.gov/04foia/index/html.

* * * * *

MEMORANDUM FOR DEPARTMENTS AND AGENCIES

FROM: LAURA L.S. KIMBERLY
Acting Director
Information Security Oversight Office

RICHARD L. HUFF
DANIEL J. METCALFE
Co-Directors
Office of Information and Privacy
Department of Justice

SUBJECT: Safeguarding Information Regarding Weapons of Mass Destruction
and Other Sensitive Records Related to Homeland Security

At the request of the Assistant to the President and Chief of Staff, we have prepared this memorandum to provide guidance for reviewing Government information regarding weapons of mass destruction, as well as other information that could be misused to harm the security of our nation or threaten public safety. It is appropriate that all federal departments and agencies consider the need to safeguard such information on an ongoing basis and also upon receipt of any request for records containing such information that is made under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (2000). Consistent with existing law and policy, the appropriate steps for safeguarding such information will vary according to the sensitivity of the information involved and whether the information currently is classified.

I. Classified Information

- If the information currently is classified and is equal to or less than 25 years old, it should remain classified in accordance with Executive Order 12958, Sec. 1.5 and Sec. 1.6. Although classified information generally must be declassified within 10 years of its original classification, classification or reclassification may be extended for up to 25 years in the case of information that could reasonably be expected to "reveal information that would assist in the development or use of weapons of mass destruction." Id., Sec. 1.6(d)(2).

- If the information is more than 25 years old and is still classified, it should remain classified in accordance with Executive Order 12958, Sec. 3.4(b)(2), which authorizes agency heads to exempt from automatic declassification any "specific information, the release of which should be expected to . . . reveal information that would assist in the development or use of weapons of mass destruction." (Agencies should note that the automatic declassification date for any classified information over 25 years old that involves the equities of more than one agency was extended until April 2003 by Executive Order 13142. Agencies have until then to exempt such information from automatic declassification under any one of the pertinent exemption categories in Executive Order 12958, Sec. 3.4(b).)

In this regard, agencies should note that Department of Defense (DOD) information that involves the equities of more than one DOD component is considered to have multi-agency equities. Information maintained by the Defense Technical Information Center (DTIC) or the National Archives and Records Administration (NARA) also is deemed to have multi-agency equities, i.e., those pertaining to DTIC or NARA and those pertaining to the component agency or agencies that created the information.

II. Previously Unclassified or Declassified Information

- If the information, regardless of age, never was classified and never was disclosed to the public under proper authority, but it could reasonably be expected to assist in the development or use of weapons of mass destruction, it should be classified in accordance with Executive Order 12958, Part 1, subject to the provisions of Sec. 1.8(d) if the information has been the subject of an access demand (or Sec 6.1(a) if the information concerns nuclear or radiological weapons).

- If such sensitive information, regardless of age, was classified and subsequently was declassified, but it never was disclosed to the public under proper authority, it should be reclassified in accordance with Executive Order 12958, Part 1, subject to the provisions of Sec. 1.8(d) if the information has been the subject of an access demand (or Sec 6.1(a) if the information concerns nuclear or radiological weapons).

III. Sensitive But Unclassified Information

In addition to information that could reasonably be expected to assist in the development or use of weapons of mass destruction, which should be classified or reclassified as described in Parts I and II above, departments and agencies maintain and control sensitive information related to America's homeland security that might not meet one or more of the standards for classification set forth in Part 1 of Executive Order 12958. The need to protect such sensitive information from inappropriate disclosure should be carefully considered, on a case-by-case basis, together with the benefits that result from the open and efficient exchange of scientific, technical, and like information.

All departments and agencies should ensure that in taking necessary and appropriate actions to safeguard sensitive but unclassified information related to America's homeland security, they process any Freedom of Information Act request for records containing such information in accordance with the Attorney General's FOIA Memorandum of October 12, 2001, by giving full and careful consideration to all applicable FOIA exemptions. See *FOIA Post*, "[New Attorney General FOIA Memorandum Issued](#)" (posted 10/15/01) (found at www.usdoj.gov/oip/foiapost/2001foiapost19.htm), which discusses and provides electronic links to further guidance on the authority available under Exemption 2 of the FOIA, 5 U.S.C. § 552(b)(2), for the protection of sensitive critical infrastructure information. In the case of information that is voluntarily submitted to the Government from the private sector, such information may readily fall within the protection of Exemption 4 of the FOIA, 5 U.S.C. § 552(b)(4).

As the accompanying memorandum from the Assistant to the President and Chief of Staff indicates, federal departments and agencies should not hesitate to consult with the Office of Information and Privacy, either with general anticipatory questions or on a case-by-case basis as particular matters arise, regarding any FOIA-related homeland security issue. Likewise, they should consult with the Information Security Oversight Office on any matter pertaining to the classification, declassification, or reclassification of information regarding the development or use of weapons of mass destruction, or with the Department of Energy's Office of Security if the information concerns nuclear or radiological weapons.

* * * * *