

# AIR FORCE AUDIT AGENCY



## FREEDOM OF INFORMATION ACT



# AUDIT REPORT

F2009-0004-FB4000

3 June 2009



## **INTRODUCTION**

The Freedom of Information Act (FOIA) provides any person the right, enforceable in court, to access federal agency records, except for those records (or portions thereof) protected from public disclosure by one of nine exemptions, or one of three special law enforcement record exclusions. The FOIA requires the Air Force provide requested records within 20 working days and post frequently requested records on an Air Force website, referred to as an Electronic Reading Room (ERR). The Air Force received 8,287 FOIA requests for records in Fiscal Year 2008.

## **OBJECTIVES**

The Chief, Warfighting Integration and Chief Information Officer (SAF/XC) requested this audit to determine whether Air Force personnel effectively managed the FOIA program. Specifically, we determined whether FOIA program managers:

- Recorded, tracked, and efficiently processed FOIA requests.
- Provided the public web access to frequently requested records.
- Identified, assessed, and recouped fees for FOIA requests.
- Developed and implemented procedures to minimize FOIA request backlogs.

## **CONCLUSIONS**

The Air Force could more effectively manage the FOIA program. The Air Force increased staffing and developed new software to better manage the program and reduce its backlog of requests. However, improvements were needed in recording and tracking requests for records, processing requests, public web access to records, recovering costs incurred, and plans to minimize request backlogs.

- The FOIA program managers did not properly record or track FOIA requests. As a result, the Air Force overstated the number of requests received and understated response times in the Air Force's

## Executive Summary

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annual FOIA report submission to the DoD for inclusion in their Annual FOIA Report to Congress. (Tab A, page 2)

- The FOIA program managers did not efficiently or properly process FOIA requests. Through more efficient and proper FOIA request processing, the Air Force could reduce response times while also reducing time and resources expended. (Tab A, page 4)
- The Air Force ERR did not include all frequently requested records, and the public could not access all Air Force organization ERRs. As a result, records were not readily available to the public, decreasing Air Force responsiveness and causing Air Force FOIA personnel to expend unnecessary time and resources duplicating work previously accomplished. (Tab B, page 9)
- The FOIA program managers did not accurately assess or collect fees for processing FOIA requests. As a result, the Air Force understated its FOIA program cost and did not recoup appropriate costs. (Tab C, page 13)
- The FOIA program managers did not have sufficient plans in place to minimize FOIA request backlogs. Automated records reviewed showed FOIA program offices had 688 open requests as of July 2008. Of those, 543 (79 percent) were open more than 20 working days and 248 (36 percent) were open more than 6 months. As a result, FOIA requesters have successfully sued the Air Force in federal court over response timeliness. (Tab D, page 17)

### RECOMMENDATIONS

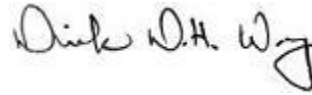
We made 13 recommendations to improve FOIA request recording and processing, public web access, cost recovery, and plans to minimize request backlogs. (Reference the individual Tabs for specific recommendations.)

### MANAGEMENT'S RESPONSE

Management concurred with the audit results and recommendations, and management actions taken and planned should correct the problems identified. Therefore, this report contains no issues requiring elevation for resolution.



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# **Executive Summary**

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# Tab A

## Recording, Tracking, and Processing

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### BACKGROUND

The Air Force Freedom of Information and Privacy Act Office (SAF/XCPPF) implements and oversees the Air Force FOIA program. This office also compiles and validates the Air Force's annual FOIA report submission to the DoD Annual FOIA Report as required by Section 552 of title 5 U.S.C.<sup>1</sup> The DoD report is submitted to Congress and the U.S. Attorney General. Each Air Force major command (MAJCOM), installation, and many specialized organizations have FOIA offices responsible to collect, redact if necessary, and provide records to requesting entities. The primary directive guidance for the FOIA program is the Air Force supplement to DoD Regulation 5400.07, *DoD Freedom of Information Act Program*, 24 June 2002 (DoD Regulation 5400.07/Air Force Supplement).

Air Force attorneys must review FOIA responses for legal sufficiency and provide written legal opinions when requested records (or portions of records) are withheld. For initial denial authorities, Air Force attorneys must ensure factual and legal issues appellants raise are considered before sending the FOIA appeal files to the Secretary of the Air Force's designee for final action.

When a request is for a record from a non-U.S. Government source, or containing information clearly identified as having been provided by a non-U.S. Government source, the FOIA program manager must notify the source of the intent to release the record. The program manager must also provide them reasonable time to present any objections concerning the release, unless there clearly is no valid basis for objecting.

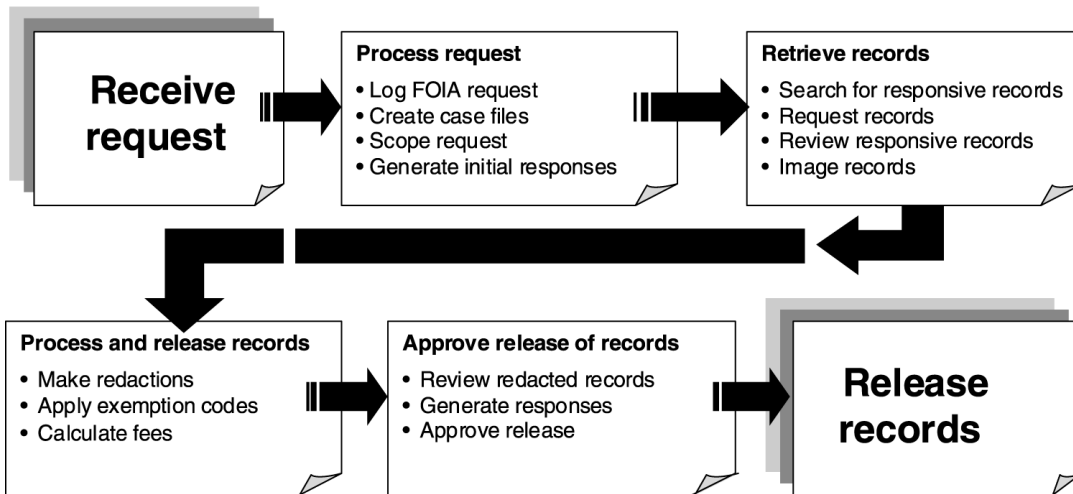
The Air Force FOIA Case Tracking System (AF FACTS) is an automated application used to store and track Air Force FOIA record request information. The AF FACTS tracks request dates, billings, request denial information, and suspense dates. It also generates Air Force-level reports, MAJCOM-level reports, installation-level reports, and suspense listings.

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<sup>1</sup> Section 552 of title 5 U.S.C. specifies the data to include in the annual FOIA report (for example, the number of requests for records pending and the number of days pending).

## Tab A Recording, Tracking, and Processing

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### AUDIT RESULTS 1 – RECORDING AND TRACKING

**Condition.** The FOIA program managers did not properly record or track FOIA requests. Of the 13 FOIA offices visited:

- Data in AF FACTS for 8 (62 percent) offices did not match supporting documentation for 69 (20 percent) of 338 FOIA requests reviewed. For example, at Nellis AFB the received and response dates in AF FACTS for 9 (41 percent) of 22 requests did not match supporting documentation.
- Program managers at 4 (31 percent) offices closed 67 cases when they transferred them to another FOIA office, then reopened 39 as new case numbers. This action incorrectly restarted the response time and understated the number of days to process requests because the original case number was closed without providing the requester any records. This action also overstated the number of requests received because each new case number counted as another FOIA request.

**Cause.** This condition existed because the Air Force did not have an effective tracking system and procedures to verify data accuracy.

- Tracking System. The AF FACTS tracking system did not have the capability to track FOIA requests from original receipt to final response. Additionally, AF FACTS required program managers assign new case numbers when transferring FOIA requests within a MAJCOM. Also, AF FACTS did not allow FOIA personnel to scan and store documents related to FOIA requests.



Data Accuracy. The FOIA program managers attributed inaccurate data in AF FACTS to input errors. However, there were no procedures to ensure data was accurately entered

**Impact.** As a result, the Air Force overstated the number of FOIA requests received and understated response times in its annual FOIA report submitted to the DoD for inclusion in their Annual FOIA Report to Congress.

**Management Corrective Action.** In March 2009, SAF/XC replaced AF FACTS with a new FOIA tracking system, eFOIA. The new system has the capability to track FOIA requests from original receipt to final response and allows FOIA personnel to scan and store FOIA request documents. In addition, eFOIA allows program managers to transfer FOIA requests within a MAJCOM without assigning a new case number. Also in March 2009, SAF/XC provided eFOIA training to all FOIA program managers. Therefore, no recommendations were made to address these issues.

**Recommendation A.1.** The SAF/XC should revise DoD Regulation 5400.07/Air Force Supplement to require:

- a. Installation FOIA program managers confirm all data entered in eFOIA is accurate by reconciling the data to source documents.
- b. MAJCOM FOIA program managers periodically review data in eFOIA to ensure installation FOIA program managers accurately entered data from source documents.

**Management Comments A.1.** The SAF/XC concurred and stated: “The SAF/XC will revise DoD Regulation 5400.07/Air Force Supplement to require FOIA Managers confirm data entered in eFOIA is accurate by reconciling the data to source documents and MAJCOM FOIA program managers periodically review data in eFOIA to ensure installation FOIA program managers are accurately entering the data from source documents. Estimated Completion Date: 31 December 2009.”

**Recommendation A.2.** The SAF/XC should direct all FOIA program managers to confirm data entered in eFOIA is accurate by reconciling the data to source documents.

**Management Comments A.2.** The SAF/XC concurred and stated: “The SAF/XC will direct all FOIA Managers to confirm data entered in eFOIA is accurate by reconciling the data to source documents. Estimated Completion Data: 30 June 2009.”

**Evaluation of Management Comments.** Management comments addressed the issues raised in the audit results, and management actions taken and planned should correct the problem.

# Tab A

## Recording, Tracking, and Processing

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### AUDIT RESULTS 2 – PROCESSING

**Condition.** The FOIA program managers did not efficiently or properly process FOIA requests. Specifically, 12 (92 percent) of 13 FOIA offices reviewed did not respond within 20 working days to 168 (50 percent) of 338 sampled FOIA requests (Table 1). To illustrate:

Location	Sample Size	Number Exceeding 20 Working Days
Air Force Office of Special Investigation (AFOSI)	29	28
Air Force Personnel Center (AFPC)	22	0
Air Force Reserve Command (AFRC)	19	3
Air Force Tactical Application Center (AFTAC)	20	19
Headquarters Air Force (HAF)	79	45
Hickam AFB	17	7
National Air and Space Intelligence Center (NASIC)	21	19
Nellis AFB	22	9
Peterson AFB	22	6
Ramstein Air Base (AB)	16	6
Randolph AFB	24	3
Scott AFB	18	7
Wright-Patterson AFB	29	16
<b>Total</b>	<b>338</b>	<b>168</b>

**Table 1. Responses Exceeding 20 Working Days.**

#### Inefficient Processes.

- Eight program offices<sup>2</sup> did not ensure offices responsible for creating and/or maintaining records (responsible offices) timely researched, redacted, and provided records.
- Five program offices<sup>3</sup> did not ensure contractors and other third party non-Government offices provided timely responses when notified of the intent to release information they provided the Air Force. Five of the 33 third party responses reviewed took over 30 days, and 1 over 60 days. To illustrate, third

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<sup>2</sup> AFTAC; HAF; Hickam, Peterson, Scott and Wright-Patterson AFBs; Ramstein AB; and NASIC.

<sup>3</sup> Hickam, Randolph, Scott and Wright-Patterson AFBs and Ramstein AB.

parties took 37 and 60 days, respectively, to respond when notified of the intent to release by FOIA offices at Hickam and Wright-Patterson AFBs.

- Three of seven MAJCOMs<sup>4</sup> reviewed performed duplicate legal reviews. Specifically, both the installation and MAJCOM Judge Advocate General (JAG) offices performed legal reviews of records prior to release. Also, at Wright-Patterson AFB both the Systems Program Office contracting function and the installation JAGs reviewed requests for copies of contracts.
- The AFOSI had 104 record requests backlogged awaiting a legal review.

#### Improper Processes.

- Four program offices<sup>5</sup> did not inform requesters of appeal procedures for 11 (31 percent) of 36 full or partial denials for records. Also, three of these offices did not complete all actions required to support 18 fully or partially denied record requests such as legal reviews and initial denial authority approvals.
- Two program offices<sup>6</sup> did not notify interested third parties of their intent to release records for 13 (39 percent) of 33 FOIA requests.

**Cause.** These conditions occurred because:

- Authority. The FOIA program offices did not have the authority to require responsible offices expeditiously research, redact, and provide requested records.
- Third-Party Request. Guidance on response time for non-Government intent to release records was not consistent. The SAF/XC issued an email on 24 April 2008 allowing contractors only 10 days to respond to FOIA requests. However, DoD Regulation 5400.07R/AF Supplement allowed non-Government sources "... reasonable time (for example, 30 calendar days) to present objections concerning the release, unless it is clear there is no valid basis for objection."
- Backlogged Legal Reviews. The AFOSI assigned only one attorney to perform sensitive record reviews, significantly slowing the response process. Also,

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<sup>4</sup> Air Combat Command (ACC), Air Education and Training Command (AETC), and Air Mobility Command (AMC).

<sup>5</sup> AFOSI; HAF; Nellis and Scott AFBs.

<sup>6</sup> NASIC and Wright-Patterson AFB

## Tab A

### Recording, Tracking, and Processing

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requests were often for records on criminal investigations or member deaths and, therefore, required additional response time.

- Duplicate Legal Reviews. The SAF/XC guidance did not assign legal review responsibilities for FOIA requests to either installation or MAJCOM JAG offices.
- Training. The SAF/XC personnel did not provide FOIA program managers sufficient training on their responsibilities to inform requesters of appeal procedures for full or partial denial of record requests, and to notify interested third parties of intent to release records.

**Impact.** Through more efficient and proper processing of responses to FOIA requests, the Air Force could reduce response times and, therefore, possible lawsuits resulting from untimely responses and improve public relations, while also reducing time and resources expended.

**Recommendation A.3.** The SAF/XC should request MAJCOMs task installation or MAJCOM FOIA program managers to review all requested records and redact in consultation with the responsible office.

**Management Comments A.3.** The SAF/XC concurred and stated: “The SAF/XC will request MAJCOMs task installation or MAJCOM FOIA program managers to review all requested records and redact in consultation with the responsible office. This process will be clarified in the supplement. Estimated Completion Date: 31 December 2009.”

**Recommendation A.4.** The SAF/XC should revise DoD Regulation 5400.07/Air Force Supplement to require each MAJCOM assign legal review responsibilities for FOIA requested records to either installation or MAJCOM JAG offices.

**Management Comments A.4.** The SAF/XC concurred and stated: “The SAF/XC will revise DoD Regulation 5400.07/Air Force Supplement to require each MAJCOM assign legal review responsibilities for FOIA requested records to either installation or MAJCOM JAG offices. Estimated Completion Date: 31 December 2009.”

**Recommendation A.5.** The SAF/XC should request SAF/AQ require all contracts include a clause stating the contractor, upon contract award, will identify any portions of the contract that should be exempted from public disclosure and justification for the exemption.

**Management Comments A.5.** The SAF/XC concurred and stated: “The SAF/XC addressed this recommendation at the Air Force FOIA Process Improvement Event in March 2008. Discussions with the SAF/AQ are still ongoing to come up with a procedure to include a clause stating the contractor, upon contract award, will identify any

portions of the contract that should be exempted from public disclosure and justification for the exemption. Estimated Completion Date: 31 December 2009.”

**Recommendation A.6.** The SAF/XC should revise DoD Regulation 5400.07/Air Force Supplement to allow non-Government sources 10 days to respond to notices of intent to release records containing information clearly identified as originating from non-U.S. Government sources.

**Management Comments A.6.** The SAF/XC concurred and stated: “The SAF/XC will revise DoD Regulation 5400.07/Air Force Supplement to allow non-Government sources (submitters) 10 business days to respond to notices of intent to release records containing information clearly identified as originating from non-U.S. Government sources. Estimated Completion Date: 31 December 2009.”

**Recommendation A.7.** The SAF/XC should request the AFOSI/CC assign additional personnel to perform legal reviews of records requested under the FOIA.

**Management Comments A.7.** The SAF/XC concurred and stated: “The SAF/XC will request the AFOSI/CC assign additional personnel to perform legal reviews of records requested under the FOIA. Estimated Completion Date: 30 June 2009.”

**Recommendation A.8.** The SAF/XC should provide FOIA program managers training on their responsibilities to inform requesters of appeal procedures for full or partial denial of record requests, and to notify interested third parties of intent to release records.

**Management Comments A.8.** The SAF/XC concurred and stated: “The recommendation will be included in the next FY 2010 FOIA Computer Based Training (CBT) which is mandated by all FOIA Managers on an annual basis. In addition, the appeal procedure is available on the Air Force FOIA web site under the FOIA Handbook and the eFOIA Public Access Link. Estimated Completion Date: 31 December 2009.”

**Evaluation of Management Comments.** Management comments addressed the issues raised in the audit results, and management actions taken and planned should correct the problem.

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## **BACKGROUND**

DoD components must include an electronic reading room (ERR) on their main FOIA websites. For those components with multiple FOIA request service centers, each center must either have an ERR on its website or a link to the component's ERR. The public must have easy access to these reading rooms.

Each Air Force activity must make FOIA-processed records (records they determine will, or have become, the subject of frequent or subsequent requests) available to the public electronically by posting the records to their website. The Air Force established a centralized ERR for all frequently requested records (those with three or more requests). The FOIA manager coordinates with the responsible office to determine the records subject to frequent or subsequent requests.

## **AUDIT RESULTS 3 – PUBLIC WEB ACCESS**

**Condition.** The Air Force ERR did not include all frequently requested records and the public could not access all Air Force organization ERRs. To illustrate:

### Posting.

- The SAF/XCCP personnel posted only 61 records to the Air Force ERR as of July 2008.

### Access.

- The SAF/XC personnel allowed Air Force Materiel Command (AFMC) and United States Air Forces in Europe (USAFE) to maintain their own ERRs, so their records were not included on the Air Force ERR. However, SAF/XC personnel did not establish automated links from the Air Force ERR to the AFMC and USAFE ERRs, limiting public access to the records.
- Three locations (Nellis AFB, Peterson AFB and the AFOSI) did not establish links from their ERRs to the Air Force ERR.

**Cause.** This condition occurred because SAF/XC personnel:

- Did not issue formal guidance on records FOIA offices were required to provide SAF/XC for posting to the Air Force ERR.

## Tab B

### Electronic Reading Rooms

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- Did not establish an Air Force-wide system for tracking frequently requested records. To compensate, 6 of 13 FOIA offices<sup>7</sup> reviewed either maintained a spreadsheet listing previously released records or searched AF FACTS attempting to identify the subject or title of previously requested records. However, the spreadsheet and AF FACTS search only identified records their location released. Due to AF FACTS limitations discussed below the searches could not identify records released by other Air Force organizations.
- Did not establish a standard naming convention for the record subject or title. Consequently, searches within AF FACTS did not identify all applicable records to determine whether those records were frequently requested.
- Overlooked establishing automated links to and from the Air Force ERR and other Air Force organization ERRs.

**Impact.** As a result, the records were not readily available to the public, decreasing Air Force responsiveness, and causing Air Force FOIA personnel to potentially expend unnecessary time and resources duplicating work previously accomplished.

**Management Corrective Action.** In December 2008, SAF/XC issued an email requiring FOIA program managers provide SAF/XC, for posting to the Air Force ERR, all released records. Also, the email eliminated the need to track frequently requested records. Additionally, the new eFOIA system searches the entire record for key words, eliminating the need to establish a standard record naming convention. Further, as of March 2009, SAF/XC personnel posted an additional 169 FOIA requested records on the AF ERR. In addition, SAF/XC personnel established links from the Air Force ERR to the AFMC and USAFE ERRs. Finally, the FOIA office at Peterson AFB established a link from their ERR to the AF ERR. Therefore, no recommendations were made to address these issues.

**Recommendation B.1.** The SAF/XC personnel should:

- a. Issue an interim change to DoD Regulation 5400.07R /Air Force Supplement establishing the records FOIA offices are required to provide SAF/XC for posting to the Air Force ERR.
- b. Review all FOIA organization ERRs to identify and correct those without links to the Air Force ERR.

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<sup>7</sup> AFTAC; HAF; Hickam, Peterson, and Wright-Patterson AFBs; and NASIC.



**Management Comments B.1.** The SAF/XC concurred and stated:

a. “The SAF/XC will issue an interim change to DoD Regulation 5400.07/Air Force Supplement establishing the records FOIA offices are required to provide SAF/XC for posting to the Air Force ERR. Estimated Completion Date: 31 December 2009.

b. “The SAF/XC will review all FOIA organization ERRs to identify and correct any without links to the Air Force ERR. Estimated Completion Date: 31 December 2009.”

**Evaluation of Management Comments.** Management comments addressed the issues raised in the audit results, and management action taken and planned should correct the problem.

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## **BACKGROUND**

The DoD Regulation 5400.07/Air Force Supplement requires FOIA personnel assess fees based upon the requester's applicable fee category. There are three fee categories: commercial, educational and noncommercial scientific institution or news media or union, and all others. The FOIA personnel must charge fees to requesters in the "commercial" and "all other" categories, and may under certain circumstances charge fees to requesters in the "educational and noncommercial scientific institution or news media or union" category. Fees are based upon the cost to process record requests. Department of Defense (DD) Form 2086, Record of Freedom of Information (FOI) Processing Cost, is used to record manpower and audiovisual material costs incurred. Each office processing requested records must prepare a DD Form 2086. Requesters must be willing to pay fees associated with processing their request or explain why the fees should be waived.

The FOIA personnel must collect fees at the time they provide records to the requester. Personnel may not collect fees in advance unless the requester has failed to pay previously assessed fees, or if the fee will exceed \$250. In addition, The Debt Collection Act of 1982 requires charging a minimum annual interest rate on overdue debts owed the Federal Government. The Air Force may levy this interest penalty for any fees that remain outstanding 30 calendar days from the date of billing (the first demand notice). The Air Force reported in its FY08 Annual FOIA Report costs of \$7,586,000 to process requested records, but collected only \$76,035 in fees.

In March 2009, SAF/XC replaced AF FACTS with a new FOIA tracking system, eFOIA. The new system included capabilities to calculate fees, create detailed bills, track payments, and provide requester payment history.

## **AUDIT RESULTS 4 – COST REIMBURSEMENT**

**Condition.** The FOIA program managers did not document, assess, or collect the appropriate reimbursable fees for processing FOIA requests. Specifically, the 13 FOIA offices reviewed did not document, assess, track or collect fees for 175 (93 percent) of 189 record requests categorized as "commercial" or "other" in our 338 sample requests (Table 2). Of the 13 FOIA offices reviewed,

- Documenting Fees. Seven did not document on DD Forms 2086 the time and cost to process 98 (29 percent) of 338 sampled FOIA requests. In addition, legal offices for 12 did not document on DD Forms 2086 the hours<sup>8</sup> expended reviewing records before release to requesters.

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<sup>8</sup> Although entities citing FOIA to obtain records are not assessed the cost of JAG legal reviews, the cost is included in the annual Air Force FOIA program cost reported to DoD.

## Tab C Fee Assessment and Collection

- Assessing Fees. Nine did not assess fees for 101 (52 percent) of 195 sampled requests. For example, the AFOSI did not assess fees for any of the 29 FOIA requests reviewed, although the requests were in the commercial and all others categories.
- Tracking Payments. Nine did not track request payment histories to determine if they received payments within 30 days. The four FOIA offices that tracked payment history were able to do so only for fees their office assessed.
- Charging Interest. None collected interest on overdue fees. Of the 14 sampled requests that were billed, 13 were collected after 30 days, but with no interest charged.

Location	DD Form 2086 Not Completed	Legal Review Hours Not Recorded	Payment History Not Tracked	Interest Not Collected on Overdue Fees
AFOSI	X	X	X	X
AFPC	X	X	X	X
AFRC		X	X	X
AFTAC		X		X
HAF	X	X	X	X
Hickam AFB		X		X
NASIC	X	X	X	X
Nellis AFB	X	X	X	X
Peterson AFB		X	X	X
Ramstein AB		X	X	X
Randolph AFB			X	X
Scott AFB	X	X		X
Wright-Patterson AFB	X	X		X
<b>TOTAL</b>	<b>7</b>	<b>12</b>	<b>9</b>	<b>13</b>

Table 2. Cost Reimbursement Procedures.

**Cause.** This condition occurred because:

- Authority. The FOIA program managers did not have authority to require responsible office personnel accurately complete and return DD Forms 2086.
- Guidance. The DoD Regulation 5400.07/Air Force Supplement did not provide procedures for tracking legal review hours and costs, provide a method of tracking requester payment history, or clearly require FOIA offices track requester payment history.

- Fee Determination. The FOIA program managers did not have completed DD Forms 2086 to use in assessing fees. Also, they improperly determined that assessing fees was counterproductive and unnecessary for sensitive criminal cases or when requests took over 20 working days to process.
- Training. The SAF/XC personnel did not provide FOIA program managers training on assessing and collecting fees and interest on overdue fees.
- Verification Procedures. The SAF/XC personnel did not establish procedures to verify FOIA program managers properly assessed fees and collected interest on overdue fees.

**Impact.** As a result, the Air Force understated its costs to process FOIA requests and ultimately its total FOIA program cost, and did not recoup appropriate fees.

**Recommendation C.1.** The SAF/XC should revise DoD Regulation 5400.07/Air Force Supplement to:

- a. Require FOIA program managers obtain from responsible offices the time expended advising the FOIA manager, then post the time to DD Forms 2086 and eFOIA.
- b. Provide FOIA program managers procedures on how to compute and record legal office hours and costs.
- c. Require FOIA offices use eFOIA to record costs incurred responding to FOIA requests, bill requesters, record requester payment, and track requester payment history.

**Management Comments C.1.** The SAF/XC concurred and stated: “The SAF/XC will revise DoD Regulation 5400.07/Air Force Supplement to (a) require FOIA program managers obtain from responsible offices the time expended advising the FOIA manager, then post the time to DD Forms 2086 and eFOIA, (b) provide FOIA program managers procedures on how to compute and record legal office hours and costs, and (c) require FOIA offices use eFOIA to record costs incurred responding to FOIA requests, bill requesters, record requester payment, and track requester payment history. In addition, SAF/XC had conducted training via Air Force FOIA/PA biweekly teleconference to MAJCOM/FOA/DRU FOIA Managers on 24 February 2009 and will also be included in the FY 2010 FOIA CBT annual training. Estimated Completion Date: 31 December 2009.”

**Recommendation C.2.** The SAF/XC should train FOIA program managers on the criteria and procedures for assessing and collecting fees, and assessing interest when fees are overdue.

**Management Comments C.2.** The SAF/XC concurred and stated: “The SAF/XC will include this training in the FY 10 FOIA CBT annual training for FOIA Managers. Estimated Completion Date: 31 December 2009.”

**Recommendation C.3.** The SAF/XC should review fee assessments periodically using eFOIA to ensure FOIA program managers are properly assessing fees and collecting interest on overdue fees.

**Management Comments C.3.** The SAF/XC concurred and stated: “The SAF/XC will review fee assessments periodically using eFOIA to ensure FOIA program managers are properly assessing fees and collecting interest on overdue fees. In addition, SAF/XC will direct FOIA Managers to ensure they are properly assessing fees and interest on overdue fees and the MAJCOM FOIA Managers will review periodically to ensure their bases are properly recording the fee. Estimated Completion Date: 30 June 2009.”

**Evaluation of Management Comments.** Management comments addressed the issues raised in the audit results, and management actions planned should correct the problem.

**BACKGROUND**

The DoD Regulation 5400.07/AF Supplement requires the Air Force provide requesters a final response determination within 20 working days. In unusual circumstances, the time limit may be extended for no more than 10 working days by providing the requester a written notice explaining the circumstances for the extension and a final response date. Final response determinations notify the requester that the records are released, or will be released on a certain date, or that the records are denied. Interim responses acknowledge receipt of the request, negotiations with the requester concerning the scope of the request, the response timeframe, and fee agreements; however, such actions do not constitute a final response determination pursuant to the FOIA.

**AUDIT RESULTS 5 – REQUEST BACKLOGS**

**Condition.** The FOIA program managers did not establish corrective actions plans to resolve FOIA request backlogs. As of July 2008, the 13 FOIA program offices reviewed had 688 total open requests.<sup>9</sup> Of those, 543 (79 percent) were open for more than 20 working days and 249 (36 percent) were open more than 6 months. However, only 2 of 5 FOIA offices with backlogs over 6 months (AFTAC and Wright-Patterson AFB) had established formal plans to resolve their FOIA request backlog, but their plans were incomplete (Table 3).

Location	Open Cases	Open More Than 20 Working Days	Open More Than 6 Months
AFOSI	331	314	198
AFPC	9	0	0
AFRC	3	1	0
AFTAC	32	30	22
HAF	154	95	8
Hickam AFB	4	1	0
NASIC	30	29	15
Nellis AFB	7	1	0
Peterson AFB	2	2	0
Ramstein AFB	7	4	0
Randolph AFB	2	0	0
Scott AFB	7	0	0
Wright-Patterson AFB	100	66	6
<b>TOTAL</b>	<b>688</b>	<b>543</b>	<b>249</b>

**Table 3. Backlogged Requests.**

**Cause.** This condition occurred because SAF/XC did not define the elements of an effective corrective action plan or require organizations with requests backlogged over 6 months to prepare and implement formal corrective action plans.

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<sup>9</sup> According to AF FACTS data.

## Tab D Backlog

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**Impact.** Corrective action plans will help resolve FOIA request backlogs and requester dissatisfaction with untimely responses. Unresolved backlogs have resulted in lawsuits against the Air Force and avoidable expenditures for damages and court costs.

**Audit Comment.** In February 2009, SAF/XC established a FOIA branch staffed with eight personnel, and assigned three to assist MAJCOMs with the largest FOIA request backlogs. The purpose was to better manage the FOIA process and reduce the volume of backlogged requests.

**Recommendation D.1.** The SAF/XC should revise DoD Regulation 5400.07 Air Force Supplement to:

- a. Define the elements of an effective corrective action plan for resolving FOIA response backlogs.
- b. Require organizations with FOIA requests backlogged over 6 months to prepare and implement formal corrective action plans.
- c. Require the FOIA branch periodically review organization corrective action plans to ensure they effectively resolve backlogs.

**Management Comments D.1.** The SAF/XC concurred and stated: “The SAF/XC will revise DoD Regulation 5400.07/Air Force Supplement to (a) define the elements of an effective corrective action plan for FOIA response backlogs, (b) require organizations with FOIA requests backlogged over 6 months to prepare and implement formal corrective action plans, and (c) require the FOIA branch periodically review organization corrective action plans to ensure they effectively resolve backlogs. In addition, SAF/XC will address the way ahead for these recommendations at our next FOIA Process Improvement Event in September 2009. Estimated Completion Date: 31 December 2009.”

**Evaluation of Management Comments.** Management comments addressed the issues raised in the audit results, and management actions planned should correct the problem.



### AUDIT SCOPE

**Audit Coverage.** We performed audit work at 13 judgmentally selected active duty installations (Appendix II). We also held discussions with SAF/XC personnel. We performed audit field work from October 2008 through February 2009 using documents dated April 1997 through June 2008. We provided a draft report to management in April 2009.

- Recording, Tracking, and Processing. To determine whether Air Force personnel recorded, tracked, and efficiently processed FOIA requests, we held discussions with FOIA personnel and reviewed applicable training documentation. Further, we identified processing procedures, reviewed checklists and tracking documents for a sample of FOIA requests for records. We reviewed responses to the sampled requests to determine if the requests were appropriately processed.
- Electronic Reading Rooms. To determine whether FOIA personnel provided public access to frequently requested records we reviewed organizational websites for appropriate links to FOIA information. Also, we reviewed FOIA program office methods for identifying frequently requested records.
- Fee Assessment and Collection. To determine whether FOIA personnel identified, assessed, and recouped fees for the cost to process FOIA requests, we reviewed a sample of 338 requests. We compared the requests to the assigned fee category identified in the AF FACTS, the fee category identified on response letters, and to DD Forms 2086 to determine if FOIA personnel identified legal review costs, appropriately assessed and recouped fees, and charged interest for overdue fees.
- Backlogs. To determine whether the FOIA program managers developed and implemented procedures to minimize FOIA request backlogs, we reviewed 688 backlogged requests. We selected requests open more than 20 working days from the online AF FACTS database. We then obtained a copy of management's formal plans for minimizing backlogs, and further identified management milestones and reduction goals.

**Sampling Methodology.** We applied the following sampling concepts and Computer-Assisted Auditing Tools and Techniques (CAATTs) to complete this audit.

- Sampling. We judgmentally selected FOIA program offices with more than 200 requests received or had more than 25 requests backlogged. In doing so, we selected 13 FOIA offices representing 12 different MAJCOMs, direct reporting units (DRUs), or field operating agencies (FOAs). Two FOIA offices reported to AFRC. The 12 MAJCOMs/DRUs/FOAs represented 88 percent of the requests

## **Audit Scope and Prior Audit Coverage**

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the Air Force received from October 2007 through July 2008. For each of the 13 FOIA offices, we randomly selected a proportional sample size of requests based on the number of requests received, then used a random number generator to select a random sample of no more than 30 requests from each location.

- CAATTs. We used CAATTs extensively throughout this audit. Specifically, we used advanced Excel spreadsheet features and functions (pivot tables, network days, and countif) to summarize audit data used to develop audit conclusions.

**Data Reliability.** We relied on computer-processed data contained in the AF FACTS. We did not evaluate the system's general and application controls. However, to establish data reliability, we compared key output data to available manual records. Based on this test, we concluded the data were sufficiently reliable to support the audit conclusions.

**Auditing Standards.** We accomplished audit work in accordance with generally accepted government auditing standards and, accordingly, included tests of internal controls as considered necessary under the circumstances. Specifically, we evaluated controls over processing FOIA requests, data entered to AF FACTS and FOIA electronic reading rooms, and recouping processing fees.

### **PRIOR AUDIT COVERAGE**

We did not identify any Air Force Audit Agency, DoD Inspector General, or Government Accountability Office reports issued within the past 5 years that addressed the same or similar objectives as this audit.

## **Locations Audited/ Reports Issued**

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<b><u>Organization/Location</u></b>	<b><u>Installation-Level Reports Issued</u></b>
<b><u>Air Combat Command</u></b>	
99th Air Base Wing Nellis AFB NV	F2009-0028-FBS000 6 April 2009
<b><u>Air Education and Training Command (AETC)</u></b>	
HQ AETC Randolph AFB TX	NONE
<b><u>Air Force Materiel Command</u></b>	
88th Air Base Wing Wright-Patterson AFB OH	F2009-0032-FCW000 11 May 2009
<b><u>Air Force Office of Special Investigations (AFOSI)</u></b>	
HQAFOSI Andrews AFB MD	F2009-0022-FDN000 28 April 2009
<b><u>Air Force Reserve Command (AFRC)</u></b>	
HQ AFRC Robins AFB GA	NONE
Air Reserve Personnel Center Denver CO	F2009-0021-FBM000 12 May 2009
<b><u>Air Force Space Command</u></b>	
21st Space Wing Peterson AFB CO	F2009-0022-FBM000 14 May 2009
<b><u>Air Force Tactical Application Center (AFTAC)</u></b>	
HQ AFTAC Patrick AFB FL	F2009-0022-FDM000 25 February 2009

## **Locations Audited/ Reports Issued**

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<b><u>Organization/Location</u></b>	<b><u>Installation-Level Reports Issued</u></b>
<b><u>Air Mobility Command</u></b>	
375th Airlift Wing Scott AFB IL	F2009-0030-FBL000 9 March 2009
<b><u>Headquarters Air Force (HAF)</u></b>	
HAF Pentagon	F2009-0025-FDN000 13 May 2009
<b><u>National Air and Space Intelligence Center (NASIC)</u></b>	
HQ NASIC Wright-Patterson AFB OH	F2009-0022-FCW000 18 March 2009
<b><u>Pacific Air Forces</u></b>	
15th Airlift Wing Hickam AFB HI	F2009-0022-FBP000 29 April 2009
<b><u>United States Air Forces in Europe</u></b>	
435th Air Base Wing Ramstein AB Germany	F2009-0032-FDE000 28 January 2009

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