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Report to Rep. Richardson Preyer, Chairman, House Committee on Government Operations: Government Information and Individual Rights Subcommittee; by Elmer B. Staats, Comptroller General.

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Congressional Relevance: House Committee on Government Operations: Government Information and Individual Rights Subcommittee.-Rep. Richardson Preyer.
Authority: Freedom of Information Act (5 U.S.C. 552). Privacy Act of 1974. 31 U.S.C. 484. H. Rept. 89-1497. S. Rept. 89-813.

The Freedom of Information Act provides the basic authority and procedure for the public to obtain documents and records from the Federal Government. Findings/Conclusions: The act has given citizens access to records not previously available. Although it is being used mostly by businesses and law firms for purposes not contemplated by the Congress, any attempt to regulate such use could also restrict use by the public. Most agencies are making a reasonable effort to meet the act's time requirements for responding to requests, but a few agencies have not responded within the 10-day time limit. Agencies should evaluate each step of the process and consider establishing time limits for each step. Agencies are not abusing fee provisions of the act. On the contrary, there is a reluctance to assess fees, and clarification is needed in this area. One problem area is in applying exemptions from disclosure listed in the act. Agencies differed in denials of requests and in determining what constituted a denial. Additional training on the act is needed in some agency field offices with variations among agencies in amount and type of training needed. Improvement is also needed in support by agency management of programs for providing public access to Government records and in the quality of agency reports on implementation of the act. Recommendations: The Attorney General should have the heads of Federal departments and agencies: review regulations pertaining to the act to make sure that they are clear, conform to the spirit of the act, and do not contain unwarranted restrictive

provisions; advise personnel to return fees collected under the act to the Treasury and to exercise better control over fee assessment, collection, and processing; and emphasize to responsible officials the need to review the act's implementation at least annually. He should: clarify what constitutes an adverse determination or denial under the act; emphasize to heads of departments and agencies the need to evaluate the training provided to field office staffs, determine needs for additional training, and make sure that it is provided; and evaluate the adequacy of staff resources allocated to the Department of Justice's oversight role. The Congress should consider amending the act to clarify the Department's oversight role. (HTW)

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REPORT BY THE

Comptroller General

OF THE UNITED STATES

RELEASED 8/7/78

Government Field Offices Should Better Implement The Freedom Of Information Act

The Chairman, Subcommittee on Government Information and Individual Rights, House Committee on Government Operations, requested that GAO review the regional implementation by Federal offices of the Freedom of Information Act--the basic authority and procedure for the public to obtain documents and records from Federal departments and agencies.

With few exceptions, regional personnel were aware of their duty to respond to public requests and were attempting to comply with the act. However, the act has not yet been totally supported and implemented.

The Congress should consider amending the act to clearly give the Department of Justice oversight responsibility for act administration.

UNITED STATES GENERAL ACCOUNTING OFFICE

LCD-78-120
JULY 25, 1978

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-173761

The Honorable Richardson Preyer, Chairman
Subcommittee on Government Information
and Individual Rights
Committee on Government Operations
House of Representatives

Dear Mr. Chairman:

In response to your April 19, 1977, request, we have reviewed the regional implementation of the Freedom of Information Act in field offices of selected Federal agencies. At your request, we did not take the time needed to obtain written agency comments. However, we discussed the matters presented with agency officials and have considered their comments in this report.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 10 days after its issue date. At that time, we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,

Comptroller General
of the United States

COMPTROLLER GENERAL'S REPORT
TO THE SUBCOMMITTEE ON
GOVERNMENT INFORMATION AND
INDIVIDUAL RIGHTS
HOUSE COMMITTEE ON
GOVERNMENT OPERATIONS

GOVERNMENT FIELD OFFICES SHOULD BETTER IMPLEMENT THE FREEDOM OF INFORMATION ACT

D I G E S T

Overall, attitudes of Federal departments and agencies toward the Freedom of Information Act and the concept of "open government" have apparently become more positive since its passage 12 years ago.

The "Freedom of Information" message has reached the Government's numerous field offices across the country. With few exceptions, Federal regional staffs are aware of their duty to respond to public requests and are attempting to comply with the act's provisions. Agency experiences with the act, along with pressures from the Congress, the Attorney General, and the courts, have probably helped foster this situation. (See p. 6.)

However, some agencies--particularly the investigative or regulatory agencies--still tend to have somewhat negative attitudes. This is undoubtedly due in part to their unique operations and records and the real or perceived impact the act has had on them. (See p. 7.)

Consequently, total support of the Freedom of Information Act has not yet been achieved in all Federal agencies' field offices.

The act's primary objective is to facilitate the fuller and faster release of Government information to the public. Enacted on July 4, 1966, and amended on November 21, 1974, it provides the basic authority and procedure for the public to obtain documents and records from the Federal Government.

WHO IS REQUESTING DATA

The act has given citizens access to records not previously available. At the agencies reviewed, it is being used mostly by businesses and law firms--sometimes for purposes not contemplated by the Congress. The widespread use of the act by these groups has burdened some agencies. Businesses and law firms made 58 percent of the requests; only 14 percent were made by individuals.

Any attempt to regulate the use of the act by businesses and law firms, however, could also restrict the use by the public. Rather than attempting to limit the act's use by particular groups, consideration should be given to increasing public awareness and use of the act. (See pp. 36 and 41.)

REGULATIONS COULD IMPEDE ACCESS TO DATA

Most Government regulations that control how the act may be used generally reflect its spirit. Some, however, contain unclear and unnecessarily restrictive provisions that could impede the flow of information to the public; such regulations need prompt reassessment and clarification.

GAO recommends that the Attorney General have the heads of Federal departments and agencies review Freedom of Information Act regulations to make sure that

--they are clear,

--they conform to the spirit of the act, and

--unwarranted restrictive provisions are eliminated. (See p. 8.)

TIMELINESS OF AGENCY RESPONSES

Most agencies are making a reasonable effort to meet the act's time requirements. Many, in fact, are supplying the requested information within 10 days. A review of 2,375 requests showed that in 86 percent of the cases

the agency responded within that period. A few agencies, however, are taking much longer to provide requested records.

The centralized processing system used primarily by investigative or regulatory agencies apparently contributes to delays in providing requested records.

Regardless of the reason for delays, some agencies not complying with the act's time response provisions do not appear to be sufficiently concerned about courtesy to requesters since they are often not notified of the need for a time extension. In addition, these agencies have interpreted the time requirement inappropriately by failing to consider the search and evaluation time required at field locations contacted directly by requesters.

Agencies with centralized procedures for answering act requests should evaluate each step of the process and consider establishing and/or enforcing time limits for each. An alternative would be to delegate some responsibility to field locations to speed up processing time. (See pp. 28 and 30.)

FEES CHARGED FOR DATA

No evidence indicates that agencies are abusing the fee provisions of the Freedom of Information Act. On the contrary, agency officials seem reluctant to assess or collect such fees. Agencies need more guidance and clarification in this area.

When fees are collected, control over receipts is sometimes loose and not all collected fees are returned to the Treasury as required by law.

GAO recommends that the Attorney General have heads of Federal departments and agencies advise personnel to return fees collected under the act to the Treasury and to exercise better control over fee assessment, collection, and processing. (See p. 33.)

THE PROBLEM OF APPLYING EXEMPTIONS

The act lists nine categories of material which can be exempt from disclosure. However, the Congress intended that the exempt categories be used permissively rather than as mandatory reasons to withhold information.

Most field offices reviewed appear to use discretion in applying the act's exemptions. In some cases, however, exemptions appear to be applied automatically. The considerable individual judgment involved in handling requests results in differing responses to similar requests for exempt material. The denial process itself differs from agency to agency, and agencies' determinations regarding whether information has been denied affects a requester's rights under the act.

One area needing clarification is the criteria for a Freedom of Information Act denial. If the Congress intended that every incomplete response be considered a full or partial denial, the intent is not being met. Because of differences in what agencies considered a denial, requesters were not always given their appeal rights when warranted and were not treated equally by the various agencies.

GAO recommends that the Attorney General clarify what constitutes an adverse determination or denial under the Freedom of Information Act. (See pp. 21 to 26.)

ADEQUACY OF TRAINING QUESTIONABLE

Additional training on the Freedom of Information Act is needed in some agency field offices. The amount and type of training needed varies from agency to agency.

Accordingly, GAO recommends that the Attorney General emphasize to heads of Federal departments and agencies the need to evaluate the training provided to field office staffs, determine what additional training is needed, and make sure that it is provided.

Training needs can best be identified after an overall evaluation of an agency's Freedom of Information Act process has been made in light of the agency's mission and type of records maintained. (See p. 13.)

STRONGER SUPPORT BY AGENCY MANAGEMENTS NEEDED

GAO's overall impression is that Federal agencies' top management has not stressed improving their programs for providing the public access to Government records. Although several agencies keep records of their Freedom of Information Act activity, this data is apparently not used much for monitoring.

Deficiencies in administration of the program were not hard to find. On the other hand, agency managers were willing to act to correct problems brought to their attention. However, the managers are apparently not yet concerned enough to actively seek better methods of administering the act.

GAO recommends that the Attorney General, to improve compliance with the Freedom of Information Act, have heads of Federal departments and agencies emphasize to managers of field offices and headquarters officials responsible for the act the need to review the act's implementation at least annually. Such a review would help identify and correct shortcomings and could also increase overall familiarity with the act and provide information needed to update training programs. (See p. 17.)

Although the act does not specifically establish an oversight agency, the Department of Justice has been functioning in this capacity. Justice, however, is not providing enough staff resources to fulfill its interpreted responsibilities.

Accordingly, GAO recommends that the Attorney General evaluate the adequacy of the staff resources allocated to the Department's oversight role in concert with its determination of its responsibilities under the act.

Furthermore, to strengthen Justice's ability to perform as an oversight agency, the Congress should consider amending the Freedom of Information Act to clearly give the oversight role to the Department of Justice and delineate the responsibilities of the Department in this role. (See p. 17.)

BETTER AGENCY REPORTS ON THE ACT NEEDED

The 1974 amendments to the act require agencies to report annually on their experiences in carrying out its provisions. Most agencies comply with this requirement, but they are often less than precise in the data they report. There are inconsistencies among agencies, and sometimes within the same agency, in the denial statistics provided. The validity of the reported cost data is also questionable because the data is imprecise.

Limitations on the adequacy and accuracy of information in agencies' annual reports have been pointed out in the Congressional Research Service compilation of the reports. If the reported information is used as a general indicator of how the act is being implemented, the effect of these inaccuracies is probably insignificant. However, if the information is to be used to aid decisionmaking, more accurate information and other types of information will apparently be needed. (See p. 43.)

At the Subcommittee's request, GAO did not take the time needed to obtain written comments on this report from agencies concerned. However, GAO did discuss the matters presented with agency officials and considered their comments in completing the report.

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CHAPTER 1

INTRODUCTION

By letter dated April 19, 1977, the Chairman, Subcommittee on Government Information and Individual Rights, House Committee on Government Operations, requested us to review the implementation of the Freedom of Information Act (5 U.S.C. 552) in regional offices of selected Federal agencies. The Chairman noted that most data gathered over the last 10 years records the experience of Federal departments in Washington but fails to describe regional implementation.

The Freedom of Information Act, enacted on July 4, 1966, and amended on November 21, 1974, provides the basic authority and procedure for the public to obtain documents and records from the executive branch of the Federal Government. The act was intended to facilitate and expedite public access to Government information and to create national standards concerning which records should be open to public inspection.

The Freedom of Information Act requires Federal agencies to release information unless a valid reason exists for withholding it. The act identifies nine categories of information that can be exempt from release. These categories are (1) information classified pursuant to Executive order, (2) information related solely to an agency's internal rules and practices, (3) information specifically exempted from disclosure by statute, (4) trade secrets and confidential commercial or financial information, (5) agency memorandums that would not be available by law, (6) files whose disclosure would constitute a clearly unwarranted invasion of privacy, (7) investigatory records compiled for law enforcement purposes, (8) certain information related to regulation or supervision of financial institutions, and (9) geological and geophysical data. However, the act's legislative history makes it clear that the Congress did not intend for agencies to use these exempt categories to automatically withhold information.

Despite the substantial shift in emphasis resulting from the Freedom of Information Act, some Government agencies responded slowly and reluctantly to requests made under the law. In 1972, the House Foreign Operations and Government Information Subcommittee held 14 days of oversight hearings on Federal agencies' administration of the act. These hearings concluded that the "efficient operation of the Freedom of Information Act has been hindered by five years of foot-dragging by the Federal bureaucracy."

Later actions by the Congress and the Attorney General left little doubt that these attitudes and practices would have to change. In 1974, the Congress enacted a series of refining amendments to the act which encouraged even more disclosure. The 1974 amendments were aimed at reducing administrative and judicial delays in request processing, preventing abuses in agency fee schedules, streamlining the legal recourse afforded requesters, and strengthening requirements to release information whenever feasible.

In a May 1977 letter to the heads of all Federal departments and agencies, the Attorney General stressed the spirit of disclosure. He stated that the Government should not withhold documents unless it is important to the public interest to do so, even if some arguable legal basis exists for withholding them. To implement this view, the Attorney General stated that the Justice Department would not defend Freedom of Information Act suits unless the disclosure was demonstrably harmful, even if the documents technically fall within the act's exemption categories.

OVERSIGHT RESPONSIBILITY

Although the act does not specifically give the oversight function to any Government agency, the Department of Justice has assumed an increasing role in implementing the act. Justice prepared guidance in the form of Attorney General memorandums and other instructions to help Federal departments and agencies administer the act. In addition, the 1974 amendments require the Department to include in its annual report a description of its efforts to encourage agency compliance with the act.

SCOPE OF REVIEW

At selected Federal agencies, most of which were specified by the Subcommittee staff, we reviewed regulations and guidelines for implementing the Freedom of Information Act. We interviewed agency personnel and, where available, reviewed act logs, correspondence, and denial files. We reviewed agency records pertaining to act fees collected and costs incurred, and we contacted individuals who used the act to request information. Congressional offices in cities visited were contacted to determine whether they had received any constituent complaints about the act's administration. Our review covered the period January 1, 1976, through September 1, 1977.

This review was intended to examine the regional implementation of the Freedom of Information Act. In some agencies, however, all final decisions affecting the release or denial of information under the act are made at headquarters. In such cases, field offices play only a minor role in the process, and our audit steps had little applicability.

The lack of agency records also limited our review. Some agencies had no records of denials. In some instances logs and other records of requests were incomplete or nonexistent or no one person was accountable for implementing the act. In such cases, our review was limited to reviewing agency regulations and interviewing agency personnel.

Although we name specific agencies throughout this report, we are not implying that approval or criticism of the activities discussed is limited to the agencies mentioned.

The following agencies and locations were included in our review.

Department of Agriculture:
- Farmers Home Administration, State Office, Temple, Tex.
- Farmers Home Administration, State Office, Raleigh, N.C.
- Soil Conservation Service, State Office, Temple, Tex.
- Office of Audit, Regional Office, Temple, Tex.
- Office of Investigation, Regional Office, Temple, Tex.
- Farmers Home Administration, Headquarters, Washington, D.C.

Department of Defense:
- Air Force Logistics Command, Wright-Patterson Air Force Base, Dayton, Ohio
- Air Logistics Center, Hill Air Force Base, Ogden, Utah
- Army Aviation Systems Command, St. Louis, Mo.
- U.S. Army Corps of Engineers, Kansas City District, Kansas City, Mo.
- U.S. Army Corps of Engineers, Los Angeles District Office, Los Angeles, Calif.
- U.S. Naval Station, San Diego, Calif.
- U.S. European Command Headquarters
- U.S. Air Force European Command
- U.S. Army European Command
- U.S. Navy European Command
- Office of the Secretary of Defense, Washington, D.C.

Department of Energy:
- Regional Office, Dallas, Tex.
- Regional Office, Kansas City, Mo.
- Headquarters, Washington, D.C.

Department of Health, Education, and Welfare:
- Headquarters, Washington, D.C.
- Regional Office, Dallas, Tex.
- Regional Office, New York, N.Y.
- Office of Education, Dallas, Tex.
- Social Security Administration, Dallas, Tex.
- Food and Drug Administration, Regional Office, Seattle, Wash.
- Food and Drug Administration Headquarters, Rockville, Md.

Department of Housing and Urban Development:
- Regional Office, Seattle, Wash.
- Area Office, Columbus, Ohio
- Headquarters, Washington, D.C.

Department of Justice:
- U.S. Attorney's Office, Denver, Colo.
- U.S. Attorney's Office, Southern District, New York, N.Y.
- Executive Office for U.S. Attorneys, Washington, D.C.

Department of Transportation:
- Federal Aviation Administration, Regional Office, Aurora, Colo.
- Federal Aviation Administration, Headquarters, Washington, D.C.

Federal Trade Commission:
- Regional Office, Los Angeles, Calif.
- Regional Office, Seattle, Wash.
- Headquarters, Washington, D.C.

Securities and Exchange Commission:
- Regional Office, New York, N.Y.
- Regional Office, Los Angeles, Calif.
- Headquarters, Washington, D.C.

Veterans Administration:
- Regional Office, Albuquerque, N.M.
- Regional Office, Cleveland, Ohio
- Regional Office, Louisville, Ky.
- Benefits Division, Washington, D.C.

U.S. Embassies:
Bonn
London
Paris

The Subcommittee requested that, due to time limitations, no written comments be obtained from the agencies reviewed. However, we discussed our findings with field office and headquarters officials of each agency, and their comments are included throughout the report.

CATEGORIZATION OF AGENCIES REVIEWED

The agencies reviewed differed considerably in their functions, types of records maintained, and methods of processing Freedom of Information Act requests. Generally, however, they seem to fall into two groups.

The first group is agencies whose records pertain to regulatory or law enforcement activities and who have a centralized process for answering act requests. Final decisions affecting the release or denial of information are usually made at headquarters. The field offices are responsible for gathering requested information, making recommendations to release or deny, and forwarding the package to the agency headquarters in Washington. This group includes the Federal Trade Commission, the Securities and Exchange Commission, the Federal Energy Administration, the U.S. Attorney's Office, the U.S. Department of Agriculture Office of Investigation, and the Food and Drug Administration.

The second group is composed of service-oriented agencies and military organizations. In these agencies, such as the Veterans Administration and the Departments of Housing and Urban Development and Health, Education, and Welfare, Freedom of Information Act requests can be answered at various levels in field offices. Denial authority usually rests at a high level in the field office or at headquarters.

CHAPTER 2

AGENCY SUPPORT OF THE FREEDOM OF INFORMATION ACT-- ATTITUDES, REGULATIONS, TRAINING, AND MONITORING

The "Freedom of Information" message has reached field offices. With few exceptions, regional and other field offices displayed an awareness of their duty to respond openly to public requests and are attempting to do so. Although we found no significant widespread shortcomings affecting release of Government information, some agencies still do not totally support the act.

Lack of support was more prevalent within the investigative or regulatory agencies than within service-oriented agencies. At the former, we found some negative attitudes toward the act and somewhat restrictive regulations. Officials of these agencies pointed out that records maintained by their agencies are sensitive, requests are sometimes burdensome, and the act has noticeably affected their operations.

The location of the Freedom of Information Act function varied with the different agencies. In some agencies, one person was responsible for both the Freedom of Information Act and the public information or public affairs functions; in other agencies, these functions were separated. In our opinion, the location of the Freedom of Information Act function in an agency's organizational structure had little impact on the act's implementation.

AGENCY ATTITUDES TOWARD THE ACT GENERALLY POSITIVE

Generally, agency personnel interviewed knew about the act's provisions and had a positive attitude toward the act's intent. For example, the freedom of information officer at Air Force Logistics Command headquarters, who has been working with the act since 1968, said "The Freedom of Information Act is the greatest thing that ever happened for informing the public about the operations of the Government." The director of a Housing and Urban Development area office said he and his staff believe that information should be released even if one of the nine exemptions does apply, as long as there is public interest in the information. An official at

the State office of the Department of Agriculture's Soil Conservation Service believes that the philosophy of the act is good and that the act is especially needed with today's complex systems of data collection.

The Department of Health, Education, and Welfare's freedom of information officer said that, although the act was originally forced on agencies, many have now come to accept it because their fears that answering requests would be an overwhelming administrative burden or that released information could embarrass agency officials have not materialized. He generally feels the "bureaucratic reluctance" has moved toward a position of "release." Other officials felt that the act has indirectly improved the quality of Government work--when agency officials know their actions may be open to public scrutiny, they tend to do a better job. These are typical of attitudes in most agencies we visited.

At a few investigative or regulatory agencies, the personnel interviewed had less positive attitudes. A Federal Trade Commission official felt that the act imposes "hassles" on his work. He believes this is also the feeling of top agency officials. A Federal Trade Commission headquarters official said that the Commission generally does not accept the concept of "open government," primarily because most requests come from lawyers or businesses who use the act for discovery and as a ploy to delay cases in litigation. (See ch. 4.)

The regional administrator of a Federal Energy Administration office (now a part of the Department of Energy) did not approve of the act. He said the amount of material requested is "outlandish" and should be minimized by restricting those who are entitled to the information. At the agency's headquarters, the information access officer said many people at his agency feel that Freedom of Information Act requests are burdensome because they detract from the agency's ability to do its business. He added that the act is probably good for some agencies but that it "impedes the regulatory activity" for which his agency is responsible.

Freedom of Information Act officials at Department of Justice headquarters stated that the act is directly opposed to the effective and efficient accomplishment of their agency's mission. They felt the act should not apply to information about criminal cases because it is being used as a discovery tool by criminals and their attorneys.

In view of the unique records maintained by investigative or regulatory agencies and the impact the act has on those agencies, such attitudes are at least partially understandable.

Conclusions

Overall, Federal agencies' attitudes toward the concept of open government, and especially the Freedom of Information Act, have apparently become more positive. Agency personnel generally seemed to have a positive attitude toward the act's intent.

Investigative or regulatory agencies, however, still tend to have somewhat negative attitudes toward the act. This undoubtedly is partially due to their unique operations and records, and the real or perceived impact the act has had on them.

VARIATIONS IN REGULATIONS

Most agency regulations address main features of the act, such as the criteria for a request, policy for releasing exempted material, policy and procedure for denying information, fee schedules, indexing requirements, methodology for processing appeals, and time constraints for answering requests. Major provisions of these regulations basically comply with the act.

As might be expected, however, regulations vary in quality and content.

--Some regulations and guidelines were clearer than others and were more valuable to agency personnel processing requests.

--Some regulations were more restrictive than others and could possibly impede release of Government records.

--Regulations reflect different interpretations of certain key act provisions.

Clear regulations facilitate processing

The Congress has made it clear that the Freedom of Information Act is to operate as the basis for full and fast release of Government information to the public. The act is broad, encompassing the entire spectrum of release of Government information within Federal executive agencies. The act

is not designed to precisely fit any one agency's system of records or organizational structure. Therefore, each agency's regulations should relate the act to the agency's unique mission, organizational structure, and group of records.

Some agencies' regulations are clear and appear to facilitate implementation of the act. For example, the Farmers Home Administration's instruction is specifically tailored to that agency's mission and operation. The instruction cites major provisions of the act and then explains them in terms of the agency's business and records. County supervisors within the North Carolina Farmers Home Administration said they would refer to the Freedom of Information Act instruction if they had questions about which records should be open for public inspection. At one county office, we were told the instruction is maintained at all employees' desks because it allows the act to be easily implemented.

On the other hand, Veterans Administration regulations have caused confusion among regional office personnel. Early guidelines instructed regional offices to treat all requests for information--even those pertaining to claimant records--as Freedom of Information Act requests. This policy was changed with this January 20, 1976, manual revision:

> "With three exceptions, all written requests for information * * * from claimant records, will be considered to have been made under the Freedom of Information Act * * *."

This does not appear to significantly change the earlier policy, but Veterans Administration legal personnel pointed out that the three exceptions cited in the manual revision are now Privacy Act requests and encompass almost all requests for information from claimant records. The revision was, therefore, almost a complete reversal of existing policy. Possibly because this change was not emphasized or not clearly understood, practices are inconsistent among regional offices, between divisions within a regional office, and even within divisions.

Although we did not find that the inconsistent practices have hampered release of information from the Veterans Administration, they do affect the validity of the Freedom of Information Act annual reports since costs attributable to the

Privacy Act are being reported as Freedom of Information Act costs. (See p. 46.) One Veterans Administration regional office plans to revise its local guidelines to help clarify the issue. After we brought this to their attention, headquarters officials said they planned to contact all regional offices to help eliminate confusion.

Regulations could restrict access

Under the Freedom of Information Act, release of information became the rule rather than the exception. Information is to be withheld only when it will demonstrably harm the public interest if released. Agencies' regulations generally advocate release of information and promote the spirit of the act. However, some agencies' regulations could impede release of information.

For example, the Federal Trade Commission's guidelines provide that the Commission shall deny access to records that are exempt under the act unless such records have been previously authorized to be made public. However, the guidelines do not identify which records have been made public.

In our opinion, Commission guidelines create an automatic denial procedure for information falling within the act's nine exempted areas. Such exemptions, however, are intended to be discretionary, not mandatory. The supervisor of the Freedom of Information Branch at Commission headquarters informed us, however, that the agency does not interpret the regulations to provide for automatic denial. She acknowledged that automatic denials are often made on requests for material from open cases, but added that a strong distinction is made between open and closed cases.

Local guidelines at a Securities and Exchange Commission regional office are cautious regarding disclosure of information from open investigative files. The regional office administrative procedures state that all information in open files should be withheld. They add, however, that disclosure may sometimes have no adverse effect. However, the decision to recommend disclosure must be made personally by the regional administrator or assistant general counsel.

Regulations reflect different interpretations of the act's provisions

The Freedom of Information Act governs release of all executive branch agency records, and it was to be implemented uniformly throughout the executive branch. However, certain provisions of the act have been interpreted differently among agencies. This could result in unequal treatment of requests. For example, criteria for what constitutes a Freedom of Information Act request vary among agency regulations.

The act states that "* * * each agency, upon any request for records * * * shall make the records promptly available to any person." The act does not specify additional provisions or preconditions for a request to be considered as a Freedom of Information Act request. However, some agency regulations impose preconditions or specific provisions on a request for information before it can be treated as a Freedom of Information Act request subject to all the act's provisions.

Corps of Engineers regulations, for example, require that for a request to be processed under the act, it must indicate in writing that records are being requested under the act or it must be made to specific officials. These specific criteria could adversely affect requesters. For example, there could be a difference between fees charged for requests under the act and those not made under the act. Clerical search fee for a Freedom of Information Act request is $5.50 per hour, with a minimum charge of $2.75. Similar fees for a non-Freedom of Information Act request are $8.00 and $5.00, respectively. In addition, requests designated as act requests might be given more emphasis than others.

A Corps of Engineers headquarters official said that all requests for information are processed as though they were Freedom of Information Act requests, even if the requester does not specifically cite the act. In one instance at a Corps district office, however, a requester successfully obtained information by citing the act after two previous written requests (not citing the act) were unsuccessful.

The Federal Energy Administration's Compliance Manual states that information obtained by the agency during audits or investigations will be released only in response to a valid Freedom of Information Act request, which must be written, be specific as to material desired, mention the act, and request information not customarily available to the public.

In contrast, Social Security Administration regulations state that Freedom of Information Act rules should be applied to every proposed disclosure of information. Information releasable under the act may be released regardless of whether the requester has specifically cited or requested the information under the act.

The preconditions cited by some agency regulations--such as requiring requests in writing and citing the act--could affect the release of information if taken literally by agency personnel. Ideally, all requests for information applicable to the Freedom of Information Act should be considered whether or not the act is cited, and agency regulations should reflect this philosophy.

Agency regulations also differ in their treatment of the act's 10-day response provision. The 1974 amendments created a 10-day response period to ensure timely replies to requests for records and reduce administrative and judicial delays. After receiving a request, agencies are required to determine within 10 working days whether to comply with the request. The 10 working days are to begin upon receipt of a request, but the act does not define "receipt" or impose conditions which constitute the receipt of a Freedom of Information Act request. Agency regulations varied in their definitions of "receipt."

Federal Aviation Administration regional guidelines state that a Freedom of Information Act request is received when it arrives in the mailroom. The Department of Housing and Urban Development's Freedom of Information Handbook states that the 10-day response period starts when the request is received by the head of the appropriate organizational unit within the field office.

Investigative or regulatory agencies process requests through Washington headquarters. Regulations of the Federal Energy Administration, the Federal Trade Commission, and the Securities and Exchange Commission do not consider a request to be received until it reaches a Freedom of Information Act unit at headquarters. Since requests are sometimes received initially in field offices, this practice could contribute to delays in answering requests. (See ch. 3.)

Conclusions and recommendation

Most agency regulations reviewed appeared to reflect the spirit of the Freedom of Information Act. Some regulations, however, are unclear and unnecessarily restrictive.

Such regulations could impede the flow of information to the public and, therefore, require prompt reassessment and clarification.

We recommend that the Attorney General have heads of Federal departments and agencies review Freedom of Information Act regulations to make sure that they are clear, that they conform to the spirit of the act, and that unwarranted restrictive provisions are eliminated.

ADEQUACY OF TRAINING QUESTIONABLE AT SOME LOCATIONS

At most agencies, persons contacted had attended orientation sessions, briefings, conferences, seminars, or workshops conducted by the agency. In some cases, an agency had prepared a formal, standardized presentation designed to acquaint personnel with the act and with procedures to be followed. For example, personnel at the Air Force Logistics Command, the Air Logistics Center, a Housing and Urban Development regional office, and a Federal Aviation Administration regional office viewed a film on the act.

The Civil Service Commission has presented workshops and seminars on the Freedom of Information and Privacy Acts. The Commission reported providing 70 sessions to 4,659 participants at a cost of $171,385 in fiscal year 1976, and 49 sessions to 1,751 participants at a cost of $95,605 in fiscal year 1977. The Soil Conservation Service, Air Logistics Center, San Diego Naval Station, Army Corps of Engineers, Department of Housing and Urban Development, and Federal Trade Commission have sent personnel to Civil Service Commission courses. In addition, personnel from the Federal Trade Commission, the Corps of Engineers, and the Department of Agriculture's Office of Investigation had attended Federal Bar Association seminars covering the act.

Need for additional training is not always related to the amount of training provided. Other factors, such as quality of agency regulations and the number and level of persons involved, affect the determination. In some cases, even though little training has been provided, little more may be needed. At the Department of Housing and Urban Development area office, for example, the public information officer and the area general counsel must approve all responses to Freedom of Information Act requests. Although these two have received little formal training, both have years of experience in dealing with the act and appear to be doing a good job carrying out its intent.

Farmers Home Administration regulations are tailored to the types of information maintained by the agency and help agency personnel make decisions concerning the act. One regulation contains the telephone number of the freedom of information officer, and staff are instructed to refer any questions and all denials to him. Freedom of Information Act managers at the European headquarters of the Army and the Air Force said that their regulations and supplemental instructions clearly describe the step-by-step process and associated responsibilities for handling a request.

Where training has been provided, some agency personnel questioned its adequacy. Several people at various agencies were not satisfied with training they felt was too broad. This opinion was also expressed about the Civil Service Commission course.

Personnel at a Department of Housing and Urban Development regional office, the Federal Trade Commission, the Federal Energy Administration, the Veterans Administration, and the Food and Drug Administration wanted training covering their agencies' unique problems and detailing procedures to be followed when handling a request. The Defense Department's director of freedom of information and security review also expressed this desire and cited a definite need for more training within the Department.

Training could help resolve confusion about the Freedom of Information Act and Privacy Act

The Privacy Act extends the Freedom of Information Act's underlying principle--that Government, in its role as custodian of information, is accountable to those it serves. Both acts provide access to Government records.

Generally, the Freedom of Information Act gives any person a right of access to everything in agency records except for the nine exempt categories of information. The Privacy Act gives the individual two principal sets of rights concerning certain records that contain information about himself--rights of access and rights to exclude others from access without his consent--with each set of rights subject to a list of exceptions.

While the Privacy Act provides an individual with the right to exclude access by other persons to records about himself, the Freedom of Information Act can be an exception to this right. If, under the Freedom of Information

Act, the public's right to know is determined to be greater than the privacy rights of the individual, the information is releasable. For example, home addresses may be released to State income tax authorities for specified beneficial purposes, but they could be exempt from release for such uses as commercial solicitation. Some agency officials feel this relationship between the two acts creates a conflict.

The Freedom of Information Act is the final determinant of whether personal records should be withheld or released. The Privacy Act does not restrict release of information required to be disclosed by the Freedom of Information Act. Confusion apparently arises concerning the subjectiveness necessary to determine what constitutes an unwarranted invasion of privacy under the Freedom of Information Act.

For example, a Department of Housing and Urban Development area counsel felt the Freedom of Information Act was vague in addressing personal privacy and in defining when the public interest is served by disclosure. For this reason and because of personal liability and heavy fines associated with Privacy Act violations, he feels that agency personnel must be very cautious in making such decisions. In his opinion, these decisions are very difficult and should be made by a lawyer.

The legislative history of the Freedom of Information Act indicates that the Congress considered identifying each type of personal record to be protected but determined that a general exemption category of personal information was more practical. The limitation of a "clearly unwarranted invasion of personal privacy" was felt to provide a proper balance between protecting an individual's right of privacy and preserving the public's right to Government information. 1/ The history shows also that the Congress expected that, although balancing the opposing interests would not be an easy task, it would not be an impossible one either. Success was expected to lie in providing a workable formula which encompasses, balances, and protects all interests, yet emphasizes the fullest responsible disclosure. 2/

1/H. Rept. No. 1497, 89th Cong., 2d Sess. 11 (1966).

2/S. Rept. No. 813, 89th Cong., 1st Sess. 3 (1965).

Although it must be decided whether or not information is releasable, information is sometimes not disclosed because agency personnel are not aware of the relationship between the two acts or their own pertinent agency regulations and statutes. At the Veterans Administration, for example:

--A vocational school, experiencing a high nonpayment rate by veterans, provided the regional office with a list of veterans attending the school. The request asked only that the regional office indicate whether the listed veterans had been paid. The regional office denied the request, stating: "Implementation of * * * the Privacy Act * * * prohibits the release of information from Veterans' records without the expressed permission of the veteran.* * *"

--The manager of an apartment complex asked that the regional office verify the monthly benefits paid to a certain veteran. The request stated the amount the veteran claimed and asked for verification. The regional office denied the request, stating: "* * * due to the Privacy Act * * * we are unable to release this information.* * *"

This information was denied even though the statute relating to the Veterans Administration and the agency regulations for releasing information allow information on the amount of a veteran's compensation to be released to any person requesting it.

The confusion between the two acts is not limited to the decision to release or deny information. The problem is sometimes even more basic. Some agency personnel are unable to distinguish between a Privacy Act request and a Freedom of Information Act request. This problem was most prevalent at the Veterans Administration. The agency's regulations provide that a request from a veteran for information from his own claimant records should be processed as a Privacy Act request. Some persons at the three regional offices visited were logging and processing such requests as Freedom of Information Act requests. Conversely, agency pesonnel were apparently recording and processing requests for information from claimant records from persons other than the claimant as Privacy Act requests. According to Veterans Administration regulations and headquarters officials, these should have been Freedom of Information Act requests.

Personnel at one U.S. attorney's office also had trouble distinguishing between the acts. This office processed nine requests during the period January 1, 1976, to September 1, 1977. All were logged as Freedom of Information Act requests. However, when the requests were sent to headquarters for final processing, five of the nine were reclassified as Privacy Act requests. Personnel at other agencies also expressed a need for more clarification of the applicability of the two acts.

Some efforts to provide additional training

Some efforts have been made to fulfill the need for specific training. The Social Security Administration is going to provide additional training designed to meet needs identified by agency employees. One U.S. attorney's office has assembled a workbook guide for processing requests. As a result of our review at one Veterans Administration regional office, management recognized the problems in that office--especially the confusion between the two acts--and planned to move an internal training session up from December 1977 to October 1977. They planned to tailor the training to the needs we identified.

Conclusions and recommendation

We see a need for additional training on the Freedom of Information Act in some agency field offices. The amount and type of training needed varies from agency to agency.

Accordingly, we recommend that the Attorney General emphasize to heads of Federal departments and agencies the need to evaluate the training provided to field office staffs, determine what additional training is needed, and make sure that it is provided.

Training needs can best be identified after an overall evaluation of an agency's Freedom of Information Act process has been made in light of the agency's mission and type of records maintained. This matter is discussed in the following section.

NEED TO EVALUATE IMPLEMENTATION OF THE ACT IN FIELD OFFICES

In its 1972 report on the Freedom of Information Act, the House Committee on Government Operations expressed concern about lack of priority given by top-level administrators

to full implementation and proper enforcement of act policies and regulations. One factor causing this concern was that agencies were making little effort to evaluate their performance under the statute.

The 1974 amendments to the act require the Department of Justice to report annually on its efforts to encourage agency compliance with the act. Justice has interpreted this to mean it is responsible for reviewing agency compliance with the act. However, the Department's role has been one of providing guidance and consultation on the act, rather than reviewing agency implementation. The head of Justice's Freedom of Information Committee said the Department does not have the resources to do "procedural delinquency" reviews. Without such a compliance mechanism, agencies have been left to review their own progress in implementing the act.

Although field offices give reasonably good support to the Freedom of Information Act, agencies have apparently done little to evaluate the act's implementation. Most agencies have not made any type of compliance review involving the act. We were told, however, that the Department of Defense Inspector General's Office and Department of Defense records management inspectors check subordinate units of the four military commands in Europe. Listed below are some points covered by inspectors:

--Are Freedom of Information Act directives current and available?

--Has a freedom of information officer been appointed?

--How many requests were received?

--Are copies of act cases on file?

--Were requests processed within the statutory time limitations?

--Have personnel been periodically briefed on the act?

Other than reviewing data required for the annual report to the Congress, most of the other agencies had not attempted to evaluate their implementation of the act.

An annual evaluation of the Freedom of Information Act process would most likely take little time and effort and

could provide immediate benefits. We brought problems to the attention of agency officials, and they took steps to correct these problems. For example:

--Army European headquarters determined that it should remind subordinate units to submit a copy of Freedom of Information Act cases to headquarters, develop a dollar limit for use in waiving fees, and monitor compliance with time limits.

--The Los Angeles District Corps of Engineers comptroller said he would ensure that agency guidelines on cost accumulation are followed.

--Veterans Administration headquarters decided to conduct a conference call including all regional managers to clarify criteria for Freedom of Information Act requests and suggest that the managers review regional procedures.

--Department of Defense headquarters agreed to see that the San Diego Naval Station's instructions are amended to require that requesters be notified when a time extension is needed to fill a request.

Conclusions and recommendations

Our overall impression is that top managers of Federal agencies have not emphasized improving their programs for providing the public access to Government records. Although several agencies keep records of their Freedom of Information Act activity, there is little indication that this data is used for monitoring. Our review suggests that finding deficiencies in program administration is not difficult and that management is willing to correct problems brought to its attention. However, agency managers apparently are not sufficiently concerned to actively seek better methods of administering the act.

We recommend that the Attorney General, to improve compliance with the Freedom of Information Act, have heads of Federal departments and agencies emphasize to managers of field offices and headquarters officials responsible for the act the need to review the act's implementation at least annually. Such a review would help identify and correct shortcomings and could increase overall familiarity with the act and provide information needed to update training programs.

Although the act does not specifically establish an oversight agency, the Department of Justice has been functioning in this capacity. Justice, however, is not providing enough staff resources to fulfill its interpreted responsibilities. Accordingly, we recommend that the Attorney General evaluate the adequacy of the staff resources allocated to the Department's oversight role in concert with its determination of its responsibilities under the act.

Furthermore, to strengthen Justice's ability to perform as an oversight agency, the Congress should consider amending the Freedom of Information Act to clearly give the oversight role to the Department of Justice and delineate the responsibilities of the Department in this role.

CHAPTER 3

AGENCY HANDLING OF REQUESTS FOR INFORMATION UNDER THE FREEDOM OF INFORMATION ACT

Agency attitudes, regulations, and administrative support indicate how well the agency is carrying out the intent of the Freedom of Information Act. What actually happens to requests for information within Federal agencies indicates how well the act's substance is being implemented. To evaluate what agencies are doing or not doing to provide requested information, we reviewed the number and types of denials issued, timeliness of responses, and procedures for charging fees at field locations.

Although problems were not prevalent in field offices we visited, optimum implementation of the act has not yet been achieved. Exemptions are still sometimes applied automatically; some agencies are not advising requesters of appeal rights when material is deleted; and a few agencies are still taking much longer to answer requests than the 10-day requirement spelled out in the act.

AGENCY TREATMENT OF EXEMPT MATERIAL

The Freedom of Information Act lists nine categories of material which can be exempt from disclosure. However, the Congress intended that the exempt categories be used permissively rather than as mandatory reasons to withhold information. The Attorney General, in a May 1977 letter to heads of all Federal departments and agencies, stated that exempt records should be disclosed unless disclosure is demonstrably harmful to the Government or the public.

Many agencies have incorporated, through regulations or internal memorandums, the policy that documents in exempt categories should not be denied unless it is important to the public interest to do so. Officials at several field locations confirmed this permissive application of exempt categories. An attorney for the Department of Housing and Urban Development described each case as "a judgment call," in which the public benefit must be weighed against the governmental purpose to be served by withholding information. A Federal Aviation Administration attorney echoed the above statement, saying that each request is weighed individually to determine if part or all of exempt material can be released. The announced policy of a Veterans Administration regional office is to deny requests only after all avenues

for granting them have been exhausted. We observed five instances in which subordinate units of Air Force European headquarters recommended denial of requests for information on the basis of one or more exemptions, but the information was later released by Air Force legal staff. The Attorney General's May 1977 letter--especially the statements that the Justice Department would not defend Freedom of Information Act suits unless disclosure is demonstrably harmful--has undoubtedly helped foster these agency practices.

Occurrences of automatic denial of exempt materials

In some cases, however, exemptions appear to be applied automatically. These actions are characteristically taken by agencies which maintain sensitive records. The Securities and Exchange Commission is extremely cautious about releasing material from open investigatory files, even when it appears disclosure may have no adverse effect. A regional administrator of the Commission explained that premature disclosure of open investigatory files could

--damage the financial position of a business or individual,

--bias witnesses before their testimony is obtained,

--identify informants, or

--give a subject the opportunity to escape the law by leaving the country.

Federal Energy Administration regional officials also believed that information of a proprietary nature should always be withheld. The regional office follows this policy strictly when recommending denials to headquarters. The Federal Trade Commission automatically denies most exempt material pertaining to open investigations. In the event of an appeal, only the Commission and the general counsel may decide whether the request warrants release of exempt material.

Release of similar materials varies between agencies

Because application of Freedom of Information Act exemptions involves a great deal of judgment, it is not surprising that agencies respond differently to similar requests for exempt material. For example, the Veterans Administration withheld certain information from a June 1977 response to a

request for information from guaranteed housing loan files. Deleted items included the veteran's or borrower's name, lender's identification number, loan amount, interest rate, and maturity. The deletions were based on act exemptions number three--material exempt from disclosure by statute--and number six--disclosure would be a clearly unwarranted invasion of personal privacy.

From an area counsel for the Department of Housing and Urban Development and the freedom of information officer for the Farmers Home Administration, we learned that their agencies would release the information the Veterans Administration had deleted. The Department of Housing and Urban Development representative said the information is a matter of public record at the county recorder's office. The Farmers Home Administration official stated that the taxpayer is in effect guaranteeing the loan and has a right to such information.

In a previous report, 1/ we noted that policies and practices of releasing names and addresses outside the Government varied among the agencies reviewed. The Department of Defense will release such information only with the individual's consent. The United States Postal Service and the Department of the Treasury prohibit such release. On the other hand, the Departments of Commerce and Health, Education, and Welfare permit release of mailing lists which contain addresses of both businesses and individuals on the assumption that the individuals are acting in a business capacity. Four other agencies contacted maintain information files, including names and addresses of individuals, which they consider public documents. Court decisions 2/ regarding release of individual names and addresses have not provided consistently definitive guidance to agencies.

Denial procedures differ

The denial process itself differs from agency to agency. For example, before a denial can be issued on a request

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1/Letter report to the Honorable Charles A. Vanik, House of Representatives, LCD-77-112, Aug. 25, 1977.

2/Getman v. National Labor Relations Board (450 F. 2d 670 (D.C. Cir. 1971)); Robles v. Environmental Protection Agency (484 F. 2d 843 (4th Cir. 1973)); Wine Hobby USA, Inc. v. United States Internal Revenue Service (502 F. 2d 133 (3d. Cir. 1974)); and Department of the Air Force v. Rose (425 U.S. 352 (1976)).

received by the Air Logistics Center at Hill Air Force Base, two authoritative levels must be convinced that the denial is necessary. The Documentation Branch must prepare a denial package that has been coordinated with the staff judge advocate for approval by the center commander. If approved by the commander, the package is forwarded to a higher level, the Air Force Logistics Command, for final approval. The Department of Housing and Urban Development also requires several levels of approval--local, regional, and general counsel--before a formal denial can be issued.

The Farmers Home Administration and the Department of Health, Education, and Welfare regional offices release information orally, in person, or in writing at all levels within the offices. The process is very informal. Denial procedures are much more structured. Farmers Home Administration offices must forward all potential denials through the State office to headquarters for approval. The Department of Health, Education, and Welfare requires that all written denials be issued by the assistant regional director for public affairs.

Most investigative or regulatory agencies, with their centrally controlled processing systems for both release and denial of information, have only one level of authority--headquarters--involved in the denial process. Field offices are responsible for gathering and forwarding requested information to headquarters, sometimes accompanied by a recommendation to release or deny.

Denial determination affects requester

In the event of an adverse determination under the Freedom of Information Act, each agency must notify the requester of the reasons for the determination and of the right to appeal the determination to the agency head. Furthermore, a notification of denial must give the name and title or position of each person responsible for the denial. We observed different interpretations of this requirement. The confusion surrounds the definition of an adverse determination. If agencies consider they have made an adverse determination under the act, a description of the appeal process and proper notification of the circumstances of the denial are included in the response.

Some agencies regard all instances in which a request is not completely answered as adverse determinations or formal denials. The Federal Trade Commission; the Air Force Logistics Command and other Department of Defense components;

the Securities and Exchange Commission; and the Department of Health, Education, and Welfare Office of Public Affairs classify and process deletions or partial denials in the same manner as full denials.

In several cases, agencies did not completely answer requests, yet did not consider these denials and did not follow the act's provisions for adverse determinations. Such cases commonly involved deleting or blocking out certain data to protect personal privacy or trade secrets. The only specific guidance in the Freedom of Information Act regarding deletions is that the reason for the deletion must be given in writing. Officials of the Food and Drug Administration, the Department of Housing and Urban Development, and the Farmers Home Administration told us that minor deletions of portions of records are not counted and reported as denials and that the requester is not notified of appeal rights because the request has essentially been filled.

There were other cases of unfilled requests that agencies did not consider to be denials under the Freedom of Information Act and, therefore, did not inform the requester of the right to appeal or report the instance as a denial. The Army Aviation Systems Command, for example, receives requests for technical drawings. These drawings are normally provided unless they are considered proprietary. Proprietary drawings are withheld, but the withholding is not considered a denial under the act and requesters are not advised of their appeal rights. The Army maintains that drawings are not "records" as described in the act. This is consistent with Department of Defense regulations which state that:

> "Formulae, designs, drawings, research data, computer programs, technical data packages, and so forth, are not considered 'records' within the Congressional intent of (5 U.S.C. 552)."

The Department of Defense freedom of information officer said that, although Department regulations exclude such requests from coverage under the act, Department policy is to release as much information as possible regardless of whether the act applies. He said that every request should be considered individually and that the Aviation Systems Command should not automatically deny requests for drawings. Although the Command normally provides drawings to requesters unless considered proprietary, in our opinion, when requests for drawings are denied, requesters should be given the right to appeal and be advised of this right.

Several agencies cited the Privacy Act as the reason for denying release of information although the request was considered to be a Freedom of Information Act request. Agencies do not consider these as Freedom of Information Act denials and, therefore, requesters are not advised of their appeal rights. This occurred at a Department of Agriculture Soil Conservation Service office; at the Naval Station in San Diego, California; at a Federal Aviation Administration regional office; and various Veterans Administration offices.

Inconsistencies in identifying denials

The legislative history of the Freedom of Information Act shows that the Congress did not intend to require Federal agencies to create new records in order to respond to a request. If requested records do not exist or are not in the agency's possession, some agencies process the response as a denial while others do not. The Securities and Exchange Commission, the Federal Energy Administration, and at least one Veterans Administration office treat and report "no records" situations as denials. The reasoning behind these actions appears to be that any case in which a request cannot be filled constitutes a denial.

In other agencies a formal denial need not be issued if the requested records do not exist. If the Farmers Home Administration does not have the requested information, it so informs the requester and says when the information will be available or lists other possible sources. These cases are not reported as denials. Officials of one U.S. attorney's district office considered "no records" responses as completely complying with the request and, therefore, not as denials.

In some instances, Department of Housing and Urban Development and Securities and Exchange Commission officials have called requesters and negotiated a response which satisfied the requester without providing all of the data originally requested. This was done in lieu of issuing a formal denial.

The Department of Health, Education, and Welfare regional offices permit all operating levels to respond orally to oral requests. When making oral denials employees are instructed to inform the requester that the request may be submitted in writing for a formal determination by the assistant regional director for public affairs. The regional offices do not keep track of the number of requests denied orally.

Requesters generally satisfied with responses

We contacted a small number of requesters at various locations to determine if they were satisfied with agency responses to Freedom of Information Act requests. In cases in which information was deleted, requesters were generally satisfied with the partial or "sanitized" responses they received. They said that the partial responses fulfilled their needs and that they understood the reasons for withholding records. A few, however, had problems with the vague responses they received.

One requester said he did not appeal a Federal Energy Administration response because he did not understand the grounds for withholding the information and was not told how to submit an appeal. He said he would have appealed had he known he could. Another requester submitted an appeal of a response he received from the U.S. attorney's office. He was protesting numerous unexplained deletions and the obvious omission of several documents. Although Department of Justice officials maintained that it is the standard policy of the U.S. attorney's office to specifically state which exemptions are used to excise any material and to inform the person if any documents were withheld entirely, the information received contained references to various other documents which were not provided.

Conclusions and recommendation

Most field and regional offices reviewed appear to use discretion when applying the exemption categories. Some agencies, however, continue to automatically deny requests for certain records. These agencies are the ones with more sensitive records.

An area that needs clarification is the criteria for a Freedom of Information Act denial. If the Congress intended that every incomplete response be considered a full or partial denial, the intent is not being met. Because of differences in what agencies considered a denial, requesters were not always given their appeal rights when warranted and were not treated equally by the various agencies.

We recommend that the Attorney General clarify what constitutes an adverse determination or denial under the Freedom of Information Act.

AGENCY TIMELINESS IN RESPONDING TO INFORMATION REQUESTS

Before the 1974 amendments to the Freedom of Information Act, agencies were required to promptly issue a response to a request made under the act. The term "promptly" had no precise definition, and requesters often encountered inordinate delays in receiving requested information. The 1972 hearings on the act disclosed that major Federal agencies took an average of 33 days to respond to a Freedom of Information Act request. Such delays sometimes made the requested information useless. To help correct this problem, the 1974 amendments required an agency to determine within 10 working days after receipt of a request whether to comply with it. The intent of the amendments was to have the agency notify the requester of the initial determination within the specified time and furnish the records either at the same time or soon thereafter.

The 1974 amendments were apparently effective in bringing about more timely responses to requests. Most agencies now seem to be making a reasonable effort to meet the act's time requirements. Many, in fact, are getting the requested information within 10 days.

At some agencies, few or no records were available to evaluate response times, while at others the volume of records was very large. At the latter, time constraints necessitated our taking a sample to make our evaluation. The following table shows the scope and results of our review of agency timeliness in responding to requests under the act.

As shown by the table, we reviewed 2,375 requests to determine how well agencies were meeting the 10-day requirement. In about 86 percent of the cases reviewed, the agency responded in 10 days or less. For example, the Air Force Logistics Command met the 10-day requirement in all 56 cases reviewed, and a Federal Aviation Administration regional office did so in 85 of 91 cases examined. A Department of Housing and Urban Development area office provided the requested information within 10 days in 99 of 138 cases, and in most of the other cases, the records were provided in 11 to 20 days.

Agency timeliness in answering requests was also evident in our discussion with selected requesters. Of the 79 requesters who answered the question on timeliness, 63 had no complaints about agency response time.

Schedule of Freedom of Information Act Request Processing Time

Agency	Number of requests available for review (note a)	Requests analyzed for compliance with 10-day criteria		Responses within 10 days		Average processing time
		Number	Percent	Number	Percent	
Department of Agriculture	68	52	76	43	83	6 days
Department of Defense:						
Air Force Logistics Command, Wright-Patterson Air Force Base, Dayton, Ohio	58	56	97	56	100	4 days
Air Logistics Center, Hill Air Force, Ogden, Utah	506	500	99	496	99	-
Army Aviation Systems Command, St. Louis, Mo.	393	368	94	354	96	6 days
U.S. Army Corps of Engineers, District Office, Los Angeles, Calif.	9	9	100	8	89	7 days
U.S. Army Corps of Engineers, District Office, Kansas City, Mo.	24	22	92	22	100	4 days
U.S. Naval Station, San Diego, Calif.	131	124	95	101	81	14 days
U.S. European military commands	275	133	48	110	83	8 days
Department of Energy:						
Regional Office, Dallas, Tex.	25	22	88	20	91	7 days
Regional Office, Kansas City, Mo.	30	5	17	1	20	118 days
Department of Health, Education, and Welfare:						
Regional offices and components	1,120	391	35	358	92	5 days
Food and Drug Administration, Regional Field Office, Seattle, Wash.	264	248	94	188	76	-
Department of Housing and Urban Development	164	163	99	121	74	8 days
Department of Justice:						
U.S. Attorney's Office, Denver, Colo.	9	8	89	1	13	80 days
U.S. Attorney's Office, New York, N.Y.	94	30	32	0	0	123 days
Department of Transportation:						
Federal Aviation Agency, Regional Office, Aurora, Colo.	94	91	97	85	93	6 days
Federal Trade Commission:						
Regional Office, Los Angeles, Calif.	19	9	47	3	33	10 days
Regional Office, Seattle, Wash.	39	27	69	14	52	13 days
Securities and Exchange Commission:						
Regional Office, New York, N.Y.	116	87	75	47	54	13 days
Regional Office, Los Angeles, Calif.	25	9	36	1	11	15 days
Veterans Administration	(b)	(b)	(b)	(b)	(b)	(b)
U.S. Embassies	32	21	66	13	62	25 days
Total	3,495	2,375	68	2,042	86	

a/Represents only requests for which agency records were available.

b/Agency records not sufficient to allow analysis.

Problems in meeting the 10-day requirement

A few agencies are still taking much longer than 10 days to answer requests. The two Federal Energy Administration regional offices visited had incomplete records since all requests were forwarded to and answered by the Washington headquarters. However, our contact with requesters indicated that the agency was not timely in responding to Freedom of Information Act requests. At one regional office, we contacted six requesters to determine if they had received the information and if they received it in time to be useful. We found that:

--The shortest time taken by the national office to provide the requested records had been 45 days. This response time was satisfactory to the requester.

--Two requesters received inadequate partial responses in 64 and 86 working days.

--Three requesters had not received responses. Two had waited over 3 months.

--The national office had not issued any notices of denial to these five requesters. In one instance, the requester had filed an appeal of denial alleging that failure to respond in the legal time was a denial. The agency failed to consider the appeal, claiming that no official denial had been made.

At the second Federal Energy Administration regional office, we also contacted six requesters. Five were notified within 10 days that the agency was processing their requests. The actual information or denial, however, took an average of 85 days (with a range of from 10 to 186 days). The sixth individual made a request in July 1976 and at the time of our review had not received any response.

The information access officer at the Federal Energy Administration headquarters said the agency rarely gets the requested information out in 10 days. He said many cases drag on for months or even a year. He feels that the 10-day requirement is not realistic. As of October 1, 1977, the Federal Energy Administration and the Energy Research and Development Administration were merged into the Department of Energy. The views of the Federal Energy Administration official are not shared by Department of Energy officials formerly with the Energy Research and Development Administration. The Department's Director of Administration Services

stated that the 10-day requirement is realistic, and he planned to initiate measures to allow the new Department to meet the requirement.

Lengthy delays also occurred at the U.S. attorney's offices. Because of limited data available in case files at one district office, we were able to compute averages for only a portion of requests processed. In 1976, the average processing time for 20 Freedom of Information Act requests was 238 days. For January through August, the average processing time for 10 requests was 140 days. We attempted to contact 11 persons who requested information from the district office, but were able to reach only 2. One complained that it took the agency over a year to answer his request, and the other said it took several months.

Department of Justice officials advised us that:

> "* * * In practically no case have the U.S. Attorneys been able to answer requests within the statutory time limits. Only in those few cases where it could be immediately determined that there were no records or that the request was for records on hand in Washington, D.C. could the time limits be met. These delays result from a number of factors not limited to but including: a) postal delays in reaching U.S. Attorneys and returning responses from them to headquarters, b) the location and collection of records many of which exist in separate judicial districts or regional record centers, c) the availability of Assistant U.S. Attorneys to examine the material. Their trial and court calendars must by necessity and law come first, and d) the time consuming nature of examining files which, while filed under one person's name generally contain information of a private nature about people (co-defendants, witnesses, informants, agents, and so forth). Accordingly, even the best efforts to comply consistently take longer than the statutory period allowed. In our opinion a 10 day response period is completely unrealistic when taking into consideration the above factors and it is the opinion of this Office that some adjustment should be made by Congress to alleviate this situation."

Justice officials recognize that routing requests through various organizational levels is a factor causing delays.

When a district office receives a request, it must first be forwarded to headquarters in Washington. Headquarters then determines which components should respond and distributes the request accordingly. The responsible components prepare response packages and send them back to headquarters, where the final response is prepared.

Freedom of Information Act coordinators at Justice headquarters advocated centralized processing. They believe this assures that responses are made when warranted and in a timely manner. They commented that the 10-day time limit begins when the request is received at headquarters, which gives field offices some leadtime.

For the Securities and Exchange Commission and the Federal Trade Commission, with centralized processing systems similar to those of the U.S. attorney's offices, we obtained incomplete data on response time. These agencies also start the 10-day time limit when the request is received by headquarters. In some instances the field location initially receiving the request failed to forward it promptly to headquarters. In these situations the requester would apparently have to wait much longer than 10 days for a response.

Some agencies were not making a concerted effort to notify requesters of the need for a time extension to fill their requests. The Freedom of Information Act requires that agencies notify requesters of certain "unusual circumstances" which make it difficult for an agency to process a request properly within the act's time limits. However, the Naval Station in San Diego did not routinely notify requesters of time extensions. Also, the Food and Drug Administration and the Federal Energy Administration failed to notify some requesters of extensions. The Federal Energy Administration's information access officer indicated that attempts to notify requesters of a time extension could hinder implementation of the act by causing additional processing delays.

Conclusions

The centralized processing system used primarily by investigative or regulatory agencies apparently contributes to delays in providing requested records under the Freedom of Information Act. Regardless of the reason for delays, some agencies are not complying with the act's time response provisions and do not seem concerned with courtesy to requesters since they are often not notified of the need for a time extension. In addition, these agencies have inappropriately interpreted the time requirement by failing to consider the search and evaluation time required at field locations contacted directly by requesters.

We believe that agencies with centralized procedures for answering Freedom of Information Act requests should evaluate each step of the process and consider establishing and/or enforcing time limits for each. An alternative would be to delegate some responsibility to field locations to speed up processing time.

FEES FOR DATA APPEAR REASONABLE

Before the 1974 amendments, agency officials could set fees for processing Freedom of Information Act requests at levels that they determined to be fair and equitable. Some agencies used excessive search and copying fees as a means of discouraging requesters and withholding information. Because of this abuse, the 1974 amendments specify that each agency's regulations should contain a uniform fee schedule applicable to all components. In addition, agencies can charge requesters a reasonable standard charge only for direct costs of document search and duplication. Fees cannot be charged for the cost of reviewing the requested records. Agencies can waive or reduce fees when the requested information will benefit the public. The United States Code (31 U.S.C. 484) generally requires agencies to remit all collected fees to the U.S. Treasury for deposit in the "Miscellaneous Receipts" account.

To determine how well field offices were meeting these requirements, we reviewed agency fee schedules and fee-waiver provisions; evaluated the adequacy of accounting procedures for collecting, recording, and reporting fees; and contacted requesters to determine if fees charged were reasonable.

Although fee schedules vary among agencies, nothing indicated that field offices were charging unreasonable fees or using fees to discourage requesters. In fact, most seem to place little emphasis on fee collection. Fees are seldom collected, and when collected, not all fees are returned to the Treasury as required.

Agency fee practices vary

Search and reproduction charges vary from agency to agency. Clerical or routine search fees, for example, ranged from $2.00 per hour at the Federal Aviation Administration to $6.50 per hour at the Air Force Logistics Command. Fees for professional search time ranged from $3.00 per hour (any agency employee) at the Department of Health, Education, and Welfare to $15 per hour at the Federal Energy Administration Copy fees ranged from 5 to 15 cents per page.

Fee-waiver provisions also varied. The U.S. attorney's office, for example, waives all fees less than $3.00, while the Federal Trade Commission waives all fees less than $10.00. Some agency regulations contain no minimum fee-waiver provision but provide that fees be waived when it benefits the public to do so.

The variations in agency fee schedules do not seem to hamper the release of information. None of the 68 requesters we contacted about this matter complained about fees. Interestingly, 38 of these requesters were not charged for their requests.

Other factors also indicate that agencies place little emphasis on collecting Freedom of Information Act fees. Although the number of requests is increasing, the Congressional Research Service's analysis of agency annual reports shows that fees collected decreased from $1,014,510 in 1975 to $978,257 in 1976.

Some field offices visited received relatively large numbers of requests, but collected small amounts of fees. The Air Force Logistics Command, for example, received 5,735 Freedom of Information Act requests Command-wide during our review period. For this same period, the Command collected $27,218 in fees--an average of about $4.75 per request. For 1976, a Department of Health, Education, and Welfare regional office and its subcomponents received 969 requests and collected about $361 in fees--about 37 cents per request.

Agency officials cited a number of reasons why they are reluctant to collect Freedom of Information Act fees. The Department of Health, Education, and Welfare public affairs officer advocates that the Department rarely charge fees because of the vague criterion of "benefit to the public." He said that he can see some public benefit in almost every request and that he considers fees only when the Department receives a very broad request. In such a case, he contacts the requester to try to determine exactly what is wanted so that he can be more responsive and eliminate unnecessary time and expenses. If the request is still broad, he then points out the costs involved and the fees that could be charged.

Agencies are also not collecting fees because it may not be cost effective to do so. For this reason, a Department of Housing and Urban Development regional office waives any fee under $10. An Army Corps of Engineers district office follows the same policy. The comptroller of a U.S. naval station estimates that the cost of processing a cash receipts voucher at the installation ranged from $35 to $50.

Finally, some agencies may be reluctant to collect fees since they must be returned to the U.S. Treasury and provide no benefit to the agency. When fees are collected for Freedom of Information Act responses, they are not always returned to the Treasury. The United States Code (31 U.S.C. 484) generally requires that fees for documents, services, etc., provided by a Federal agency to any person be collected and paid into the Treasury as miscellaneous receipts. A Department of Housing and Urban Development regional office credited about $90 in fees to the agency's travel and equipment fund. An Army Corps of Engineers district office normally retains fees collected in order to offset the administrative expense incurred.

Conclusions and recommendation

There are no indications that agencies are abusing the fee provisions of the Freedom of Information Act. On the contrary, agency officials seem reluctant to assess or collect such fees. This is an area where more guidance and clarification are needed by Federal agencies.

When fees are collected, control over receipts is sometimes loose and not all collected fees are returned to the Treasury as required by law. We recommend that the Attorney General have heads of Federal departments and agencies advise personnel to return fees collected under the act to the Treasury and to exercise better control over fee assessment, collection, and processing.

CHAPTER 4

WHO IS REQUESTING DATA UNDER THE FREEDOM OF INFORMATION ACT?

The Freedom of Information Act and its legislative history do not limit who can use the act or for what purpose. The implication, however, is that the law was intended primarily to give individuals the right to know what our Government is doing, thereby strengthening our democratic system.

Most agency officials agree with the act's objective. However, they made one prevalent complaint--that the act is not being used by individuals as the Congress might have envisioned, but by businesses and law firms who are profiting at taxpayers' expense. According to agency officials, these user groups are creating problems for agencies in implementing the act--especially for the investigative or regulatory agencies.

Our review of requests submitted to the various agencies, although hindered by a lack of pertinent agency records, seems to support the contention of officials interviewed. As shown by the following table, businesses and law firms made 58 percent of the requests reviewed, while individuals made only 14 percent.

At some of the agencies visited, businesses were heavy users of the act. At the Army Aviation Systems Command, for example, 305 (78 percent) of 393 requests received between January 1, 1976, and June 30, 1977, were from business organizations. Of the 305 requests from businesses, 112 came from two California companies. Most requests received by the Command were for technical manuals, drawings, prints and specifications of aircraft parts, and contract data, including names of bidders and copies of contracts.

One request was made in early 1977 by a helicopter company that had been unsuccessful in bidding for an Army contract. The company requested a copy of the contract awarded to the successful bidder. The second company, which had been awarded the contract, learned of the request and threatened an injunction because the two companies were also bidding for a Navy contract. The second company contended that, by getting a copy of the Army contract, the first company would be in a position to underbid for the Navy contract. The Aviation Command, with higher headquarters approval, released the contract to the requester.

Number and Source of Requests

Responding agency	Individual	Law firm	News media	Special interest group	Business	Local, State, and Federal Government	Other	Total (note a)
Department of Agriculture	12	7	4	1	42	8	1	75
Department of Defense	115	53	-	36	900	10	5	1,119
Department of Housing and Urban Development	15	42	5	35	34	12	2	145
Department of Justice	73	24	1	2	3	-	-	103
Federal Aviation Administration	15	37	1	5	35	2	-	95
Federal Energy Administration	1	5	-	3	13	-	-	22
Federal Trade Commission	6	33	-	3	6	2	8	58
Food and Drug Administration	6	10	-	3	13	2	-	34
Securities and Exchange Commission	18	98	10	-	5	2	-	133
Veterans Administration	89	24	-	24	77	493	24	731
Total	350	333	21	112	1,128	531	40	2,515
Percent	14	13	1	4	45	21	2	100

a/The number of requests reviewed in some cases was the total received by the agency during our review period. In other cases we reviewed only those requests for which records were sufficient to make a determination, and in the remaining cases we made selective samples.

Although he emphasized that the Command does not attempt to determine requesters' motives for seeking information, one official feels that the act is abused by requesters who obtain information from the Command and sell it to other companies.

The freedom of information officer at Farmers Home Administration headquarters said that businesses make about 90 percent of the requests to that agency. Many requests are for lists of lenders or borrowers participating in the agency's guaranteed loan program. These requests are from mortgage brokers who want to purchase guaranteed loans from the primary lenders and resell them at a profit to investors. Because of the demand for such lists requested under the act, the agency has created special computer programs to access the central data file in St. Louis, and produce the lists.

The Farmers Home Administration also receives requests from brokers for lists of potential lenders and applicants, and requests that such lists be automatically updated. The agency has determined that a record has not been created until the "guarantee" has been issued and, therefore, does not honor requests for lists of potential lenders or borrowers. Likewise, the agency does not honor requests from brokers for automatic updates of such lists on the premise that there is no obligation to fill requests for records not in existence when the request is made.

The headquarters freedom of information officer at the Farmers Home Administration was concerned that a company can pay up to $30,000 for a feasibility study when applying for a loan, only to have the study made available to a competitor at a relatively small cost. The agency's loan file on a given business often contains financial and commercial information, such as sales information, cost and expense projections, such technical data as blueprints and equipment schematics, and such individual information as individual tax returns. Since the supposed trade secrets are not always obvious to agency officials, a borrower must resort to costly legal actions to stop release of such information.

Obviously, businesses are using the act to try to obtain information about their competitors. A defense contractor submitted a request to an Air Force air logistics center asking for information about a certain request for proposal, including copies of the "contract pricing proposal" submitted by all bidders. The requested pricing documents contain very specific cost information provided

to the Government for use in analyzing bidders' offers. The requester told us that he received all information requested, except for the contract pricing proposals. He agreed with the Air Force's decision not to release this information and would not want the same information about his company released to competitors.

Law firms have also found the act useful for their purposes. At one Federal Trade Commission regional office, 20 of the 39 requests received during our review period were from law firms. Regional officials stated that most requests for information are made by attorneys in litigation, and it is this group that is abusing the act's provisions. For instance, we were told there are rules of discovery governing the turning over of documents from one party to another during litigation. Instead of obtaining documents through discovery, attorneys submit a Freedom of Information Act request to obtain the information. According to these officials, the requests create nonproductive time for Federal Trade Commission attorneys, as they must review all documents being requested rather than spend time preparing the Government's case. One regional official sees this to be unnecessarily time consuming since the information would usually be provided during the normal discovery process.

At a second Federal Trade Commission regional office, officials also expressed concern about resources needed to answer requests submitted by businesses and attorneys. One such request from two corporate lawyers asked for the review and release of all documents concerned with all Commission land sale cases. The Commission estimated that over 400,000 documents would have to be reviewed agency-wide. This regional office had six land sales cases with over 21,500 documents. The office estimated that over 200 hours of attorney time would be expended in analyzing the documents and preparing necessary outlines and response memorandums. About 40 to 50 hours had been spent as of March 1978. Headquarters was reportedly negotiating with the requesters to try and narrow the scope of the request. Commission officials feel that some of these requests by attorneys are made to disrupt agency attorneys and investigators working on specific cases.

The information access officer at Federal Energy Administration headquarters, where all agency requests are processed, said that law firms sometimes use the act to obtain information at no cost and sell it to their clients. As an example, he said law firms request the agency's Compliance

Manual and sell it to companies under investigation. By knowing the agency's investigative practices, the company under investigation is better able to cover up or provide all the "right answers." The Federal Energy Administration headquarters staff responsible for handling information requests has grown from 2 persons in 1974 to 14 in December 1977. A staff member said that the growth occurred primarily because of requests from businesses and law firms.

Officials at other investigatory or regulatory agencies would probably agree with the statements made by the Department of Justice in the 1976 annual report covering Freedom of Information Act operations:

> "* * * we are committed to the maximum practicable release of Department records, but we cannot accept the proposition that continued expenditures of resources of the magnitude indicated in this report are appropriate when weighed against the other important missions of the Department. We believe that there must be a reasonable reformulation of the access provisions of these laws in light of the peculiar and complex considerations presented by records created and maintained for law enforcement purposes. * * * Although the FOIA [Freedom of Information Act] was designed so that the public could gain access to government records and information of value in understanding the operations of government, private counsel seem to believe that the FOIA should function as a discovery device. * * * It is time for taking a fresh look at the way the Freedom of Information Act has been used, and to ask whether the Act isn't being used for ends not intended by Congress. * * *"

Some officials, however, do not agree that the act is benefiting only businesses and law firms or that this group is abusing the act. The freedom of information officer at the Department of Health, Education, and Welfare cautions against drawing conclusions solely from statistics on who is using the act. He felt that businesses and law firms do use the act more frequently than individual citizens but that the numbers do not necessarily show who is benefiting from the act. He pointed out, for example, that one request from a public interest group may benefit hundreds or even thousands of individuals. In addition, he felt that statistics on the use of the act and cost of processing

requests are often inflated by agencies that are frustrated by the "public intrusion" into their businesses.

Securities and Exchange Commission officials said that lawyers are the primary users of the act at that agency. They don't feel, however, that lawyers are abusing the act and point out that requests by lawyers sometimes benefit the public. As an example, they cited a request by a lawyer representing a group of stockholders who had been defrauded by a corporation.

EDUCATION OF THE PUBLIC

The Freedom of Information Act gives the public the right to know what their Government is doing. For whatever reasons, citizens are not exercising that right as much as many expected. Some possible explanations are the public's disinterest or lack of awareness of the act and how it can be used. Field offices of Federal agencies have done little to increase public awareness.

The Freedom of Information Act requires each agency to maintain and make available for public inspection and copying current indexes of certain agency information available to the public. Each agency is required to publish and distribute copies of each index unless it determines by publication in the Federal Register that this would be unnecessary and impracticable. In such cases, the agency is required to provide copies of the index on request at a cost not to exceed the cost of duplication.

Few field offices we visited had copies of agency indexes. Some agency officials said their headquarters were responsible for maintaining the indexes; some made their indexes available by publishing them in the Federal Register; and some were not aware of the indexing requirement or not sure whether the agency had published any indexes. We found little evidence that the public used the indexes available.

The field and regional offices have done very little to educate the public on the use of the act or agency indexes. The Securities and Exchange Commission puts out a freedom of information pamphlet, but regional offices make little use of it. Officials of the Soil and Conservation Service, the Farmers Home Administration, and the Social Security Administration saw no need for a public outreach program since they deal openly with the public daily. They say people are used to obtaining information from their agencies. Some officials commented that public outreach

is not the responsibility of a field office or of a single agency. It should, they believed, be handled by headquarters or a central government unit. The House Committee on Government Operations apparently reached the same conclusion after the 1972 hearings on the act. One of the recommendations coming from the hearings was that the Department of Justice:

--Prepare a pamphlet in simple, concise language for the general public, to be published by the Government Printing Office, setting forth the basic principles of the Freedom of Information Act, the procedures by which a citizen may obtain public records from a Federal agency, his right to appeal a denial of his request, including court remedies, and other similar advice concerning the citizen's right under the act.

The Department of Justice did not carry out this recommendation.

The Committee on Government Operations prepared "A Citizen's Guide on How to Use the Freedom of Information Act and the Privacy Act in Requesting Government Documents." The guide, which was approved in November 1977, is to help citizens exercise their rights under the two acts.

CONCLUSIONS

The Freedom of Information Act has given citizens access to records not previously available. The act is being used mostly by businesses and law firms--sometimes for purposes not contemplated by the Congress. The considerable use of the act by these groups has burdened some agencies. In our opinion, however, any attempt to regulate use of the act by businesses and law firms could also restrict use by the public. Rather than attempting to limit the act's use by certain groups, consideration should be given to increasing public awareness and use of the act.

CHAPTER 5

VALIDITY OF FREEDOM OF INFORMATION ACT REPORTS

The 1974 amendments to the Freedom of Information Act require each Federal agency to submit an annual report to the Congress covering administration of the act for the prior calendar year. Among other things, agencies are to report the number of determinations not to comply with requests for records and the reason for each determination. The Congressional Research Service's overview of the 1976 annual reports shows that agencies reported a total of 24,604 initial denials under the act.

The reporting provisions of the 1974 amendments do not specifically require agencies to report the costs of administering the act. However, the Attorney General recommended in a December 11, 1974, memorandum that executive branch agencies design procedures to accumulate data on such costs. Two congressional subcommittees requested that agencies report the incremental costs incurred in administering the 1974 amendments. Thirty-seven agencies included cost data in their 1976 reports. These agencies showed that the incremental cost of administering the act was about $20.8 million.

Field offices' input to the annual reports is often incomplete or inaccurate, and there are inconsistencies between agencies or between offices of the same agency in the denial and cost information reported. Because of these discrepancies, the validity of statistics in the annual reports is suspect, and the value of these reports as a tool for monitoring the act's implementation is questionable.

DENIALS

As discussed in chapter 3, agencies vary in what they consider to be a denial under the Freedom of Information Act. As a result, the accuracy of reported denial statistics is questionable. A good example of this problem can be seen by comparing the reported denial statistics of the three Veterans Administration regional offices visited. During 1976, the Albuquerque regional office reported 290 denials, while the Cleveland office reported only 4 denials and the Louisville office only 3.

The three regional offices do not differ in their function or relationship with the public. They serve as repositories for information concerning veterans' benefits and routinely deal with a large volume of requests for information from claimants' records. During the same period, the Albuquerque office received 1,444 requests for all types of information and the Louisville office received 748. The Cleveland office lacked a complete record of the number of requests received.

It appears that the Louisville and Cleveland offices are reporting as denials only those cases in which existing records were withheld under one of the exemption categories. On the other hand, the Albuquerque office apparently reports all instances of unfilled requests as denials. Of the 290 denials reported by that office, 20 were made because the requested information was specifically exempted from disclosure by statute. Of the other 270 denials, 129 were cases in which the office did not have the records or could not identify the requested information, 49 were referred to a Veterans Administration hospital for response, 82 were responses not sent because the requester failed to pay the associated fees, and 10 were cases in which the claimant reviewed the files in lieu of obtaining copies. We believe most of these situations do not constitute denials.

The number of questionable denials reported by Albuquerque and the absence of similar denials reported by Cleveland and Louisville indicate that the offices have adopted different criteria for reporting Freedom of Information Act denials. As can be seen by this example, as well as other examples discussed in chapter 3, agency annual reports to the Congress do not present comparable data.

COSTS

In addition to the Attorney General's recommendation that agencies accumulate data on the cost of administering the act, the House Government Information and Individual Rights Subcommittee and the Senate Administrative Practices and Procedure Subcommittee asked executive branch agencies to answer certain questions annually. Included was a request that agencies provide a statement of incremental costs incurred in administering the 1974 amendments.

Based on the following, we question the usefulness of the requested cost data.

--Not all agencies report costs in their annual report.

--Most agencies that do report costs simply report the administrative costs for the act, rather than the incremental cost of the 1974 amendments.

--There is a difference in what agencies consider to be administrative costs.

--Reported costs are often best estimates and often inaccurate.

Because the act does not require agencies to report cost information, many do not. In 1976, about 90 Federal departments and agencies compiled reports of their experience with the act. However, only 37 agencies included cost information in their annual report. These agencies showed incremental costs of about $20.8 million. The Congressional Research Service, which compiles and analyzes data in executive branch agency annual reports, issued a note of caution about using reported figures. It pointed out that most agencies have simply reported the annual administrative costs for Freedom of Information Act operations. This was true at agencies we reviewed. In addition, agencies differed greatly in what they consider part of this administrative cost.

Some agencies, such as the Army Corps of Engineers and Health, Education, and Welfare regional offices, interpret administrative cost as being only the direct personnel cost associated with answering Freedom of Information Act requests. The Federal Trade Commission also interprets administrative cost as direct personnel cost. However, headquarters and one regional office include only the professional personnel time, while another regional office also includes clerical costs charged to act activities. Other agencies, such as Veterans Administration regional offices, two European commands, and the Air Force Logistics Command, include overhead costs in their reports.

In addition to these inconsistencies, the reported cost data is often the agency's best estimate. These estimates are frequently incomplete or inaccurate. The Department of Health, Education, and Welfare, for example, reported in its 1976 report that the incremental cost of administering the 1974 amendments was about $5.3 million. However, one regional office did not include the cost of its subcomponents in its report to headquarters. The Department's director of public affairs, who prepares the overall annual report,

recognizes that the statistics reported are not valid but says he lacks time to correct the problem.

Similarly, two U.S. attorney's offices visited did not report any cost data to headquarters. The Department of Justice freedom of information act coordinator said that costs included in the annual report are estimated costs. Headquarters estimates field office costs based on headquarters experience in processing requests. He suspects that the costs estimated for the first 2 years were low.

A Federal Aviation Administration regional office estimated and reported to its headquarters that the cost of administering the act in 1976 was $500. Our analysis identified $614 in salary costs alone to process just 39 percent of the regional office's requests for that year.

A subordinate unit of the U.S. Army, Europe, reported $53,[illegible] as the cost of administering the act for the period Janu[illegible] 1, 1976, to April 30, 1977. In reviewing the unit's report, we found that the unit only processed four requests for that period. Officials at the command level did not know how the costs were calculated. The unit responsible for the data could not verify the costs because of insufficient documentation.

Some agencies are overstating Freedom of Information Act costs by including Privacy Act costs in the annual report. This was true at Veterans Administration regional offices, at a Federal Trade Commission regional office, at the Ogden Air Logistics Center, and at the Justice Department. The Veterans Administration, for example, reported Freedom of Information Act costs of about $1.1 million in 1976. This figure is misleading. Agency personnel pointed out that most requests received by them are Privacy Act requests--veterans requesting information from their own records, second parties with the veteran's consent, and routine uses as described by the Privacy Act. The costs of processing these requests, however, are reported as Freedom of Information Act costs. A division in one regional office reported Freedom of Information Act costs of over $3,000 in 1976. When questioned about these costs, the division director stated that the division processed only one Freedom of Information Act request during the reporting period and that the costs were actually Privacy Act costs. As other personnel in the Veterans Administration pointed out, if there are any incremental costs to the agency, they are due primarily to the Privacy Act. According to them, it was the Privacy Act that gave veterans greater access to their records and that this act is responsible for the increase in requests at that agency.

The Justice Department, in its 1976 annual report, recognized the difficulty of categorizing requests as falling under either act and the virtual impossibility of allocating processing time and overhead expenses on that basis.

CONCLUSIONS

The 1974 amendments to the Freedom of Information Act require agencies to report annually on their experiences in implementing the act. Although most agencies comply with this requirement, they are often less than precise in the data they report. Inconsistencies exist among agencies, and sometimes within the same agency, in the denial statistics reported. The validity of the reported cost data is also questionable because the data is imprecise.

Limitations on the adequacy and accuracy of information in agencies' annual reports have been pointed out in the Congressional Research Service compilation of the reports. In our opinion, if the reported information is used as a general indicator of how the act is being implemented, the effect of these inaccuracies is probably insignificant. However, if the information is to be used to aid decision-making, more accurate information and other types of information will be needed.

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