

# U.S. DEPARTMENT OF ENERGY



## OFFICE OF HEARINGS & APPEALS

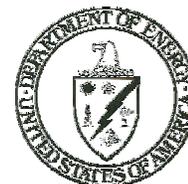
FY 2010  
ANNUAL REPORT

The seal of the Office of Hearings and Appeals is a circular emblem. At the top, the words "OFFICE OF HEARINGS AND APPEALS" are inscribed in a circular path. In the center, an eagle with its wings spread is superimposed over a stylized American flag. Below the eagle, a pair of scales of justice is visible. The Latin word "justitia" is written in a script font above the eagle. The Latin words "veritas" and "aequitas" are also inscribed on the left and right sides of the seal, respectively.

OFFICE OF  
HEARINGS  
& APPEALS

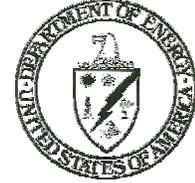
FY 2010  
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## MESSAGE FROM THE DIRECTOR...



I am pleased to report on the FY 2010 operations of the Office of Hearings and Appeals (OHA).

OHA's mission is to conduct fair and efficient hearings, and to issue decisions of the Department of Energy (DOE) with respect to any adjudicative proceedings which the Secretary may delegate. OHA's jurisdiction is broad and varied. It has included matters affecting the oil industry, consumers, appliance manufacturers, nuclear licensees, governmental entities, the public in general, and DOE and DOE contractor employees. Each area of jurisdiction supports one or more of DOE's Strategic Themes.

Here are highlights for the past year:

**Personnel security hearings.** Under DOE's personnel security program, OHA conducts administrative hearings concerning individuals' eligibility for access to classified information or special nuclear material. In FY 2010, our average time for processing a case reached a 10 year low, 25 percent below the averages of the last five and ten fiscal years. For the second year in a row, we had no cases older than 180 days in our end-of-year inventory. By the end of FY 2010, our average time for issuing a decision after the receipt of the hearing transcript stood at less than 30 days.

**Whistleblower cases.** Under the DOE Contractor Employee Protection Program, OHA conducts investigations and hearings, and considers appeals concerning whistleblower claims filed by DOE contractor employees. In FY 2010, though we received significantly more whistleblower cases than in FY 2009, we remained committed to their timely processing. We again ended the fiscal year with no cases older than 180 days in our inventory, and reduced our average case-processing time by six percent over FY 2009.

**Freedom of Information Act (FOIA) and Privacy Act Appeals.** OHA considers appeals of agency denials of requests for information. In FY 2010, though receiving nearly twice as many appeals than we did in FY 2009, we maintained our average case-processing time of 21 days, over 50 percent below our average of the last five fiscal years.

**Exceptions and Special Redress.** OHA considers petitions for special redress, as well as requests for relief from certain regulatory requirements. In FY 2010, we issued a decision on a Petition for Special Redress seeking review of a Final Notice of Violation of DOE's Worker Safety and Health Regulations, a relatively new area of jurisdiction granted to OHA in FY 2006. In the exceptions area, we again significantly improved our average case processing time.

**Alternative Fuel Transportation Program Appeals.** In FY 2010, OHA issued decisions on two Appeals filed under this program, which mandates the acquisition of alternative fuel vehicles by State governments and certain alternative fuel providers.

Over the last three years, OHA has reduced its average case-processing time by over 54%, while the total number of cases OHA adjudicated rose by over 20% in the same period. Throughout this report we have highlighted examples of decisions issued by OHA during FY 2010.

I am particularly proud of OHA's efforts during FY 2010 in continuing our outreach to and collaboration with our client and stakeholder offices, as well as other federal agencies. Examples include the service of the Chief of our Personnel Security Appeals Division as the Chairperson of DOE's first Clinician's Summit (see page 7), the training provided by our Employee Protections and Exceptions Division Chief and an OHA attorney to employee concerns managers from throughout the DOE Complex (see page 10), and the continuation of our Brown Bag Lunch Series, featuring distinguished guests from within and outside the agency.

As we begin FY 2011, we are committed to continued improvement and to meeting any new Departmental needs for adjudicative services. To achieve improvements and be well-positioned to accept new responsibilities, we continue to comprehensively review our operations to identify opportunities for increased efficiency and productivity.

We hope that this report is informative. If you have any comments or suggestions for future improvements, please write or email us.

Sincerely,

Poli A. Marmolejos

## INTRODUCTION

The Office of Hearings and Appeals is the centralized adjudicative forum for the Department of Energy. The Secretary of Energy has delegated to the OHA Director the authority to act for him in many different areas. The Director's decision typically serves as a final agency action.

During its over 30-year history, OHA has had broad-ranging subject matter jurisdiction. Originally OHA's primary function was to consider exceptions and other petitions related to the economic oil regulations, as well as Freedom of Information Act (FOIA) and Privacy Act appeals. From that point onward, OHA's jurisdiction has evolved to meet the needs of DOE's programs.

Over the last decade, OHA has heard appeals from a variety of DOE determinations, including those related to reimbursement claims for environmental clean-up costs, physician panel reviews of DOE worker occupational illness claims, and payment-equal-to-taxes claims under the Nuclear Waste Policy Act of 1982. OHA has also conducted personnel security and whistleblower proceedings, and considered exceptions from the Energy Information Administration (EIA) reporting requirements and from the appliance efficiency standards. In FY 2006, OHA was granted new jurisdiction to hear contractor appeals of civil penalties imposed for violations of DOE's new worker safety and health rule.

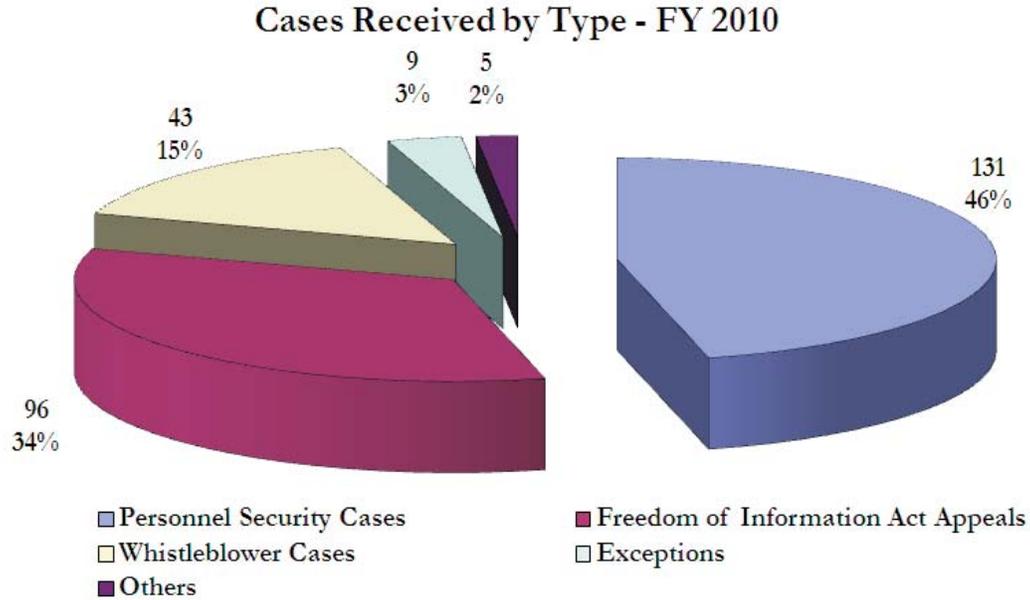
In FY 2010, OHA continued to conduct personnel security and whistleblower proceedings, consider FOIA and Privacy Act Appeals and rule on exception requests. In the past year, we also considered appeals involving the Department's Alternative Fuel Transportation Program, and the Elk Hills Oil Field, formerly Naval Petroleum Reserve No. 1.

The procedures that OHA uses vary, depending on the type of case involved. OHA procedures are flexible and easily adaptable to new situations, allowing OHA to minimize "start-up" times and to produce high-quality work in new areas. To further this goal of flexibility and adaptability, OHA encourages the use of alternative dispute resolution techniques when they can benefit the parties. OHA's general procedures and those used for specific proceedings can be found on our web site at [www.oha.doe.gov](http://www.oha.doe.gov) under "Regulations."

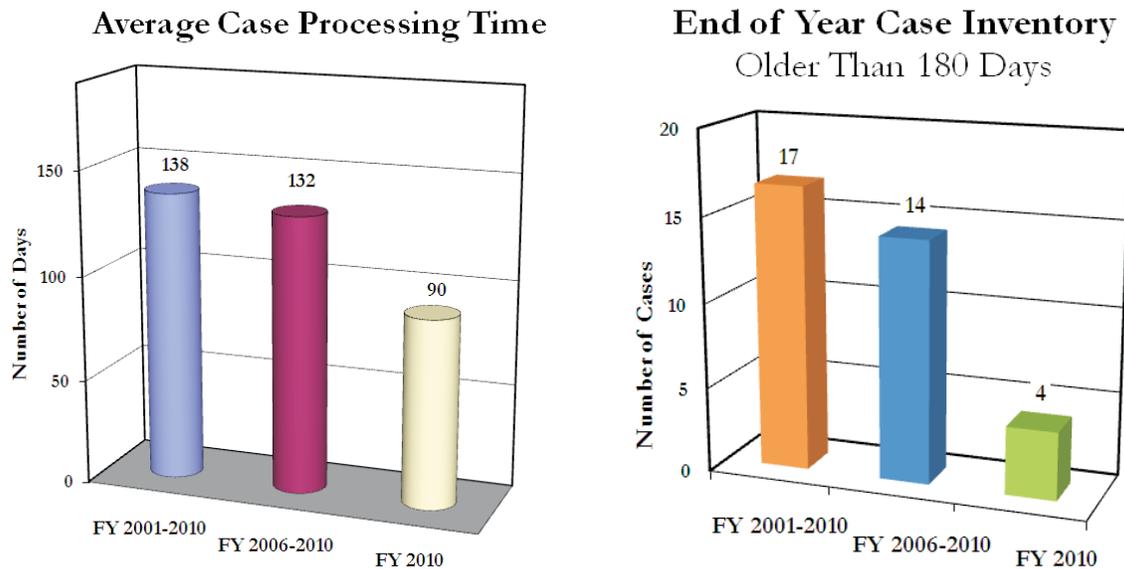
In the end, OHA decisions do more than resolve disputes. They also serve to inform affected parties and the public about the Department's programs. The decisions reflect the balancing of important and varied interests, including those of the public, the Department, state and local governments, and individual litigants.

## OVERVIEW OF OHA WORKLOAD

The majority of cases received in FY 2010 consisted of personnel security hearings, followed by FOIA and Privacy Act appeals, whistleblower cases (investigations, hearings, and appeals), exception applications and others. The following chart shows the volume of cases, by type (full data at Appendix, Table 1).



The chart on the left below shows the average case-processing time for cases closed in FY 2010, and over the last five and ten fiscal years (full data at Appendix, Table 2). Though we received more cases in FY 2010 than in any of the last five years, our average case-processing time was over 30 percent below both our most recent five- and ten-year averages. Average case-processing time has been reduced by more than 25% over the last two years, and more than 54% over the last three years. In addition, our inventory of older cases remains near a ten-year low, far below our average over the last five and ten years (full data at Appendix, Table 3). We attribute these results to a continued emphasis on timeliness.



# I. AREAS OF JURISDICTION

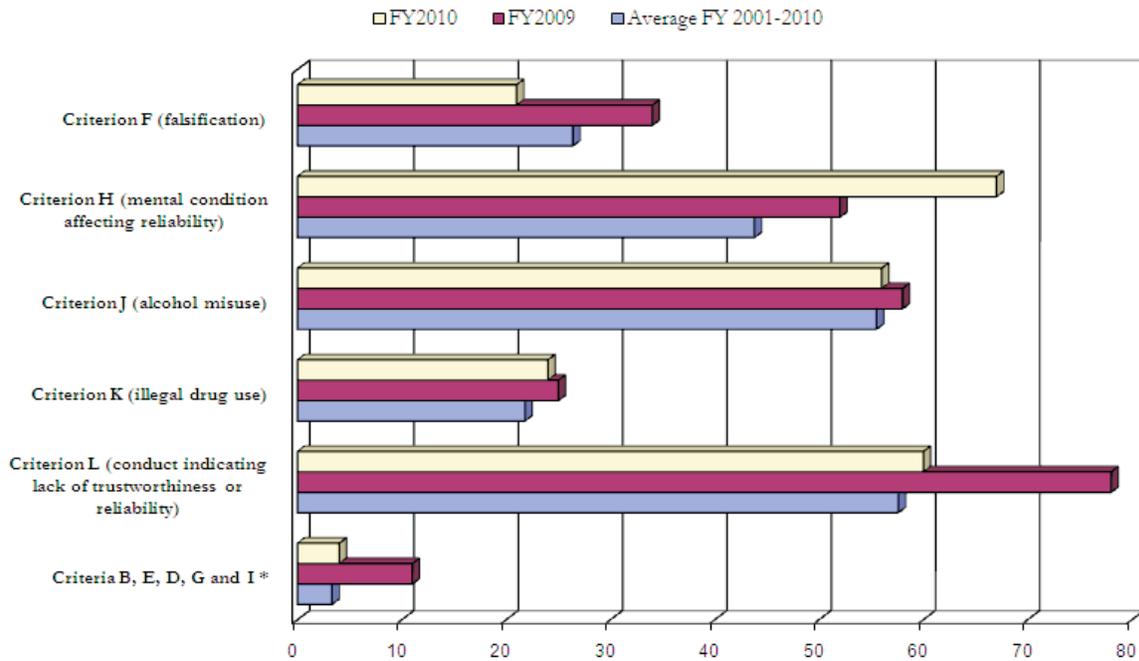
## A. PERSONNEL SECURITY

In FY 2010, 46 percent of cases received by OHA concerned an employee’s (federal or contractor) eligibility for a DOE security clearance. OHA also conducts hearings involving eligibility for the human reliability program, a security and safety reliability program for individuals who may have access to certain material, nuclear devices, or facilities. The governing regulations are set forth at 10 C.F.R. Parts 710 and 712, respectively. OHA’s web site contains a “Question and Answer” sheet to assist individuals in understanding the personnel security hearing process.

Personnel security hearings typically involve concerns about excessive alcohol use, substance abuse, mental illness, financial irresponsibility, or conduct raising doubt about an individual’s honesty and reliability. Evidence and testimony may include expert medical opinion. The OHA Hearing Officer assigned to the case analyzes the evidence and renders a decision, which may be appealed to an Appeal Panel within the DOE.

The following chart (full data at Appendix, Table 4) shows the number of cases in which various types of concerns - also referred to as criteria - were raised. Some cases involve multiple criteria. For example, a case may involve a concern about excessive alcohol use (Criterion J) and related or different concerns about honesty and trustworthiness (Criterion L). As the chart shows, the criteria cited have been relatively constant, though there was a continued increase in FY 2010 in the area of mental conditions affecting reliability (Criterion H), while the number of cases involving issues of trustworthiness or reliability (Criterion L) fell to a level more consistent with the average of the last ten years.

**Criteria Invoked in Personnel Security Cases**



\* B - sympathetic association with individuals with interests opposed to the U.S.

E - relative residing in hostile nation

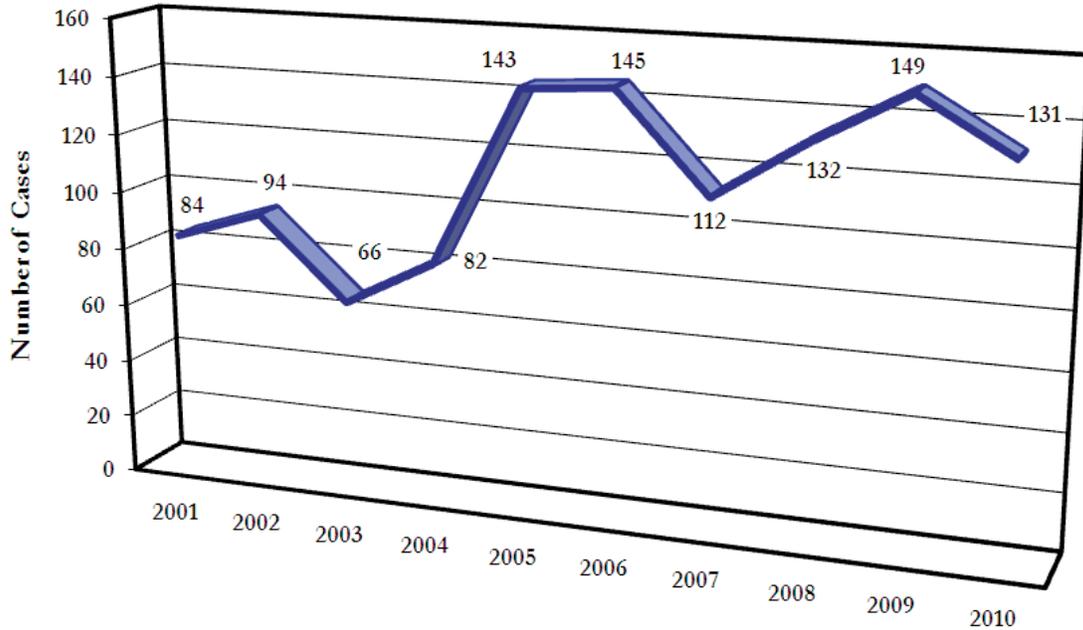
D - advocate of unlawful overthrow of government

G - violation of security regulations

I - refused to testify in security proceeding

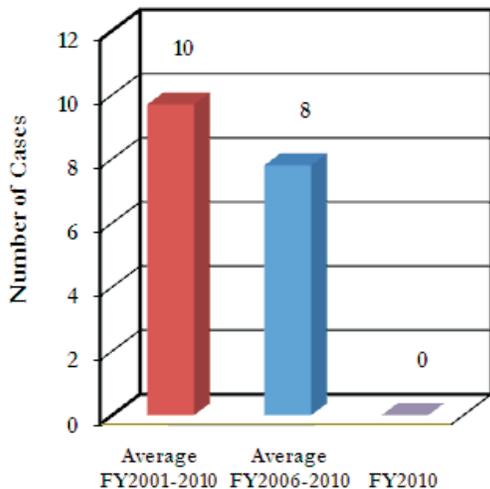
The following chart (full data at Appendix, Table 5) shows the number of personnel security cases received during each of the last ten years. OHA received 131 personnel security cases in FY 2010, fewer than in FY2009, though only slightly below the average number of cases received over the last five years.

**Personnel Security Cases Received  
FY 2001-2010**

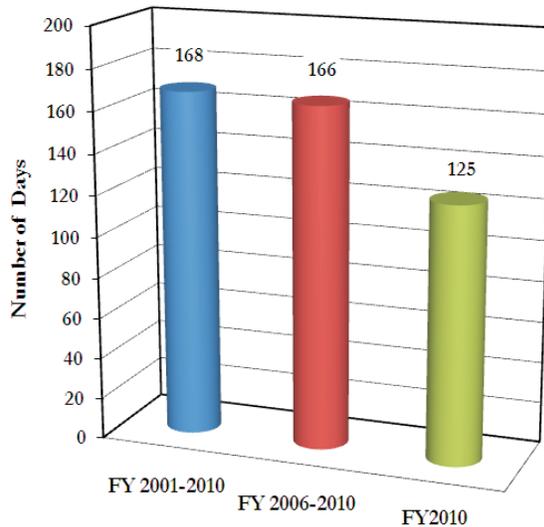


In FY 2010, we continued to process personnel security cases in a more timely manner. As shown in the first chart below, at the end of the year, we had no cases in our inventory older than 180 days, a clear improvement over our averages of the last five and ten fiscal years. The second chart shows our continuing reduction in case-processing time, nearly 25 percent below our average over the last five years, and over 25 percent below our average for FY 2001-2010 (full data at Appendix, Tables 6 and 7).

**Personnel Security Cases  
End-of-Year Inventory  
Older Than 180 Days**



**Personnel Security Cases  
Average Case Processing Time**



In September 2010, Ann Augustyn, Chief of the OHA's Personnel Security and Appeals Division, served as the Chairperson of the DOE's Clinician Summit in Las Vegas, Nevada. This three-day summit was the first of its kind in the agency and was designed as an avenue for DOE mental health clinicians to share best practices, develop professional contracts throughout the complex, and establish a consistent and standardized set of DOE expectations on matters related to the DOE Administrative Review, Personnel Security, and Human Reliability Programs. Summit speakers included OHA Deputy Director Fred Brown and Hearing Officers Bill Schwartz and Richard Cronin. Other presenters included officials from the DOE's Office of Health and Safety, lawyers from the NNSA and the DOE, officials from the NNSA Service Center's Personnel Security Division, consultants to the DOE's Office of Counterintelligence, a policy expert from the DOD's Personnel Security Research Center, and several psychiatrists and psychologists. The Summit provided the Clinicians with a forum to discuss challenges in their DOE-related work and to seek guidance from their peers and the DOE officials in attendance on issues of concern to them. In addition, the clinicians received eight hours of training on how to administer and interpret a psychological test designed to detect malignant personality disorders.

## PERSONNEL SECURITY CASE DECISION SUMMARY

### **Case No. TSO-0928 - Personnel Security Hearing**

On September 3, 2010, an OHA Hearing Officer issued a Decision regarding the eligibility of an individual for a DOE security clearance. The Hearing Officer determined that the DOE should not restore the individual's access authorization.

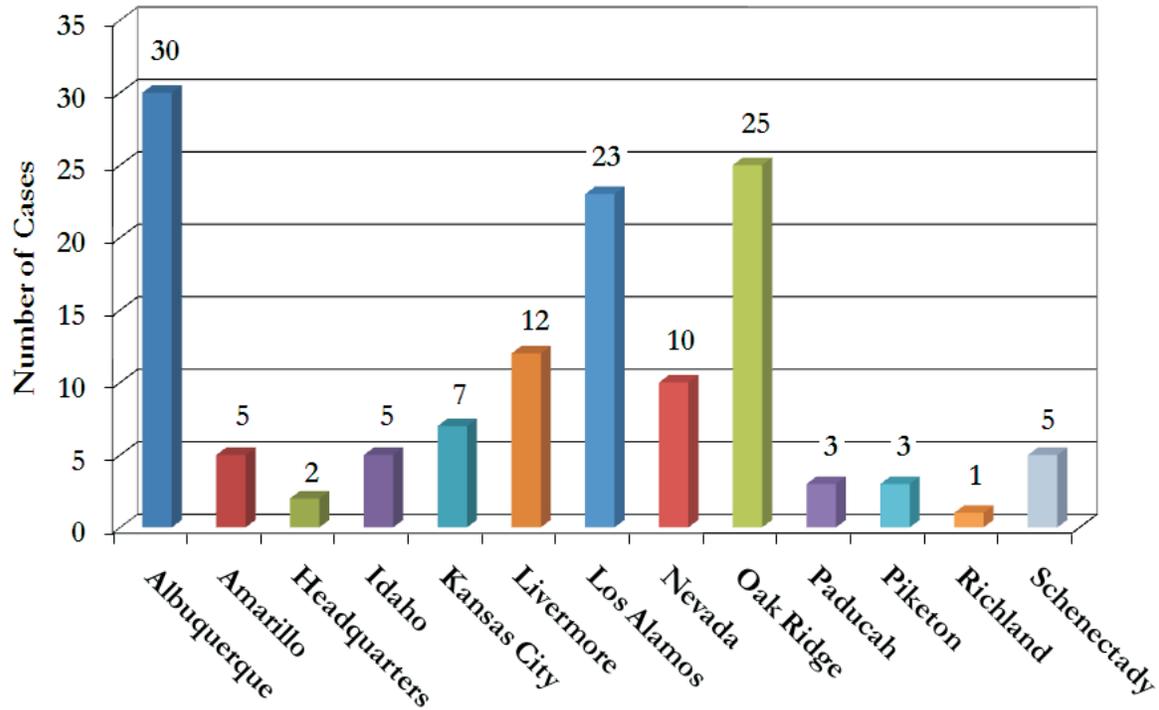
The individual worked for a DOE contractor. The DOE denied the individual's application for access authorization due to issues relating to his use of alcohol. After the individual requested reconsideration of his eligibility for a clearance, the DOE granted the individual access authorization. The individual was subsequently arrested and charged with Driving Under the Influence (DUI). In addition, a DOE psychologist diagnosed the individual as suffering from of Alcohol-Related Disorder, Not Otherwise Specified. The local security office ultimately informed the individual that there was information creating a substantial doubt concerning his eligibility for access authorization, and that he was entitled to a hearing before a Hearing Officer in order to resolve the security concerns raised by the derogatory information.

At the hearing, the individual presented evidence that he had completed an intensive outpatient treatment, and attended aftercare once a week and Alcoholics Anonymous meetings two to three times per week. The DOE psychologist rated the individual's risk of relapse at 25 percent, and stated that the individual was still very early in the process of recovery. In his decision, the Hearing Officer noted that the individual's most recent DUI arrest was still a quite recent event, having occurred only seven months prior to the hearing. In addition, the individual had a history of repeated treatments followed by relapses. After weighing the evidence, the Hearing Officer was not convinced that the risk that the individual will use alcohol to excess in the future was sufficiently low such that restoring his access authorization would not endanger the common defense and would be clearly consistent with the national interest.

*The full text of this decision can be found at <http://www.oha.doe.gov/cases/security/tso0928.pdf>.*

## Location of Personnel Security Cases Received in FY 2010

(full data at Appendix, Table 8)



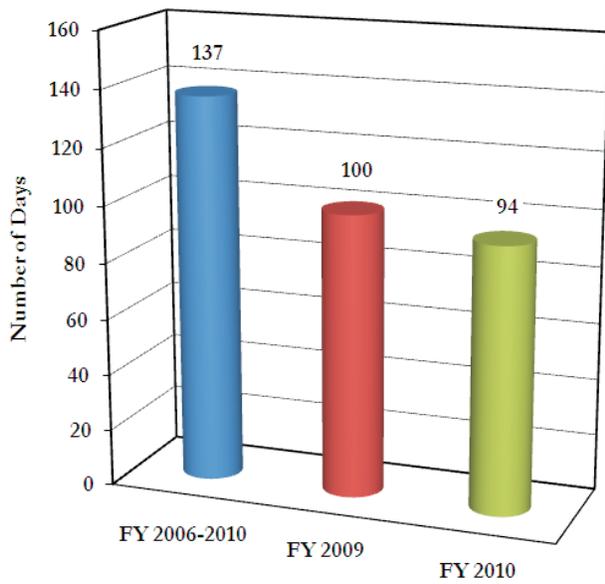
### B. CONTRACTOR EMPLOYEE PROTECTION PROGRAM

OHA investigates complaints, conducts hearings, and considers appeals under DOE's Contractor Employee Protection Program. The program provides an avenue of relief for DOE contractor employees who suffer reprisal as the result of making protected disclosures or engaging in other types of protected activity. The governing regulations are set forth at 10 C.F.R. Part 708. OHA's web site ([www.oha.doe.gov](http://www.oha.doe.gov)) contains two "Question and Answer" sheets to assist DOE field personnel and contractor employees in understanding the process for considering contractor employee reprisal complaints.

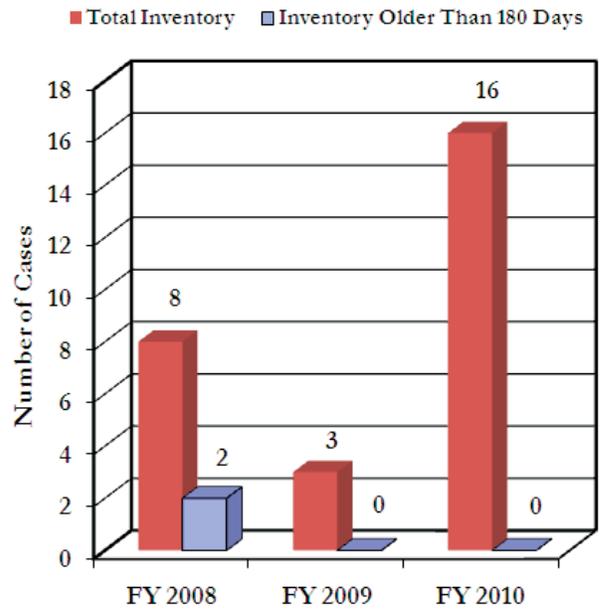
The main issues in these cases are whether an employee engaged in protected activity and, if so, whether the contractor would have taken an adverse action against the employee in the absence of the employee's involvement in that activity. During the investigation, an OHA Investigator conducts interviews, examines documentary evidence, and issues a report. Following the issuance of the Report of Investigation, an OHA Hearing Officer is assigned to the case. The Hearing Officer rules on pre-hearing motions, conducts the hearing, and issues an initial agency decision, which may be appealed to the OHA Director. The OHA Director also hears appeals from dismissals of complaints. His decisions in both types of appeals serve to increase understanding of the program's purpose and implementation. A finding of reprisal for certain types of disclosures may result in civil penalties pursuant to the DOE enforcement programs under the Price-Anderson Act and the DOE Worker Safety and Health Rule (10 C.F.R. Part 851).

During FY 2010, OHA received 35 whistleblower cases and, as with our other areas of jurisdiction, we continued to focus on timeliness in the processing of these cases. We are pleased with the results of those efforts in the past year, shown in the charts on the following page. Despite a marked increase in

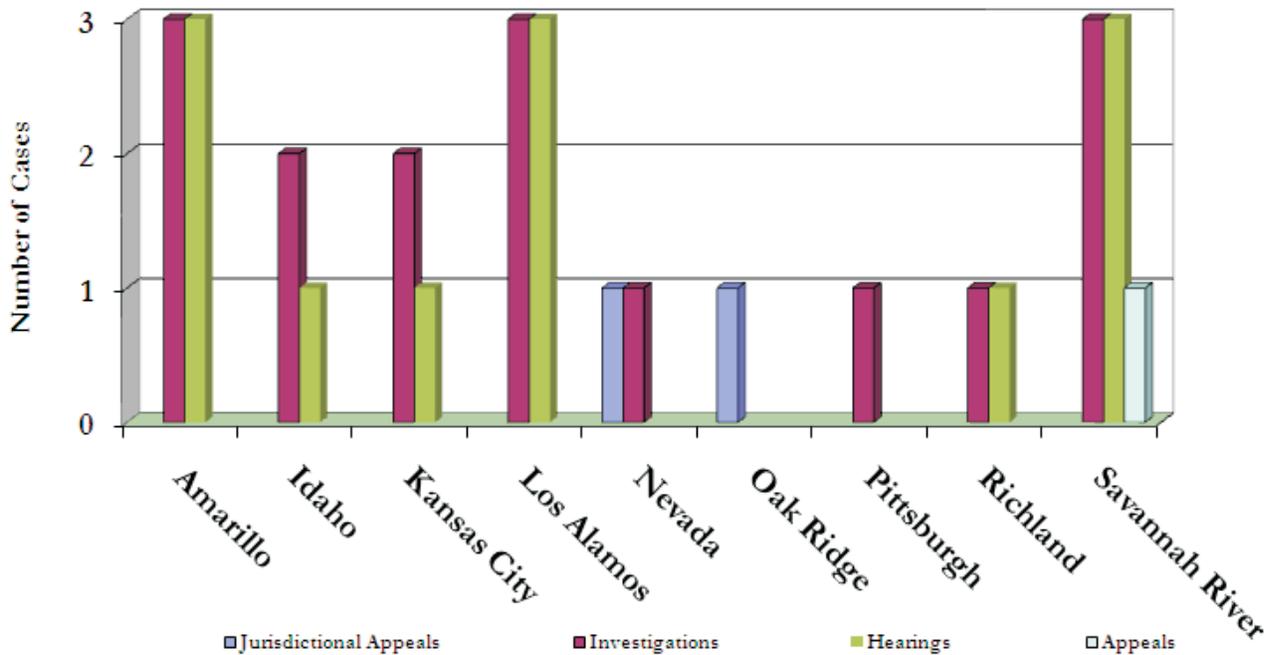
**Whistleblower Cases  
Average Case Processing Time**



**Whistleblower Cases  
End-of-Year Inventory**



**Location of Whistleblower Cases Received in FY 2010**



caseload, evidenced by our end-of-year case inventory, we continued to build on the dramatic reduction in case-processing time achieved in FY 2009, and ended FY 2010 with no case in our inventory older than 180 days.

## CONTRACTOR EMPLOYEE PROTECTION CASE DECISION SUMMARY

### **Case No. TBH-0096 - Douglas L. Cartledge**

On August 6, 2010, a Hearing Officer issued an Initial Agency Decision denying a Complaint filed by Douglas L. Cartledge under the DOE Contractor Employee Protection Program, set forth at 10 C.F.R. Part 708. The Complainant, whose employment had been terminated by Parsons Corporation (Parsons), a contractor at the Department of Energy's Savannah River Site, alleged that Parsons retaliated against him after he made protected disclosures to Parsons management and the DOE.

Parsons was contracted by DOE to construct a Salt Water Processing Facility at the Savannah River Site, and Mr. Cartledge alleged, among other things, that he had disclosed concerns regarding whether Parsons was adhering to its heat stress procedures at the construction site, and whether Parsons was in compliance with requirements for the posting of an Employee Concerns Program notice at the site.

The Hearing Officer conducted a three-day hearing in Aiken, South Carolina. After a review of the record, the Hearing Officer determined that Mr. Cartledge demonstrated by a preponderance of the evidence that his disclosure regarding heat stress procedures was protected under Part 708, based upon evidence that he reasonably believed that he was disclosing a substantial and specific danger to employees, but that his other alleged disclosures were not protected. The Hearing Officer further found that Mr. Cartledge's protected conduct was a contributing factor to his termination, which occurred the same day as his disclosure.

Nonetheless, the Hearing Officer found clear and convincing evidence that, because Mr. Cartledge engaged in insubordinate behavior on the day of his termination, and in light of a prior instance of Mr. Cartledge's insubordination toward his foreman, Parsons would have chosen to terminate Cartledge's employment regardless of whether Cartledge had engaged in any activity protected under Part 708. Therefore, the Hearing Officer denied Mr. Cartledge's request for relief.

*The full text of this decision can be found at <http://www.oha.doe.gov/cases/whistle/tbh0096.pdf>.*

The DOE Contractor Employee Protection Program is part of a larger DOE program - the DOE Employee Concerns Program (ECP). The latter is managed by the Office of Civil Rights and Diversity, an office within the DOE's Office of Economic Impact and Diversity.

In September 2010, two OHA attorneys from the Office of Hearings and Appeals provided training to DOE and DOE contractor employee concerns managers concerning the ECP Program. This training was provided in conjunction with the Fall 2010 meeting of the National Association of Employee Concerns Professionals, convened in Annapolis, Maryland. The attorneys made presentations on the responsibilities of DOE field elements concerning the initial processing of Part 708 complainants, as well as the related governing standards, and conducted a break-out session in which they presented additional information concerning the Part 708 process, fielded questions, and received suggestions for future topics for training. As a result of these meetings, OHA expects to conduct ongoing training, using technology such as iPortal web conferencing.

## C. FREEDOM OF INFORMATION AND PRIVACY ACTS

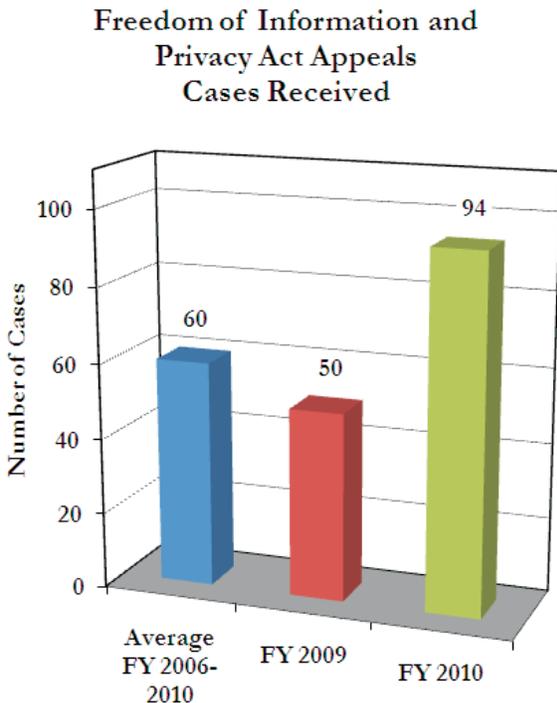
OHA considers appeals of agency determinations under the Freedom of Information Act (FOIA) and Privacy Act. The governing regulations are set forth at 10 C.F.R. Parts 1004 and 1008, respectively.

These appeals arise from determinations across the DOE complex and involve diverse subject matter areas. OHA facilitates communication between the requester and the agency, which in some cases permits the resolution of the issues without adjudication. OHA works closely with the DOE's FOIA and Privacy Act offices, and participates in complex-wide training.

OHA continues to receive a number of FOIA and Privacy Act appeals by DOE workers seeking exposure and medical records to support compensation claims under the Energy Employees Occupational Illness Compensation Program Act. The Department of Labor administers that program.

As shown in the chart below, during FY 2010 we received 94 FOIA and Privacy Act Appeals, a number greater than any year since FY1998 (full data at Appendix, Table 12).

This dramatic increase did not, however,



### FREEDOM OF INFORMATION AND PRIVACY ACTS CASE DECISION SUMMARY

#### Case No. TFA-0403 - Southern Alliance for Clean Energy

On August 11, 2010, the OHA Director issued a Decision on an Appeal that the Southern Alliance for Clean Energy (SACE) filed in response to a determination issued by the DOE's Loan Guarantee Program Office (LGPO). This determination was in response to a FOIA request SACE filed for documents pertaining to DOE's issuance of conditional commitments for loan guarantees for the construction and operation of two nuclear reactors at Vogtle Electric Generating Plant in Burke County, Georgia.

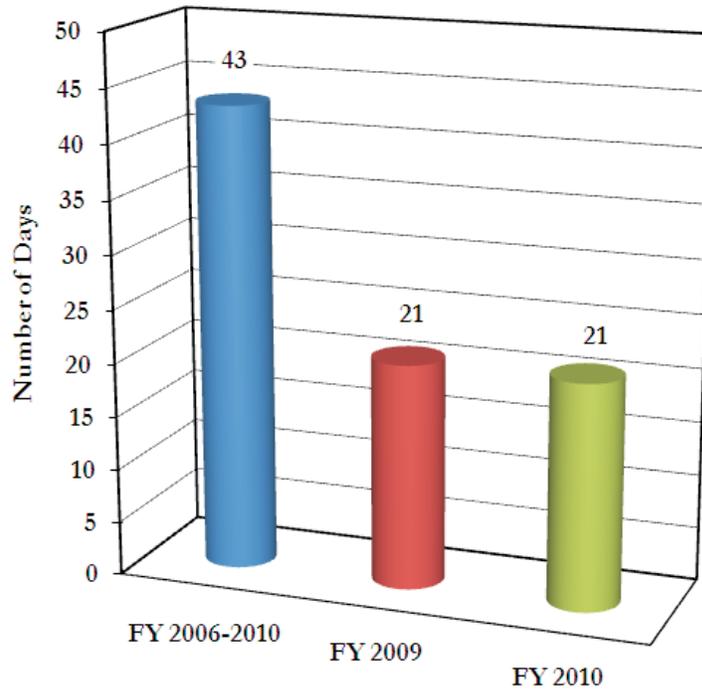
LGPO issued a partial determination in response to SACE's request, releasing copies of three Loan Guarantee sheets, but withholding portions of the documents pursuant to Exemption 4 of the FOIA, which exempts from mandatory disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential." LGPO claimed that the information withheld was commercial or proprietary. In its Appeal, SACE challenged the adequacy of LGPO's determination, as well as the appropriateness of LGPO's use of Exemption 4 as justification for withholding the redacted information.

OHA determined LGPO did not adequately justify its withholding of information under Exemption 4, because it did not provide specific information regarding the nature of the withheld information or the competitive harm that would result from its release. Accordingly, OHA remanded the matter to LGPO to issue a new determination explaining with more specificity how Exemption 4 applies to the various types of withheld material in the documents.

*The full text of this decision can be found at <http://www.oha.doe.gov/cases/foia/tfa0315.pdf>.*

prevent us from continuing to process cases in a timely manner. Our average processing time for FOIA and Privacy Act appeal cases remained more than 38 percent below that of FY 2008, and over 50 percent below our average processing time during the FY 2006-2010 period (full data at Appendix, Table 13).

### Freedom of Information and Privacy Act Appeals Average Case Processing Time



#### D. EXCEPTIONS AND SPECIAL REDRESS

OHA considers petitions for special redress, as well as requests for exceptions from certain DOE regulations and orders. Most requests concern the Energy Information Administration (EIA) reporting requirements and the DOE appliance efficiency regulations.

The exception process is a regulatory relief valve. An exception is granted where the application of a rule or order would constitute a gross inequity, serious hardship, or unfair distribution of regulatory burdens. OHA may grant an exception, for example, if applying a rule to a specific firm would be inconsistent with the overall purpose of a program or would impose a burden on the firm that would be grossly disproportionate to the burden imposed on other firms by the rule. In all cases, OHA consults with the affected DOE office.

Over the last ten years, receipts of EIA cases have fluctuated, with the high points likely related to EIA announcements of a new reporting sample. Similarly, appliance efficiency cases tend to increase as the deadline for compliance with a new standard approaches. In FY 2010, OHA closed 4 EIA exception cases and 4 appliance efficiency cases.

## EXCEPTIONS AND SPECIAL REDRESS CASE DECISION SUMMARY

### Case No. TEG-0005 - Pacific Underground Construction, Inc.

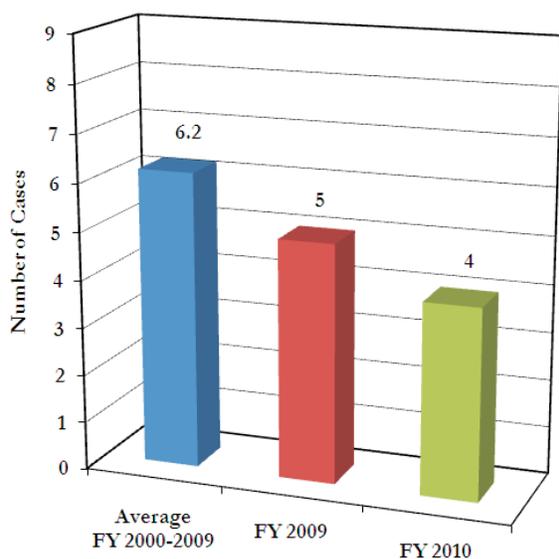
On December 9, 2009, OHA issued a decision denying a Petition for Special Redress filed by Pacific Underground Construction, Inc. (PUC). In its Petition, filed pursuant to OHA procedural regulations set forth in 10 CFR Part 1003, Subpart G, PUC sought review of a Final Notice of Violation (FNOV) issued to PUC on September 3, 2009, by the DOE Office of Health, Safety and Security (HSS) under the provisions of 10 CFR Part 851 (Worker Safety and Health Program). The Worker Safety and Health Program was adopted by DOE to implement the statutory mandate of Section 3173 of the National Defense Authorization Act (NDAA) of 2003, by which Congress directed DOE to promulgate worker safety and health regulations that maintain a high level of protection for employees of DOE contractors.

The FNOV assessed a civil penalty of \$42,000 against PUC based upon a finding by HSS that PUC's failure to ensure proper safety procedures by its subcontractor contributed to a pipe explosion at DOE's SLAC National Accelerator Laboratory in September 2007. In denying PUC's Petition, OHA rejected PUC's claims that PUC had no notice of its Part 851 safety requirements and that PUC was not responsible for the unsafe practices of its subcontractor. Further, OHA found PUC's contention that the civil penalty imposed by the FNOV would cause the firm a financial hardship was unsubstantiated and speculative.

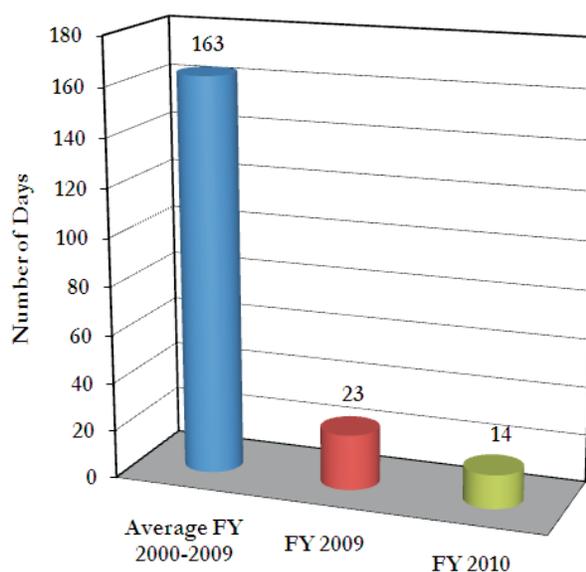
*The full text of this decision can be found at <http://www.oha.doe.gov/cases/wa/teg0005.pdf>.*

Despite inevitable fluctuations in the number of EIA form exception cases received, the first chart below shows that the number of EIA cases received in FY 2010 was not significantly less than in FY 2009 or the average number of cases received annually during the last ten fiscal years. The second chart shows a nearly 40 percent improvement in FY 2010 over an already dramatic reduction in average case-processing time in FY 2009, compared with our average of prior years (full data at Appendix, Tables 14 and 15).

**EIA Form Exception Cases Received**



**EIA Form Exception Requests  
Average Case Processing Time**



## E. ALTERNATIVE FUEL TRANSPORTATION PROGRAM

The DOE's Alternative Fuel Transportation Program implements policies established by Congress in the Energy Policy Act of 1992, including requirements that certain alternative fuel providers and most State governments include alternative fuel vehicles (AFVs) in their light duty vehicle fleet acquisitions. The program provides that covered entities may request, from the Assistant Secretary for Energy Efficiency and Renewable Energy, exemptions from the AFV-acquisition requirements. The regulations governing the program, set forth at 10 C.F.R. Part 490, provide that Appeals from the denial of exemptions may be filed with OHA.

In FY 2010, we issued decisions on two Appeals filed under this program, one submitted on behalf of a gas and electric utility company, the other file by a State government (see summary below).

### ALTERNATIVE FUEL TRANSPORTATION PROGRAM CASE DECISION SUMMARY

#### **Case No. TEA-0012 - Commonwealth of Massachusetts**

On November 30, 2009, the OHA Director issued a Decision on an Appeal filed by the Commonwealth of Massachusetts, from a determination issued on behalf of the Assistant Secretary for Energy Efficiency and Renewable Energy (EE), under the regulations governing the DOE's Alternative Fuel Transportation Program. EE denied a request filed by Massachusetts for 37 exemptions, in addition to 88 already granted, from the firms Model Year 2008 alternative fuel vehicle (AFV) purchase requirements under the program.

As a basis for the exemptions it sought, Massachusetts cited the unavailability of AFVs, conversion kits, and refueling stations. However, OHA found that Massachusetts had the option to meet the remainder of its AFV purchase requirement through biodiesel fuel use credits, yet had not demonstrated that it could not have purchased and used sufficient biodiesel fuel to qualify for the additional credits for which it sought exemptions.

Thus, OHA concluded that Massachusetts had received the maximum number of exemptions to which it is entitled under the regulations, and that its Appeal must be denied. As directed by EE, the Commonwealth was required to pursue the purchase of credits under the Alternative Fueled Vehicle Credit Program in order to satisfy its MY 2008 AFV-acquisition requirements.

*The full text of this decision can be found at <http://www.oha.doe.gov/cases/ee/tea0012.pdf>.*

## F. ELK HILLS OIL FIELD (FORMERLY NAVAL PETROLEUM RESERVE NO. 1)

OHA has a unique jurisdiction concerning the Elk Hills Oil Field, formerly Naval Petroleum Reserve No. 1. In the largest privatization in U.S. history, the federal government sold its share in the field to a major oil company. Prior to the sale, Chevron USA Inc. and DOE operated the field as a unit pursuant to a congressionally-approved contract. At the time of the sale, the parties had not finalized their equity interests in the unit's production; Chevron agreed to give up judicial review in exchange for an agency process that culminates with an appeal to OHA. In 2005, OHA reversed and remanded a decision concerning the Stevens Zone for a revised determination. OHA is currently considering an appeal of the revised determination.

## II. WORKING WITH OTHERS

Over the years, OHA has collaborated and partnered with other DOE offices and federal agencies, and FY 2010 was no exception.

In November 2009, the Chief of OHA's Personnel Security and Appeals Division spoke at the Human Reliability Conference in Las Vegas, Nevada, and compared and contrasted the Human Reliability Program regulations under 10 CFR Part 712 with the regulations governing the eligibility of persons to hold a security clearance under 10 CFR Part 710. In September 2010, the Personnel Security and Appeals Division Chief served as Chair of the DOE's three-day Clinician Summit in Las Vegas, Nevada, which included presentations from representatives of a number of DOE offices responsible for the Department's Administrative Review, Personnel Security, and Human Reliability Programs (see page 7).

During FY 2010, an OHA attorney participated in a Title IX compliance review conducted by the DOE's Office of Civil Rights and Diversity at the University of Pennsylvania. OHA has also worked with the Office of Civil Rights and Diversity to train Employee Concern Managers concerning DOE's Contractor Employee Protection Program (see page 10).

Sharing information and ideas with other organizations, within and outside the DOE, benefits both sides of the conversation. We continue to learn from our colleagues, and hope that those with a better understanding of OHA and what we do can take advantage of the expertise, resources, and services we offer in support of DOE's mission. In this spirit, OHA continued in FY 2010 its series of occasional Brown Bag Lunches. Our distinguished guests in the past year included:

Kathleen Binder, DOE Office of Conflict Prevention and Resolution  
Robert Edwards, DOE Deputy General Counsel for Energy Policy  
David S. Jonas, General Counsel, National Nuclear Security Administration  
Sanford Parnes, Counsel to the Inspector General, DOE  
Pamela M. Pontillo, DOE Office of Conflict Prevention and Resolution  
Melanie Ann Pustay, Director, Department of Justice Office of Information Policy  
Herbert Richardson, Principal Deputy Inspector General, DOE

We look forward to continuing this series in the coming year.

## III. SERVING OUR COMMUNITY

In FY 2010, OHA employees continued their long tradition of generosity to the Combined Federal Campaign, receiving an eighth President's Award for "their extraordinary support of voluntarism" through the CFC.

For the eleventh year in a row, OHA attorneys supported DOE's partnership with the "Everybody Wins!" lunchtime reading program at Amidon Elementary School. As the fiscal year closed, six OHA attorneys were participating in the weekly reading program. Apart from DOE-sponsored activities, OHA staff members donate their time and skills to their communities in a variety of ways.

#### IV. INFORMATION MANAGEMENT

OHA makes broad use of technology to accomplish its mission. OHA maintains a website where it publishes its decisions and other information. Internally, OHA uses a case management system to record new case filings, track the status of pending cases, produce productivity and case status reports, and assist staff attorneys in the timely resolution of assigned cases.

In FY 2010, OHA continued to reduce the space devoted to records storage as part of its plan to transition to a paperless office, converting 4,400 square feet of paper document storage space to electronic media. For FY 2011, OHA plans to increase its use of electronic filing and case record maintenance.

#### V. GENERAL INFORMATION

- ✍ Extensive information is available on our website at [www.oha.energy.gov](http://www.oha.energy.gov). The website includes information about OHA's jurisdiction, including applicable regulations, "Question and Answer" sheets, and OHA decisions.
- ✍ For copies of submissions in OHA proceedings, you may contact the Docket Room at (202) 287-1400. You may also fax your inquiries to (202) 287-1415 or e-mail them to [doretha.colter@hq.doe.gov](mailto:doretha.colter@hq.doe.gov).
- ✍ For general information, you may contact the Office of the Director at (202) 287-1566 or the Docket Room at the number listed above.
- ✍ To give us feedback on this Annual Report or on any aspect of our operations, please email us at [oha.feedback@hq.doe.gov](mailto:oha.feedback@hq.doe.gov). We truly value your observations and suggestions.

## APPENDIX - TABLES

Table 1 - Cases Received by Type, FY 2010

Personnel Security Cases	131	46%
Freedom of Information Act Appeals	96	34%
Whistleblower Cases	43	15%
Exceptions	9	3%
Others	5	2%

Table 2 - Average Case Processing Time (Days)

FY 2001-2010	138
FY 2006-2010	132
FY 2010	90

Table 3 - End of Year Case Inventory Older Than 180 Days

FY 2001-2010	17
FY 2006-2010	14
FY 2010	4

Table 4 - Criteria Invoked in Personnel Security Cases

	Average FY 2001-2010	FY 2009	FY 2010
Criterion F (falsification)	26.4	34	21
Criterion H (mental condition affecting reliability)	43.8	52	67
Criterion J (alcohol misuse)	55.5	58	56
Criterion K (illegal drug use)	21.8	25	24
Criterion L (conduct indicating lack of trustworthiness or reliability)	57.6	78	60
Criteria B (sympathetic association with individuals with interests opposed to the U.S.), D (advocate of unlawful overthrow of government), E (relative residing in hostile nation), G (violation of security regulations), and I (refused to testify in security proceeding)	3.3	11	4

Table 5 - Personnel Security Cases Received, FY 2000-2009

Fiscal Year	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Cases Received	84	94	66	82	143	145	112	132	149	131

Table 6 - Personnel Security Cases, End-of-Year Inventory Older Than 180 Days

Average FY2001-2010	Average FY2006-2010	FY2010
10	8	0

Table 7 - Personnel Security Cases, Average Case Processing Time (Days)

FY 2001-2010	FY 2006-2010	FY2010
168	166	125

Table 8 - Location of Personnel Security Cases Received in FY 2010

Albuquerque	Amarillo	Headquarters	Idaho	Kansas City	Livemore	Los Alamos	Nevada	Oak Ridge	Paducah	Piketon	Richland	Schenectady
30	5	2	5	7	12	23	10	25	3	3	1	5

Table 9 - Whistleblower Cases, Average Case Processing Time (Days)

FY 2006-2010	FY 2009	FY 2010
136.8	100	94

Table 10 - Whistleblower Cases, End-of-Year Inventory

	FY 2008	FY 2009	FY 2010
Total Inventory	8	3	16
Inventory Older Than 180 Days	2	0	0

Table 11 - Location of Whistleblower Cases Received in FY 2010

	Jurisdictional Appeals	Investigations	Hearings	Appeals
Amarillo		3	3	
Idaho		2	1	
Kansas City		2	1	
Los Alamos		3	3	
Nevada	1	1		
Oak Ridge	1			
Pittsburgh		1		
Richland		1	1	
Savannah River		4	4	1

Table 12 - Freedom of Information and Privacy Act Appeals Cases Received

Fiscal Year	Average FY 2006-2010	FY 2009	FY 2010
Cases Received	60	50	94

Table 13 - Freedom of Information and Privacy Act Appeals, Average Case Processing Time (Days)

FY 2006-2010	FY 2009	FY 2010
43.2	21	21

Table 14 - EIA Form Exception Cases Received

Fiscal Year	Average FY 2000-2009	FY 2009	FY 2010
Cases Received	6.2	5	4

Table 15 - EIA Form Exception Requests, Average Case Processing Time (Days)

Average FY 2000-2009	FY 2009	FY 2010
163.3	23	14

