



U.S. GENERAL SERVICES ADMINISTRATION
Office of Inspector General

September 17, 2010

The Honorable Charles E. Grassley
Ranking Member
Committee on Finance
135 Hart Senate Office Building
United States Senate
Washington, DC 20510

The Honorable Darrell Issa
Ranking Member
Committee on Oversight and Government Reform
2157 Rayburn House Office Building
United States House of Representatives
Washington, DC 20515

Dear Senator Grassley and Representative Issa:

In your letter dated August 23, 2010, you asked me to review the General Services Administration's Freedom of Information Act (FOIA) office to determine whether, and if so, the extent to which political appointees are made aware of information requests and have a role in request reviews or decision-making. To respond to this request, we reviewed documents and interviewed or surveyed relevant individuals. In brief, our findings are as follows:

- About half of the GSA positions responsible for FOIA decision-making are occupied by political appointees.
- Formal participation by political appointees in the GSA FOIA program has not caused a disproportionate amount of untimely initial decisions.
- No one involved in GSA's FOIA process suggested that political appointees not formally connected to the Agency's FOIA program are involved in FOIA decision-making or seek information about FOIA requestors.
- A media-initiated FOIA request for email exchanges between the staffs of three members of Congress and GSA was not processed in accordance with GSA's procedure.

Below we discuss our methodology, background information on FOIA processing at GSA, and the basis for our findings.

METHODOLOGY

We contacted every individual identified by GSA as a participant in its FOIA program, with the exception of those in GSA's two independent offices: the Office of Inspector General and the Civilian Board of Contract Appeals. Twenty-six people were interviewed personally, and fifty-nine received a survey comprised of eight questions that could be completed confidentially and returned via email directly to us, of which thirty-nine responded. We also conducted statistical analyses using data from GSA's enterprise management system for FOIA information, IQ®, and its annual FOIA reports for Fiscal Years (FYs) 2007-2009. The results of these analyses were compared with information obtained during interviews of GSA personnel and the results of our electronic survey. Finally, we conducted follow-up interviews with the Agency's Chief FOIA Officer and several office heads to resolve open issues and confirm investigative findings.

BACKGROUND

The following discusses the GSA FOIA program, including assigned responsibilities and general processing data.

Program Responsibilities - GSA implements the FOIA through a Standard Operating Procedure (SOP). The GSA FOIA Office, which reports to the Executive Secretariat, is responsible for accepting FOIA requests, loading them into IQ®, assigning them to the Regional Administrators (RAs) and Heads of Services and Staff Offices (HSSOs) for disposition, and monitoring compliance with the deadlines set under the SOP. RAs and HSSOs are responsible for administering the Agency's FOIA program in their Regions/SSOs and for the initial decisions to grant or withhold access to records under their jurisdiction. Appeals from their initial decisions are decided by the Agency's Chief FOIA Officer.

Most FOIA requests received in FY 2010 were processed in the Regions - In FY 2010, about 70% of GSA's FOIA requests were handled in the Regions. The remaining 30% were handled within GSA's Central Office.

Since FY 2008, most FOIA requests have been granted in full - About 85% of the FOIA requests received during this period resulted in the Agency providing all of the information sought by the requestors. Eleven percent of the requestors received some of the information they requested, and about four percent of requests were denied in full. Most of the full denials occurred in cases in which the information sought consisted of confidential commercial information received by GSA from vendors and contractors.

The number of FOIA requests received by the Agency has remained steady - During FYs 2008- 2009, GSA received an average of 120-130 FOIA requests per month, and it responded to an average of 120-128 requests per month. Data for the first 11 months of FY 2010 indicate the GSA is receiving about 123 requests per month and responding to about 115 requests per month.

In FY 2009, 49% of all FOIA requests were processed in 20 workdays or less -

Distribution of response times for FOIA requests, FY 2009

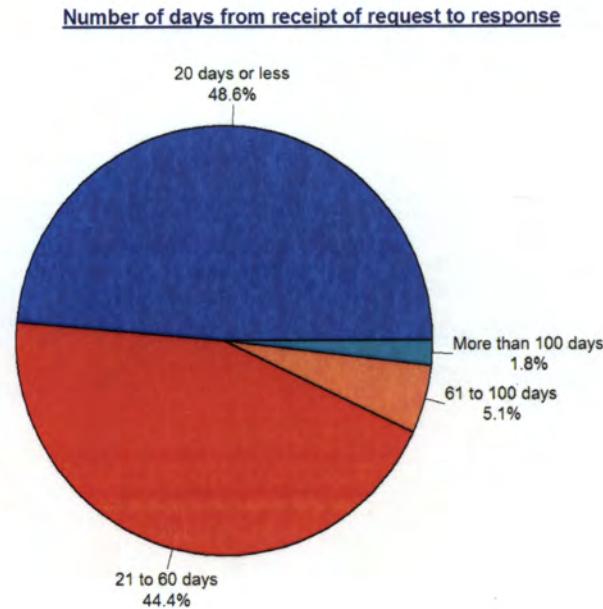


Figure 1

As illustrated in Figure 1 above, just under half of the FOIA requests handled by GSA in FY 2009 (49%) were processed within the 20-day timeframe set by FOIA. About 45% of requests were processed within 21-60 days, and 5% were processed within 61-100 days. Slightly fewer than 2% required more than 100 days to process.

FINDINGS

The basis for each finding is discussed below.

Finding 1: About half of the GSA positions responsible for FOIA decision-making are occupied by political appointees.

Since GSA policy places the initial decision-making for FOIA requests at the highest level within each service and regional office, and adjudication of FOIA appeals at an even higher level within the Agency, about half of the positions that make FOIA decisions are occupied by political appointees, as follows.

A political appointee has overall responsibility for the administration of the FOIA program, and he adjudicates all appeals from denials of requests for information. Specifically, Michael Robertson, the Chief FOIA Officer, who is responsible for administering the FOIA Program within GSA and for deciding all appeals, is a political

appointee. He also serves as the GSA's Chief of Staff, a position he has held since May 2010.

Political appointees also serve in about half of the positions that make initial FOIA decisions. GSA is divided into 11 Regions, each of which is headed by an RA. As discussed previously, the RA is responsible for administering FOIA within the region and for making the initial release determination. Presently, seven of the eleven RAs are political appointees. Of the 15 GSA Services and Staff Offices, where the office head is responsible for FOIA in that organization, currently six office heads are political appointees.

Finding 2: Formal participation by political appointees in the Agency's FOIA program has not caused a disproportionate amount of untimely initial decisions.

Based upon the analysis of overdue FOIA responses, as set forth below, we found no indication that political appointees cause more delay in processing FOIA requests than career employees.

To determine whether political appointees who make initial FOIA decisions do so in a timely manner, we undertook the following statistical analysis. We calculated the total number of FOIA requests received by GSA during the first eleven months of FY 2010. We then determined the percentage of requests assigned to each Region and component organization and their share of total requests that were "overdue," i.e., not acted upon within the required 20 days set by FOIA.

Distribution of FOIA Requests and Overdue Responses, by Region, FY 2010 thru 9/1/2010

During FY 2010, GSA regions and offices received a total of 1,354 FOIA requests—of these, 172 had a response that exceeded the 20 day limit. Relative to the FOIA requests received, Central Office, Boston, and San Francisco disproportionately accounted for the overdue responses.

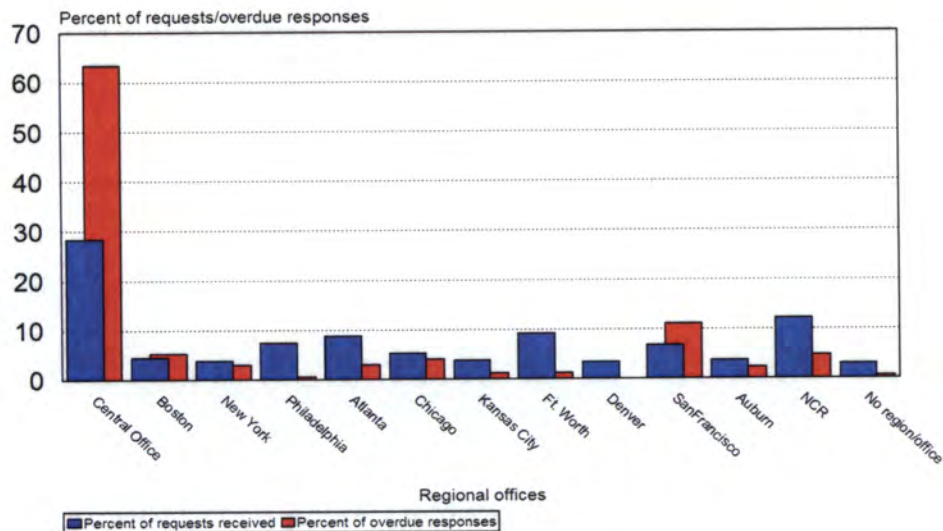
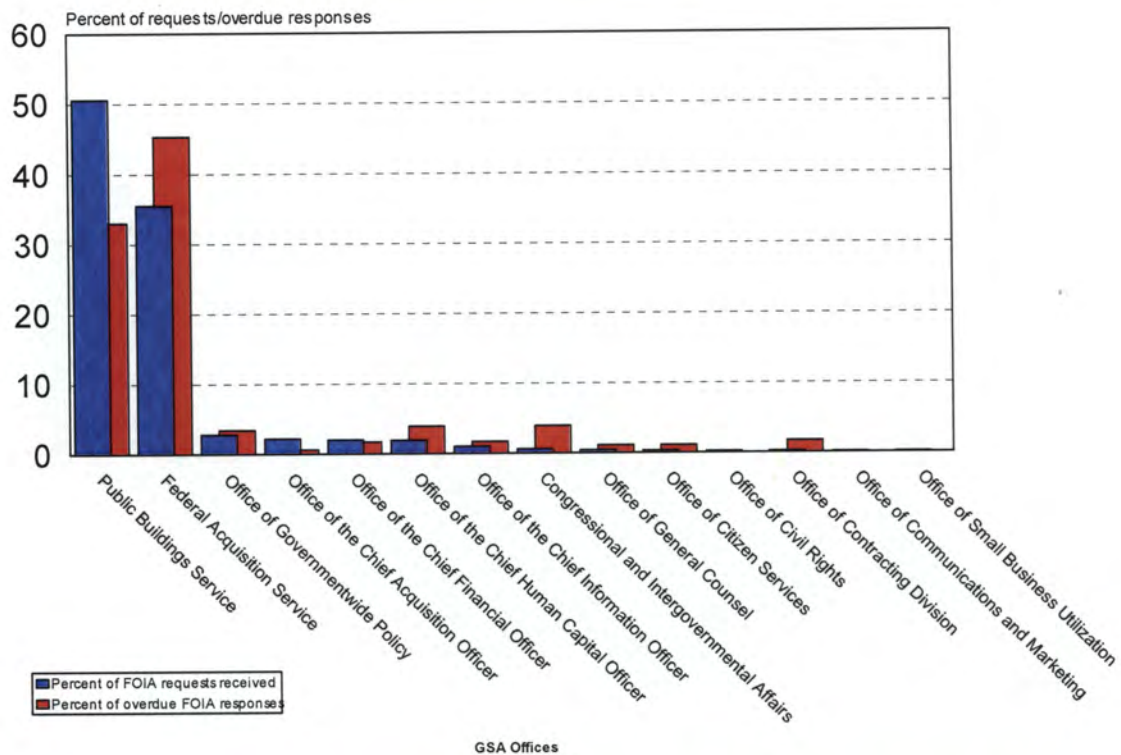


Figure 2

We found that two of the eleven Regions had percentages of overdue FOIA requests that exceeded their share of the total FOIA caseload - the New England Region (Boston) and the Pacific Rim Region (San Francisco). Currently, both of these Regions are headed by career federal employees serving as Acting Regional Administrators. None of the seven Regions currently headed by political appointees (Philadelphia, Atlanta, Kansas City, Fort Worth, Denver, Auburn and National Capital Region [Washington, DC]) had a percentage of overdue requests that exceeded their percentage of the total FOIA caseload. These results are illustrated in Figure 2, above.

Similarly, for the Central Office, we found that eight of the 15 staff offices had a percentage of overdue FOIA requests that exceeded their share of the total FOIA caseload; five of these eight are headed by career employees. These results are illustrated by Figure 3, below.

Distribution of FOIA Requests and Overdue Responses, by GSA Office, FY 2010 thru 9/8/2010



Note: The figure excludes the Office of the Chief of Staff and the Executive Secretariat which are not identified as SSO's, and the Civilian Board of Contract Appeals and the Office of Inspector General which are independent SSO's. Together, these four offices account for about 2% of the FOIA requests in FY 2010. In addition, the Office of Communications and Marketing is shown as one office, though it accounts for two SSO's.

Figure 3

As further indicated by Figure 3, the Public Buildings Service (PBS) and Federal Acquisition Service (FAS) together handled more than 85% of the FY 2010 FOIA requests. On average, however, PBS, which is headed by a political appointee, had a smaller share of overdue responses than did FAS, which is headed by a career

employee. More specifically, PBS, which received about half of the FY 2010 FOIA requests, is responsible for 33% of the Agency's overdue responses. FAS, which handled about one-third of the FOIA requests received in FY 2010, is responsible for about 45% of the Agency's overdue responses.

Finding 3: No one involved in GSA's FOIA process suggested that political appointees not formally connected to the Agency's FOIA program are involved in FOIA decision-making or seek information about FOIA requestors.

None of the 26 individuals we interviewed or 39 people who responded to our survey reported any attempt by a political appointee outside the FOIA program to influence a FOIA response. Likewise, none reported any attempt by a political appointee outside the FOIA program to gather information about a FOIA requestor.

Finding 4: A media-initiated FOIA request for email exchanges between the staffs of three Members of Congress and GSA was not processed in accordance with the Agency's SOP.

We found one FOIA request that was not processed in accordance with GSA's procedures.

On March 23, 2010, the Agency received an electronic FOIA request from Cox Television for several years' worth of email exchanges between the GSA and the staffs of U.S. Representatives Nancy Pelosi, Silvestre Reyes, and Zack Space. On March 24, 2010, the FOIA Office assigned the Cox Television request to the Office of Congressional Affairs and set April 21, 2010, as the date upon which a response was due to the requestor.

(b) (6) the then-head of the Office of Congressional Affairs and a career employee, assigned the matter to two career employees within (b) (6) office. One of those career employees, in late April 2010, reviewed documents identified as responsive to the Cox Television request and determined that, with the exception of some items related to security or personal privacy, the materials could be released.

At or about that time, another career employee of the Office of Congressional Affairs notified the Office of the Chief Administrator of the House of Representatives of the existence of the Cox request. This led to a conference among attorneys from the GSA Office of General Counsel, an Assistant House Counsel, and a representative of the GSA Office of Congressional Affairs to discuss whether the House of Representatives or the GSA would determine which documents would be released to Cox Television. An agreement was reached under which GSA would provide its responsive documents to the House for comment. However, GSA retained the authority to determine which records to release or withhold.

In early to mid-June, the career employees in the Office of Congressional Affairs advised (b) (6) that the Chief FOIA Officer, Michael Robertson, should be made

aware of the Cox Television request. (b) (6) accepted their recommendation. However, (b) (6) did not make an initial determination to grant or withhold access to the material sought by Cox Television as contemplated under the Agency SOP.

On or around June 25, 2010, the career employees briefed Mr. Robertson on the Cox Television request, and Mr. Robertson said he would handle the matter himself. Thereafter, Mr. Robertson contacted the Office of White House Counsel. During the ensuing conversation, Mr. Robertson was advised to collect the information responsive to the request and deliver the package to the Office of White House Counsel, which he did.

In early July 2010, Deputy Administrator Susan Brita, a political appointee, attempted to expedite the processing of several overdue FOIA requests, including the Cox Television request. Ms. Brita did so at the request of the Director of the Executive Secretariat, a career employee and Ms. Brita's subordinate, who oversees the FOIA Office. As of September 8, 2010, GSA had not responded to the Cox Television FOIA request, and the GSA's IQ® system had been updated to extend the Agency's due date for another 60 days, *i.e.*, until November 5, 2010.

Please feel free to contact Dave Farley of my staff at 202-219-1062 if you have any questions or there is additional information we can provide.

Sincerely,



Brian D. Miller
Inspector General