

A Flawed Tool

Environmental Reporters' Experiences with the Freedom of Information Act

*Report of the
First Amendment Task Force
of the
Society of Environmental Journalists*

September 12, 2005

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Published by

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About SEJ

The Society of Environmental Journalists is the world's oldest and largest organization of individual working journalists covering environmental affairs. Founded in 1990 and based in Jenkintown, PA, our membership is composed of more than 1,450 journalists, educators and students dedicated to improving the quality, accuracy and visibility of environmental reporting. Membership guidelines exclude any person who is paid to lobby or work in public relations on any side of environmental issues.

Acknowledgements

For their invaluable help, we would like to thank Pete Weitzel, Rebecca Daugherty, Ken Ward, Joe Davis, Perry Beeman, Christy George, Tim Wheeler, Jim Bruggers, Debbie Schwartz, and all the other journalists who took time to help us compile this report.

EXECUTIVE SUMMARY

Journalists who cover the environment are having an increasingly difficult time dragging information out of the federal government to shed light on Superfund sites, chemical factories, mining accidents and a host of other topics important to citizens.

Long before the terrorist attacks of Sept. 11, 2001, reporters seeking to use the Freedom of Information Act grew accustomed to seemingly interminable delays and withholding of crucial information on dubious grounds.

But since that horrible day, we have watched the tragedy's effects reach further into our society as this democratizing law – one that helps define us as free and proud Americans – has been further compromised.

In fact, our members have even noticed the government embarking on new attempts to hobble the Freedom of Information Act, using quibbles about search fees to delay the release of documents and invoking the already-cumbersome FOIA process to dodge simple queries from reporters.

Our interviews of 55 reporters belonging to the Society of Environmental Journalists revealed growing shortcomings in the way the government is treating FOIA requests:

- Three-quarters of the reporters we interviewed who use FOIA on an occasional or frequent basis encountered significant delays in getting information from federal agencies. In some cases, those delays exceeded a year.
- The federal agencies most cited for failing to respond promptly and fully were the Department of Energy, Department of Defense, Food and Drug Administration and the Mine Safety and Health Administration.
- Some journalists found it difficult or impossible to monitor the status of their requests, or even find out who is in charge of reviewing them.
- Some agencies have declined to answer routine inquiries for documents such as Superfund reports and underground mine inspection reports, instead forcing reporters to file time-consuming FOIA requests for the information. The Department of Energy, the Federal Energy and Regulatory Commission, the Environmental Protection Agency, and the Mine Safety and Health Administration have all employed this strategy, reporters said.
- While agencies in the past have located and pulled documents for

journalists without charge, they are now questioning whether to grant journalists these legally mandated fee waivers. The agencies' waffling over fee waivers creates more delay in an already-slow process.

- Some reporters said they were ultimately disappointed in the quality and amount of the information they received. In one example, a district office of the U.S. Army Corps of Engineers even tried to withhold copies of letters sent in by the public commenting on a permit requested to allow a company to mine clay in the flood plains south of Macon, Georgia.
- We spoke to a large number of reporters – a majority we interviewed, in fact – who do not use FOIA. In some cases, that is because they do not report often on federal activities, instead filing requests under state sunshine law provisions (many of which suffer from problems similar to those noted here regarding the federal law.) But other reporters said they don't file these FOIA requests because they don't do investigative reporting, because they don't know how to file the requests, or because they've heard "horror stories" from other journalists. If this many reporters aren't using this landmark law, it suggests to us that the tool itself is in need of repair.

We should add that not all of the reporters' experiences with FOIA were bad. Several reported that the Environmental Protection Agency has provided information on a relatively prompt basis, for example. Reporters gave mixed reviews to the National Marine Fisheries Service, the U.S. Fish & Wildlife Service and other Department of Interior agencies. When reporters were able to get the information they needed, they said they were often able to give their readers a better and more complete story.

NOTE: As this report was in press, Hurricane Katrina struck New Orleans. In the days that followed, New Orleans Times-Picayune hurricane reporter Mark Schleifstein began asking the EPA for data on reports of spills of hazardous substances. The agency would not produce them, even though on its website it said agency personnel were "compiling a comprehensive database of potential pollution sources" and using aircraft to "assess spills and chemical releases."

On Sunday, Sept. 4, Schleifstein turned in desperation to FOIA, filing a request for "reports of spills, releases, accidents, fires, flooding that resulted in reportable movements of materials." That was followed two days later by similar requests from other reporters.

On Wednesday, Sept. 7, EPA officials held a press conference, describing in general terms the amount of fecal coliform and a few other pollutants in the floodwaters. EPA still has not produced this data - two weeks after the storm struck.

More details on Hurricane Katrina and the FOIA are available in Appendix III

INTRODUCTION

Since Sept. 11, 2001, reporters across the country have encountered increased difficulty obtaining information from the federal government.

The Society of Environmental Journalists (SEJ) responded in 2002 by forming a First Amendment Task Force to investigate the problem. Since the task force's creation, it has received numerous complaints from members about the way federal agencies administer the Freedom of Information Act. Other groups have raised similar concerns. The Reporters Committee for the Freedom of the Press last year issued a "severe" alert for risk to the Freedom of Information Act.

The law, known as FOIA, is a crucial public tool for assessing the performance of the federal government. Passed in 1966 with bipartisan support, the statute was signed into law by President Lyndon Johnson, who said he approved it "with a deep sense of pride that the United States is an open society in which people's right to know is cherished and guarded."

But now many in the federal government seem intent on rolling back public access to government information. Former Attorney General John Ashcroft set a new executive policy with his Oct. 12, 2001, memorandum allowing federal agencies greater leeway in rejecting FOIA requests. Congress and federal agencies have since created rules that make it difficult or impossible for reporters to collect information for stories on so-called "critical infrastructure," such as hydroelectric dams and pipelines.

Prompted by the Society of Environmental Journalists' increasing concern about the serious impact of new federal policies on information gathering — one of the most basic tasks of journalism — the First Amendment Task Force undertook telephone interviews with 55 of its members in the spring of 2005. The goal was to learn about their experiences with the Freedom of Information Act.

The First Amendment Task Force wanted to learn how environmental reporters' FOIA requests are being treated by federal agencies. SEJ's members are among the most affected by policy and rulemaking on FOIA because many routinely gather information about a wide array of federal activities.

It was beyond the scope of this project to discover all the reasons why the government has become less friendly to FOIA. But the findings of this inquiry and earlier information available to SEJ's First Amendment Task Force are consistent with the view that Ashcroft's memo emboldened agencies already inclined to release as little information as possible.

One of the most significant problems the reporters we interviewed revealed

was delay in release of information – more than a year in some cases. In truth, this was a problem for journalists long before September 2001, but the situation appears to be deteriorating.

Even more alarming, it appears that some government agencies now actually are using the Freedom of Information Act to delay or withhold information. The Act's fee-waiver provision is intended to allow journalists and other qualified individuals to freely obtain information under FOIA when disclosure is in the public interest and is likely to contribute to public understanding of government activities.

The Department of Justice advised in 2004 that fee-waiver requests from journalists should be given "special weight." But a number of agencies apparently are launching protracted internal discussions about whether to grant journalists fee waivers. In some cases, they settle this question before ever starting the clock on the 20-day deadline imposed by FOIA for the agency to tell a requester whether and to what degree the request will be granted.

And, turning the law on its head, some agencies are now beginning to require the filing of time-consuming and cumbersome FOIA requests for information once readily available to journalists with just a phone call.

METHODS

Four members of the Society of Environmental Journalists' First Amendment Task Force conducted telephone interviews of 55 SEJ members. We interviewed 35 newspaper reporters, five radio reporters, seven magazine staff reporters, five free-lance reporters, one wire-service reporter and a journalism professor who has written an investigative book.

We deliberately targeted investigative reporters in order to narrow our pool of interview subjects to those reporters who were most likely to have filed FOIA requests.

SEJ realizes this is not a scientifically rigorous survey. But, given the complaints we heard from journalists who do file FOIA requests, SEJ felt it was important to gather information about problems members are experiencing. *

We interviewed reporters who work for large, medium and small publications

* Shortly after SEJ's First Amendment Task Force was formed, a quick and informal survey showed that 29 of 45 members who responded agreed with the statement, "Since 9/11, I've experienced more trouble accessing information in my day-to-day reporting." This latest project – more detailed interviews with 55 SEJ members – is another step by the organization to gauge the significance of the hurdles and pinpoint areas that need reform.

and broadcast outlets, asking them following questions:

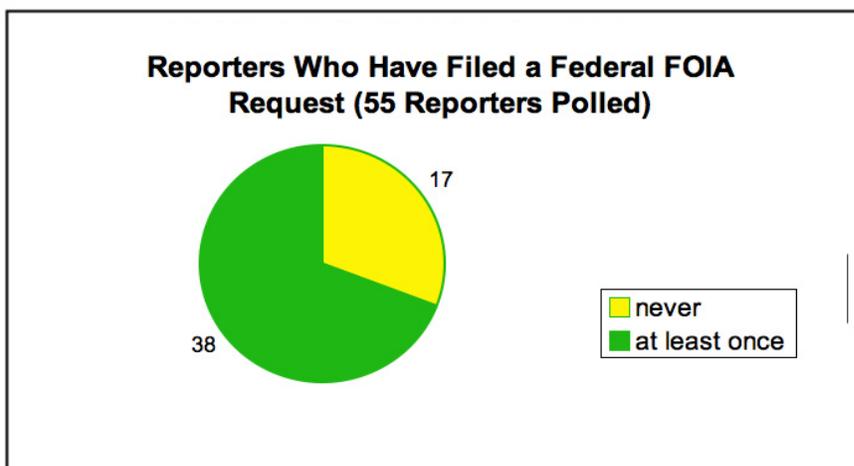
- Do you file FOIA requests, and if so, how often?
- Why do you or don't you use FOIA for your reporting?
- Have you experienced FOIA delays?
- If so, please explain the circumstances of the delay.
- Is there anything SEJ can do to help?

For those reporters who experienced significant problems with FOIA, we asked them to describe their experiences. Some of their stories are appended to the end of this report as a series of case studies.

FINDINGS AND ANALYSIS

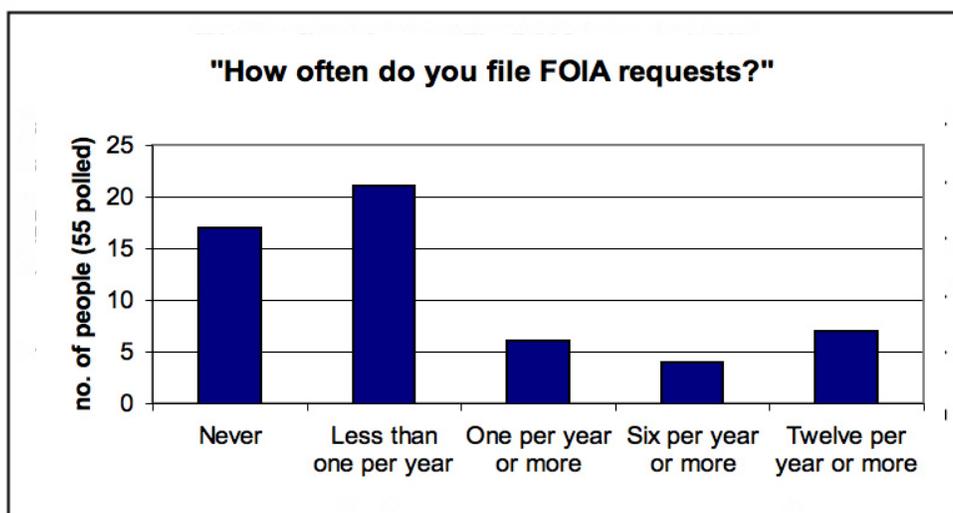
Journalists who file FOIA requests believe that it is a critical tool in reporting on the environment.

"You can't just rely on calling an agency spokesperson," says Paul Koberstein, a veteran investigative journalist in Portland, Ore., and editor of the independent Cascadia Times newspaper. "It seems like these days, people are becoming real experts at not answering questions."



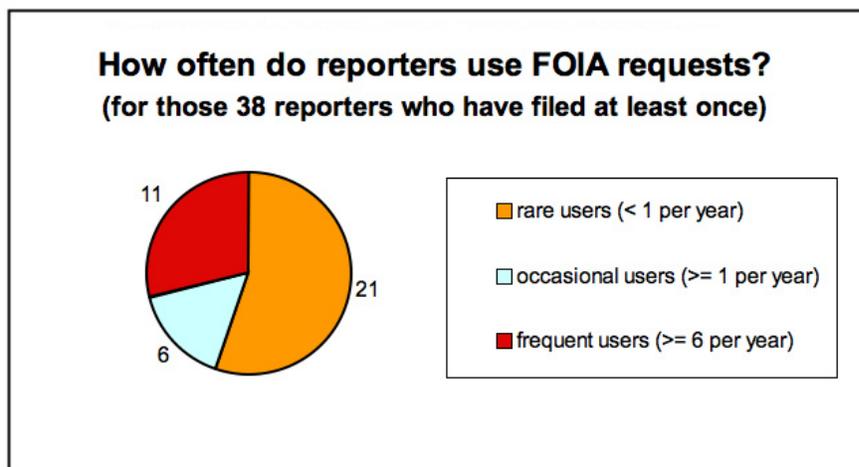
Reporters have encountered significant delays upon filing their requests, and some believe that the government is willfully ignoring the law to withhold information. Fourteen out of the 17 reporters who file FOIA requests on an occasional or frequent basis say they have experienced delays.

Out of the 17 who file occasional or frequent FOIA requests, seven reporters saw one or more of their requests delayed for a year or longer. Several reporters said they had trouble getting their phone calls or e-mails returned, or in



one case even learning the name of the person processing the request.

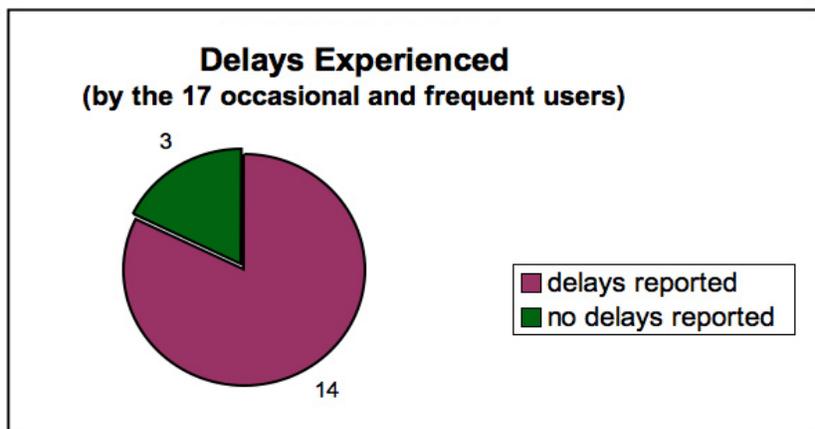
“You file these FOIA requests, and they just go into the ether,” Koberstein said. Koberstein has waited more than a year to obtain scientific records he requested under FOIA from the Department of Energy and the National Marine Fisheries Service.



A number of reporters shared what journalists have come to call “FOIA horror stories.” Not only must they wait long periods to get the documents requested, they also are unable to even get information on the status of their requests – despite repeated telephone calls or e-mail requests.

Unreasonable delays

Consider Mobile (Ala.) Register reporter Ben Raines’ experiences with the Federal Energy Regulatory Commission (FERC) and the Department of Energy. Raines has filed FOIA requests that have not been answered even after a wait of several years. When calling agency contacts, he is told his requests are still working through channels.



Seth Borenstein, a national correspondent with the Knight Ridder News Service whose responsibilities extend beyond environmental reporting, says the worst example of poor response time he encountered involves the Department of Defense. More than 1-½ years ago, he requested death certificates of military and government contractor personnel who had died overseas as a result of the Afghanistan and Iraq conflicts. He has not received any of the information he requested. When Borenstein called to follow up, the agency blamed a backlog caused by understaffing. Borenstein says a basic problem is that many FOIA

offices, including the Department of Defense's, lack accountability. Given that a study by the Coalition of Journalists for Open Government showed the Defense Department to be fairly fast at responding to FOIA requests, this case raises a question about whether some agencies for public-relations purposes stall the longest on the requests they least want to fill. It is certainly not the only case we encountered that raised this question.

Karen Dorn Steele of *The Spokesman Review* in Spokane, WA, has waited since November 2004 for a response to a FOIA request she filed with the Office of Naval Research, a Pentagon agency, for information on the correlation between radioactive iodine-131 exposure and child thyroid cancer. She received one document naming the person in charge of processing her request, but nothing else since. "They do not respond to calls or e-mails," she said. "It's kind of ridiculous."

Some of these delays clearly are not due to overworked FOIA staffs, but rather appear to be the result of recalcitrant agencies.

Take the case of *Cascadia Times'* Koberstein's April 2003 request for several scientific reports on declining population of the Hawaiian monk seal, which has large implications for the fishing industry. The National Marine Fisheries Service refused to release the reports, calling them "preliminary" – even though each have been referenced on federal Web sites and in at least three other federal documents, including an environmental impact statement required under the National Environmental Policy Act. This indicates they are already a basis for federal decision-making.

Sara Shipley Hiles, previously with the *St. Louis Post Dispatch* in Missouri and now a freelance writer in Kentucky, said she had to wait several months for the Food and Drug Administration to reply to a FOIA request, and never got a critical component of the request — access to a large electronic database on food additives.

"That was a very frustrating wait because it was information we knew that they had and we were pretty specific in what we wanted," Shipley Hiles said. "The FDA did respond to other parts of our FOIA request ... although it took months and a lot of hassle to get it."

She said in her experience, "In the worst cases, reporters have to be heroically persistent to get what's supposed to be public information."

Turning FOIA on its head

A number of reporters discussed another alarming trend: It has become more difficult for them to gather routine information without filing a FOIA request. This greatly slows down the reporting process, according to Kathleen O'Neil, until recently employed by the Idaho Springs, Idaho, Post Register.

O'Neil said Department of Energy officials have told her that they need to treat some of her questions for routine news stories "like FOIAs." A serious blow for a daily news reporter, this means O'Neil had to file a FOIA request to get basic facts and can't get the information she needs in time for a story.

In one case, O'Neil asked whether a government contractor had been paid in full for a construction job at a government energy laboratory. The Department of Energy's answer: We will treat that question as a FOIA request. The answer arrived weeks later, long after her story was published.

"The Mining Safety and Health Administration is requiring FOIAs for just about everything now," added Ken Ward Jr., a reporter with the Charleston (W.Va.) Gazette, who waited 11 months for the agency to provide him routine mine inspection reports following a fatal explosion near Moundsville, W.Va.

The Mobile Register's Raines said that Superfund cleanup reports, which he once could obtain readily, now can be procured only by filing a FOIA request.

And even that's no guarantee that Raines will get the information he requests. The Department of Energy recently denied the existence of federal documents pertaining to safety studies about liquefied natural gas shipping that Raines had filed a FOIA request to obtain. He received a letter in July 2005 saying he could appeal the department's finding.

But the Department of Energy's statement was inaccurate. At least some of the documents did exist. Thanks to another source, Raines already had obtained several DOE documents he believes should have been turned over under FOIA.

Hiding Risks

Two reporters, Heather Duncan and Seth Borenstein, say it is now quite difficult to obtain copies of EPA's risk management plans, or RMPs, which assess industrial plant hazards and require corporate programs for prevention and emergency response.

Even though the Chemical Safety Information Site Security and Fuels Regulatory Relief Act of 1999 put limits on public access to some RMP data, EPA's efforts to make this information hard to access go well beyond the requirements of the law and serve no homeland security purpose.

Duncan, who works for the Macon (Ga.) Telegraph, said she was told that she'd have to file a FOIA request to obtain her own copy of risk management plans she had just reviewed in EPA's Atlanta public reading room.

Excessive redactions

A number of journalists reported trouble with severe redactions in their FOIA requests, meaning large areas of the documents they received were blacked out.

Merritt Clifton, editor of Animal People, said the U.S. Fish and Wildlife Service usually responds promptly to his filings, as does the National Marine Fisheries Service, but most often the specific information he is looking for is redacted. For example, Clifton got a tip that grazing contracts at an extensively over-grazed national wildlife refuge were held by people related through marriage to members of the Fish and Wildlife Service's senior management. He used FOIA to get the grazing leases – but the names were all blacked out, making it impossible to verify the tip and confirm the alleged conflict of interest.

Two reporters with the Seattle Post-Intelligencer waited 10 months while the Fish and Wildlife Service redacted information from a database of permits it grants for habitat conservation plans. The information requested was data on applicants seeking government approval of the conservation plans, which grant permission to harm or kill endangered species in exchange for an applicant's promise to take other action to help the remaining members of the species.

Two months after the newspaper's September 2004 request, the agency said it had nearly completed redactions that it claimed were justified under the Privacy Act. Yet it did not release the information until July 2005 – two months after the reporters' three-part series was published. Many of the plans' names and locations had been withheld.

Wrangling over fees

And then there is the fee-waiver delaying tactic. Reporters are entitled under the Act to have the normal fees for searching government files waived, and have up to 100 pages copied without charge. Any requester is entitled to a fee waiver that includes copying charges if he or she can show that disclosure of the documents "is in the public interest because furnishing the information can be considered as primarily benefiting the general public." News reporters

have frequently qualified for this waiver in years past.

Increasingly, though, agencies that once routinely agreed to grant fee-waiver requests for news reporters are refusing to even start pulling documents from files until the question of the fee waiver is subjected to time-consuming debate and quibbling.

Duncan, of Georgia's Macon Telegraph, has run into the fee-waiver road-block: "It's no longer good enough that you're a reporter. They don't consider that adequate to waive the fee." Duncan says that she has to submit a fee-waiver request routinely for every FOIA request with the EPA, and that the work on gathering the information she requests doesn't start until the fee-waiver issue is resolved. A couple of weeks can go by before the agency even responds to her fee-waiver request. Then Duncan must either track down an agency official and negotiate about the fee waiver or simply agree to pay the fee, not knowing what the amount might be. In one case concerning a risk-management plan for a chemical facility, it took the EPA five weeks to resolve her fee-waiver request.

"I kept getting handed around between different individuals at the EPA. It took them several weeks just to find the right person for me to talk to. Once that person was found, they were on vacation, and no one else would help me." Duncan has run into similar problems with her fee-waiver requests on four different occasions.

Taken together, the experiences of our members who do file FOIA requests paint a picture of a Freedom of Information Act that is, as Spokane, Wash.-based freelancer Ken Olsen says, "a flawed tool."

These flaws are dangerous for our democracy and require serious attention from Congress.

RECOMMENDATIONS:

The reporters we interviewed suggested some potential measures by Congress and journalism organizations to help reduce delays and improve the FOIA process.

First and foremost, a mechanism is needed to hold agencies accountable when their actions do not comply with FOIA law or impose lengthy delays, reporters said.

"The main thing is making sure that the government responds as quickly as possible and in compliance with the law," said Perry Beeman, a reporter with The Des Moines (Iowa) Register and president of the Society of Environmental Journalists.

Some reporters said the recent Congressional proposal for a FedEx-style tracking system that would allow petitioners to follow their requests through the FOIA process is a good one. It adds a measure of accountability that's missing now.

"At least you know the status. It's just basic housekeeping," said Koberstein, of Cascadia Times.

Reporters should also write about the hurdles the FOIA process presents, these journalists suggested.

"We should bring publicity to agencies that routinely break the law or inordinately delay requests," suggested Olsen, the Spokane freelance reporter.

The situation described by SEJ members cries out for Congressional oversight action. The fact that so many reporters have given up on even trying to use FOIA does not reflect well on our democracy or the news media.

WHAT CONGRESS CAN DO:

Bills already under consideration:

Congress is considering several pieces of legislation that have the potential to improve the FOIA process. These are:

1) S. 589, also known as the Faster FOIA legislation. It authorizes a 16-member panel, to be appointed by the executive and legislative branches, to investigate the ongoing and apparently growing backlogs in fulfilling FOIA requests. It is to report to Congress, with recommendations on how to reduce the backlogs.

2) S. 394, also known as the Open Government Act of 2005. It would make a number of important changes committing the federal government to more prompt and fair administration of the law. Provisions include: Stipulates that the 20-day deadline for agencies to determine whether records are releasable begins on the first day the request is received; establishes a tracking system allowing information requesters to follow their requests by telephone or the Internet; establishes an Office of Government Information Services to track administration of FOIA; and requires an annual report on how protected "critical infrastructure information" is being used. *

* The Society of Environmental Journalists has endorsed S. 394, although we do not consider it a total answer to the problems we are encountering.

3) S 1181, also known as the FOIA Impact Statement Act. It provides that any legislation that creates a new FOIA exemption must explicitly state the exemption in the body of the bill.

Other recommendations for Congress:

We believe several steps are necessary to re-establish a FOIA that functions for the news media as it was intended.

Based on our interviews with SEJ members, we suggest the following:

Make concrete changes in the law and regulations to require faster processing of FOIA requests, with punishment for agencies that don't meet the deadlines. For example, S. 394 would prohibit agencies that miss the 20-day time limit from asserting disclosure exemptions unless disclosure would harm national security. It would also require reporting and, potentially, investigation of agency officials who arbitrarily and capriciously miss deadlines for responding.

Implement clearer and more transparent reviews of FOIA requests to allow requesters to better track the status of their requests. Again, this is addressed in S. 394, which would require agencies to establish tracking systems that include telephone or Internet systems to allow requesters to obtain updated information on the status of their requests.

Change the law to prohibit agencies from delaying the processing of FOIA requests from representatives of the news media while agency officials review a request for a fee waiver. While agencies are sorting out whether they will grant a fee waiver for actual copying costs, they should be required to continue processing the materials and releasing up to whatever number of pages they regularly release to the news media without charge (usually 100 pages).

Clarify the rules. Independent journalists and others seeking to use the information to inform the public are intended to benefit from the fee-waiver provisions of FOIA. Congress should explicitly state that independent journalists are considered eligible for fee waivers. This, too, is a provision of S. 394.

Other recommendations by SEJ:

Create a FOIA ombudsman's office, a central agency within the federal government dedicated to enforcing FOIA. It could be called in on behalf of requesters, particularly those without resources to pursue lawsuits. (See S. 394).

In the case of improperly withheld documents, **allow the public to recoup legal costs from the agency involved** – even if the documents are later released. (See S. 394).

Clarify that information held by federal contractors is subject to FOIA. (See S. 394).

Require agencies to report on how often information is being withheld from the public as the result of the “critical infrastructure information” exemption added to FOIA after September 2001.

Mandate that more meaningful data should be made available regarding the FOIA performance of agencies in order to help Congress and the public better track the agencies' performance. In addition to stating the median response time, agencies should also be required to divulge the average response time.

WHAT JOURNALISTS CAN DO:

We further recommend that journalists consider how their own actions or failure to understand the law can complicate their FOIA requests.

For example, we discovered through our interviews a misconception by some journalists that FOIA officers are required to give them the information they seek within 20 days. This is simply the date by which FOIA officers must provide a response to their request stating whether the agency intends to release the records.

Journalists who decide to use FOIA requests for their work need to realize that this is not usually a 20-day process. It can take quite a bit longer. Reporters should consider asking for expedited review — provided in the statute for those who “demonstrate a compelling need” — for the request to be processed quickly.

Taking a little time to learn about the law – including successful strategies for filing fee waiver requests and getting an expedited review – can be a significant aid to a journalist before he or she even gets started on a request.

Reporters and their news organizations also need to show a little more backbone – and be willing to foot the bills for lawyers when necessary.

Journalists who don't directly cover the federal government should start using FOIA anyway. Many would be surprised how much can be learned about state or local government from federal agencies, such as EPA's oversight of Clean Water Act compliance. SEJ's First Amendment Task Force can offer more guidance.

Reporters can also do a better job of informing the public in their stories about how efforts to curtail public information may touch the lives of average people – whether it's a lack of information about chemical risks at a nearby industrial plant or details of a land exchange funded by taxpayer dollars.

Journalists who feel confused by the FOIA process can seek advice from veteran FOIA users or Internet resources provided for free by journalism groups such as the Society of Environmental Journalists, Investigative Reporters and Editors and the Reporters Committee for the Freedom of the Press. Go to: www.sej.org/foia/index.htm or www.rcfp.org or www.ire.org/foi or www.spj.org/foi.asp. And remember that RCFP provides a hotline for reporters at 1-800-336-4243.

Additionally, reporters should seek, when it is appropriate, to forge better and closer communications and negotiations with FOI officers and specialists, who are the persons designated by federal agencies to shepherd requests through the process.

WHAT THE PUBLIC CAN DO:

We appeal to citizens to contact their congressional representatives to urge passage of pending FOIA legislation. While this report focuses on journalists' use of FOIA, anyone can file a FOIA request. SEJ encourages citizens to use the Act to gather information they need.

APPENDIX I Reporters' experiences with FOIA

Seth Borenstein, Knight Ridder News Service, Washington D.C.

Seth Borenstein is a heavy user of FOIA, filing requests about once a month. Often these FOIAs are filed for specific information, and other times they're filed simply to identify potential stories. More often than not, he says, the information he receives in his FOIA requests clears someone, or some subject, from further scrutiny. Yet, like other reporters, Borenstein has noticed a need to file FOIA requests for information that was previously available without resorting to FOIA.

Borenstein feels that there are simply too many delays in the FOIA system. His most troublesome example comes from the Pentagon. As part of his duties unrelated to environmental reporting, he filed FOIA requests for the death certificates for military and military contractor personnel who died as a result of the Iraq and Afghanistan conflicts. As of August 2005, he has yet to get a response – more than 18 months later. When he calls, the agency tells him that there's a backlog because not enough personnel are assigned to handle FOIA requests.

Borenstein said his news bureau has gone more than two and a half years without a response from the Food and Drug Administration on a FOIA request. The bureau has since filed suit against the agency.

Borenstein believes that an agency's response time depends upon the culture within the agency. At agencies including the FDA and the Pentagon, he says the culture is blasé. There's a sense that, "if they don't do their job, so what?" In other words, there's no accountability to ensure that FOIA requests get filled.

In Borenstein's experience, the FDA and the Pentagon are especially bad at providing timely response to FOIA requests. The Environmental Protection Agency and NASA have been pretty good about getting back to him, although EPA has grown much more reluctant to grant even clearly justified fee waivers, he said.

Ken Ward Jr., Charleston (WV) Gazette

It's a good thing that Ken Ward Jr. is adept at filing FOIA requests. One of the federal agencies he covers is requiring him to file FOIAs for just about everything lately.

Ward files FOIAs with the Mine Safety and Health Administration (MSHA) for

documents and information that he used to get with a phone call five or six years ago. "Things with that agency have changed dramatically," since May 2001, when a Bush appointee took over the agency, he said.

Sometimes it takes a long time to get a response from MSHA. For example, it took 11 months to get a response after Ward filed a FOIA request in 2003 related to a tragic methane explosion at a coal mine in Moundsville, WV. A crew of contractors was killed while digging a new shaft. Ward asked MSHA for the mine's quarterly or monthly inspection reports for the previous six months. He later expanded his request to an entire year of inspection reports. "There was no question that they were public records," he said.

Ward, chairman of SEJ's First Amendment Task Force, had already heard through unofficial channels that the mine had never had a methane inspection but MSHA investigators routinely dodged the question.

Throughout the FOIA review process, Ward was bumped around to different offices and had a hard time getting anyone to talk to him about the status of his request. "I got different answers from different people on who was reviewing my request ... I'd periodically write to them. They'd ignore me. Eventually I think we wore them down," he said. MSHA released the inspection records to Ward the same day that it released its accident report for the mine, 11 months after the explosion. The accident report didn't mention the fact that the mine never had a methane inspection.

To Ward, this suggests that MSHA "hoped things would get muddled and there wouldn't be any further attention."

FOIAs can lead reporters to a better reflection of the truth, he says. Ward, a few days later, or 11 months later, depending on how you look at it, wrote a story detailing the agency's failure to inspect the mine.

Kathleen O'Neil, Idaho Falls (ID) Post Register

Kathleen O'Neil files FOIA requests about once per month. But Department of Energy officials also treat some of her routine questions for news stories "like FOIAs" and thus she can't include basic information in some routine news stories, she said.

"Two days should be good enough for some of the things I've asked for," O'Neil said, adding that often, the information subjected to the FOIA process isn't part of a big controversy. She wonders if it is legal for DOE employees to require her to file a FOIA request for mundane information.

She's had trouble learning such basic information as whether a new Idaho National Engineering and Environmental Laboratory contractor was paid its full fee after completing a previous job at the Oak Ridge National Laboratory. The Department of Energy office dragged its feet, telling her that her question would be treated as a FOIA request

She didn't get a response to her filing for three weeks, long after her story ran.

Paul Koberstein, Portland, OR-based editor of Cascadia Times

In 2003, as he was reporting on the decline of the Hawaiian monk seal, an endangered species, Koberstein asked scientists at the National Marine Fisheries Service for data on the seal's diet. Such information could help explain why monk seal pups have been starving to death at alarming numbers in recent years. He filed a FOIA request with National Marine Fisheries Service's headquarters in Silver Springs, Md. for the results of four specific studies on the monk seal's diet. But this information, he was told, was "preliminary" and could not be released.

Koberstein, however, found references to National Marine Fisheries Service studies on the seals' diet in environmental impact statements and other documents. He believes the real reason for declining his FOIA request is political: the information in the studies could be damaging to the commercial lobster fishing industry in Hawaii.

Sources told Koberstein that the Fisheries Service (also known as NOAA Fisheries) instituted a gag order barring the scientists involved in the studies from making any comments or disclosures about it. This gag order apparently dates back to around 2000, when one of the scientists disclosed preliminary data showing that lobster could be an important part of the monk seal's diet at a public meeting.

Also in April 2004, Koberstein asked the Department of Energy's FOIA officer to provide specific monitoring data that showed the groundwater movement of highly radioactive chemicals at the Hanford nuclear reservation in Washington state. The data would help the public understand how fast this contamination is traveling through the ground toward the Columbia River, Koberstein said.

Again, as of August 2005, he still had not received even acknowledgement of his request.

Karen Dorn Steele, The Spokesman (Spokane, WA) Review

Karen Dorn Steele says her FOIA filings gets fairly prompt attention from the Environmental Protection Agency but the responses from the Department of Energy and the Pentagon come very slowly or not at all.

For example, in November 2004 Dorn Steele filed a FOIA request to find out the cost of a health study of Chernobyl victims and other health studies that may have been funded by the Pentagon's Office of Naval Research (ONR). She still has not received a response, other than a single letter that told her the request had been received and the name of the FOIA officer in charge.

She learned the Pentagon office had paid for the Chernobyl study after she obtained a copy of the study from its authors at the Fred Hutchinson Cancer Research Center in Seattle. Her interest in the study – which showed a strong correlation between radioactive iodine-131 exposure and child thyroid cancer – derived from the fact that her readership area includes the Hanford former nuclear weapons production plant, which had also released iodine into the air. The authors would not tell her how much funding they had received from the Pentagon for their work.

The study's funding was a relevant topic for Dorn Steele's readers because the military had previously been embroiled in a controversy during the Clinton presidency over nuclear weapons agencies' role in funding health studies. Because of the flap, the Clinton administration directed the Centers for Disease Control to handle those studies instead of nuclear weapons agencies.

Since she filed her FOIA request last fall, the Office of Naval Research has not returned Dorn Steele's phone calls or e-mails to tell her the status of her request, which asked for the cost of Chernobyl study and any other health studies it had funded, she said. Dorn Steele doesn't know why her request is being delayed "because no one will answer my queries," she said. "It's kind of ridiculous."

A different FOIA request that Dorn Steele filed recently over government funding also hit a snag.

Dorn Steele said she received records earlier this year in response to a December 2004 FOIA from the Department of Energy that appear to be inaccurate. For some time now, Dorn Steele periodically has put in requests for the cost of Hanford-related litigation and who is indemnified in the cases of radiation-exposed litigants.

But in response to this FOIA request, the Department of Energy gave her num-

bers that she believes are “just wrong.” She said, “They are smaller than the (numbers) were a year and a half ago.” When she asked for an explanation, department officials declined to explain the anomaly.

Instead the department referred her complaint to the Justice Department. As of August 2005, she had waited eight months for an answer.

“I no longer have any confidence in the quality of the information that has come back,” she said.

Ben Raines, Mobile (AL) Register

Ben Raines files FOIAs as infrequently as possible because the requests are almost never fruitful.

“I have several requests that have been out there for several years and have never been answered,” he said of the FOIA requests to the Department of Energy, Department of the Interior, U.S. Minerals Management Service and FDA.

When calling the agencies, Raines has been told the requests are still working through the channels.

In one case, Raines filed a FOIA to find information about liquefied natural gas (LNG) terminals in populated areas. He requested expedited review. Raines got a letter back about a year after the FOIA was filed saying that the request for expedited review was denied because the situation posed no imminent threat to people's lives. While the request was being processed, ExxonMobil withdrew a request it had made to build an LNG terminal, citing public outcry.

Raines eventually stopped calling about the status of this request and ended up obtaining the information he needed from other channels.

Also, the Critical Infrastructure designation — now used by federal agencies to limit the flow of information about dams, pipelines and other energy facilities—is really troubling, Raines said. To get the documents, a reporter must sign a confidentiality agreement, meaning he or she can't use the information for a story. Raines started down that road with FERC while looking at a liquefied natural gas (LNG) plant in Georgia, but “refused to sign the agreement and then got the documents elsewhere,” Raines said. It turned out the maps that FERC was protecting included a rough calculation of the size of a fire that could result from an explosion at the terminal, he said.

Raines now files FOIA requests infrequently because he doesn't believe he will have much success.

Raines says he has been asked by the Environmental Protection Agency and the U.S. Fish and Wildlife Service to file FOIA requests more often for routine information. Officials at the agencies say they have to ask for FOIA requests, and are being told to do so by headquarters, Raines said.

Sometimes the documents being requested are routine Superfund documents related to sites in Raines' area. In one case, the EPA published a new report about a Superfund site, which should be part of the public record, then required Raines to file a FOIA request to get the information. The report showed up several months later. EPA officials told Raines that requiring FOIA requests was a matter of policy now.

Officials with the National Oceanic and Atmospheric Administration (NOAA), by contrast, have told Raines that if requested information can be obtained legally, the agency will go ahead and provide it instead of going through the FOIA process.

Raines said that in his experience, the Fish and Wildlife Service and NOAA are really good about sharing information. Homeland Security, FERC, and the Department of Energy are not.

Ken Olsen, freelance writer

Spokane-based journalist Ken Olsen is still waiting to get responses back to some of the FOIA requests he filed with multiple federal agencies in 2003.

Olsen, a former newspaper reporter who free-lances articles for publications including National Wildlife, Outside, the Arizona Republic and High Country News, said he has hit a stumbling block over his FOIA fee-waiver requests. In 2002, he said, federal agencies started telling him that they would not start compiling documents for his FOIA requests until his fee waiver request is resolved.

For example, the Bureau of Land Management would not begin working on a 2003 FOIA request until it decided whether Olsen qualified for the fee waiver. The agency sent him a letter notifying him of the policy and asking for additional proof he was a bona fide member of the media. At the time, Olsen held a prestigious Alicia Patterson Foundation journalism fellowship and was working on a project on federal land exchanges. The fee waiver exchange added at least two weeks to an already slow process, he said.

In general, Olsen's greatest difficulties in getting an adequate and timely response to FOIA requests are with the U.S. Forest Service and Bureau of Land Management, but he said the Environmental Protection Agency has also be-

come more difficult to deal with under the Bush Administration.

He has had requests pending for two years at the Offices of Inspector General at the Department of Interior and the Department of Agriculture. "If I had millions of dollars and attorneys on retainer, I would pursue more of these," Olsen said. "The reality is, the agencies simply go unchallenged by virtue of (my) lack of such resources."

In March 2003, he was turned away from the Forest Service supervisor's office for Arizona's Prescott National Forest when he asked to review project files for the Northern Arizona National Forest Land Exchange – also known as the Yavapai Ranch Land Exchange – which involved trading national forest land and public water to a private developer in exchange for a large chunk of his ranch land. Employees at the forest supervisor's office told him that the project files were not public information, although Olsen has looked at dozens of Forest Service project files in the past.

Olsen filed a FOIA request for the files with the Prescott Forest supervisor, who denied the request. He appealed to the forest's regional headquarters in New Mexico. After many months, Olsen was able to get access to some of the documents. Others remain tied up in appeals with the Washington office.

"A year after I filed the FOIA, (the Department of Agriculture) wrote to say they were backlogged and hadn't had a chance to review my appeal. They added that I had the option of treating their delay as a refusal to provide the records. That's how part of that appeal still stands. I was seeking the documents as part of a fellowship and didn't have the time or money to hire an attorney and fight stonewalling." In August 2005, the Forest Service granted part of his appeal by giving him 66 heavily redacted pages. The agency continues to deny him 97 pages, including a draft briefing paper, map, initial biological opinions and other material.

Heather Duncan, Macon Telegraph, Macon, GA

Heather Duncan files about one FOIA a month and constantly has trouble getting timely responses from the Environmental Protection Agency and the U.S. Army Corps of Engineers. Duncan also says that she has to submit a fee-waiver request for every FOIA request with the EPA, and that the clock doesn't start ticking on her request until the fee waiver issue is resolved. Duncan feels this is bending the law considerably.

While working on a story about chemical hazards in her community, Duncan asked the EPA for copies of the Risk Management Plan summaries for facilities in her area.

The EPA told her that these summaries are open and public under the law, but

the agency didn't want to give them to her. The agency never provided the records, nor did it provide any responses in writing.

Duncan did go to the EPA reading room in Atlanta, where she was allowed to look at the Risk Management Plans. It took EPA staff three days to print out copies of the plans, but they would not allow her to take these copies. They had to be destroyed, according to staff, who told her she'd have to file a FOIA request in order to get the documents.

Her ensuing FOIA request was routed through four different offices and sent to Washington, D.C. It was then filtered back down to the local office. It took two months for the EPA to respond to the FOIA asking for the same information she's seen in the reading room, and even then, the agency didn't supply her with the summaries that she had asked for.

In the end she did not get the plan summaries – even though the law says the summaries are public. She said EPA officials told her they didn't want anything in the public realm about the agency's off-site consequence analysis, which outlines what might happen in the community if a chemical accident were to occur.

In a different case, Duncan attempted to gather information about a 50-year clay mining permit application in the Savannah District of the U.S. Army Corps of Engineers. It was the longest time frame for such a permit in this district, so a story informing the public was in order. She tried to get all the public portions of the permit request file. Duncan knew there had been a lot of letters during the public feedback portion of the process. When she first went to Savannah to look at these letters, the Corps claimed that the only public portion of the file was the actual permit request. She told Corps personnel that she knew there were numerous letters and that those were public.

Eventually, the agency relented. The FOIA officer involved seemed to have no knowledge of the law, operating under the assumption that nothing was public until the permit had been issued, Duncan said. Duncan looked at the letters while she was in Savannah. Over the course of the next three weeks, the Corps sent her batches of information that Corps personnel had discovered was also public. The agency knew her planned publication date. The last batch of information came on the Friday before the Sunday publication. It was almost 2,000 pages (and this occurred just before Christmas). Duncan felt as if the agency was trying to delay her story.

Duncan feels that there's a real lack of specific responsibility within the Corps of Engineers and the EPA in handling FOIA requests. She notices that when requests get handed off to a FOIA office, it seems as if the request is not a priority

or that no one has actually been assigned to ensure the request is met. Often she has been given a name of a person who is supposed to fulfill the request, but he or she often does not return her phone calls.

Lisa Stiffler and Robert McClure, Seattle (WA) Post-Intelligencer

For 23 years, the U.S. Fish and Wildlife Service and National Marine Fisheries Service (also known as NOAA Fisheries) have been issuing permits allowing private landowners to harm or kill endangered species in exchange for agreeing to plans to help the remaining members of the species. These “habitat conservation plans” were authorized in the 1982 amendments to the Endangered Species Act.

Critics have blasted the government for failing to adequately include the public and independent scientists in the creation of the plans. Government officials said that isn’t so – that there are plenty of opportunities for feedback on the agreements, which often allow for the permanent destruction of habitat important to imperiled species.

As part of a Seattle Post-Intelligencer investigation into the program, Lisa Stiffler and Robert McClure requested a database listing the permits that are in works. If the program is so transparent and supportive of public involvement, they reasoned, this request should not be a big deal.

They filed the FOIA request in September 2004 with one of the Fish and Wildlife program’s lead officials. Months passed. Phone calls were exchanged and excuses for the delay provided. In November, the official confirmed having the database, and said she was almost finished removing identifying information that the agency contended was not subject to FOIA. Then the redaction would have to go through internal review.

In May the newspaper published the reporters’ investigation – without the database. They finally received the information in July, 10 months after requesting it and eight months after the agency told them the material was almost ready for release. When it did arrive, the names of about one out of every seven plan names in the 1,253-item database were blacked out. In 74 entries, the lack of disclosure extended even to the location – perhaps the most basic piece of information a reporter would want to know.

APPENDIX II Selected FOIA responses

Louise Odegaard
12/13/01 04:42 PM

To: Benjamin Bibb/WO/USDAFS@FSNOTES
cc: JAMES.SNOW@usda.gov, Mike R Williams/WO/USDAFS@FSNOTES,
Steve Sams/R3/USDAFS@FSNOTES, Wayne
Thornton/R3/USDAFS@FSNOTES, Susan M
Ness/R3/USDAFS@FSNOTES, Mary_Ann.Joca@usda.gov
Subject: Re: Information for inclusion in a Yavapai draft bill

And you'd like this by.....?????

Louise A. Odegaard
Deputy Director, Lands & Minerals
Southwestern Region
505-842-3274
FAX: 505-842-3142

RO-7

"Before you build a better mousetrap, it helps to know if there are any mice out there." - Yogi Berra
Benjamin Bibb

(b)(5)
delib

Benjamin Bibb
12/13/01 01:48 PM

To: Louise Odegaard/R3/USDAFS@FSNOTES, Steve
Sams/R3/USDAFS@FSNOTES
cc: Mike R Williams/WO/USDAFS@FSNOTES, JAMES.SNOW@usda.gov
Subject: Information for inclusion in a Yavapai draft bill

To All:

After the meeting yesterday with Mr. Ruskin and Andy Wiesner, Mike Williams and Jim Snow would like the Forest and Region to provide the following information for inclusion in a redraft of the Yavapai exchange legislation:

[REDACTED]

Additional informational needs may come up as we redraft the bill.

[REDACTED]

Thomas F Gillett
12/18/01 01:15 PM

To: Dwan Utley/R3/USDAFS@FSNOTES
cc:
Subject: Information for inclusion in a Yavapai draft bill

Thomas F. Gillett
Public Services Group Leader
Kaibab National Forest
(928) 635-8367
tgillett@fs.fed.us

----- Forwarded by Thomas F Gillett/R3/USDAFS on 12/18/2001 01:15 PM -----

Steve Sams
12/17/2001 09:24 AM

To: John Spehar/R3/USDAFS@FSNOTES, Douglas D
Vandergon/R3/USDAFS@FSNOTES, Wesley R
Girard/R3/USDAFS@FSNOTES, Douglas T
MacPhee/R3/USDAFS@FSNOTES, Mike R
Leonard/R3/USDAFS@FSNOTES, Thomas F
Gillett/R3/USDAFS@FSNOTES, Peter
Mourtsen/R3/USDAFS@FSNOTES, William E
Townsend/R3/USDAFS@FSNOTES
cc: Louise Odegaard/R3/USDAFS@FSNOTES, Mark L
Johnson/R3/USDAFS@FSNOTES, Ernest Del
Rio/R3/USDAFS@FSNOTES, Thomas D
Bonomo/R3/USDAFS@FSNOTES, Mike
King/R3/USDAFS@FSNOTES, Steve Sams/R3/USDAFS@FSNOTES
Subject: Information for inclusion in a Yavapai draft bill

(b)(5)
delib

Here's the first blush of questions that the W.O. has for responding to the request for drafting services on legislation for the Yavapai Ranch exchange.

1. [REDACTED]

APPENDIX III Hurricane Katrina and the FOIA

In the week after Hurricane Katrina struck New Orleans, reporters began asking the U.S. Environmental Protection Agency for data regarding releases of hazardous chemicals. The agency did not produce this information.

On Sunday, Sept. 4, a week after Katrina's landfall, New Orleans Times-Picayune reporter Mark Schleifstein tried to get the information through a FOIA request for "reports of spills, releases, accidents, fires, flooding that resulted in reportable movements of materials," and related information. (The text of the letter is reproduced below.)

A number of other reporters followed up with similar FOIA requests, but the information still was not forthcoming.

SEJ's First Amendment Task Force, with support from the organization's board of directors, sent a letter to EPA on Tuesday, Sept. 6, urging the agency to not only to release the information sought in the FOIA requests but to also post it on the EPA website. (The text of the letter is reproduced below.)

The SEJ letter noted that the agency's Web site said the agency was "compiling a comprehensive database of potential pollution sources" and using aircraft to "assess spills and chemical releases." SEJ takes at face value EPA's statements that it has this information and has not been told of any reason why it should not be released. We know from covering less powerful hurricanes in the past that numerous releases are likely to have occurred.

As of this writing, on Friday, Sept. 9, EPA has still not released the data.

The agency did hold a press conference on Wednesday, Sept. 7, at which EPA officials discussed levels of fecal coliform and a few other constituents of the floodwater. But EPA did not release any of the data requested about what kinds of spills had been reported where. *

Recall that the FOIA law entitles requesters to expedited review of their request if failure to obtain the records quickly "could reasonably be expected to pose an imminent threat to the life or physical safety of an individual" or if the request is from a "person primarily engaged in disseminating information" who demonstrates an "urgency to inform the public concerning actual or alleged Federal Government" activity.

* One other problem with EPA's press conference was that many reporters were notified only by e-mail - and at least some, including Schleifstein, didn't get the e-mail until after the press conference.

Mark Schleifstein
The Times-Picayune c/o
Louisiana State University Manship School of Mass Communications
Louisiana State University
Baton Rouge, LA 70803-7202
email mersmia@cox.net

504-717-1157 or 225-578-9294

September 4, 2005

National Freedom of Information Officer
U.S. EPA, Records, FOIA and Privacy Branch
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

FOIA REQUEST

Fee benefit requested

Fee waiver requested

Dear FOI Officer:

Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request access to and copies of Any and all notifications from individual businesses and corporations within the state of Louisiana of any reportable environmental issues from Aug. 28 until Sept. 4, inclusive. I am looking for reports of spills, releases, accidents, fires, flooding that resulted in reportable movements of materials, or any other communications concerning EPA's response to Hurricane Katrina, and communications from EPA or affiliated agencies to the the issuers of those reports or concerning those reports to other state, local or federal agencies. Also, any reports generated by EPA or state agencies and sent to EPA about spills, releases, accidents, fires, flooding that resulted in reportable movements of materials, or any other communications concerning EPA's response to Hurricane Katrina, and communications from EPA or affiliated agencies to the the issuers of those reports or concerning those reports to other state, local or federal agencies.. This request refers to any communications in any form. Please consider this a CONTINUING REQUEST FOR THE NEXT TWO MONTHS. Because of my newspaper's evacuation to Baton Rouge, I'm extremely limited in my ability to communicate with you.

I would like to receive the information in electronic format. (I need whatever records are available immediately, and then others as they become available.)

As a representative of the news media I am only required to pay for the direct cost of duplication after the first 100 pages. Through this request, I am gathering information on What are the effects of Hurricane Katrina in the state of Louisiana. Your staff has been non-responsive to my repeat-

ed requests for this information. I also will be placing a copy of this request on the Society of Environmental Journalists listserve to insure other reporters in the nation understand the kinds of information my readers need. This information is extremely important to our readers, which includes many of those evacuated from their homes in the New Orleans metropolitan area. This is obviously of import to the general public, as shown by the 100 million visits to our web version of our newspaper as of yesterday. This information is being sought on behalf of The Times-Picayune for dissemination to the general public.

Please waive any applicable fees. Release of the information is in the public interest because it will contribute significantly to public understanding of government operations and activities. My reasons for a fee waiver range from the obvious need for our readers and others in the public to understand the environmental effects of this storm, to our dire financial situation, in that our business has been evacuated, we've had to relocate outside the area, and individual reporters, including myself, have lost their life savings in this flood and cannot afford to pay the fees.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

As I am making this request as a journalist and this information is of timely value, I would appreciate your communicating with me by telephone, rather than by mail, if you have questions regarding this request.

I look forward to your reply within 20 business days, as the statute requires, but BEG YOU to respond to me immediately so we can inform the public now about hazards they may be facing.

Thank you for your assistance.

Sincerely,

Mark Schleifstein

Mark Schleifstein
Environment writer
The Times-Picayune
mersmia@cox.net
cell only 504-717-1157



Society of Environmental Journalists

P. O. Box 2492, Jenkintown, PA 19046
 Phone: (215) 884-8174 Fax: (215) 884-8175
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Chemical & Engineering News

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Pittsburgh Post-Gazette

Robert McClure
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Representative for Associate
Membership: Rebecca Daugherty
 Reporters Committee for
 Freedom of the Press

Founding President
 Jim Detjen
 Michigan State University

SEJ Journal Editor
 Mike Mansur

Executive Director
 Beth Parke

September 6, 2005

TO: National Freedom of Information Officer
 U.S. EPA, Records, FOIA and Privacy Branch
 1200 Pennsylvania Avenue, NW (2822T)
 Washington, DC 20460
 (202) 566-1667

Fax (202) 566-2147
hq.foia@epa.gov

We are writing to encourage the U.S. Environmental Protection Agency to quickly respond to requests for more detailed information about chemical spills and other environmental releases resulting from Hurricane Katrina.

The Society of Environmental Journalists is the world's oldest and largest organization of individual working journalists covering environment affairs. Founded in 1990 and based in Jenkintown, Pa., our membership is composed of more than 1,450 journalists, educators and students dedicated to improving the quality, accuracy and visibility of environmental reporting.

The SEJ First Amendment Task Force was formed in March 2002 to, among other things, provide SEJ members with services to help them obtain and use public records and to deal with efforts to withhold those records from them.

Mark Schleifstein, reporter at *The Times-Picayune* and an SEJ board member, filed a Freedom of Information Act request on Monday, September 5, 2005 for information about the environmental consequences of Katrina, after his efforts to obtain answers without a formal request were unsuccessful. Several other SEJ members have filed similar FOIA requests today.

While the exact nature of the environmental damage done by Katrina may not be known for some time, it is clear that EPA is making assessments and equally clear that the agency should have some initial data that can and should be made public. For example, the EPA Web site notes that the agency is "compiling a comprehensive database of potential pollution sources" and using aircraft to "assess spills and chemical releases."

Even preliminary information from these EPA assessments would be helpful to environmental reporters trying to inform the public about potential threats to the environment and public health and safety.

At the very least, EPA should immediately agree to expedite the processing of the FOIA requests referenced above. They clearly meet the statutory requirements for expedited review, as EPA's failure to make this information public "could reasonably be expected to pose an imminent threat to the life or physical safety of an individual." See 5 U.S.C. 552(a)(6)(E)(V)(I).

Even better, EPA could agree to immediately begin posting the requested information on its website as part of its Hurricane Katrina response section and/or in its Electronic FOIA Reading Room. As you are aware, EPA is required to post such information in the Reading Room when such requested documents "because of the nature of their subject matter, the agency determines, have become or are likely to become the subject of subsequent requests for substantially the same records." See 5 U.S.C. 552(a)(2)(D).

Perry Beeman, President, Society of Environmental Journalists
 Ken Ward, Jr., Chair, First Amendment Task Force, Society of Environmental Journalists
 Cc: Eryn Witcher, EPA press secretary
 Fax (202) 501-1474

Improving the Quality, Accuracy and Visibility of Environmental Reporting 