FEDERAL INFORMATION POLICY OVERSIGHT

HEARING

BEFORE THE

SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, INFORMATION, AND TECHNOLOGY

OF THE

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

JUNE 13, 1996

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U.S. GOVERNMENT PRINTING OFFICE

43-928 WASHINGTON : 1997

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-055834-4

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FEDERAL INFORMATION POLICY OVERSIGHT

THURSDAY, JUNE 13, 1996

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT,
INFORMATION, AND TECHNOLOGY,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 2154, Rayburn House Office Building, Hon. Stephen Horn (chairman of the subcommittee) presiding.

Present: Representatives Horn, Flanagan, Blute, Maloney, Owens, Peterson, and Clinger (ex officio).

Staff present: J. Russell George, staff director and counsel; Mark Uncapher, professional staff member and counsel; Council Nedd and Mark Brasher, professional staff members; Andrew G. Richardson, clerk; Ian Davidson, staff assistant; and Mark Stephenson and David McMillen, minority professional staff members.

Mr. HORN. Good morning. The Subcommittee on Government Management, Information, and Technology will come to order, a quorum being present.

It is a hallmark of a free society that those who are governed have access to the information within the control of those who govern. James Madison said it most eloquently when he wrote, "A popular government without popular information or the means to acquiring it, is but a prologue to a farce or a tragedy, or perhaps both. Knowledge will forever govern ignorance," said Madison, "and a people who mean to be their own governors must arm themselves with the power that knowledge gives."

It was in this spirit that three decades ago, Congress passed the Freedom of Information Act, or, as it is commonly referred to, the FOIA Act. As the 1966 committee report which introduced the act stated, the Freedom of Information Act would provide a, "True Federal public record statute by requiring the availability to any member of the public of all the executive branch records described in its requirements."

It is noteworthy that the first report issued by the House Committee on Government Reform and Oversight in this Congress is "A Citizens' Guide on Using the Freedom of Information Act and the Privacy Act of 1974 To Request Government Records." In the years since its enactment, the types of information and the format in which they are maintained have advanced tremendously. The number of requests which the departments and agencies receive exceeds 600,000 each year. The Federal Bureau of Investigation has a backlog of 4 years on its responses to FOIA requests. I should know;

I was informed of that fact when I sent a letter, knowing this hearing would eventually be coming, seeking information under the act. We hope to learn from our witnesses this morning how the Freedom of Information Act has fulfilled its mandate and their suggestions for improving its implementation.

The subcommittee will hear from Roslyn A. Mazer, the Deputy Assistant Attorney General in the Office of Policy Development of the Department of Justice. The Department of Justice has general oversight responsibility for the Freedom of Information Act.

We will next hear from representatives of the Federal Bureau of Investigation and the Department of Defense, and, as many of you are undoubtedly aware, the actions of the FBI have come under fire when it was revealed that highly confidential records have been misused by the White House. These records pertained to former White House staff members from the Reagan and Bush administrations, some of whom have been working on Capitol Hill.

The records were requested in the name of a high White House official. The FBI seemed to have no problem immediately providing 339 files about which we now know, and there are probably others. These records were to be reviewed by the employees of the Clinton administration, seeking derogatory information on the former White House employees. This is a most serious matter. It will be handled by the full committee next week. The Privacy Act was enacted to prevent this unwarranted intrusion into the privacy of Americans using information maintained by the Federal Government.

In brief, the Privacy Act is designed to prevent Big Brother, whether President, Presidential aide, Members of Congress, or a career civil servant, from looking into possible confidential information unless there is a legitimate need to know. Dirty politics is not a legitimate need to know.

The Office of Management and Budget will be brought before this subcommittee to discuss its oversight of the Privacy Act in the next few days. The subcommittee will also receive testimony this morning from representatives of groups which frequently make requests under the Freedom of Information Act.

Our last panel will consist of officials from the General Services Administration, public interest groups, and private attorneys commenting on the effectiveness and implementation of the Government in the Sunshine Act and the Federal Advisory Committee Act.

As with the Freedom of Information Act, the Sunshine Act affords Americans firsthand access to the decisionmaking process of the Federal Government. The Federal Advisory Committee Act requires the General Services Administration to review the number of advisory committees in use and to determine whether they are fulfilling their intended purpose.

I will now ask the gentleman who represents the minority, Mr. Peterson, if you have an opening statement. If you don't, we will move to Senator Leahy. I know he is pressed for time. But if you do.

[The prepared statement of Hon. Stephen Horn follows:]

ONE HUNDRED FOURTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6143

Opening statement of
The Honorable Stephen Horn, Chairman
June 13, 1996

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In the years since its enactment, the types of information, and the format in which they are maintained have advanced tremendously. The number of requests which the departments and agencies receive exceeds SIX HUNDRED THOUSAND (600,000) each year. The Federal Bureau of Investigation has a backlog of four years on its responses to FOIA requests. I should know. I was informed of that fact when I sent a letter seeking information under the act. We hope to learn from our witnesses this morning how the FOIA has fulfilled its mandate, and their suggestions for improving its implementation.

The subcommittee will hear from Roslyn Mazer, Deputy Assistant Attorney General in the Office of Policy Development, Department of Justice. The Justice Department has general oversight responsibility of the Freedom of Information Act. We will next hear from representatives of the Federal Bureau of Investigation and the Department of Defense. As many are undoubtedly aware, the actions of the FBI have come under fire when it was revealed that highly confidential records have been misused. These records pertained to former White House staff members from the Reagan and Bush administrations -- some of whom have been working

(Over)

on Capitol Hill. The records were requested in the name of a high White House official. The F.B.I. seemed to have no problem immediately providing the 339 files about which we now know. These records were to be reviewed by employees of the Clinton administration seeking "derogatory information" on the former White House employees. This is a most serious matter. The Privacy Act was enacted to prevent this unwarranted intrusion in the privacy of Americans using information maintained by the Federal Government. In brief, the Privacy Act is designed to prevent Big Brother -- whether the President, Presidential aide, or career civil servant -- from looking into possible confidential information unless there is a legitimate need to know. Dirty politics is not a legitimate need to know. The Office of Management and Budget will be brought before this subcommittee to discuss its oversight of the Privacy Act in the next few days.

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We thank you all for joining us. We look forward to your testimony.

Without objection, we are being joined this morning by the Senator from Vermont, Mr. Leahy. He has devoted a substantial part of his distinguished legislative career to advancing citizen access to government information. He has requested the opportunity to testify on his bill S. 1090, the "Electronic Freedom of Information Improvement Act," a proposal the subcommittee will consider during tomorrow's legislative hearing. Senator Leahy's legislation is intended to ensure that government records maintained in an electronic format are fully available under the Freedom of Information Act. Although companion legislation has not yet been introduced in the House, I share the Senator's interest in making sure that information access laws keep pace with changing technology.

We welcome you Senator Leahy.

Mr. PETERSON. Mr. Chairman, I do have a short statement.

Mr. HORN. Please go ahead.

Mr. PETERSON. Thank you, Mr. Chairman, for holding this hearing today, and first of all I want to thank Senator Leahy for coming to testify about his bill, the Electronic Freedom of Information Act of 1996.

One of the biggest frustrations with the Freedom of Information Act is that deadlines are rarely met, and I commend Senator Leahy for working to alleviate this problem, and I especially want to hear about the provision in his bill that will give Federal access to the Federal Register and access to records available to the public. And I look forward to the consideration of this bill in tomorrow's hearing.

Today we will hear testimony on how effectively Government agencies and the departments administer the Freedom of Information Act, the Privacy Act, the Government in the Sunshine Act, and the Federal Advisory Committee Act, all vital public laws that give access to information while protecting the privacy of individual citizens. This is what democracy is all about.

But I ask that we focus our attention on the one part of this, the Federal Advisory Committee Act, which was passed in 1972 to control apparently the proliferation of advisory committees and make them accountable for their existence. And maybe we need to strengthen the accountability provision, because I am concerned about the vast number of advisory committees that are in existence today.

Like a lot of Members of Congress, I am very much interested in reducing paperwork, reducing the deficit, streamlining Government to make it as lean and efficient as possible for the American taxpayers, and I think we need to find out why taxpayers have been burdened with paying $133 million for advisory committees in 1994 and why is it that the cost of advisory committees currently is estimated to be about $160 million.

I found the 1987 GAO report on advisory committees to be mind-boggling. Why did we have to have 992 committees with 19,837 people serving on them? I notice that 367 of these committees were created by agency heads. We should require these agency heads to make an airtight case to justify the needs of these advisory committees before the taxpayers have to pay for setting up one more of these committees.

I think the number of advisory committees apparently keeps growing. In 1993, we still had 1,236 of them. So I was glad to see that President Clinton signed an Executive order to eliminate at least 33 percent of these advisory committees not required by Congress. This drops the number of those committees to 1,088, but I still think that is too many.

We should make it difficult for an advisory committee to exist more than 2 years, as the current law allows. I question why they need to exist that long in a lot of cases. I think they should get the job done and move on. I think we owe it to the American people to justify the needs for all of these committees. I hope we will focus on this because it is a big price tag. And I thank you, Mr. Chairman, for holding this hearing and look forward to the testimony.

Mr. HORN. I thank you.

There will be a brief statement by the ranking minority member. Then we will get to Senator Leahy. Then we will come back to the ranking minority member and Mr. Tate of Washington, after you get a chance to leave for your markup.

Mrs. MALONEY. Good morning and thank you, Mr. Chairman, for holdings these 2 days of hearings.

Information policy is what democracy is all about. Public access to Government information, public participation in decisionmaking, and public accountability for Government officials, these all come about through our information policy.

I welcome Senator Leahy to this hearing. You have a well-deserved reputation for public service through protecting the privacy of the public. You are to be congratulated for the leadership and perseverance you have shown on the Electronic Freedom of Information Improvement Act.

I understand that a number of changes in the bill have been made to address the concerns of the administration. I would like to see that version introduced in the House of Representatives, and I look forward to working with the chairman to see that it happens.

I have a great deal more to say, but I would first like to welcome you and hear what you have to say and indicate my strong support for your bill and my willingness to work in the House to help pass it.

[The prepared statement of Hon. Carolyn B. Maloney follows:]

CAROLYN B. MALONEY
14TH DISTRICT, NEW YORK

COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

COMMITTEE ON GOVERNMENT OPERATIONS

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House of Representatives
Washington, DC 20515-3214

WASHINGTON OFFICE
1504 LONGWORTH BUILDING
WASHINGTON, DC 20515-3214
(202) 225-7944

DISTRICT OFFICES
950 THIRD AVENUE
19TH FLOOR
NEW YORK, NY 10022
(212) 832-6521

28-11 ASTORIA BLVD
ASTORIA, NY 11102
(718) 932-1804

619 LORIMER STREET
BROOKLYN, NY 11211
(718) 349-1260

STATEMENT OF HONORABLE CAROLYN MALONEY
GOVERNMENT MANAGEMENT SUBCOMMITTEE HEARING
ON THE OVERSIGHT OF
FEDERAL INFORMATION POLICY

June 13, 1996

Good morning, and thank you Mr. Chairman for holding these two days of hearings. Information policy is what democracy is all about -- public access to government information; public participation in decision making; and public accountability for government officials. These all come about through our information policy. I welcome Senator Leahy to this hearing. You have a well deserved reputation for public service through protecting the rights of the public.

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Information policy is the bedrock of an open and accessible government. The Paperwork Reduction Act codifies one of the fundamental principles of democracy -- government information belongs to the public. Information created by government officials and paid for by the public should be available to the public at the lowest possible cost -- the marginal cost of distribution, as the Paperwork Reduction Act says.

The Freedom of Information Act complements the Paperwork Reduction Act by establishing the presumption that all government documents should be accessible to the public. It is incumbent upon an agency to justify why a document should be withheld.

Arching over these two laws is the Privacy Act, which guarantees that an individuals privacy will not be compromised.

Together, these laws put in place a system which provides public access to government information, documents, and the decision process, while at the same time, protecting individual privacy. Open access is essential in maintaining public confidence in the government.

This is not to say that the system works perfectly. Even as we speak, agencies, pressed by reduced funding, are trying to circumvent the pricing guidelines codified in the Paperwork Reduction Act, so that they can make a profit on electronic access to government information. This must be stopped.

Senator Leahy's bill makes much needed improvements in the Freedom of Information Act. It makes it clear to agencies that the same access must be given to electronic records as is now given to paper documents.

My War Crimes bill which amends the Freedom of Information Act to make sure that those who created the atrocities of World War II cannot hide. Neither of these bills are in final form, but they move in the right direction.

Credit should also be given to the President for his leadership in moving the government into the electronic age. One of the most cumbersome parts of the Privacy Act occurs every two years when the Government Printing Office publishes all of the lists of agency records printed in the Federal Register. The 1993 version took 5 volumes.

Today, that compilation is available on-line through the Government Printing Offices Web page. There is a handout on the press tables that explains this system. It is another example of how the Clinton Administration is working to make real improvements in public access to government information.

Mr. Chairman, I look forward to these two days of hearings, and I hope we come out of them with a clear direction for improving government information policy. If we do our job well here, we can make a significant improvement in our democratic government. If we do not do our job well, we will be robbing the public of the access they deserve.

Mr. HORN. Thank you very much.

Now, Senator Leahy, we are delighted to have you here. You have been a longtime architect of caring about the public and about citizens' access to information. So please proceed.

STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Senator LEAHY. Thank you, Mr. Chairman, and I appreciate the fact that you and this subcommittee are taking such an active interest, and I was very pleased to hear your statement, Mrs. Maloney's statement, and Mr. Peterson's statement here this morning.

You know this is not a partisan issue. This is a good government issue. When we try, as I think the American people want us to do, to find areas where Republicans and Democrats can come together, this is one where we should.

We are talking about maintaining access to Federal agency records, and the access should be the same whether they are on a piece of paper or on a computer hard drive. The Freedom of Information Act is one of the most significant tools that we have to know what our Government is about, and in the 22 years I have been here in the Senate, it seems that this is something that I have worked on virtually every year to try to find ways to improve it. Look what we have gotten out of it.

In the past few months, records released in FOIA have revealed FAA actions about ValuJet before the May 11 jet crash in the Everglades, revealed the Government's treatment of South Vietnamese commandoes who fought in a CIA-sponsored army in the early 1960's, revealed the high salaries paid to independent counsels, revealed the unsafe lead content of D.C. tap water, and revealed the types of tax cases that the IRS recommends for a criminal prosecution.

We have also seen in the 30 years since FOIA became law, that technology has dramatically changed on how we handle information. When I go home on weekends, as I will this weekend, to my farmhouse in Middlesex, VT, I no longer carry a big briefcase with me. I have a little laptop up there, and I will sit in the living room, and I will type on that, and if I need a file from my office, I will just pull it up on my laptop. But that is the way we keep records.

But unfortunately, as one analyst said, Federal agencies remain confused about how they should respond to FOIA requests seeking electronic records. One Federal information officer said a lot depends upon what Congress does. We are not going to take the leap when Congress hasn't acted yet; we wouldn't want to. We want guidance, and we want to be consistent. Well, let's give them that guidance. We set that consistency. There isn't a single Government agency that doesn't use electronic filing, so let's update the FOIA to address those issues.

We need to make clear that the FOIA is not just a right to know what is on paper records, but it applies equally to what is on electronic records. Senators Brown, Kerry, and I sponsored legislation to mandate under the FOIA that agencies use technology to make Government more accessible.

We recognized the responsibility of access here in the Government and Congress when we passed the GPO access law requiring on-line access to Government publications and the Federal Register. The House initiated the Thomas system for on-line access to legislation, and I certainly find on my own Web page that people make use of that a great deal.

But I would like to highlight some of what the bill would accomplish. First, it would require agencies to provide records in a requested format whenever possible. This runs counter to the view of most agencies, who think they should determine what format records should come out in, not what the requester asks.

The bill would address the biggest single complaint that people have with FOIA requests: delays in getting a response. For some agencies, those delays can stretch to 2 years. Well, depending upon what you are asking for, a delay of that nature might mean no access at all because the information you seek, if you have to wait a year, have to wait 2 years, can well be useless by the time you get it.

And such routine failure to comply with the statutory time limits is bad for the morale in the agencies and breeds contempt by citizens who expect Government officials to abide by, not routinely break, the law.

Speaker Gingrich and I do agree on some things on occasion, I must say, Mr. Chairman, usually to his surprise but to our joint pleasure. He strongly indicated his support for the goals of this legislation. He said, "My position will be that I favor any set of records which would be, in fact, available if they were in print being available if they were electronic because they are, for all practical purposes, of the same record. My bias is absolutely in favor. The electronic information is the same as printed information, and therefore you ought to have the same rights."

I agree with the Speaker, and, as I said, this is not a partisan issue, it is a good government issue. It shouldn't make any difference if we have Democratic legislation or Republican legislation; let's do it.

In closing, let me say this: One commentator has said that these amendments of the FOIA have become as much of an annual tradition as the Cherry Blossom Festival. I enjoy the Cherry Blossom Festival, and I enjoy tradition, but this is a tradition that should stop. We shouldn't have to keep upgrading FOIA. Let's do it once and for all. We are in the electronic age. Let's reflect the fact that the Government and access by the citizens to this Government are also available in the electronic age.

Thank you, Mr. Chairman.

[The prepared statement of Hon. Patrick Leahy follows:]

U.S. SENATOR PATRICK LEA

Contact: Joe Jamele (202-224-4242) VERM(

STATEMENT OF SENATOR PATRICK LEAHY
ON PUBLIC ACCESS TO GOVERNMENT ELECTRONIC RECORDS
Hearing on Federal Information Policy Oversight
House Government Reform and Oversight Subcommittee on
Government Management, Information and Technology
June 13, 1996

I am glad to be here today to talk about maintaining public access to Federal agency records, whether those records are on paper or on a computer hard drive.

This is a good government issue, not a partisan one.

The Freedom of Information Act is one of the most significant tools Americans have to inform themselves about what their government is doing--or not doing. As President Johnson said in 1966, when he signed the Freedom of Information Act into law: "This legislation springs from one of our most essential principles: A democracy works best when the people have all the information that the security of the Nation permits."

Just in the past few months, records released under the FOIA have revealed FAA actions against Valuejet before the May 11 crash in the Everglades, the government's treatment of South Vietnamese commandos who fought in a CIA-sponsored army in the early 1960's, the high salaries paid to independent counsels, the unsafe lead content of D.C. tap water, and the types of tax cases that the IRS recommends for criminal prosecution.

In the thirty years since the Freedom of Information Act became law, technology has dramatically altered the way government handles and stores information. Gone are the days when agency records were solely on paper stuffed into file cabinets. Instead, agencies depend on personal computers, computer databases and electronic storage media, such as CD-ROMs, to carry out their mission.

Nevertheless, according to one analyst, "Federal agencies remain divided and confused about how they should respond to FOIA requests seeking electronic records." One federal information officer is quoted in a recent article saying, "A lot depends on what Congress does. We're not going to take the lead when Congress hasn't acted yet. We wouldn't want to. We want guidance and we want to be consistent. We wouldn't want to set the government's policy on our own."

We need to update the FOIA to address new issues related to agency reliance on computers. We need to make clear that the FOIA is not just a right to know what's on paper law, but that it

senator_leahy@leahy.senate.gov
http://www.senate.gov/~leahy/

applies equally to electronic records.

Senators Brown, Kerry and I have sponsored legislation to amend the FOIA so that agencies use technology to make government more accessible and accountable to its citizens. The Senate recognized the need to update the FOIA in the last Congress by passing an earlier version of this legislation, which unfortunately died in the House.

Storing government information on computers should actually make it easier to provide public access to information in more meaningful formats. For example, people with sight or hearing impairments generally have had enormous difficulty getting information in a useable format. Special computer programs can translate electronic information into braille or large print or synthetic speech output. Access to government information in an electronic format that can be run through these special programs can make access a reality for them.

Electronic records make it possible to provide dial-up access to any citizen who can use computer networks, such as the Internet. Those Americans living in the remotest rural area in Vermont, or in a distant State far from the agency public reading room here in Washington, D.C., should be able to use computer networks to get direct access to the warehouse of unclassified information stored in government computer banks.

Congress recognized the importance of such access when it passed the GPO Access law requiring on-line access to important government publications, such as the Federal Register, the Congressional Record and other documents put out by the Government Printing Office. The House also initiated the THOMAS system this Congress so that American could get on-line access to legislation and activity happening here.

Ensuring public access to electronic government records is not just important for broader citizen access. The government is probably the largest single producer and collector of information in the United States. All this government information is a valuable commodity and a national resource that commercial companies pay for under the FOIA, add value to, and then sell--creating jobs and generating revenue in the process. It is important for our economy and for American competitiveness that access to that resource in electronic form be available. The electronic FOIA bill would contribute to our information economy.

I would like to highlight some of what this bill would accomplish. First, it would require agencies to provide records in a requested format whenever possible. This runs counter to the current view of most agencies surveyed in 1994 that they, not the requester, have the right to choose the format in which information was released.

Second, the bill would also force agencies to assess how new

computer systems will enhance agency FOIA operations before systems are installed that impede access.

Third, the bill would encourage agencies to increase on-line access to government information, including the records agencies currently put in their public reading rooms.

Finally, the bill would address the biggest single complaint of people making FOIA requests: delays in getting a response. For some agencies, the delays can stretch to over two years. **Long delays in access can mean no access at all.**

Because of these delays, writers, students and teachers and others working under time deadlines, have been frustrated in using FOIA to meet their research needs. Taxpayers foot the bill for the collection and maintenance of this information and should get prompt access upon request.

The current time limits in the FOIA are a joke. Few agencies actually respond to FOIA requests within the 10-day limit required in the law. Such routine failure to comply with the statutory time limits is bad for morale in the agencies and breeds contempt by citizens who expect government officials to abide by, not routinely break, the law.

The bill would help agencies comply with the law's time limits in a number of ways. First, the bill would double the ten-day statutory time limit to twenty days to give agencies a more realistic time period for responding to FOIA requests. Second, the bill would encourage agencies to make more information available on-line and to use better record management techniques, such as multi-track processing, publishing a general index of prior-released records to avoid new searches, and making available those documents that are the subject of multiple FOIA requests.

The electronic FOIA bill would make important progress in requiring agencies to technology to make government more accessible and accountable to our citizens. Both Vice President Gore and Speaker Gingrich have strongly indicated their support for the goals of this legislation. When he was asked about the Leahy-Brown bill in April, the Speaker said:

> "My position will be that I favor any set of records, which would be in fact available if they were in print, being available if they were electronic, because they are for all practical purposes the same record... My bias is absolutely in favor of the notion: Electronic information is the same as printed information, and therefore you ought to have the same rights."

Over the past few weeks, OMB has worked constructively with us to make sure this legislation will work at a time of shrinking budgets and agency resources. The American people do not need or

want just an empty promise of better access. I have attached to my statement a copy of the revised legislation, with a section-by-section summary, for the consideration of this Subcommittee.

I am aware that some people contend that Congress should do nothing -- nothing to help solve the endemic delay problems, nothing to ensure that electronic information is available to citizens on the same basis as information in paper files, and nothing to help fulfill the promise of increased government access to agency records. I reject those naysayers.

One commentator has said that these amendments to the FOIA "have become as much an annual Washington tradition as the Cherry Blossom Festival." I enjoy tradition as much as the next fellow, but its time to put a stop to this one and enact this legislation.

Mr. HORN. Well, we appreciate your comments. We agree with you completely. You can be sure that every agency witness that we have before us, we will be pursuing implementation: Did they ask for the resources? Who has turned them down? Was it OMB? Was it the President? Was it the Congress?

I think it is unconscionable when I hear that the FBI has a 4-year wait, and it makes no sense to me. It is another way to duck implementation of the law. We will be pursuing that. Let me ask you what you think the greatest barrier is you see to citizen access to Government records. What do you regard, based on your experience, as the greatest barrier?

Senator LEAHY. Just knowing how to do it, and do it easily. A lot depends on the agency, and we have some agencies that are very, very good at responding and others that can balance the angels on the head of a pin when they look at what you want. If you want to go through a bureaucratic tangle, they can stop you, because they are going to say to the average citizen, "You didn't ask specifically for this." That is not the way it should be.

If agencies really want people to know what they are doing, it means that they are going to know about mistakes as well as the things they do right. If an agency does something right, they are going to send a press release out; they don't want you to know about the mistakes. It can be done very easily electronically. It is probably going to be the best way.

We have a whole new generation coming along that knows how to use computers, knows how to use the search methods, and they should be allowed to. You are talking about delays. If you were the Cabinet official that ran that agency, and you said, "Look, we have got this real big political issue coming up; I want—by 2 o'clock this afternoon, I want all the information on such-and-such," you know you are going to have it. Well, if it could be done that quickly for you as a Cabinet member, why can't probably a much simpler request for Mr. Horn's citizen be answered just as quickly?

Mr. HORN. You are absolutely correct. That is what our aim ought to be, your legislation, our legislation, and whatever we finally figure out between the two bodies.

Would the ranking minority member have a question or two she wants to ask before the Senator leaves?

Mrs. MALONEY. Thank you, Mr. Chairman.

You mentioned in your testimony that delayed access to information is almost the same as not having any access at all, and I would like to ask you, would you support requiring agencies to include in their annual reports statistics on the number of requests completed, the median time to complete the total number of pending requests, so that we could keep track of how many requests are out there and whether they are being met or not? Would you support that?

Senator LEAHY. I would, and the fact they are doing it electronically, it is going to be really easy to do that.

Frankly, I serve on the Appropriations Committee. A number of different agencies come before the various subcommittees. If I was an agency head, I would like to come in and say, "We have got this number of requests, and we were this slow answering them because we don't have the resources. Would you help us?"

I have a feeling that the vast majority of members on the committees and subcommittees in both parties would say, "Sure, we will help you on that," because, one, we are not talking about that much money, to begin with, but it is the easiest way to do it.

The other thing, you know what you are going to find. You are going to find, with the same resources, some departments answer these questions much, much faster than others, and it is usually the mind set of the department itself whether they want the answers made, and that I found in both Republican and Democrat administrations.

Mrs. MALONEY. When I speak to the agencies, their response, when I ask, "Why is there that backlog? Why can't you process it?" They say, "We just don't have the resources, and we have other more important things to do, and we just cannot handle it."

What kind of increase in personnel and budget do you think is needed to keep up with the current rate of requests, and, in the absence of further resources, what would you recommend to improve the processing of FOIA requests?

Senator LEAHY. It would depend upon the particular agency. You may have an agency that has handled a lot of classified material: the CIA, FBI, Department of Defense. They are going to require more time to make sure they are also not passing out governmental secrets. By contrast, at the Department of Agriculture, you should basically be able to pull up something very, very easily.

I have in this bill—we have a lot of things, multitrack processing, record management techniques, and a number of other things that will help make it a lot easier for them. But I would contend that all of this will be much faster if they go—in the electronic era. They don't have somebody going down trying to pull out huge stacks of paper.

Mrs. MALONEY. Some people are concerned about your definition of record in your bill, and some of the critics of the bill say this definition would actually block access to some Government data bases. How would you answer that criticism?

Senator LEAHY. It is certainly not the intent. We have worked—Senators Brown, Kerry, and I have worked very hard on this. If somebody has a better definition, certainly I will be happy to work with them on that. We wanted to make it—we want to design it always to err on the side of more access than less access. If somebody has a better definition, I will be happy to applaud it and join it.

Mrs. MALONEY. Very well.

Mr. HORN. I yield to Mr. Tate, the gentleman from Washington, for a question or two, then go to Mr. Peterson for a question or two. Then you are home free.

Mr. TATE. I would like to commend the Senator on the Internet caucus and on this particular legislation.

One of the things, at least from my perspective, to make Government more accountable is to make it more accessible. I think you have taken a lead on that and should be commended. One complaint, though, is just the long delays. It is great that it is accessible. If it takes me a year to get it, what specifically in the bill will address that, help the average citizen that lives out in the Ninth District of Washington if they want to get information on the

Department of Education, for example, and they have a computer at home? How will this affect their lives, and how will they get the information more quickly?

[The prepared statement of Hon. Randy Tate follows:]

OPENING STATEMENT OF REP. RANDY TATE ON FEDERAL INFORMATION POLICY OVERSIGHT SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, INFORMATION AND TECHNOLOGY JUNE 13, 1996

First of all, I want to thank Chairman Horn for his leadership in arranging these two days of hearings on federal information policy and the Electronic Freedom of Information Act (EFOIA).

As Chairman of the Subcommittee on Government Management, Information and Technology, you have served on the front lines in our efforts to improve the efficiency and responsiveness of government operations.

In a March 21st letter to the distinguished Chairman, I and five of my Republican colleagues on the House Government Reform and Oversight Committee urged House consideration of EFOIA and I am delighted to be a part of these hearings today

Opening the work of the federal government to the watchful and vigilant eyes of the American public is an effort that both parties and the Administration can and should embrace wholeheartedly. The distinguished Senator from Vermont, Mr. Leahy, is to be commended for his committed work with his colleague, Sen. Hank Brown of Colorado.

The Freedom of Information Act was enacted in 1966 in order to provide the public with a presumptive and clear right of access to government information.

In the thirty years since the implementation of the original Freedom of Information Act, our nation has witnessed enormous technological advances. The laptop computer, cellular phone, fax and internet are just a few of the technological achievements that have brought us into the information age.

It is only fitting that we now work to use modern day technology to deliver common-sense efficiency and government accountability to the American people.

EFOIA would require the use of on-line technology by government agencies to make information readily accessible to the American public.

Parents in my hometown of Puyallup, Washington who want to see the latest regulations, opinions, and policy statements issued by the Department of Education would be able to sit in the comfort of their home -- turn on their computer -- click onto the internet -- and download the relevant information ---- all before putting their children to bed.

EFOIA will successfully harness the benefits of computer technology and deliver to the average citizen increased government efficiency, accessibility, and responsiveness.

Openness, efficiency and accountability. These are the qualities that the people expect of their government and that the government should expect of itself.

The Freedom of Information Act turns thirty this year -- it's time to bring the law into the modern information age, using cutting edge technology to deliver cutting edge service to the American people. We in Congress, as their public servants, should aspire to nothing less.

I am confident that these hearings will underscore the need to modernize the public's access to government information and will result in the passage of a much needed Electronic Freedom of Information Act.

Senator LEAHY. It doubles the time to 20 days for an initial determination. Then that helps the agencies. So the quid pro quo is that it encourages agencies to put a lot more of this information on-line.

It does have a lot of ways to track multiple requests. They claim this delays processing. They will be able to respond to the multiple requests, answer them all at the same time, and do it in a way, too, in looking at where the costs are going to go to make the costs—I am trying to think of the best way—realistic.

Right now a lot of them will refuse, saying the costs are too much, and they will delay. For that we have some pretty strict time limits in here, and we have the ability to pay for what is requested so they will move further.

The full impetus of it is to put the pressure on the agencies to respond, but if it is electronic, it is going to be done much faster.

You know, Mr. Tate, you are one who is computer literate. A lot of us went kicking and screaming from the quill pen age. I find out when I pick up my computer, I can use various search engines and go through very, very quickly, very quickly, including my own e-mail, and I know that the same thing would have taken me a day in the past and I wouldn't have done it. Now I do it in 2 or 3 seconds.

Why not require it here? If we have electronic access, there will really be no excuse for delay. Then the Congress can require it.

What we were saying about having a report each year for the agencies—how many FOIA requests did they get? How long did it take? That in the long run, that would do more to make this work than anything else, because if you have agencies—and there will be those that comply very, very quickly and who have it on the Federal page, the Post, or whatever, a comparison of who complied or who didn't, you know it is going to bring the pressure.

Mr. TATE. Thank you.

I yield back my time.

Mr. HORN. The gentleman from Minnesota, gentleman from Massachusetts. Let me just ask one final question, and that is, How much emphasis or priority should we give members of the media who are working on stories of public interest that can't be held up for 1 year or 2 years or whatever? Does your bill address that problem?

Senator LEAHY. Actually, everybody should have a priority. I don't know exactly how to answer that question, Mr. Chairman. I would hope that a priority is given to anybody who asks, because really the delays—in most instances, the delays made are not real. I mean—well, the delay is real, but the reasons are not real for it.

I would hope that the media has very good access, because I found in my 22 years here many times issues that come to my attention and whatever oversight committee I am on came via the media, not via my work or anybody else's work. But there are certain compelling circumstances, and the legislation will give expedited procedures for that. But I think we have to acknowledge the fact in the Congress, many, many times problems that we have gotten legitimately involved in came to our attention first through the media, not through constituents, not through our own work.

Mr. HORN. I agree with you, and we will see if we can't do something about that on a joint basis.

Thank you very much for coming over and sharing your thoughts with us.

Senator LEAHY. It is a privilege to be here. Thank you, Mr. Chairman.

[The prepared statement of Hon. Michael P. Flanagan follows:]

Statement of Rep. Michael P. Flanagan of Illinois
Government Management Information and Technology Subcommittee
Oversight of Federal Information Policy
9:30 AM 2154 RHOB

OPENING REMARKS

Mr. Chairman, I would like to thank you for calling this hearing today to address the effectiveness of Federal departments and agencies' administration of Federal Information Policy including the Freedom of Information Act and the Privacy Act.

The Freedom of Information Act was enacted 30 years ago to establish the public's right to obtain existing records of Federal departments and agencies. Under the current law, anyone requesting information from a Federal department is not required to illustrate a need or reason for obtaining the information -- even if the person requesting the information is not a citizen of the United States. With certain exceptions, such as information pertaining to national defense, confidential business information or information which would violate a person's privacy -- Federal departments must comply with the Freedom of Information Act.

This compliance creates a great burden on the agencies to fulfill requests in a timely manner. It is not unheard of for a citizen to request their own FBI file and have to wait years to attain it or correct it. A lack of staff, lack of prioritizing guidelines for requests and a lack of departmental resources to fulfill the requests only compound these problems. It is for this reason, that we must review the management and administration techniques of departments and agencies to see what changes can be made to remove the obstacles people requesting information face.

However, it is very important that in the oversight of the Freedom of Information Act, to abide by the Privacy Act of 1974. It is the right of all citizens of the United States to be protected from unwarranted invasions of their privacy especially if the information is derived from collection or disclosure by a Federal agency. Ironically, the full Committee on Government Reform and Oversight may now be faced with investigating violations of the Privacy Act by the White House in connection with requesting personal FBI files on law-abiding citizens of the United States. The Privacy Act specifically states information which can not be disclosed as, "any item, collection, or grouping of information about an individual that

is maintained by an agency including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finder of voice print of photographs". Did the files requested and reviewed by the White House not fall under the Privacy Act? Was the language of the Act not explicit enough to ensure the rights of privacy for citizens of the United States?

It is imperative that the United States Government continue the policy of openness toward information within its control. However, as technology moves forward, the laws and regulations of the Freedom of Information Act and the Privacy Act must also move forward -- fulfilling requests in a more timely manner while still protecting the privacy of others. Mr. Chairman, again I thank you for calling this hearing and look forward to the testimony.

Mr. HORN. We will now go to the second panel. We have Ms. Roslyn A. Mazer, Deputy Assistant Attorney General, Office of Policy Development of the Department of Justice.

And I might say, Ms. Mazer, we have a tradition on all subcommittees of Government Reform and Oversight of swearing witnesses, so please raise your right hand.

[Witness sworn.]

Mr. HORN. We will note that the witness has affirmed, and we will note that when questions are asked and we ask for a followup in writing, the oath still applies to you and all other witnesses.

So please proceed.

STATEMENT OF ROSLYN A. MAZER, DEPUTY ASSISTANT ATTORNEY GENERAL, OFFICE OF POLICY DEVELOPMENT, DEPARTMENT OF JUSTICE

Ms. MAZER. Mr. Chairman and members of the subcommittee, good morning. I am pleased to be here to address the Department of Justice's role in administering the Freedom of Information Act, the principal statute governing public access to Federal Government records and information. This statute, which has now been in effect for nearly 30 years, has become an essential part of our democratic system of government, a vital tool for learning about the Government's operations and activities.

As you know, under the FOIA, the Department of Justice encourages agency compliance with the Freedom of Information Act, and this responsibility is discharged on a day-to-day basis by the Department's Office of Information and Privacy. Within the Department of Justice, each component bears the responsibility of responding in the first instance to FOIA requests for its own records. The Office of Policy Development provides policy guidance to the Attorney General on ways to improve the Department's performance of its responsibilities, including measures to enhance accountability of those who process FOIA requests, improve timeliness, and, fundamentally, to get more information out to the public.

During the past 3 years, under the leadership of President Clinton and Attorney General Janet Reno, the Department of Justice has taken steps to reinvigorate FOIA throughout the executive branch. In October 1993, President Clinton and Attorney General Reno issued statements of new FOIA policy to the heads of all Federal Departments and agencies. President Clinton called upon all agencies to "take a fresh look at their administration of the act" in accordance with new standards for FOIA administration set forth in an accompanying memorandum from Attorney General Reno.

In turn, Attorney General Reno's FOIA memorandum established higher standards of Government openness under the FOIA that apply both in FOIA litigation and at the administrative level. The essential elements of this FOIA policy are: One, an overall presumption of disclosure that is applied to decisions made on the use of FOIA exemptions; two, a specific foreseeable harm standard governing the Department's decision on whether to defend an agency's use of a FOIA exemption in court; and, three, an accompanying emphasis on making discretionary disclosures of exempt records or information whenever possible under the act.

The Attorney General ordered a review of the merits of all FOIA litigation cases as measured against these disclosure standards, which has led to the disclosure of much additional information under the act.

The Department of Justice has taken specific steps to energize FOIA in accordance with these policies. For example, the Department has taken the lead among Federal agencies in establishing a new mechanism for affording expedited access under the FOIA to the Department's records. In 1994, it expanded its expedited access policy to include requests in which there is widespread media interest in the records and which involve "possible questions about the Government's integrity which affect public confidence." Under this policy, which is implemented through the Office of Public Affairs, the Department of Justice has expedited FOIA requests involving a number of high-profile matters such as the FBI's negotiations with the Branch Davidians at Waco.

Similarly, in order to promote Government openness and accountability, the Department in 1993 initiated a policy of automatically disclosing public summaries of attorney misconduct investigations that are conducted by our Office of Professional Responsibility, regardless of whether formal FOIA requests are made for those investigative files. In fact, our Office of Public Affairs now employs a regular practice, which we recommend to other Federal agencies, of trying to anticipate public demands for Department of Justice records in an effort to make information available without encumbering the FOIA process. And in order to improve the efficiency of the FOIA process itself, as well as agency accountability, Attorney General Reno has established new and expanded performance standards that now apply to all Department employees whose work supports FOIA administration, including line attorneys and others whose review of FOIA requests is essential before a final decision is made.

The Department has also sponsored a National Performance Review laboratory to develop an automated FOIA processing system—making good use of new technology—and to infuse principles of customer service throughout the processes of FOIA administration. In this same vein, the Department has reviewed all of its standard forms and correspondence formats used in its administration of the act, making improvements in both content and tone, and it has assisted other agencies who are following our lead in that regard.

On a day-to-day basis, the Department of Justice promotes Government openness and encourages proper compliance with the FOIA throughout the executive branch. Through its Office of Information and Privacy, the Department provides extensive consultation and advisory assistance to all Federal agencies on a wide range of FOIA-related matters; it conducts a full range of FOIA-training programs for all agencies throughout the year; and it issues policy guidance to agencies through its quarterly FOIA Update publication and its annual "Justice Department Guide to the Freedom of Information Act."

These Governmentwide policy activities are described in greater detail in the "Description of Department of Justice Efforts to Encourage Agency Compliance With the Act" which is a part of the Department's annual report to Congress, the most recent copy of

which is attached. Through these efforts, the Department continually strives to improve the delivery of FOIA services to the public and to assist all Federal agencies in meeting their statutory responsibilities as best as possible with limited administrative resources.

In closing, Mr. Chairman, the Department of Justice works hard to fulfill its responsibilities under FOIA. In 1995 it received 133,000 FOIA and Privacy Act requests and responded to about 126,000 requests using the equivalent of 627 full-time employees at a cost of over $36 million.

The number of requests has grown exponentially in recent years. For example, since 1987 the number of requests has more than doubled.

Next month we celebrate the 30th anniversary year of the FOIA's enactment. As President Johnson observed when he signed the act on July 4, 1966, "A democracy works best when the people have all the information that the security of the Nation permits." FOIA embodies our Nation's commitment to President's Johnson's pledge. We therefore look forward to continuing to work with the subcommittee to make FOIA work better.

I would be pleased to address any questions that you or any other member of the subcommittee might have on this subject.

[The prepared statement of Ms. Mazer follows:]

ROSLYN A. MAZER
DEPUTY ASSISTANT ATTORNEY GENERAL
OFFICE OF POLICY DEVELOPMENT

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here this morning to address the Department of Justice's role in administering the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1994), the principal statute governing public access to Federal Government records and information. This statute, which has now been in effect for nearly thirty years, has become an essential part of our democratic system of government -- a vital tool for learning about the government's operations and activities.

As you know, under the FOIA, the Department of Justice encourages agency compliance with the Freedom of Information Act,[1] and this responsibility is discharged on a day-to-day basis by the Department's Office of Information and Privacy. Within the Department of Justice, each component bears the responsibility of responding in the first instance to FOIA requests for its own records. The Office of Policy Development provides policy guidance to the Attorney General on ways to improve the Department's performance of its responsibilities, including measures to enhance accountability of those who process FOIA requests, improve timeliness, and, fundamentally, to get more information out to the public.

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[1] See 5 U.S.C. § 552(e).

During the past three years, under the leadership of President Clinton and Attorney General Janet Reno, the Department of Justice has taken steps to reinvigorate FOIA throughout the Executive Branch. In October 1993, President Clinton and Attorney General Reno issued statements of new FOIA policy to the heads of all Federal departments and agencies. President Clinton called upon all agencies to "take a fresh look at their administration of the Act" in accordance with new standards for FOIA administration set forth in an accompanying memorandum from Attorney General Reno.[2]

In turn, Attorney General Reno's FOIA Memorandum established higher standards of government openness under the FOIA that apply both in FOIA litigation and at the administrative level. The essential elements of this FOIA policy are: (1) an overall "presumption of disclosure" that is applied to decisions made on the use of FOIA exemptions; (2) a specific "foreseeable harm" standard governing the Department's decision on whether to defend an agency's use of a FOIA exemption in court; and (3) an accompanying emphasis on making "discretionary disclosures" of exempt records or information whenever possible under the Act.[3]

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[2] President's Memorandum for Heads of Departments and Agencies Regarding the Freedom of Information Act, 29 Weekly Comp. Pres. Doc. 1999 (Oct. 4, 1993) (copy attached), reprinted in FOIA Update, Summer/Fall 1993, at 3.

[3] Attorney General's Memorandum for Heads of Departments and Agencies Regarding the Freedom of Information Act (Oct. 4, 1993), reprinted in FOIA Update, Summer/Fall 1993, at 4-5 (copy attached).

The Attorney General ordered a review of the merits of all FOIA litigation cases as measured against these disclosure standards, which has led to the disclosure of much additional information under the Act.

The Department of Justice has taken specific steps to energize FOIA in accordance with these policies. For example, the Department has taken the lead among Federal agencies in establishing a new mechanism for affording expedited access under the FOIA to the Department's records. In 1994, it expanded its expedited access policy to include requests in which there is widespread media interest in the records and which involve "possible questions about the government's integrity which affect public confidence."[4] Under this policy, which is implemented through the Office of Public Affairs, the Department of Justice has expedited FOIA requests involving a number of high-profile matters such as the FBI's negotiations with the Branch Davidians at Waco.

Similarly, in order to promote government openness and accountability, the Department in 1993 initiated a policy of automatically disclosing public summaries of attorney misconduct investigations that are conducted by our Office of Professional Responsibility -- regardless of whether formal FOIA requests are

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[4] Office of Information and Privacy Memorandum of Feb. 1, 1994 (copy attached), excerpted in FOIA Update, Spring 1994, at 2.

made for those investigative files.[5] In fact, our Office of Public Affairs now employs a regular practice (which we recommend to other Federal agencies) of trying to anticipate public demands for Department of Justice records, in an effort to make information available without encumbering the FOIA process.[6] And in order to improve the efficiency of the FOIA process itself, as well as agency accountability, Attorney General Reno has established new and expanded performance standards that now apply to all Department employees whose work supports FOIA administration -- including line attorneys and others whose review of FOIA requests is essential before a final decision is made.[7]

The Department has also sponsored a National Performance Review laboratory to develop an automated FOIA-processing system -- making good use of new technology -- and to infuse principles of customer service throughout the processes of FOIA administration.[8] In this same vein, the Department has

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[5] See id. (citing Deputy Attorney General Memorandum of Dec. 13, 1993) (copy attached).

[6] See FOIA Update, Winter 1995, at 1-2 (describing Justice Department practices of "affirmative" information disclosure) (copy attached).

[7] See FOIA Update, Fall 1995, at 1 (describing new FOIA-related work-performance standards and offering them as models for use by other Federal agencies) (copy attached).

[8] See FOIA Update, Winter 1996, at 1-2 (describing National Performance Review "FOIA Lab" activities regarding automated processing); FOIA Update, Summer 1994, at 6 (describing NPR FOIA-related customer-service activities) (copy attached).

reviewed all of its standard forms and correspondence formats used in its administration of the Act, making improvements in both content and tone -- and it has assisted other agencies who are following our lead in that regard.[9]

On a day-to-day basis, the Department of Justice promotes government openness and encourages proper compliance with the FOIA throughout the Executive Branch. Through its Office of Information and Privacy, the Department provides extensive consultation and advisory assistance to all Federal agencies on a wide range of FOIA-related matters; it conducts a full range of FOIA-training programs for all agencies throughout the year; and it issues policy guidance to agencies through its quarterly FOIA Update publication and its annual "Justice Department Guide to the Freedom of Information Act." These government-wide policy activities are described in greater detail in the "Description of Department of Justice Efforts to Encourage Agency Compliance with the Act" (which is a part of the Department's annual report to Congress), the most recent copy of which is attached. Through these efforts, the Department continually strives to improve the delivery of FOIA services to the public and to assist all Federal agencies in meeting their statutory responsibilities as best as possible with limited administrative resources.

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[9] See FOIA Update, Spring 1994, at 1 (advising all Federal agencies to conduct such a "FOIA Form Review") (copy attached).

Next month we celebrate the thirtieth-anniversary year of the FOIA's enactment. As President Johnson observed when he signed the Act on July 4, 1966, "a democracy works best when the people have all the information that the security of the Nation permits."[10] FOIA embodies our nation's commitment to President's Johnson's pledge. We therefore look forward to continuing to work with the Subcommittee to make FOIA work better.

I would be pleased to address any questions that you or any other Member of the Subcommittee might have on this subject.

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[10] Statement of President Johnson upon Signing Pub. L. 89-487 (July 4, 1966), reprinted in Attorney General's Memorandum on the Public Information Section of the Administrative Procedure Act at ii (June 1967).

Mr. HORN. Well, we thank you very much for your general testimony. Let me pursue a few questions.

I have no doubt that your office does a fine job on policy development as related to the Freedom of Information Act. What concerns me is the opportunity for bureaucracies, either through the pressure of other business or whatever, downgrading the need to meet both citizen, congressional, and media inquiries. And I wondered, to what degree do you see that as a role of your office to look around the executive branch and see how effectively each agency, bureau, department, however it is administered, is being responsive to this act, and do you have data on that?

I would like to, for example, find out which Department has the longest delays, which bureau, agency, so forth. Do you collect that type of data?

Ms. MAZER. The Department has certain responsibilities, though they are limited, in overseeing FOIA administration throughout the Government. Under the act, as you know, we do have the responsibility to encourage compliance with the act. Let me tell you the ways in which we do that and try to respond to your question.

Through the Office of Information and Privacy, extensive training is conducted each year, dozens of training programs are held with every level of FOIA officials throughout the Government. These training programs update FOIA officers on how to conform to the new administrative standards. They also encourage, for example, aggressive negotiation with requestors to reduce the amount of information, on the scope of information that is requested.

This is one of the most important initiatives that our training folks encourage because many requestors, be they media requestors or members of the general public, ask for the kitchen sink to use the colloquialism, and in fact they would be satisfied if they could get a prompt response with much less information. In these training programs, our Office of Information and Privacy alerts agencies on how they can serve the public better.

I want to stress that while we focus on FOIA requests and what the batting average is of different agencies, that one of the most important initiatives this administration has inculcated is the opportunity for affirmative disclosures without the necessity of a FOIA request.

And as to that, I can speak about the Department's experience because I know we have taken the lead through Carl Stern, the director of our Office of Public Affairs, who has had 30 years of experience as a consumer of Government information. He has made a number of initiatives to expand access and encourage they be acted on a more timely basis.

For example, you asked Senator Leahy about whether it would be appropriate as a policy matter under his proposed legislation to accelerate media requests. The Department of Justice in this administration has created a new category of requests that receive expedited treatment, and those are circumstances where there is exceptional and widespread media interest in the subject matter and the subject matter involves questions of possible abuse of Government integrity.

Mr. HORN. So that would include not only members of the media but Members of Congress to get expedited treatment so they could properly conduct hearings, I assume.

Ms. MAZER. If they fall within those qualifications.

Mr. HORN. But does the holding of a hearing on the subject mean we, too, get expedited treatment to find the records so we can properly ask questions in a hearing? Or is it just the media that get the preference?

Ms. MAZER. It is not just media requestors who have access to that expedited treatment, it is any requestor who would fall within those two criteria would receive expedited treatment.

Mr. HORN. Well, again, I would ask the question, do Members of Congress who conduct hearings on a particular subject qualify under your criteria?

Ms. MAZER. We would entertain a request of that sort in the same way we would any other request.

Mr. HORN. Or do we have to subpoena records? That is where we are now in some cases, is issue a subpoena. I would like to see something smoothly going where people know you could make the request and have the material furnished to you.

Let me ask you this. Have you gone around and asked how much delay each agency, bureau, has in terms of responding to the series of requests they are getting? And what type of data does the Department of Justice, your office in particular, collect on that?

Ms. MAZER. I could speak to the information that we collect within the Department because we have obviously discrete responsibility for improving our own performance. Governmentwide, as I said, we are in regular contact through our training programs——

Mr. HORN. Training, I understand. My query is very simple: Do you ask them how many requests they have and how many months it takes you to respond?

Ms. MAZER. We don't have that responsibility under the statute.

Mr. HORN. You are saying you need the law to be changed to give someone that responsibility, take it in the executive branch; is that correct?

Ms. MAZER. We would need guidance from the Congress if that were something the Department of Justice would be asked to do.

Mr. HORN. Do you think your office is the appropriate place? Some of these laws have OMB worrying about the administration of that. Where in the executive branch do you think is the responsibility to serve the timeliness of the response? Are there sufficient resources? Did the office that administers this ask for the resources? Did the Secretary ask? Did OMB ask? Did Congress do it? And where in the executive branch, in your judgment, should that be put?

Ms. MAZER. I was advised from a member of our Office of Information and Privacy we have some of the data that you described—Governmentwide, per agency—and we will be happy to supply that to the subcommittee.

[The information referred to follows:]

While collection of this backlog data has not been statutorily required, the Department believes that its collection of such information has aided its understanding of how its initatives and the day-to-day administration of the FOIA are working and has identified areas in need of improvement.

Ms. MAZER. As to your question as to who is best equipped to gather that kind of information Governmentwide, I would like to consider that and supply an answer to the subcommittee.

Mr. HORN. Fine.

The gentleman from New York, Major Owens.

Mr. OWENS. Ms. Mazer, how would you say the new—the procedures in your administration differ from the procedures of the past administration in terms of collection of information about what is going on in the various agencies and keeping data on how rapidly requests are amended, et cetera? Is anything new been added since your administration came in?

Ms. MAZER. As I said in response to the chairman's question, the responsibility the Department has to collect information Governmentwide has not changed in this administration, but we have been extremely aggressive making sure agencies know of the measures available and opportunities available to improve FOIA performance and that, as I mentioned, would include opportunities to make information available without the need for a FOIA request. We stress the anticipation of public requests for information on topics of widespread interest, making the information available in public reading rooms, putting information on the Internet. The Department of Justice has a Web site, and other agencies in the Government do also.

I quite agree with Senator Leahy's comments that the accessibility of information to the public could be considerably enhanced through electronic means, and the Department is continuing to add more information to its Web site, and I can mention a couple of categories of information that are already on it.

All of our press releases are on it. Our Freedom of Information Guide and Freedom of Information Act overview is on the Internet and accessible. And the basic brochure, available in written form, of course, that guides the public in very simple, straightforward terms in how to use the FOIA is now posted on the Internet. So these are initiatives that we have undertaken, and we engage in consultations with other agencies to learn from them, and we set the pace in some cases with the Department's initiatives.

Some of the particulars that I mentioned in terms of making records on professional misconduct by Department of Justice attorneys and more generally changing the administrative standards on making information available are among the real hallmarks of this administration's efforts to make Government more open.

Mr. OWENS. So this administration has taken a more assertive and aggressive posture in making information available. You don't just wait for it. That is the big difference between your administration and the last administration.

Ms. MAZER. This administration rescinded the previous guidelines from 1981 which permitted the Department of Justice to defend an agency's assertion of an exemption under FOIA whenever there was a substantial legal basis for doing so. Now an agency's assertion for an exemption is defended only in much narrower circumstances, only where there is a foreseeable harm to a Government or a private interest.

In speaking fundamentally about getting more information out, those changes in administrative and litigation guidelines are

among the most significant initiatives the administration has undertaken.

Mr. OWENS. Do you have data which would show whether the number of requests have increased very much in the last 3 years? Has there been any trend in the kind of requests you have received?

Ms. MAZER. I do have information on that. The number of requests to the Department of Justice has more than doubled in the last 8 years, and I can provide the subcommittee information on an annual basis, but that is included in our annual report to Congress. We are seeing exponential increases. It is a source of frustration but also a tremendous challenge, and we are doing what we can to improve our situation within the Department, and I might like to address what we are doing to address it within the Department.

Mr. OWENS. When you mention you put certain categories of information out to libraries, you mean public libraries?

Ms. MAZER. Public reading rooms.

Mr. OWENS. There are public reading rooms in Washington or across the country able to get the same information so that citizens in any part of the country can get some information about the Bureau of Freedom of Information?

Ms. MAZER. Those reading rooms are both in Washington, and the U.S. attorneys' offices around the country also can choose to make that kind of information available. U.S. attorneys are also putting their press releases on the Internet, which had not heretofore been available.

Mr. OWENS. Internet and the Web site, that is your innovation of this administration; is that correct?

Ms. MAZER. That's right.

Mr. OWENS. Thank you.

Ms. MAZER. I would like to point out, Mr. Chairman, that you raised in questioning Senator Leahy the answer to improving FOIA and serving our requestor communities better cannot be, in this day and age, simply more resources, we have to be smarter and more creative about finding ways to avoid the FOIA—the necessity of a formal FOIA request whenever—we can. I think those initiatives are very important and we shouldn't lose sight of them.

Nonetheless, it is the case that FOIA is both a blessing and a burden. We enjoy the most open democracy in the world, but the demands of the requestor communities, whether they be media, scholars, or just curious citizens and other folks, are understandably greater, and they need to be addressed.

Mr. HORN. I think that is well put.

I now yield 5 minutes for questioning to the gentleman from Massachusetts, Mr. Blute.

Mr. BLUTE. Thank you very much, Mr. Chairman.

I want to commend you for holding this series of hearings, and I thank the witness for testifying.

I am a strong supporter of the Freedom of Information Act. I think it is a very important check on Government secrecy, and while some Government documents should be privileged, such as FBI background checks, generally speaking, Government action should be reviewed by the Congress, by the media, and ultimately by the American people.

You mention in your testimony a selective expedited release procedure that you use in particular circumstances, and I think you mentioned the Waco incident. I was a member of the Waco panel that looked into that tragic incident. I seem to recall great difficulty the committee had in getting certain photographs from the Department of Justice relating to the weapons that were found there and the x rays of those weapons to determine whether they were automatic or semiautomatic weapons.

I wonder if you are familiar with how the agency handled the Waco request from the media and from the Congress?

Ms. MAZER. I was not specifically involved in responding to those requests. I know that requests for the FBI's negotiations with the Branch Davidians were released.

I would be happy to respond following the hearing on any other particular questions you have. But I was not involved with that.

Mr. BLUTE. In general, how does your office decide what events constitute calling in the selective expedited release procedure?

Ms. MAZER. Accompanying my written testimony, Congressman, you will see a copy of the memorandum that sets forth the standards by which expedited treatment can be furnished. This is a matter of agency discretion. It is not something that we are required to do.

But the determination was made by the Attorney General, in consultation of the director of public affairs, that there are certain exceptional cases that should be added to the two extant circumstances, threats to life or safety or loss of substantial due process rights, that warranted expedited treatment.

Those are circumstances where there exists widespread and exceptional media interest in the requested information and where expedited processing is warranted because the information sought involves possible questions about the Government's integrity which affects public confidence.

There are many different places to draw the line, I suppose, and everyone, as was stated by Senator Leahy, would like to have their request prioritized, but this is the line that the Department has drawn, and it's been used in a number of circumstances in the case of high-profile subjects.

Mr. BLUTE. That ultimate decision is made by the Attorney General?

Ms. MAZER. It is made by the director of public affairs.

Mr. BLUTE. With the review of the Attorney General?

Ms. MAZER. I think it resides with the director of public affairs.

Mr. BLUTE. Let me shift gears here and ask you about commercial requestors of FOIA. I have in my district a lot of biotechnology companies, for example, who are very frustrated with the FDA's long delays and their backlog, and from time to time they file freedom of information requests.

How many of these types of requests do you handle, and do you think that that was how the act was intended, companies trying to get to the bottom of decisionmaking within regulatory agencies?

Ms. MAZER. I have heard that FOIA is one example of—as a former law professor said—it is the Taj Mahal of the doctrine of unintended consequences. And there are indeed many requesters who are not seeking information about what the Government is

doing, which one could say is the essential purpose of the Freedom of Information Act, rather than information about what the Government is storing.

Now Congress has not made this distinction in terms of the purpose of the requester, or the interest the requester seeks to advance by seeking information, but it is certainly true that significant FOIA resources throughout the Government, not so much at the Department of Justice but in certain agencies I am sure you will be hearing from, absorb a considerable amount of processing time and taxpayer dollars in processing requests about competitors.

There are other categories of requesters, likewise, who are not seeking information about what the Government is doing.

I think those are important policy questions, but they are not the subject of——

Mr. BLUTE. What is your judgment? Do you think restrictions of this type should be added to FOIA restrictions on commercial requests?

Ms. MAZER. The Department doesn't have a position on that, and I would personally not want to see us move in the direction of restriction. I would like to see us move in the direction of finding more creative ways to be responsive, getting more resources when necessary.

But negotiating with requesters to reduce the amount of information they are seeking and using automated resources and new technologies to be more responsive and, I might say, encouraging accountability for those who are involved in the process. I mentioned in my statement that, for the first time now, folks at the Department of Justice who have anything to do with considering a FOIA request, whether they be assistant U.S. attorneys or people who move the paper within the Department but who are not formal FOIA processors, are now graded based on their timely performance of the FOIA-related functions because we learn that considerable delays occur before the documents even get to the person who has to analyze whether they are exempt material or not.

We have shined a spotlight on FOIA by making it part of the work performance standard of everyone who touches a FOIA request, and we encourage other agencies to do that.

Mr. BLUTE. I thank you, and I thank you, Mr. Chairman.

Mr. HORN. Thank you.

Five minutes to the ranking minority member from New York, Mrs. Maloney, for questioning.

Mrs. MALONEY. Thank you very much.

One of the versions of Senator Leahy's bill had a portion of FOIA fees would go directly to the agency processing the FOIA request so that it would help with the resources of the agency. Congressman Horn and I had a similar provision in the debt collection bill that we passed giving some of it back to the agency.

What is your feeling on that particular part of this bill? Would you support it?

Ms. MAZER. I understand that the lead with Senator Leahy's bill is with the Office of Management and Budget which will be providing witness testimony at some later date, so I would have to refer to them.

Mrs. MALONEY. You have no comment; you will follow their suggestion?

Ms. MAZER. That's right.

Mrs. MALONEY. And his bill separates the processing of simple and complex requests for all agencies. You mention that as a procedure that you are following in your agency now. But would you support that or all agencies as a way to really make access quicker?

Ms. MAZER. Again, I don't think I am in a position to make a generalization about what would be best for all agencies. I think we have learned in our consultations with different agencies that they respond to different kinds of requests. If an agency served different requester communities—and I don't know whether an across-the-board adjustment of that kind would simplify or perhaps complicate a better performance.

Mrs. MALONEY. We have many more witnesses, and I would just like you to read the definition of "record" that is in the bill. If you can think of any other way to make it more open to the public, which, as the Senator said, was his intent, or your analysis and response to it, if you could submit it in writing, if you have any comments on it.

I have no further questions, Mr. Chairman.

Mr. HORN. Thank you very much.

Let me just round out your part of the hearing with a few questions. Some of which you might want to submit for the record. I would like you to work with our staff and your staff so we can get a survey we can agree on and get it in a timely manner.

Do you have any knowledge at this point of the average response time to a Freedom of Information Act request? Have you got a feel for that throughout the Government? What is the average response time?

Ms. MAZER. I do not.

Mr. HORN. Your office has not collected any data on that?

Ms. MAZER. No.

Mr. HORN. Has any office in the executive branch collected data?

Ms. MAZER. We have certain information that we can supply to the committee on backlogs and what is the extent of requests that are backlogged more than 30 or 60 days.

Mr. HORN. Is that just a one-time survey, or do you ask that on a regular basis to see if there is any improvement?

Ms. MAZER. The Attorney General has, I believe, sent two requests for this information, the second being very recently; and we are in the process of collecting responses from agencies on the status of their backlog. I am not certain it includes average response time, but I will check and get back to the subcommittee.

[The information referred to follows:]

In October 1993, President Clinton and Attorney General Janet Reno called upon agencies to infuse a new spirit of openness into the administration of the Freedom of Information Act. As a part of this initiative, the Department of Justice requested that all agencies provide specific backlog figures. The Department's Office of Information and Privacy collected and compiled the data, a summary of which is attached.

In May, 1996, the Attorney General requested that the agencies provide undated backlog information. The Office of Information and Privacy has collected and compiled the responses received through August 7. A copy of the summary of that data is attached.

Mr. HORN. Let us have your staff and our staff work it out. That document you have will be put into the record at this point, without objection, because we are interested in the Governmentwide figures, the breakdown by department, and on specific agencies that have a particular demand, such as the FBI, the Food and Drug Administration, and so forth.

We are interested in knowing which department has the longest delays and which department has the shortest delays. We are interested in what can be done beyond the administration's actions to speed up the process. Do we need changes in the law? Do we have to mandate this?

If it is not clear to them we are serious, we will be glad to make it very clear to the executives and the civil servants implementing this law that we do mean business and we want the public's right to know to be fulfilled.

We also would like to know, how often it happens that the people just move away or lose interest with the long wait. Is that part of a bureaucratic pressure, if you will, so that we are not responsive in the executive branch? That concerns us.

We need your advice as to how we might improve and specifically mandate that. I realize that has to be coordinated with the legislative reference arm of the Office of Management and Budget.

We would welcome your thoughts on this, formally or informally.

Ms. MAZER. Excuse me for interrupting. The information I can supply today identifies the 28 agencies that have no FOIA backlog; 18 agencies reported a backlog between 15 and 30 days, 29 agencies have backlogs of more than 30 days.

Mr. HORN. Do we know who has a backlog of more than 1 year?

Ms. MAZER. I think we can supply that information, yes.

Mr. HORN. Do you know at all now who has a backlog of more than 1 year?

Ms. MAZER. The FBI does.

Mr. HORN. The information we were given by them is they have a 4-year backlog. This is responsiveness?

Ms. MAZER. It is a tremendous challenge.

Mr. HORN. Is there anybody in that category besides the FBI?

Ms. MAZER. I will supply that to the subcommittee if there are any others.

Mr. HORN. Yet hundreds of files get delivered to the White House and they don't even have a signed request from the White House. They just sent them over there. That bothers us, I say. We will pursue that one next week, as I said.

Should use of the act be limited to U.S. citizens or permanent residents? I mention that, because apparently the U.S. Government felt it was required by the act to turn over the information in its files to the Ayatollah Khomeini about the Shah of Iran. I wonder if the Ayatollah was ever put in a queue like the rest of us are.

Can we look into what happened on that? Should we be permitting outsiders, if you will, who are not citizens or permanent residents, to request information? Is that a problem? How much of that are you getting?

I must say, I am concerned about the commercial mischief with FDA. It is one thing to request types of data that help people in the public interest or see if some idiot patent medicine is under

way, that we don't want to suffer and kill people and all the rest. That, I understand.

What I don't understand that we have to do is have the Government be part of a commercial intelligence operation to undercut the creative rights of people that are filing various things with the FDA, who can then just simply file, get their ideas, go out and make trouble and lawsuits and everything else, and in essence, steal from creative people. I just wonder, is your office, which is engaged in policy formulation, taking a look at that?

Here we are arguing with the Chinese, we are arguing with everybody in the world on stealing our intellectual property. One could make the case that right under our noses, due to FOIA, intellectual property is being stolen from a lot of people that have invested their labor, their dedication, and their money and everything else, so somebody can get it and challenge them—the actual inventor of it. That bothers me.

Does it bother the Department of Justice? Does it bother your office?

Ms. MAZER. As I said, we would be happy to work with the subcommittee in asking those issues. It is something we keep our eye on in terms of trying to get a sense of who our users are, what constituencies are growing.

There is a perception that media occupies very, very significant portions of FOIA requests. That is not the case at the Department of Justice. So it is certainly something we would be happy to work with the subcommittee staff in considering.

Mr. HORN. Now, you heard the discussion with Senator Leahy. Do you have any reaction to his proposal?

Ms. MAZER. OMB is taking the lead on S. 1090, and I understand they will be furnishing testimony before the subcommittee.

Mr. HORN. Has the Department of Justice filed its views with OMB for the normal clearance review over there?

Ms. MAZER. I do not know, but will advise the subcommittee on that.

[The information referred to follows:]

The Department has had a number of meetings with both the Office of Management and Budget (OMB) and staff members of the Subcommittee on Government Management, Information and Technology to discuss H.R. 3802, the Electronic Freedom of Information Amendments of 1996, and its Senate counterpart, S. 1090. We will continue to work with both OMB and the House and Senate to achieve the bill's goals of enhancing rapid and convenient citizen access to government information.

The Department would like to take this opportunity to clarify the record with regard to requests from Congress for records from the Executive Branch. Congressional requests from a Committee or Subcommittee, acting through its chairman in an oversight capacity, are not governed by FOIA. In fact, FOIA Subsection (d) states that FOIA is not a basis for withholding records in the context of oversight. Some of the same policies that pertain to FOIA, including third agency consultation and concern for confidentiality interests, such as individual privacy and pending investigations, also apply to oversight committee requests for documents, but the requests are not governed by the FOIA's statutory provisions.

Mr. HORN. Well, the reason I ask is, we are in sort of an expedited procedure here. We are going to be moving very fast on this bill, and I would say we would love to have the views of the affected agencies. Obviously, we are going to really need them within the next 2 weeks, because we will have only so many legislative days to go.

Now, do you have a view on the implementation of the Privacy Act at all?

Ms. MAZER. OMB takes the lead under the statute on the Privacy Act, Mr. Chairman.

Mr. HORN. And so have your views been filed with OMB or can your views be filed with this committee? Because we are going to be getting into that also.

Ms. MAZER. On what subject?

Mr. HORN. The Privacy Act.

Ms. MAZER. What in particular?

Mr. HORN. Just in general. What is your experience with it? We are interested in getting the feedback of those of you on the firing line in making sure that these laws are effective. If there is something we have failed to do, and that is not unusual around here, where we have put a euphemism in the law to get agreement, and then you all sit around and say what in heavens name do they mean by this word?

If we have got that problem, we need to surface it on the table in this go-around, in the Leahy bill or the Horn bill, we want to clarify some of these things so you don't have to go through that problem. So we would welcome your suggestion.

One of the last questions, we are going to also consider tomorrow the health information privacy protection proposal that Mr. Condit of California took the lead in in the last Congress. He, unfortunately, will not be able to be here tomorrow when we consider some of that. However, he is working very closely with us on a joint proposal, myself and him, to update that and to improve some of the protections in it.

So we would love to have any views you have, informally or formally, based on the experience you see throughout the country on this.

We heard in the hearings we held under Mr. Condit's leadership in the last Congress, we had a real tale of horrors of what happens to medical records in some hospitals in this country. I think we want to do something about that.

So, again, we would welcome your thinking. Mrs. Maloney's bill will be up tomorrow on the War Crimes Disclosure Act. We want to move that right along. Does Justice have any views on that particular proposal? If you have got them, we are going to need them in the next 2 weeks. We are going to move that one very rapidly.

Those are sort of little teasers to say we would like your help and cooperation on this. We would like your staff and our staff to get together under Russell George, sitting to my left, the staff director, to get an agreement on a survey so we can really find out what the agencies and departments are doing in terms of responsiveness to the citizen's requests. How long is it taking?

I am going to be asking each one here, but there are a lot of departments that are not going to be here. Most departments are not. I am going to ask the simple question: What is the average time? How many requests? Have you asked for the money? Did you ask the Cabinet office for the money and resources? Can the department reprogram those resources so it is not always asking for money?

Just use some common sense; that is, some of the major operations in a number of departments, where they come into citizen contact. We want to be effective on that.

Does any member have any other questions of the Deputy Attorney General?

Very well. Thank you very much for coming.

Ms. MAZER. Thank you, Mr. Chairman.

Mr. HORN. We now move to panel 3. We have Mr. Kevin O'Brien, the section chief for the Freedom of Information/Privacy Acts Section of the FBI; Mr. Anthony H. Passarella, Director, Directorate for Freedom of Information and Security Review, Office of the Assistant Secretary of Defense for Public Affairs.

If you gentlemen will stand and raise your right hands.

[Witnesses sworn.]

Mr. HORN. Both witnesses have affirmed.

We will begin in alphabetical order with Mr. O'Brien. Welcome.

STATEMENTS OF KEVIN O'BRIEN, SECTION CHIEF, FREEDOM OF INFORMATION/PRIVACY ACTS SECTION, FEDERAL BUREAU OF INVESTIGATION; AND ANTHONY H. PASSARELLA, DIRECTOR, DIRECTORATE FOR FREEDOM OF INFORMATION AND SECURITY REVIEW, OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE (PUBLIC AFFAIRS)

Mr. O'BRIEN. Thank you. Good morning, Mr. Chairman.

On behalf of Director Louis J. Freeh, I appreciate the opportunity to testify before your subcommittee about the FBI's Freedom of Information and Privacy Acts Program.

The FBI has made a significant commitment of people and resources to process requests for information under the Freedom of Information Act and the Privacy Act; but despite these efforts, we are dealing with a large volume of work on hand and we are not able to process requests in as timely a manner as we would like.

In calendar year 1995, the FBI spent $21 million on the FOIPA Program. The FBI processes most FOIPA requests centrally, in the FOIPA Section at FBI Headquarters in Washington, DC. A relatively small amount of FOIPA processing is done in field offices. The FOIPA Section currently has a net of 239 full-time employees working in the program. As well, there are another 11 assigned to a FOIPA module in Savannah, GA. And another 74 analysts, some full-time and some part-time, are spread throughout FBI field offices.

Because of the nature of the FBI's main mission, which is to uphold the law through investigations of Federal criminal laws, to protect the United States from foreign counterintelligence activities, and to provide leadership and law enforcement assistance to Federal, State, local, and international agencies, the Bureau is involved in a wide variety of activities which often involve sensitive factors. In processing FBI documents for release under the FOIPA, great care is taken to ensure that no material to which the requester is entitled is erroneously withheld, and that no material that should be withheld is inadvertently released.

A disclosure analyst conducts a line-by-line, page-by-page review of the work copy of documents to determine what should be released, and whether any FOIPA exemptions should be applied. An-

alysts must decide how much information can be disclosed to the requester without harming the national security, revealing confidential sources, invading personal privacy, interfering with ongoing investigations, disclosing specialized investigative techniques, or revealing other sensitive information.

On the whole, FBI files contain very sensitive information, and the review of this type of information is necessarily time consuming, and the analysis cannot be done properly if it is done in haste. The analyst uses a special marking pen to edit exempt material, and thereafter marks and identifies the exemption used in the margins of the documents.

During the process, sometimes other Government agencies must be consulted about the releasability of their information or documents which may be found in FBI files, if they are in the files being processed. The process requires a thorough supervisory review to ensure legibility, completeness and accuracy, and then the materials to be released are sent to the requester.

As of May 31, 1996, the FBI had 15,259 requests on hand in the FOIPA Section backlog, and it is estimated that there are over 5,400,000 pages of documents to be reviewed. Because of the FBI's work, investigative files can range from relatively small to very large and complex. Of the 15,000 requests, we estimate that about 2,000 of them consist of an average of 100 pages or less, and are not complex. At the other end of the spectrum are project cases, which we define as consisting of 3,000 pages or more.

At the end of May 1996, we had 248 project case requests, which involve an estimated 2,600,000 pages to be reviewed. The remainder of the requests for which responsive files have been identified would consist of between 100 and 3,000 pages, and in varying degrees of complexity.

The cases in the FBI's backlog span the full range of the Bureau's work. I have shown percentages here in my prepared written statement, and they are on the range of cases including white collar crime, organized crime, foreign counterintelligence, terrorism, civil rights, applicant cases, and miscellaneous cases and other criminal cases.

Types of requesters in 1995 were predominantly private individuals, 74 percent; followed by prisoners, almost 15 percent; and scholars, historians, news media members, freelance writers and authors, organizations, and current employees.

There are a number of factors which have contributed to the growth of the backlog of requests. First is the constant stream of a high volume of new requests received, an average of 13,100 per year in each of the last 5 years. In addition, some experienced analysts have been lost through attrition, including transfers to other positions and retirements.

In addition, because of the nature of the FBI's investigative files, many requests involve complex processing decisions that are time-consuming. Some requests involve voluminous records. The 248 project cases I mentioned previously are only 1.6 percent of the pending requests, but represent 48 percent of the estimated pages to be reviewed. As an example, 3 project requests currently being processed are for records consisting of approximately 80,000, 55,000, and 32,000 pages, respectively. When these requests have

been completed, thousands of hours of processing time will have been expended.

In addition, FOIPA analysts are also sometimes diverted away from handling initial processing of requests to other essential activities. Administrative appeals must be addressed. As of May 31, 1996, 480 requests were on appeal. Moreover, litigation has significantly drawn on analysts' time. At the end of May 1996, there were 233 pending FOIPA lawsuits involving 641 requests. Our analysts spend a significant amount of time on litigation. In 1992, analysts spent 10.4 percent of their time on litigation; in 1993, 20.1 percent; in 1994, 29.8 percent; and in 1995, 20.4 percent. These litigations must be responded to. Frequently there are court ordered deadlines, and we must provide justification for what we have done.

Because of their analytical expertise, some FOIPA analysts are diverted to other analogous functions. We have 12 of our analysts assigned to the John F. Kennedy assassination records task force, which has processed and released to the National Archives over 640,000 pages of assassination records in response to legislation passed by Congress in 1992. And they will continue to work there until that project is completed. Whenever analysts must be diverted to other tasks, such as dealing with administrative appeals and litigations, and processing records under the John F. Kennedy Assassination Records Collection Act of 1992, they cannot perform the service of initially processing requests of other requesters.

Another factor which has added to complexity and made analysts' processing activities more time-consuming involves changes in processing rules. In May 1993, the Supreme Court ruled in *U.S. Department of Justice, et al.* v. *Landano,* 113 S. Ct. 2014 (1993), that the Government is not entitled to a presumption that all sources supplying information to the FBI in criminal cases are confidential sources. It had been the law in the majority of Federal circuits up to that time, and this decision overturned it.

As well, in October 1993, Attorney General Reno announced a discretionary release policy for Department of Justice components. In both of these instances, these new policy changes require a greater amount of analysis, and, therefore, a greater amount of time. They both have the virtue of resulting in a greater amount of disclosure material, but another consequence of it is to make the processing much more time-consuming and longer.

The FBI has taken several measures to deal with the increasing backlog of requests. In order to treat requesters equitably, requests are assigned based upon their approximate date of receipt. We have employed a two-track system whereby smaller cases can be processed more expeditiously as time and resources permit, and therefore we are able to service more requesters than we would if all cases were kept in one queue.

We have also streamlined processes. For example, we have clarified form letters, and converted forms to computerized macros to diminish the amount of typing time expended. We have also formed and used ad hoc project teams to process large and complex requests. We have taken several internal measures to bring more personnel time and resources to bear in processing the FOIPA requests in the headquarters backlog. We have used overtime, as available, in the FOIPA Section. Beginning in 1989, we began

training field office analysts to do the more complex work found in the headquarters backlog cases, and they supplement our headquarters analyst force by processing backlog cases as time permits.

In addition, we developed and trained an offsite FOIPA processing module in Savannah, GA, in 1992, which functions as an offsite team which processes FOIPA cases from the headquarters backlog. In 1992, from internal resources we added and trained 15 new FOIPA disclosure analysts at FBI Headquarters. Again, in 1995 Director Freeh added 17 more disclosure analysts from within FBI Headquarters, and added 34 new document classification analysts, 20 of whom are devoted to the classification aspects of processing a FOIPA request.

We also initiated and are continuing development of the FOIPA Document Processing System, which is an initiative to automate the physical aspects of FOIPA document processing through computerization. This project has been recognized as part of a National Performance Review laboratory, and the research and development stage is nearly concluded. Once developed, the system will have potential applications for FOIPA and civil discovery document processing. It will be of benefit to other agencies beyond the FBI, should they choose to use it, and should result in savings of analysts' time, as well as other beneficial effects.

It is clear, however, that only more analysts, trained to process requests, can significantly diminish the backlog, absent an unexpected decrease in new requests. The FBI is seeking additional personnel resources through the budget process, and a request for 129 additional personnel to process FOIPA requests is now pending before the Congress.

I am pleased that during the first 5 months of 1996, the backlog has not grown. On December 31, 1995, there were 15,358 requests on hand, and May 31, 1996, there were 15,259. However, we would much prefer to significantly diminish the size of the backlog of requests so that requesters' needs may be served in a more timely fashion.

I assure you that, with whatever resources are available to us, we are committed to continuing to do high-quality work in processing FOIPA requests, and to continuing our best efforts to reduce the backlog.

This concludes my prepared statement. I thank you, and I would be happy to address any questions.

[The prepared statement of Mr. O'Brien follows:]

J. KEVIN O'BRIEN
CHIEF, FREEDOM OF INFORMATION AND PRIVACY ACTS SECTION
FEDERAL BUREAU OF INVESTIGATION

On behalf of Director Louis J. Freeh, I appreciate the opportunity to testify before your subcommittee about the FBI's Freedom of Information and Privacy Acts (FOIPA) Program.

The FBI has made a significant commitment of people and resources to process requests for information under the Freedom of Information Act (FOIA) and the Privacy Act (PA); but, despite these efforts, we are dealing with a large volume of work on hand and we are not able to process requests in as timely a manner as we would like.

In calendar year 1995, the FBI spent $21,082,010 on the FOIPA Program. The FBI processes most FOIPA requests centrally, in the FOIPA Section at FBI Headquarters in Washington, D.C. A relatively small amount of FOIPA processing is done in field offices. The FOIPA Section currently has 263 full-time employees on hand. (The equivalent of about 24 of these employees work on document classification matters which do not involve FOIPA requests. All others in the Section are devoted to the FOIPA Program). Another 11 are assigned full-time to a FOIPA module in Savannah, Georgia. Another 74 analysts, some full-time and some part-time, are spread throughout FBI field offices.

Because of the nature of the FBI's main mission, which is to uphold the law through investigations of federal criminal laws, to protect the United States from foreign intelligence

activities, and to provide leadership and law enforcement assistance to federal, state, local and international agencies, the Bureau is involved in a wide variety of activities which often involve sensitive factors. In processing FBI documents for release under the FOIPA, great care is taken to ensure that no material to which the requester is entitled is erroneously withheld, and that no material that should be withheld is inadvertently released.

A disclosure analyst conducts a line-by-line, page-by-page review of the work copy of the documents to determine what should be released, and whether any FOIPA exemptions should be applied. Analysts must decide how much information can be disclosed to the requester without harming the national security, revealing confidential sources, invading personal privacy, interfering with ongoing investigations, disclosing specialized investigative techniques, or revealing other sensitive information. On the whole, FBI files contain very sensitive information, and the review of this type of information is necessarily time-consuming, and the analysis cannot be done properly if it is done in haste. The analyst uses a special marking pen to edit exempt material, and thereafter identifies the exemption used in the margins of the documents, and/or prepares a "deleted page information sheet" when an entire page has been deleted.

During the process, other government agencies must be consulted about the releasability of their information or documents which may be found in FBI files. When the analyst has finished, a supervisory analyst does a thorough review. The documents to be released are then photocopied, checked for legibility and completeness, and sent to the requester.

As of May 31, 1996, the FBI had 15,259 requests on hand in the FOIPA Section backlog, and it is estimated that there are over 5,400,000 pages of documents to be reviewed. Because of the FBI's work, investigative case files can range from relatively small, to very large and complex. Of the 15,259 requests, we estimate that about 2,000 of them consist of an average of 100 pages or less, and are not complex. At the other end of the spectrum are "project" cases, which we define as consisting of 3,000 or more pages. At the end of May 1996, we had 248 project case requests, which involve an estimated 2,600,000 million pages to be reviewed. The remainder of the requests for which responsive files have been identified would consist of between 100 and 3,000 pages, and varying degrees of complexity.

The cases in the FBI's backlog of FOIPA requests span the full range of the Bureau's work. Of main files reviewed in 1995, 3.2% concerned white collar crime, 1.6% organized crime, 8.2% terrorism, 6.1% foreign counterintelligence, 5% civil rights, 11.5% applicant cases, and 64.4% miscellaneous and other criminal

cases. Types of requesters in 1995 were predominantly private individuals (74.6%), followed by prisoners (14.7%), scholars and historians (4.1%), news media members (2.8%), freelance writers and authors (2.4%), organizations (0.8%), and current employees (0.6%).

There are a number of factors which have contributed to the growth of the backlog of requests. First is the constant stream of a high volume of new requests, an average of 13,100 per year in each of the last 5 fiscal years. In addition, some experienced analysts have been lost through attrition including transfers to other positions and retirements.

Moreover, because of the nature of the FBI's investigative files, many requests involve complex processing decisions which are time-consuming. In addition, some requests involve voluminous records. The 248 "project" cases I mentioned previously are only 1.6% of the pending requests, but represent 48% of the estimated pages to be reviewed. As an example, three project requests currently being processed are for records consisting of approximately 80,000, 55,000, and 32,000 pages, respectively. When these requests totaling 167,000 pages are completed, thousands of hours of processing time will have been expended.

FOIPA analysts are also sometimes diverted away from handling initial processing of requests to other essential activities. Administrative appeals must be addressed. As of May 31, 1996, 480 requests were on appeal. Moreover, litigation has significantly drawn on analysts' time. At the end of May 1996, there were 233 pending FOIPA lawsuits, involving 641 requests. In 1992, analysts spent 10.4% of their time on litigation, in 1993, 20.1%, in 1994, 29.8%, and in 1995, 20.4%. In many instances ad hoc teams of analysts have to be formed to complete work within court ordered deadlines.

Because of their analytical expertise, some FOIPA analysts are needed in other, analogous functions. Currently, 12 FOIPA analysts are assigned to the John F. Kennedy Assassination Records Task Force, which has processed and released to the National Archives over 640,000 pages of assassination records in response to legislation passed by Congress in 1992. The Task Force's work continues.

Whenever analysts must be diverted to other tasks, such as dealing with administrative appeals and litigations, and processing records under the John F. Kennedy Assassination Records Collection Act of 1992, they cannot perform the service of initially processing requests of other requesters.

Another factor which has added complexity and made analysts' processing activities more time-consuming is changes in processing rules. Specifically, in May, 1993, the Supreme Court ruled in U.S. Department of Justice, et al. v. Landano, 113 S. Ct. 2014 (1993), that the government is not entitled to a presumption that all sources supplying information to the FBI in criminal cases are confidential sources. This overturned the law as it existed in a majority of Federal Circuit Courts. Now, an analysis of the facts and circumstances must be made to determine whether confidentiality may be inferred or not. In October 1993, Attorney General Reno announced a "discretionary release" policy for Department of Justice components. Where applicable, this requires a significantly greater line-by-line analysis of documents than previously needed under the law.

These new processing rules have the virtue of resulting in increased disclosure. The cost is greater complexity and increased use of analysts' time to process documents.

The FBI has taken several measures to deal with the increasing backlog of requests. In order to treat requesters equitably, requests are assigned based upon their approximate date of receipt. We have employed a two track system whereby smaller cases can be processed more expeditiously as time and resources permit, and therefore we are able to service more requesters than we would if all cases were kept in one queue.

We have also streamlined processes. For example, we have clarified form letters, and converted forms to computerized macros to diminish the amount of typing time expended. In addition, we have formed and used ad hoc project teams to process large and complex requests.

We have taken several internal measures to bring more personnel time and resources to bear in processing the FOIPA requests in the headquarters backlog. We have used overtime, as available, in the FOIPA Section. Beginning in 1989, we began training field office analysts to do the more complex work found in the headquarters backlog cases, and they supplement our headquarters analyst force by processing backlog cases as time permits. In addition, we developed and trained a FOIPA processing module in Savannah, Georgia, in 1992, which functions as an off-site team which processes FOIPA cases from the headquarters backlog. In addition, in 1992, we added and trained 15 new FOIPA disclosure analysts at FBI Headquarters from on-board employees. Again, in 1995 we added 17 more disclosure analysts from within FBI Headquarters, and added 34 new document classification analysts, 20 of whom are devoted full-time to the classification aspects of processing a FOIPA request.

We also initiated and are continuing development of the FOIPA Document Processing System (FDPS), which is an initiative to automate the physical aspects of FOIPA document processing

through computerization. This project has been recognized as part of a National Performance Review laboratory, and the research and development stage is nearly concluded. Once developed, the system will have potential applications for FOIPA and civil discovery document processing, and should result in savings of analysts' time, as well as other beneficial effects.

It is clear, however, that only more analysts, trained to process requests, can significantly diminish the backlog, absent an unexpected decrease in new requests. The FBI is seeking additional personnel resources through the budget process, and a request for 129 additional personnel to process FOIPA requests is now pending before the Congress.

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This concludes my statement. Thank you very much.

Mr. HORN. Thank you. We will wait until we have heard from the next witness and open it up to questioning by the committee.

Mr. PASSARELLA. Thank you, Mr. Chairman.

I am Anthony H. Passarella, Director of the Directorate for Freedom of Information and Security Review, Office of the Assistant Secretary of Defense for Public Affairs. I am pleased to have the opportunity to discuss the Department of Defense's Freedom of Information Act Program with you today.

The Assistant Secretary of Defense for Public Affairs has overall policy and implementation authority to administer the DOD FOIA Program. He has charged my directorate to carry out this responsibility. The DOD implementation of the FOIA is set forth in DOD Directive 5400.7, which further authorizes publication of DOD Regulation 5400.7–R.

The Directorate for Freedom of Information and Security Review develops the FOIA policy for DOD, and processes requests for records under the control of the Office of the Secretary of Defense [OSD] and the Office of the Chairman of the Joint Chiefs of Staff and Joint Staff [OJCS]. I am not responsible for the DOD Privacy Act Program, but my directorate does process individual Privacy Act requests.

My directorate also conducts security review of all material prepared for public release and publication originated by the DOD, to include testimony before congressional committees, or by contractors, DOD employees as individuals, and material submitted by sources outside the DOD for such review. The directorate conducts the Mandatory Declassification Review Program for the OSD/OJCS.

Because of the mission, functions, size and geographic dispersion of the DOD, it is decentralized into separate military departments and defense agencies. The FOIA program is likewise decentralized in the DOD components. The DOD components consist of 15 separate organizations, inclusive of the military departments and separate defense agencies, located across the Nation and around the world. These DOD components conduct their own FOIA programs under the policy guidance of the DOD FOIA regulation which is written by my office. The components' responsibility requires them to respond to requests for records under their control, make release determinations on records originated in the component, refer requests for other records to other FOIA offices as appropriate, review adverse determinations on appeal, and work in concert with the Department of Justice and the U.S. attorney's office in FOIA litigation.

As I said, my directorate processes FOIA initial requests and appeals for one of these components, the OSD/OJCS, consisting of 80 staff offices in OSD, the Office of the Chairman of the Joint Chiefs of Staff and Joint Staff. We also refer requests to other DOD components as appropriate, process appeals of initial denials of those records of nine unified commands worldwide, and coordinate with the Department of Justice and the U.S. attorney's office in FOIA litigation like the DOD components alluded to earlier.

The DOD receives a wide variety of requests throughout the Department, nationally and worldwide. Many of the requests involve classified information, which can be as recent as the ongoing oper-

ations in Bosnia or as old as World War I or II information, which may still require protection. Other records, while residing physically at the National Archives and Record Administration, must often be reviewed by area experts in the DOD.

Some of the other types of requests the Department receives are requests for the following records: bids or proposals during the contracting process; contracts themselves; mailing lists; current and historical policy papers on a multitude of subjects; descriptions and analyses of military weapons; nuclear information; technical data information; lessons learned on completed operations such as Desert Storm, Grenada, and so forth; alleged human rights abuses in various other nations including El Salvador, Guatemala, and Bosnia; human radiation experimentation; AIDS; personal files under the Privacy Act; and attempts to locate long lost relatives. Requests are received from all types of requesters: private individuals all over the world, commercial organizations, nonprofit organizations, news media, and law firms representing a multitude of clients.

Due to the size and complexity of the DOD there is no central repository for all DOD records, nor a single office that has sufficient knowledge on all the many subjects to process them. For this reason and because the originator of the information must make a disclosure decision on that information, the public is asked to direct its requests to the proper DOD component which they believe may have responsive records. The addresses of these components are published in each component's FOIA regulation, all of which are published in the Code of Federal Regulations.

Therefore, if someone desires information located at one of the Army's installations, the Army regulation asks that the requester write directly to that installation which will then respond to the requester. To prepare the response, records are reviewed by subject matter experts at the installation to ensure that all pertinent information can be released and that information which should be withheld is not released. All of the military departments and separate defense agencies have personnel at the base, installation, or ship level, who in concert with their other duties, have been assigned FOIA duties as well.

Should a requester seek information on Secretary of Defense policy issues which originated in OSD, the request normally should be sent to my directorate in the Pentagon, which will task the request to the appropriate office or offices in OSD and/or the OJCS for a records search. On the other hand, and as frequently happens, should a request arrive at my FOIA office for records pertaining to events which occurred at one of the decentralized FOIA components, my directorate would refer the request in writing to the appropriate FOIA component, which in turn would forward it in writing to the appropriate FOIA office to prepare the response. The requester would receive a letter from my directorate informing him/her of this referral. Referrals are necessary for the reasons of physical location of responsive records, subject matter expertise and the responsibilities of originators of information which I mentioned earlier. This obviously delays a response to the requester, but unfortunately cannot be avoided.

Another area which creates delays in responding to requests are requests for large volumes of historical, classified information. It is not uncommon to receive stacks of top secret documents measuring anywhere from 12 to 24 inches high from NARA asking that they be reviewed for release under the FOIA. Review of classified information must be done line by line to ensure no information is inadvertently released that would damage national security. In addition, classified information often requires coordination with other Federal agencies involved in national security, and this, too, takes time.

The DOD FOIA Program is a very large-volume program involving thousands of documents. As an example, the DOD received 107,486 requests and 1,303 appeals in 1994, and 103,347 requests and 899 appeals in 1995. While the numbers of requests have decreased over the past 2 years, the sophistication of the requests has increased and are for larger numbers of records. These factors have made the process more difficult. A great deal of DOD time is spent processing FOIA requests for a relatively small group of prolific requesters who continually seek vast quantities of classified, historical data, which has long been retired either to the Federal records storage area in Suitland, MD, or been accessioned by the NARA. Retrieving records from the records storage area takes time, and review of large volumes of classified material also takes time, as mentioned earlier.

What steps can be taken to improve this process is a difficult question to answer. For one thing, I doubt if the original framers of the FOIA ever intended it to be used by people and organizations throughout the world for profitmaking ventures. The Supreme Court has emphasized the core purpose of the FOIA to be providing information on the operations of Government, but it is clearly used for much more than that. The DOD will have to explore more ways to capitalize on technology as one method of improving processing times, as well as continuing its emphasis on personalized training of FOIA personnel and those who must make decisions on release of information under the FOIA. However, I must emphasize that with the current thrust in downsizing, it will be difficult to do more and do it quicker with fewer assets.

In closing, I ask you to remember that no matter how technologically advanced we may become and how many personnel we may hire, extreme care must always be taken to ensure that no information detrimental to our Nation's security is disclosed. This will always take careful, thoughtful human review and time.

Thank you. I will be happy to answer your questions.

Mr. HORN. On this round of questioning, each member will have 10 minutes. I think each of us has a series we would like to get out, and not lead off in other directions. I would like both of you gentlemen to respond to some of these.

Some of these toward the end are exclusively Defense. I would like to get both Justice's perspective and Defense, and get into access questions.

Are any and all documents in your agency available to Members of Congress who request them, or are they subject to a need-to-know test? What is the answer to that?

If a Member of Congress filed for particular information, are they subject to a need-to-know test?

Mr. PASSARELLA. Sir, I can't honestly answer that question. But in my opinion, if it is for the use of the committee, it can be handled through what is called a congressional inquiry.

That is not something that my office processes, sir.

Mr. HORN. Who processes that?

Mr. PASSARELLA. I believe that is done through legislative affairs within the Office of the Secretary of Defense.

Mr. HORN. You are saying legislative affairs could override your office?

Mr. PASSARELLA. No, sir. Are you saying your committee submitted an FOIA request or your committee——

Mr. HORN. We would submit a request for documents. I am just curious how the process works. In other words, you have trained people there that are used to going through records, be it the media, be it the average citizen, be it a Member of Congress, be it the Ayatollah Khomeini, I guess, based on that previous example.

I just need to know, when you are looking for information in an agency where a lot of information is classified, and it might be historic information, and at one time it might have been either confidential, secret or top secret, or some other category undefined. If certain specific documents were asked for, would there be, besides the classification, let's say, that those documents might have 10, 20, 30, 40 years ago, but is there also a need-to-know test?

Mr. PASSARELLA. If it is in the performance of Government business, sir, I imagine you would not have to use the FOIA to obtain those documents.

Mr. HORN. OK. So if a congressional committee made a request for documents—I want to be very specific—if they were there, would we be told they are there and, let's say, there was a decision made, well, you really can't release these for one reason or another, I am just curious how that system works.

Mr. PASSARELLA. I can't imagine, sir, if a congressional committee asked the Department of Defense for documents that they would not be provided. That is my personal opinion.

Mr. HORN. I hope you are right, because we are going to put them to the test in a few months. I am laying the groundwork for this, just to make sure what we are asking for. As one good friend of mine on the other side of the aisle said, Steve, you have to ask the specific question or you are not going to get the answer out of them. That was said after 30 years' experience with the Department of Defense.

So I am curious: Is there a need-to-know test beyond the classification?

Mr. PASSARELLA. I do not know the answer to that, sir.

Mr. HORN. At this point in any requests that have come from the average citizen, the media, whoever, when it gets in your shop and you first decide, now, is this accessible—and it could be an old classification, maybe it was never classified—does somebody in your shop still have a need-to-know criterion?

Because that is the way it goes sometimes, as you and I know, on classification. You can be top secret, but you don't have a need to know.

Mr. PASSARELLA. Yes, sir. If a request came in to my office for a classified document, we would send that request to the appropriate individual or office that would hold that document. That document would be reviewed for releasability and segregability.

If it was segregable, it would be provided to my office to respond back to the requester. If it was denied, then it would not be provided, that is, it would still remain classified.

Mr. HORN. In other words, you take the word of the classifying office as to whether that ought to be public information?

Mr. PASSARELLA. Yes, sir. The classifying office is the one that has the responsibility for both classifying the document and for declassifying the document, the way the DOD is organized.

Mr. HORN. OK. Let's say they don't want to declassify the document; would you tell the requester such documents exist but they are classified?

Mr. PASSARELLA. We would normally tell them the request for documents has been located, but unfortunately they are denied for the appropriate reasons under the FOIA. As long as there is harm to the Government, they would be denied. If there were no harm, we would release the documents.

Mr. HORN. The classifying office makes the decision whether there is harm to the Government?

Mr. PASSARELLA. Yes, sir.

Mr. HORN. Is there an appeals process?

Mr. PASSARELLA. Yes, sir. Our office runs the appellate process. When the appeal comes in, we would obtain the document, and it would be reviewed by taking into account their recommendations, our experience, to determine if their denial was correct. It would be reviewed by the Office of General Counsel to ensure they were properly utilizing the FOIA exemption, and then it would go to my boss for an appellate response.

Mr. HORN. To your knowledge, has the need-to-know test ever been required in any documents that have passed through your office as an additional criterion? In other words, it isn't enough to say they are classified or they are unclassified, but does that person really need to know?

Mr. PASSARELLA. No. No, sir.

Mr. HORN. That is not applied?

Mr. PASSARELLA. If it is being released, sir, it is a publicly available issue.

Mr. HORN. You are saying anybody could know it at that point?

Mr. PASSARELLA. Not everybody has access to all the documents until it has been through the FOIA process. When it has been through the FOIA process and been made available to the public, anybody can have that particular document after it is finished.

Mr. HORN. Let's say they declassify it, but they don't want to share the document. It is declassified, but they don't think it is a good idea to share it.

Mr. PASSARELLA. They have to have a reason for denying it, sir. It must have an exemption under the FOIA. If they declassified it and there is no other FOIA exemption that fits it, we release it.

Mr. HORN. In other words, you are telling me documents over there would either be marked confidential, secret, or top secret if they are not to be made publicly available?

Mr. PASSARELLA. No, sir. Because there are other reasons that documents would not be released.

For example, under the FOIA, if they were a pre-decisional document, it may be an unclassified document, but about—a pending decision to be made which has not been made yet. That would not become available under the exemption.

Mr. HORN. What are the criteria by which that document is——

Mr. PASSARELLA. It is a pre-decisional document under the Freedom of Information Act.

Mr. HORN. Which means what? Give me an example.

Mr. PASSARELLA. A new policy being created by the deployment of ships. I am stretching here. They have not decided yet what they are going to do or how they are going to go about doing it. The decision has not been made. They are going to increase the deployment times from 6 to 8 months, and they are gathering all of the information as to whether that would be a good idea, and no decision has been made yet. That is exempt under the FOIA.

Mr. HORN. In other words, you are saying it is one of the nine exemptions under the act?

Mr. PASSARELLA. Yes, sir.

Mr. HORN. When that document is denied, it is one of the specific nine exemptions that is stated as the basis for denial?

Mr. PASSARELLA. Yes, sir.

Mr. HORN. You are saying those are the ones you rely on, not the sort of vague judgment as need-to-know?

Mr. PASSARELLA. That is correct, sir. It must meet an FOIA exemption in order to be denied.

Mr. HORN. Now, when a Member of Congress requests something for which he or she or the committee is not determined to have any need-to-know, is that person told that there are no documents in this area, or is that person told that certain documents are not being received because they either come under the nine exemptions or they are still classified?

I am trying to get at, do we admit the documents are there, but sorry, you can't have them; or do we just say no documents are available?

Mr. PASSARELLA. I don't know, sir. I would have to go back and get an answer for the record on that.

[The information referred to follows:]

The DoD policy is to make the maximum amount of information concerning its operations and activities available promptly to, and cooperate fully with, members of Congress and Congressional committees and their staffs.

In rare cases when there is a question as to whether information may be furnished to a member or committee or Congress, even in confidence, every attempt is made to satisfy the request through some alternate means acceptable to both the DoD and the requester. There can be no final refusal to provide information without the specific approval of the DoD component head or the Secretary of Defense.

In those instances when a member of Congress uses the FOIA to request documents as a personal request—not in an official capacity—he or she is treated as any other requester. Under the FOIA, the existence of records must be acknowledged unless the mere fact that a record exists would reveal classified information or be an invasion of individual privacy. In these circumstances, the DoD would invoke the "Glomar Response" whereby the existence of records is neither confirmed nor denied.

Mr. HORN. Have you ever had a case that comes to your memory like that?

Mr. PASSARELLA. No, sir.

Mr. HORN. OK. And you are telling me that—say, the President of the United States asked for certain documents. Is he automatically going to get them out of the Department of Defense, or is there a reason not to give documents to the President?

Mr. PASSARELLA. I cannot imagine a reason we would not give whatever the President asked for.

Mr. HORN. I would hope the Commander in Chief would have a little priority to get to the head of the line.

Mr. PASSARELLA. He would never have to invoke the FOIA.

Mr. HORN. He would just send a little message over and the documents would come. We are going to get into that next week, who sends messages to whom, and do they even sign their name to them.

You are telling me that the need to know is not really a criterion in your operation, that it is either the nine exceptions or it is classified; is that it?

Mr. PASSARELLA. That is a hard way—the document is either classified or exempt from release from one of the nine exemptions of the FOIA, including B–1 being the classification issue. If it is not fitting that exemption, it is released.

Mr. HORN. OK. Now, does the Pentagon consider the need-to-know category a classification?

Mr. PASSARELLA. No, sir.

Mr. HORN. So it would have to be then either secret, top secret, or confidential; is that right?

Mr. PASSARELLA. To have a need-to-know issue.

Mr. HORN. Yes. Because as you know, usually you can have top secret clearance, but you don't have a need-to-know, and therefore documents in the military can be denied fellow officers and enlisted personnel in the military.

Mr. PASSARELLA. That is correct.

Mr. HORN. What I want to know is, is the need-to-know a vague category or specific, as it might be on the basis of who has got access; is that used anywhere in the FOIA process, Freedom of Information Act?

Mr. PASSARELLA. No, sir.

Mr. HORN. It isn't used anywhere. So what you deal with then is something again that is confidential, secret, or top secret, or it is in one of those exemptions?

Mr. PASSARELLA. That is correct.

Mr. HORN. If it is confidential, secret, or top secret, you don't release it unless they change the classification?

Mr. PASSARELLA. No, sir. If it is a top secret document—and we review many of those—the document is gone through, line by line, to identify what in that particular document is classified.

Mr. HORN. Will that be redacted?

Mr. PASSARELLA. That information will be redacted.

Mr. HORN. In brief, blanked out.

Mr. PASSARELLA. The redacted information would not be released to the requester and it would be explained as to the rationale for that redaction.

Mr. HORN. OK. We will pursue some of this a little later. I want to yield to the ranking minority member, Mrs. Maloney, 10 minutes for questioning.

Mrs. MALONEY. You mentioned, both of you, in your testimony the need for resources to process the hundreds of thousands of requests. In the absence of further resources, what would you recommend to improve the processing of FOIA requests?

Mr. O'BRIEN. Well, we have done a lot to refine our processes, Congresswoman, over the years, and we are always looking for new ways to do it better. We do, on occasion, have our personnel telephonically contact requesters to try to focus their requests. Sometimes requests are not well focused and we try to have some personal telephonic contact to try to meet the needs of the requesters. As well, we use an automated search of our indices and are able to give answers in a short time if we have no record in the automated searches.

We have formed ad hoc teams to deal with large requests. In fact, this document processing system that I talked about, which will help by computerizing the process with optical scanning and optical imaging and storage of the records in an electronic way, would help somewhat in time. I cannot tell you how much time would be saved, but it would help in timesaving on the physical part of the processing.

The document processing is a two-part process for the analyst. It is mental, and the mental judgments cannot be sped up. They have to be carefully done and intelligently done. That cannot be sped up. But they also go through laborious physical processes when they redact, actually marking these things with Magic Marker-like pens.

Then they have to be Xeroxed through a special filter and then checked to make sure you can't hold it up to the light and read through. If they decide, a supervisor decides, no, that should not be redacted, that has to come out, they take bleach and bleach it out, or re-Xerox the original and go back and do it over again. It is a very laborious process.

You talk about technology lacking, we are in the Dark Ages on it. It is a very laborious process. If we get the computerization, that part, the physical part would be greatly speeded up. As well, we will cut down on time, because we will have no possibility of error in those things. Therefore, analysts doing essentially physical, nonanalytical work of checking to be sure there is no physical error, that will go by the wayside.

In connection with trying to develop this, Martin Marietta, an independent contractor, looked at our whole work processes in 1992, and concluded there was no significant reengineering we could do in processing that would speed up our backlog. So we really are faced with, as General Grant in the Civil War, getting enough bodies on the line to fight the fight and keep doing it well in a high-quality manner.

We are open to any suggestions, however, believe me.

Mrs. MALONEY. Mr. O'Brien, I have a letter here requesting the FBI files on myself. Last night I spoke to a colleague of mine, Congressman Kanjorski, and he said that he requested the FBI filings on himself, and he has been waiting 2 years.

How long will I have to wait to get the FBI files on myself?

Mr. O'BRIEN. What we have, we have two tracks, two queues, in effect. In order to treat requesters equitably, we have to treat them in the order received, generally. It depends on the size of the file. If it is relatively small, 100 pages or less, it is in the track 1 queue. If it is larger than that, it would be in the track 2 queue.

As of now, we are assigning cases to be reviewed in the track 1 queue that we received as of January 1994, and the track 2 queue that we have received as of October 1992, that is, to assign them to a disclosure analyst to review them and process them. It will take a little bit of time thereafter.

So the prognosis is, depending on the size, 2½ to 4 years.

Our average turnaround time on the cases we released——

Mrs. MALONEY. I will have to wait 2½ to 4 years to get my FBI file on myself?

Mr. O'BRIEN. I think that is correct.

Mrs. MALONEY. I would like someone to give him my request.

I just wanted to mention an article that was in the Washington Post yesterday, and it talks about Congressman McDade, also from Pennsylvania, and he wrote the FBI seeking "an immediate, prompt copy of my FBI file."

It just said that he would have to wait a considerably long time.

Mr. O'Brien, earlier—we just heard testimony from the Justice Department that they expedite requests. In this article, it says Mr. McDade needs his FBI file immediately because of the trial that he is facing. Yet they put him back—they are working on requests dated July 1992, and he is going to be put behind that date. So he will probably not get the files in the time that he needs them.

I would like your response to that.

Mr. O'BRIEN. Yes, Congresswoman, I saw that article yesterday.

Mrs. MALONEY. A related question: Why don't you have an expedited procedure for people who may need a file for a particular reason, for whatever important reason?

Mr. O'BRIEN. Let me explain that. When we have Freedom of Information or Privacy Act requests, there are three bases for expediting requests which are the Department of Justice bases. They involve either threat of a loss of substantial due process, threat to life or physical safety, or a situation where there has been widespread media interest in some Government action and an allegation of Government wrongdoing.

We looked at Mr. McDade's request and did not believe it met the criteria, the criteria defined by the Department of Justice. They are relatively narrow.

Mr. Stern, from the Department of Justice, makes the decision on the third of those criteria, widespread media interest and an allegation of Government wrongdoing. Mr. McDade has as administrative appeal right.

Mrs. MALONEY. There is an allegation of Government wrongdoing with Mr. McDade; there is a trial. Wouldn't he fit the criteria in that category?

Mr. O'BRIEN. I think it was decided he did not. In Mr. McDade's case—and I cannot comment on his case; he is on trial charged with criminal charges—there is a different procedure. There is discovery procedure for criminal defendants with the Government. Mr.

McDade has been under indictment for some years, and the case has now, I think this week, come to trial up in Pennsylvania.

That is a separate process, is what I am trying to say. What criminal defendants can get in terms of discovery from the Government to prepare their defense is a separate process from the Freedom of Information Act process.

Mrs. MALONEY. Mr. Kanjorski indicated he had been waiting 4 years. I will have to wait 4 years is what you are estimating. The article said that you had to get back to Mr. McDade and have it certified that it was his request.

Now you have my request, so we don't have to go through the certification. Two weeks are off of it. I am going to have to wait 4 years, you estimate?

Mr. O'BRIEN. That is what I estimate, Congresswoman. If we get more resources, hopefully, that will not project out in that way. But to give you an honest projection now—we are not happy saying that; I am not happy saying that at all. I am not happy to say to people that call every day, we are in that kind of a situation. We would like to do them more quickly.

If I could make a comment on the article which talked about getting the notary, it was implied that that was a less than human touch. I can tell you why we do that. It is not that people in our office did not know who Mr. McDade is, but we are very serious about protecting people's privacy.

Mrs. MALONEY. I understand that.

Mr. O'BRIEN. It came from his office address. The procedure is to send it back and get a personalized, notarized signature from Mr. McDade to make sure it is him making the request rather than somebody in the office. That was kind of a standard way of handling it. That is what is behind it.

Mrs. MALONEY. Back to the timeframe: Senator Leahy testified earlier he thought delays in FOIA requests were the same as not really responding to them; that the urgency is not there, you don't get the information in time, so a delay is the same as not being able to get the information.

So I would like to ask both of you, what is the median time it takes to respond to an FOIA request at your agency? Is 4 years the median?

Mr. O'BRIEN. No. That is a projection out, based upon where we are in assigning cases that are ready for assignment now to our disclosure analysts. In fact, in 1995, the average turnaround time for cases that required processing to release was 923 days. For all requests, it was 292 days in 1995. All requests would include those needing processing and those in which we determined relatively early that there was no record responsive to the request.

Mrs. MALONEY. What is the median number of pages in a FOIA response? Roughly 100 pages? Is there a median number?

Mr. O'BRIEN. I don't have that information available. I think, as I indicated, a lot of our requests are over 100. We estimate 2,000, maybe a little more, of our work on hand now that are 100 or less, average of 100 or less. So probably the average FOIA response would be larger than that, I would think.

Mrs. MALONEY. My time is up. Maybe the chairman will let me ask very quickly, what proportion of your records are stored electronically now?

Mr. O'BRIEN. In the FBI?

Mrs. MALONEY. Yes.

Mr. O'BRIEN. We have paper files, and—we have paper files and documents are being created electronically. I think though that they are probably all stored in a paper way at this time.

The objective of the Bureau is to go into the paperless environment. That is one of the information management objectives of the Bureau. We have made substantial progress going in that direction.

But I cannot speak to what is the nature of the records being created now. Most of the records to which FOIA requests are responsive are records prior to this time, and they are paper records. So we process paper records in this process.

Mr. HORN. Thank you. Before I yield 10 minutes to Mr. Flanagan, I want to pursue one or two things that Mrs. Maloney elicited.

You mentioned the McDade case. Now, if the U.S. attorney asked for the McDade file, would that go through your office, or is there a separate process for them to gain access to the McDade file?

Mr. O'BRIEN. That would not go through my office. It would be a separate process in that regard.

Mr. HORN. Who runs that process?

Mr. O'BRIEN. Well, I would think an investigative file would be located in the field office where the investigation took place. As well, there would be a corresponding headquarters file. The field office, in working with the prosecutor, would be dealing in sharing the information and documents, as needed, to help prosecute the case.

That might be the day-to-day way that things like that are done. If there was some specific request, it might go through our Office of General Counsel, perhaps, here in Washington.

Mr. HORN. Well, we will ask staff to check. Mrs. Maloney raised a very fine point there, that if the individual on trial cannot have the file and the prosecuting attorney can have the file, it seems to me justice is not being done here.

You mentioned discovery. Quite properly, it would seem to me, if a judge issued an order, that ought to solve the problem. On the other hand, if the judge—I don't know whether the judge was asked or not in this case—but since it has come up, I think we need staff to round out the file on this. Who has had access? Where do you go to get access? Where was access denied?

I am obviously concerned, and as I said, we will get into this next week. But when 339 files that we know of, and it could be 600 since they are presumably only down to the "G"s where my staff director is included in the White House request for files, even though none of them must have been under consideration for a position. When the White House Counsel doesn't even have to sign it, but his name is on it, the FBI suddenly delivers 339 files, they sit over in the White House for months, years, I don't know.

We will get all that straightened out next week. And would any of that come through your office, or does that come from a different office in the FBI?

Mr. O'BRIEN. It would not come through my office.

Mr. HORN. Which office would handle that?

Mr. O'BRIEN. I am not sure exactly.

Mr. HORN. I will get that for the record then.

Here is where I am headed. When I see the misuse of FBI files by members of the White House staff, whether it be the Nixon staff or the Clinton staff, I am going to put in a bill that says, if you want a file out of the FBI, the President of the United States must have his signature on that request.

It is perfectly appropriate, if he is thinking about appointing somebody for the Supreme Court of the United States, he ought to have a file, if there is a file, and have access to that before he makes an offer and embarrasses somebody. And that has happened, as we all know, when you have a full field investigation, or even they didn't tell him the obvious. The FBI has had some problems in that area, not doing a thorough evaluation on a few justices I can think about.

But it just seems to me some people have easy access, because they pick up the phone and they are the White House, and they get any file they want. And the average citizen, including a Member of Congress in Mrs. Maloney's case, who wants her file, will have to sit around for 4 years. I find that a little problem.

I am going to now yield 10 minutes to the gentleman from Illinois, the vice chairman, Mr. Flanagan.

Mr. FLANAGAN. Thank you, Mr. Chairman.

Mr. O'Brien, thanks for coming today. Your testimony is enlightening. The nine exemptions to the FOIA request, are there any exceptions to that? Is it possible there is a competing interest that outweighs the interest in the exemption?

Mr. O'BRIEN. I think rather than saying exceptions to the exemptions, there are competing interests. The exemptions only apply if the concepts and parameters of the exemption apply.

In other words, I think the way you have to start out conceptually with the Freedom of Information Act is, it is a disclosure statute. If a person makes a request, whatever records are responsive to their request should be disclosed to them, unless an exemption applies.

So you start out first with the concept, we are going to disclose, and then it is, unless an exemption applies. So in applying the exemptions, there are, for example, some which involve taking in a competing interest. For example, the privacy exemptions, (b)(6) and (B)(7)(c), involve balancing on the one hand the individual's privacy right and the degree of the privacy, is it great—for example, personal medical records, very high value of privacy? Some other information may be rather innocuous about the individual.

The person's privacy right is balanced against the competing public interest in disclosure of the information.

The interesting thing, the Supreme Court has defined the underpinnings of the FOIA as is it in the public interest? It isn't just you are curious about something. It is so citizens can find out what their Government is up to. It has to be of some public interest. If that outweighs the competing private interest, that will not be applied. If the public disclosure interest is weak, then the privacy interests will be protected. So there are competing interests in many areas.

Mr. FLANAGAN. That example is exactly where I wanted to go. Thanks for getting us there.

Can you give me an example of when such a competing interest may have outweighed the otherwise blanket exemption; or a set of circumstances, let us say, rather than a specific example, where a competing interest would have outweighed the exemption?

Mr. O'BRIEN. Competing interests in disclosure?

Mr. FLANAGAN. Yes.

Mr. O'BRIEN. Generally we protect privacy.

Mr. FLANAGAN. I am not suggesting you don't. In an exemption that says the Privacy Act shall apply, that this person's private files will remain with the FBI, or with that individual, after 4 years of waiting to get it, if there is an occasion where that file would be reduced to paper or communicated in some way to someone else, can you give me a set of circumstances under which that may happen?

Mr. O'BRIEN. No. That really will not happen. There could be a public interest, there may have been some public disclosure before.

I will give you an example. These are exceptions. Generally, we will not give out information about other individuals. If the requester is Mr. A, and he writes in and says, I would like some information about Mr. B, we write back to him and say, we will not be able to give you information about Mr. B unless you either provide us a privacy waiver by Mr. B, or proof of Mr. B's death, because the privacy dies with the individual.

So we are not going to give out information about others. That is a very interesting point, and I am glad we brought this up. The FBI in processing requests really has three sets of clients or customers. One is the requester, get all the information they are entitled to; second is the FBI and the American people and the country. We have got to balance things to protect the FBI's ability to continue to function and serve the Nation, and serve the people of this Nation, by not disclosing confidential sources or not revealing details of sensitive investigative techniques; and therefore, you can't use them anymore.

The third set of clients we have are those individuals whose privacy we protect, people in the files, and they don't know we are protecting their privacy. So, in general, there would not be a competing public interest.

An example of it would be, for example, if you wrote in for information and there was information about me in there. I am in the senior executive service in the FBI. People at this level we consider more public figures, so you would get information about me. If it was a line agent investigator, we would protect his name, for example. So, in general, we are protecting privacy very, very strongly.

Mr. FLANAGAN. So the exemptions, while very good, broad rules, are really guidelines, in a loose way, because you will weigh in a competing interest if there is a valid one; they are not as blanket or naked as they appear. Is that a fair statement?

Mr. O'BRIEN. I think that—in the first place, they are laws, and they have been defined by a lot of case law as to what their content should be.

Mr. FLANAGAN. Perhaps by way of explanation, I can say this, further: In your department is the rulemaking authority of whether

this will go out or whether it will not? There is an appellate process and I understand that. But that is also in your hands. So there is a great deal of trust reposed in you that it will be done, because there is not a lot of check and balance on whether or not it is done.

Consequently, I am trying to find out, without bringing in any specific examples or actually trying to obtain information I shouldn't be having in the form of a hearing—under what circumstances your thought processes go, under what circumstances you make that decision, and under what rulings or categories you say the exemption applies or does not apply, or the exemption is exempted because of a competing interest, or the exemption is not exempted because case law says it is not exempted.

I think what we are getting at here and in all of the questioning we have heard so far is, these exemptions are really guidelines. They are good ones, and you adhere to them very closely, but there are exceptions to the exemption.

Mr. O'BRIEN. I guess conceptually what we are talking about, the question is whether the exemption applies or not, and it is a rational decision. They are more than guidelines, they are laws. We have to apply them according to the law.

I wasn't quite sure I heard you correctly; I think you said the appellate process is in my hands as well. That is not so. The appeals process from a FBI decision on freedom of information is to the Department of Justice. Those appeals are adjudicated by Department of Justice attorneys. We are a component of the Department of Justice.

Mr. FLANAGAN. You are wearing your larger DOJ hat, I assumed.

Mr. O'BRIEN. It is a different entity, it is a parent entity, so I wanted to clarify that, if I might, because this very same entity making appellate decisions as initial decisions is a bit of a problem conceptually I think. We are not in that situation. But we have to make judgments.

For example, exemption (B)(7)(a) has to do with law enforcement records, where the release of them would interfere with an enforcement proceeding, a so-called pending case exemption. You have to make judgments in categories of the information. This is what the courts require.

The analyst goes through and makes judgments on categories of information, whether release of those would harm the investigation or release would harm the Government's ability to get a fair trial. Sometimes it is decided, no, it would not. For example, if it is already public source information, we would not protect that because it is part of a pending case. So these have to be categorically done.

There is a large body of case law on each one of these things. We do our best, I think, to work within the law, make these judgments legally and rationally and in an intelligent manner, and they are not just guidelines. But you have to have judgment. That is why analysts have to take some time and care in doing these things.

Mr. FLANAGAN. I have two easier questions. First, if I were to ask for my file and I were a field artillery officer for 5 years, I handle special weapons, I know there were background investigations done on me. I would authorize them, I know there is a file on me, how extensive it is, I do not know, and it would take me 4 years to find out if I were to make the request today.

When I received that file, barring some criminal action that may happen to me in the future, and I don't expect but assuming it doesn't, will that file come back to me in any way redacted?

Mr. O'BRIEN. A background investigation about you?

Mr. FLANAGAN. No, your file. If I ask for a background file on me, will that come to me in any way redacted? Are there any circumstances under which you won't tell me about me what you know?

Mr. O'BRIEN. Yes.

Mr. FLANAGAN. OK. What might those be?

Mr. O'BRIEN. For example, we would protect confidential sources if there was a background—do I have the facts correct? Was a background investigation on—I was distracted by a note when you started talking.

Mr. FLANAGAN. Been there myself.

Mr. O'BRIEN. If purposely furnished information was held confidential, it would allow us to protect the identity of people. Confidential information and information that would tend to identify them.

Mr. FLANAGAN. That is not really information about me that you have. That is information about other people about me.

Mr. O'BRIEN. No, it would be information, background information. If he wanted it held confidential and they were promised confidentiality during a background investigation, there is a value in continuing a promise, and I am sure Members of Congress are asked about interviewing background investigations in various contexts. And sometimes people want the confidence that if they are frank and honest about the person who is the subject of the background investigation, this will be protected and so we will honor that.

Mr. FLANAGAN. I don't think anyone will disagree.

Is there any other redaction one might see in his own file if he asks for it?

Mr. O'BRIEN. Yes, privacy of other people, a privacy basis.

Mr. FLANAGAN. One last question, Mr. Chairman, if I may.

Mr. O'BRIEN. There could be other things as well we would have to look at.

Mr. FLANAGAN. You ran through some of the possibilities of redaction about Mr. A asking for Mr. B and asking that request be approved under some sort of perfectly legitimate exceptions. Will the FBI go to the greatest extent possible to redact Mr. A's file with Mr. B's request to exactly what Mr. B is looking for? And how does Mr. B communicate that to you?

Mr. O'BRIEN. We generally will not process a file about Mr. B for Mr. A. We won't process——

Mr. FLANAGAN. You have also said today there are circumstances where Mr. A's file is redacted as much as possible. If so, how do you know how to redact it?

Mr. O'BRIEN. I think that—let me clarify this. We will not process Mr. B's file for Mr. A unless Mr. A gets a privacy—Mr. A gets a privacy waiver from Mr. B. Or he proves to us that Mr. B has died, because the privacy rights of all of us will——

Mr. FLANAGAN. Let's say Mr. B was an official. We will talk about Mr. G. Is it possible that Mr. G's file, when it is requested

by Mr. A, how is that file redacted, if at all, and how does the FBI know how to redact it? To what extent does the FBI redact it? Is that contained in the request?

Mr. O'BRIEN. Our policy is to reply and ask for a privacy waiver or proof of death. I brought up the example of me. If I was in a file, there are times when an individual will be in a file. Mr. B is in a file. Mr. A has asked about a subject matter. Mr. B's name and information about Mr. B appears in a file, then we would process and protect his privacy there.

Generally, in fact, we won't even confirm or deny there is a file. If Mr. A asks for a file on Mr. B, we don't even confirm or deny we have such a file. We ask him to provide us with a privacy waiver or proof of death and we don't confirm or deny that we have files. We say that we will search for a potential file after we get a privacy waiver or proof of death, but not before.

Now, unless there was some very, very public—very, very public that we had——

Mr. FLANAGAN. Let's say it was very, very public and you had the file. I made the request for Mr. B or Mr. G's file, how would you redact that file? Would it be within the parameters of my request and, if so, how would I articulate that to you? Would it just be you who would give me that file?

Mr. O'BRIEN. We would not process the file for you about Mr. B. He is very, very public. We would not process that file for you without his waiver. If he is found within another file on a subject matter and he is a very, very public figure, then we have to make the judgment on privacy. But in general we are very strongly protecting personal privacy by not processing files on others without the privacy waiver or proof of death. In fact, on a public figure we would generally release public source material only. So we are very strong on protecting privacy.

Mr. FLANAGAN. I will leave it to the chairman to go to the next question. I thank you for his indulgence at this time.

Mr. HORN. I thank you. You have raised an interesting question which I was getting to. As I understand it, you mentioned, Mr. O'Brien, that you do not even admit to the inquirer that there is a file on that individual unless you have either a death certificate, copy of the death certificate or a notarized access to that file from the individual. You do that under the Privacy Act; is that correct?

Mr. O'BRIEN. Yes. Some proof of death. It can be other than the death certificate.

Mr. HORN. My query, and I am going to get to you here on Defense, and if the FBI is involved, I would like to hear about it.

Let's take a wild subject for some people but about which there is a lot of public interest. There are Members of Congress, Mr. Schiff in New Mexico has had extensive discussions on this, that is, unidentified flying objects. The question would be if anyone was connected with those unidentified flying objects, where would one go?

Let's take the Department of Defense to start with. One could assume the Air Force ought to be involved. Some of those cases I read in the papers go back to when it was the Air Force. Maybe the records are with the Army. Did the Air Force take the record?

Maybe they are with the Joint Chiefs. Maybe they are with the Air Defense Command, if you are talking about raid or indicators and all the rest of that. So just run me through where somebody interested in that, Members of Congress, average citizens, members of the press, where do they go? Is there a central repository they can ask and they would get an honest answer whether a file existed or not?

Mr. PASSARELLA. Yes, sir. All of the records that we are aware of that have been collected about UFO's have been sent to the National Archives and Records Administration. I know when we receive those requests, we have a little packet of information that we provide back to the requestor of documents we have in our public reading room about UFO's, and we then refer them to the National Archives and Records Administration for any other records. As far as I know, the Air Force, all their records they have collected, they have accessioned to the National Archives and Records Administration.

Mr. HORN. How does the Member of Congress who asks the question or the citizen or media know that, indeed, those entities of the Department of Defense which predate the existence of the Department of Defense that all those records have been turned over to the National Archives? How do we find that out?

Mr. PASSARELLA. I imagine you could ask the National Archives. I am not a records manager. I run the Directorate for Freedom Information and Security Review, but the records are accessioned based on the Archivist of the United States directions into the National Archives and Records Administration. As far as I know, from 60 years earlier, they have all been accessioned to the National Archives and Records Administration that have been of historical value to the United States.

Mr. HORN. If they weren't, do we have to get every office head somewhere in the Department of Defense to come up here under oath and tell us whether they are there or not?

Mr. PASSARELLA. If they were not of historical value, they would be probably just thrown away.

Mr. HORN. I guess that is possible, too. How do we know? The archivist doesn't know something is missing, he just knows what he has got. How do you know where the records are if somebody says we are not sophisticated enough to know that fact so we keep it out for the sophistication exception, which isn't in the law. That is why I got on the need-to-know, somebody makes that judgment. That it is too much to think about therefore they don't need-to-know it so we won't send it to the archives but we will keep it over here someplace.

Mr. PASSARELLA. If I can clarify about need-to-know. Need-to-know is a common term within the Department of Defense but generally between individuals that already have security classification clearances, and if A has a clearance and B has a clearance and B is working on some topic or subject and A has no need-to-know, it is not shared with A.

But under the FOIA, need-to-know is not an issue because either the information is releasable or it is not releasable and need-to-know has nothing to do with that. It has to fit the exemptions for being denied or its release.

Mr. HORN. It fits the exceptions and if it is classified it is denied unless the classifying office says, well, we can declassify that.

Now what I would like to know is, are there any classifications in the Department of Defense or anywhere else in Government of which you are aware besides confidential, secret, and top secret?

Mr. PASSARELLA. Everything I know fits in those three categories of classification.

Mr. HORN. Because people used to talk about the Q clearance or something.

Mr. PASSARELLA. That is a form I think, sir, of top level classification of top secret.

Mr. HORN. Are there any forms under the categories of top secret that would be a de facto classification without calling it top secret?

Mr. PASSARELLA. You'd have to have the top secret, then you'd have to have the need-to-know for that particular portion of that clearance. That is what that amounts to.

Mr. HORN. And who decides that?

Mr. PASSARELLA. We have code word. We have special access programs. Who decides that?

Mr. HORN. Yes.

Mr. PASSARELLA. The people that have access to the program as to whether somebody else has a need-to-know about that program.

Mr. HORN. I feel like I am watching the "Groucho Marx Show." What is the magic word down here? How does one ask an intelligent question of the Pentagon on historic documents if they don't know the subclassifications under top secret? Is that indeed also top secret or is that public knowledge as to what are the subclassifications?

Mr. PASSARELLA. I would have to look up that question for——

Mr. HORN. Could you look into that. The staff will work with you and we will file the answer for the record.

Mr. PASSARELLA. Yes, sir.

[The information referred to follows:]

There are no "subclassifications" under Top Secret, or under any of the two other levels of classification, confidential and secret. My allusion earlier to code word and special access programs has nothing to do with "subclassifications." Special Access Programs are used to limit access because: a. Normal management and safeguarding procedures are not sufficient to limit "need to know" or access and, b. The number of persons who will need access will be reasonably small and commensurate with the objective of providing extra protection for the information involved.

There is nothing in the FOIA or DoD's FOIA Regulation that requires the public to know that a particular historical document is classified, nor is there a requirement to determine under what level of classification the document may be i.e., confidential, secret, or top secret. Likewise, there is no requirement to know whether the document is part of a special access program. All the public has to do is request the record they want, and it is the responsibility of DoD to decide whether the record is releasable or should be withheld from public release under one or more of the nine FOIA exemptions.

Mr. HORN. Let me go back a minute to the case, Mr. O'Brien, I think you are familiar with it since you wrote me about it, knowing on the 30th anniversary I was going to have a hearing on the Freedom of Information Act, the Privacy Act, the whole works.

I wrote the Director on October 31, 1995, partly to see what happens about a case, about an individual that I have known for a number of years, and these letters in exchange will be put into the

record. It is dated October 21, 1995, to the Honorable Louis J. Freeh, Director of Federal Bureau of Investigation.

I say:

DEAR MR. FREEH. This request requires your personal attention and it is hoped your approval of the freedom of information request noted below.

Background: This request had been made to me by Robert Dellinger, whom I have known for over two decades. Bob Dellinger was a part-time faculty worker at the California State University, Long Beach. He was an ex-convict from Terminal Island. He did outstanding work at the university as well as at Terminal Island where as a prisoner he began the first course on creative writing in the Federal prison system. After he was released, he voluntarily returned to teach that course for a total of 17 years.

For the past 20 years, Mr. Dellinger has achieved success as writer/producer of various TV series and movies and also a mini-series. He was one of the key speakers, along with Judge Matt Byrne, at the Judge Manuel Real's testimonial dinner when he gave up his chief judgeship to Judge Byrne. Judge Real was Bob Dellinger's sentencing judge. He took an interest in Bob, and he is his friend. In brief, Mr. Dellinger is not a miscreant, or a misfit.

Now here is the freedom of information request: "Bob Dellinger has told me when he filed for his FBI materials under the provisions of the Freedom of Information Act, the Bureau was unable to locate certain key documents, including summaries of its contacts with the CIA before Dellinger was prosecuted. However, the CIA did find all of those materials in its files and it released them to him totally unexempted, with the exception of the two teletypes which the CIA says the FBI excepted. Dellinger claims the CIA also has no objection to releasing this information, without exemptions, if the FBI withdraws its objections." So I was testing to see what is the interagency cooperation here.

"In the interest of truth, I would hope that the FBI would drop its objections to the release, unexpurgated, of the two attached CIA teletypes," which I will file with the record also. They are "dated February 9 and 11, 1972, from the CIA's Los Angeles office to its Headquarters and will advise the CIA to send the full text to those materials to Mr. Robert Dellinger.

"I am informed that Special Agents who stepped over the line in this case were ordered to do so" and then I named that particular agent, which I won't name here, "who became the first and only Special Agent in Charge to be denied membership in the Society of Former Special Agents of the FBI. Mr. Dellinger assured me that he intends to show in his movie about this matter that it was *not* an institutional policy of the FBI that caused agents' misdeeds, but rather the misdeeds were a result of the individual agent's consistent breach of many policies." For example, that agent claims Dellinger had used his badge to obtain and then not repay almost $200,000 in unsecured loans from the Beverly Hills Bank of an individual, also not named, whose kidnapped son was rescued by the FBI.

"Anything you can do to release these two records and any others which pertain to Mr. Dellinger would be appreciated," and then those are attached.

Then I received the letter from you, which I will also put in the record that is dated January 17, 1996. I think I finally received it in March or so, and the letter was presumably sent but our office had no record of its receipt. This was what was sent, a copy after we asked for the record of that letter.

And you say:

Dear Congressman Horn, your letter dated October 21, 1995, concerning the Freedom of Information/Privacy Acts' request of your constituent, Robert Dellinger, has been referred to me for your response. We have opened a new FOIPA request for your constituent and assigned it No. 404,100, which we ask him to use in any future correspondence with us in this regard.

In order to be fair to our thousands of requesters awaiting an initial review of documents, we are treating requests for rereview as new requests to be handled in turn. Therefore, Mr. Dellinger's request has been placed in our backlog of unassigned requests to await its turn for processing based on the date of receipt, October 26, 1995.

Unfortunately, due to our limited resources and thousands of requests on hand, I am unable to give you a definite date of when this request will be assigned. At the end of November 1995 our total requests numbered over 15,300 with over 5.4 million estimated pages to review.

We assign our requests for processing based on the date of receipt consistent with sound administrative practices. We are currently assigning cases we received in April 1992; therefore your constituent can expect an extensive delay in assignment.

In order to equitably administer the thousands of FOIPA requests the FBI receives, we maintain the two-tiered system for assigning requests based on volume and complexity. Since there are only two documents responsive to Mr. Dellinger's request, we have placed his request in our track one cue consisting of the less voluminous and less complex request. Therefore, I expect his request will come up for assignment sooner than the more voluminous and complex request in track two.

I would like nothing more than to be able to respond to an inquiry in a more favorable manner. However, in the recent years the FBI has experienced a general increase in the level of new FOIPA requests. At the same time, we have not had sufficient resources to address this increase or the backlog of work on hand. Repeated efforts by the FBI to attain through the annual budget process have not been successful. The FOIPA section has been also obligated to comply with court deadlines and the other legislation requiring the expenditure, the large number of resources on a limit number of requests.

With Government downsizing, we recently lost employees through early retirements and buyouts. This has further exacerbated an already serious backlog situation causing additional delays in the assignment of work. I regret the delays we are experiencing and hope your constituent will be understanding and patient while waiting for his request to be handled in turn. Rest assured, it will be processed in due course. If I can be of any further assistance to you, please do not hesitate. J. Kevin O'Brien, Chief, Freedom of Information Privacy Act Section, Information Resources Division.

Well, obviously, one of my concerns is have you made the request for additional resources and, if so, what has been the nature of those requests? Do you want to double the staff to get it down to 2 years or would that get you down to 2 years?

[The letter referred to follows:]

STEPHEN HORN
38TH DISTRICT, CALIFORNIA

WASHINGTON OFFICE:
438 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-6676

DISTRICT OFFICE:
4010 WATSON PLAZA DRIVE
SUITE 100
LAKEWOOD, CA 90712
(310) 424-1338

Congress of the United States

House of Representatives

Washington, DC 20515-0538

COMMITTEE:
TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEES:
SURFACE TRANSPORTATION
WATER RESOURCES AND ENVIRONMENT

COMMITTEE:
GOVERNMENT REFORM AND OVERSIGHT
SUBCOMMITTEE:
CHAIRMAN:
GOVERNMENT MANAGEMENT, INFORMATION, AND TECHNOLOGY

October 21, 1995

The Honorable Louis J. Freeh, Director
Federal Bureau of Investigation
J. Edgar Hoover Building, Room 7176
9th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20535

Dear Mr. Freeh:

This request requires your personal attention and--it is hoped--your approval of the Freedom of Information Act Request noted below.

Background: This request has been made to me by Mr. Robert Dellinger, whom I have known for over two decades. Bob Dellinger was a part-time faculty member at California State University, Long Beach, when I was President. He was an ex-convict from Terminal Island. He did outstanding work at the university as well as at Terminal Island where as a prisoner he began the first course on creative writing in the Federal Prison System. After he was released, he voluntarily returned to teach that course for a total of 17 years.

For the past 20 years Mr. Dellinger has achieved success as a writer/producer of various TV series and movies, and also a mini series. He was one of the key speakers, along with Judge Matt Byrne, at Judge Manuel Real's testimonial dinner when he gave up his chief judgeship to Judge Byrne. Judge Real was Bob Dellinger's sentencing judge. He took an interest in Bob, and is his friend. In brief, Mr. Dellinger is not a miscreant, or a misfit.

The FOIA Request: Bob Dellinger has told me that when he filed for his FBI materials under the provisions of the FOIA, the Bureau was unable to locate certain key documents, including summaries of its contacts with the CIA before Dellinger was prosecuted. However, the CIA did find all of those materials in its files and released them to him, totally unexempted, with the exception of the two teletypes which the CIA says the FBI excepted. Dellinger claims that the CIA also has no objection to releasing this information, without exemptions, if the FBI withdraws its objections.

In the interest of truth, I would hope that the FBI would drop its objections to the release, unexpurgated, of the two attached CIA teletypes, dated February 9 and 11, 1972, from the CIA's Los Angeles office to its headquarters, and will advise the CIA to send

the full text of those materials to Mr. Robert Dellinger.

I am informed that the Special Agents who stepped over the line in this case were ordered to do so by Wesley G. Grapp, who became the first and only Special Agent-in-Charge to be denied membership in the Society of Former Special Agents of the FBI. Mr. Dellinger has assured me that he intends to show in his movie about this matter that it was not an institutional policy of the FBI that caused the agents' misdeeds, but rather that the misdeeds were the result of Mr. Grapp's consistent breach of many policies. (For example, Mr. Grapp--claims Dellinger--had used his badge to obtain--and then not repay--almost $200,000 in unsecured loans from the Beverly Hills bank of Stanley Stalford, whose kidnapped son was rescued by the FBI.)

Anything you can do to release these two records and any others which pertain to Mr. Dellinger would be appreciated. Mr. Dellinger's address is:

Robert Dellinger
1226 N. Hayworth Avenue, Apt. 16
West Hollywood, CA 90046

Attached are the redacted copies of the CIA teletypes sent February 9 and 11, 1972. I would appreciate being copied on this matter. Thank you in advance for your cooperation.

With kindest regards,

Sincerely yours,

Stephen Horn
U.S. Representative

SH:dnh
Enclosures (2)

Mr. O'BRIEN. We have the—the Bureau was concerned that the backlog of requests might grow going back into the 1980's and in 1987, for fiscal year 1989, the budget submission made its first request for more people. Thereafter, we have made requests every year. The backlog of requests has grown from 7,000 from the end of 1987 to what it is today, 15,200. During that time, we have been making requests for additional people. The number of additional people requested keeps going up but in fact the request never did make it to the Congress. In many years, OMB—there is an approval process through the administration.

Mr. HORN. I was going to ask you that, so I am glad you are into it. In other words, who decides the budget with the FBI? Is it an assistant director for budget or administration or what?

Mr. O'BRIEN. The Director.

Mr. HORN. He approved your submission in 1987, I take it?

Mr. O'BRIEN. We had a submission in 1987 that was sent out of the FBI.

Mr. HORN. To the Attorney General or whoever represents her on the budget?

Mr. O'BRIEN. Right.

Mr. HORN. What I would just like is to get a feel for has the Director asked for resources each year for this office?

Mr. O'BRIEN. Yes.

Mr. HORN. And where—has the Attorney General, regardless of who is Attorney General, regardless of administration, passed that on as a Justice request to OMB?

Mr. O'BRIEN. In most instances, yes, and it went to OMB. I think the fiscal year—what are we, 1997 now, 1995 and 1996 perhaps was not passed on from the Justice Department. There were 2 years it wasn't passed on from the Justice Department. This year, however, where we are now with the fiscal year 1997 budget request, it was approved by the Justice Department and OMB and is pending action here on the Hill for 129 additional people.

Mr. HORN. And what would that do to getting at your backlog? What is your estimate of what 129 would do?

Mr. O'BRIEN. We think that would begin—we would start reducing the backlog of requests we projected out. I don't have the projections available, how much that produced. It is in the budget submission, and we are trying to get it down to a reasonable level that would be a more acceptable turnaround time and be able to service more requesters. Some 129 people is what we are asking for in the fiscal year 1997 budget.

Mr. HORN. I will ask Mr. Russell George, who worked with your staff, to see if we can get a little chart for the record at this point as to when your particular Freedom of Information/Privacy Act section has asked for the funds, when the directors concurred, and you are telling me he has concurred in all cases.

[The information referred to follows:]

FOIPA PROGRAM

SUPPORT PERSONNEL ENHANCEMENT REQUESTS

FY		FBIHQ Recommend.	DOJ recommend.	OMB recommend.
1989		30	30	0
1990		15	16	0
1991		60	30	0
1992		56	30	0
1993		100	40	0
1994		65	81	0
1995		122	0	0
1996		129	0	0
1997		129	129	129
1998				

Mr. HORN. Then the question is, did Justice or the Attorney General or any agent of the Attorney General approve that? Then did OMB approve it, and you are saying it has really been in the last couple of years where OMB did not approve it, I take it.

Mr. O'BRIEN. No, I think within the last couple of years——

Mr. HORN. This year they did approve it and it is here in the Justice budget, so we need to trail it right up to the Appropriations Subcommittee which is relevant, which I assume is the one on Justice.

Mr. O'BRIEN. Yes, sir.

Mr. HORN. We will put that in the record, without objection, at this point.

Now getting back to the Dellinger correspondence, do you often have requests where it involved another agency, in this case where it involves the CIA where they say we don't have a problem releasing it. I am just interested in how this works and how you deal with that and are there cases where other agencies refuse to release part of what is also in your file and therefore you can't send that out presumably to the requestor.

Mr. O'BRIEN. The procedure is—the concept of the third agency rule. If the agency has information in its records that belong to another agency, they defer it and refer it to the agency whose information it is. In the case of Mr. Dellinger's request, while there are two CIA documents, the information in the documents is FBI information. That is information that the FBI furnished them. That is what I am told, and the decision as to whether that would be released would be made by the FBI.

Mr. HORN. Even though CIA says they have no problem releasing it.

Mr. O'BRIEN. They might have no problem from their standpoint; and we would have to make an assessment whether from our standpoint the information that is in their document that came from the FBI is such that we should release it or not.

Mr. HORN. That would go to what? The field office that handled the case would make that judgment or is there another place other than the FBI where that judgment is made?

Mr. O'BRIEN. No; we would make that judgment here under the Freedom of Information and Privacy Act.

Mr. HORN. You wouldn't even have to refer it. You would just have sort of operating rules that decide which information you release and which you don't? Is that it? You just built up over the years ways to handle certain cases?

Mr. O'BRIEN. Based upon the exemptions that are available in the statute, yes. And the processing—most of the processing is done centrally at the FOIPA section at FBI Headquarters. I think Defense said a lot of their processing is done at various installations.

Mr. HORN. What exception would be used in this case? I assume you have had a chance to look at it now. It is part of the hearing process.

Mr. O'BRIEN. I have not looked at the actual documents. I am told that the question is of a confidential source, that it is not—I was told it is not a classified information issue, but a confidential source issue.

Mr. HORN. Could a confidential source also be an FBI agent?

Mr. O'BRIEN. No.

Mr. HORN. Confidential source defined as someone outside of FBI.

Mr. O'BRIEN. That's right, there may be a privacy issue there if there is an agent in the FBI. We would have to look at it.

Mr. HORN. As I mentioned without mentioning names, although it will be in a public document you have here an agent that apparently is questionable by the FBI and its standards of ethics and conduct that apparently is involved, in this case I am not familiar with the details of it, but it just seemed to me that somebody needs to take a good look at this case and see if they are trying to protect that individual should that individual really be protected?

Mr. O'BRIEN. I will certainly look at that. I don't think we are trying to protect that individual. There is——

Mr. HORN. Go ahead.

Mr. O'BRIEN. There is case law on the issue of protecting persons who are officials in the Government. There is the Stern case which drew the line on very high level people get less privacy protection than those in the middle and lower ranks would, and we will follow whatever the applicable law is to be applied.

Mr. HORN. Can we have a response on this for the record that we can put in that resolves this matter?

Mr. O'BRIEN. Exactly what is the question?

Mr. HORN. Well, I would like a response to this letter that we can put into the hearing record that resolves this case with the FBI because I am interested, No. 1, in interagency cooperation and, No. 2, since an agent that apparently did not win the approval of the FBI is involved in this case, if that is anywhere in those redacted documents, because I don't have the slightest idea what was redacted, neither does the individual involved by that document.

Mr. O'BRIEN. I don't either. What I am working on is the version of the facts which Mr. Dellinger has provided you and whether he is accurate or not I don't know.

Mr. HORN. And if that is wrong I would like to have a statement from the FBI that we can close out the record and put it in this hearing record.

Mr. O'BRIEN. Can we follow up with staff as to exactly what your——

Mr. HORN. I want your response on this decision and if there is a problem with the request or if I have stated the facts wrong, I would be the first to like to know it and I would like to put your version in the record along with this version that is going into the record.

Mr. O'BRIEN. With what is happening with the request at this time it has been put in a cue, in other words it is not up for analysis yet. It is in that——

Mr. HORN. I would think when a congressional hearing uses it as a case that the FBI would get it to the top of the cue.

Mr. O'BRIEN. We will be back to you on this case.

Mr. HORN. We will need it in 2 weeks to close out the hearing record. The gentleman from Illinois, Mr. Flanagan, has some questions.

Mr. FLANAGAN. I have just two. One is simple, and I think one clarifying. Mr. O'Brien, if an individual requests information about

himself, and requests it of the FBI and wants to see his file and you would otherwise redact it to protect the source of that information under that source's privacy requirements and it is all well and fine, to what extent would that redaction happen? To the extent of the name of the source or to any information that that source provided? Would that be redacted as well or would there be some compromises in between?

Mr. O'BRIEN. It depends on the nature of the case. In order to protect the identity of the source, we have to redact the name and identifying data, as well as any identifying information that would tend to identify him. That would have to be done to protect him, because facts as to what somebody told may very well indicate who it is, even if you protect his name. So, we would have to do that.

Mr. FLANAGAN. It is a judgment process on your part as to what that would be.

Mr. O'BRIEN. In the criminal cases we are allowed by law, by the second clause of the (B)(7)(d) exemption, once it has been determined that a person is a confidential source, we are allowed by the law to exempt all of the information furnished without making an analysis of whether or not particular bits of information would tend to identify him.

Under Attorney General Reno's discretionary release program, however, we do make that analysis and we will release some information, the information that would not tend to identify him. So it varies from case to case and if the person requests files about himself, those kinds of files can be different, depending on the individual. It could be background investigation if the person has been involved in Government service. It could be criminal cases, for example, if an organized crime figure made a request, I would like to see the files you have on me, could be criminal investigations and therefore there could be confidential source in there, and we protect them. These things can be different.

Mr. FLANAGAN. I am glad to see that the stated policy is to provide as much as possible while still protecting the exemption which is for a very good reason.

I think I can clarify where the chairman was trying to be with his questions. I think what he was asking about, if I understand the chairman, is, are there administrative levels where DOD would be unwilling to provide information apart from the official categories of confidential, secret, top secret, and various classifications of access in top secret. Let's say, for example, the document was marked FOUO, under what strictures would that be withheld, if at all, or any other administrative marking outside of the official classifications for national security or other reasons it may be marked.

I think we got kind of lost in the discussions about what I need to know because there aren't many documents stamped "need-to-know." That is understood under other matters. But if it is stamped "FOUO," for official use only, which is a common administrative barrier to access within DOD, is that a barrier to a FOIA request?

Mr. PASSARELLA. It is not a barrier to a FOIA request, but some of the information which is FOUO may be denied from the FOIA exemption of before, that is, priviledged or confidential trade se-

crets or commercial or financial information, which is why that document would have been marked FOUO.

Mr. FLANAGAN. Under the other and ordinary exemptions.

Mr. PASSARELLA. Yes, sir.

Mr. FLANAGAN. Are there any other administrative classifications other than FOUO that may require some attention?

Mr. PASSARELLA. I do not know of any other, sir.

Mr. FLANAGAN. I thank you and I thank the chairman.

Mr. HORN. I thank my colleague, the vice chairman. You can tell when you are fully Irish when you finish the question, where the half Irish can't just get to it. I thank the gentleman very much. I see the distinguished chairman of the full committee. I should say to the gentleman from Pennsylvania we have mentioned the irony of the 339 files being delivered by the FBI to the White House when you don't even have a signature on the letter. We also have a little problem here with citizens getting their files—not to mention Members of Congress who are in court cases getting their files. So if the chairman would like to give us an indication of what he plans next week, we would be glad to hear it before we recess at 1:30.

Mr. CLINGER. I would like to commend you for holding this hearing. We are dealing with statutes that are very sensitive, very necessary. They are the sort of statutes that do provide a right of the public to know at the same time hopefully ensure that the individual's rights are not being trampled on. There is a fine line between involving those decisions, and I think the immediacy of what has been going on lately it is very appropriate that we are holding this hearing today.

I do intend to go into this in a little more detail in the specific situation involving the files that were turned over, and I think we clearly have a lot of questions about procedures that are involved here because I think the issue really is the public's right to know. At the same time we have gone overboard in perhaps invading the individual's rights of privacy. So we will explore that next week and in the first of three hearings on this matter. This is important for the future and for ensuring those statutes are doing what they were designed to do and no more.

Mr. HORN. I suggested before you came into the room thinking after I listened to all of this testimony of putting a bill in that says when the White House wants some files, say you are going to consider someone for the Supreme Court, the President ought to sign his name along the dotted line when you make that request. There ought to be some understanding that files don't sit over there forever unless they are Xeroxes of files or something. It seems to me when they respond to a sort of typewritten name there with no signature, you don't know if Mickey Mouse did it or the——

Mr. CLINGER. And, one, the use of the names was apparently not known to the person who gave it whose name was used did not give authorization to anybody to do this. I think there are questions about that. I do hope that as I understand Director Freeh has indicated to me they hope to have them conclude their initial investigation by tomorrow and we will look forward to having that report.

Mr. HORN. I thank you, Mr. Chairman. We are in recess until 1:30 when we have a number of key panels coming in, journalists

and others who have been intimately involved with the Freedom of Information Act request, and we will also get into some of the policy areas with GSA and the director of the committee, Management Secretary for the General Services Administration, as well as some distinguished lawyers who have dealt with this subject over the years.

We thank you both for coming. Sorry to take too long, but you do have some valuable information to share with us and we appreciate it. I might say on the Defense Department, we would like staff to work out the same as we are working it out for Justice. If you need more staffing over there, have you asked for it? Has the Secretary of Defense or the Controller sent that forward to OMB? Have they sent it forward to the Congress? What happened to it?

In other words, we are trying to solve these questions so it isn't just the spirit of the act that is carried out, but the actual implementation. There wouldn't be much spirit left if we all sit around waiting 4 years, 6 months, or whatever it is. I realize you have the problem. That is the reason the law was passed so people could find out what is going on in Government. We need to back you up with the resources to get that job done, so thank you for coming. We are in recess until 1:30.

[Whereupon, at 12:15 p.m., the subcommittee was recessed, to reconvene at 1:30 p.m., this same day.]

Mr. HORN. The recess has ended. The subcommittee will begin the afternoon portion of the hearing. I apologize for being 2 minutes late. We had two votes on the floor.

I will say to this panel that we have the tradition of putting all witnesses under oath except Members of the House and Senate. If you would not mind standing, raise your hand and repeat or affirm.

[Witnesses sworn.]

Mr. HORN. All four witnesses affirm.

Let's begin in the order in which they are in the agenda. We will start with Ms. Welsome, Society of Professional Journalists, American Society of Newspaper Editors, Newspaper Association of America.

Ms. Welsome.

STATEMENTS OF EILEEN WELSOME, SOCIETY OF PROFESSIONAL JOURNALISTS, AMERICAN SOCIETY OF NEWSPAPER EDITORS, NEWSPAPER ASSOCIATION OF AMERICA; LARRY KLAYMAN, CHAIRMAN, JUDICIAL WATCH, INC.; JANE E. KIRTLEY, EXECUTIVE DIRECTOR, THE REPORTER'S COMMITTEE FOR FREEDOM OF THE PRESS; AND BYRON YORK, REPORTER, THE AMERICAN SPECTATOR

Ms. WELSOME. Thank you very much. I would like to thank the Honorable Chairman Stephen Horn and members of the subcommittee for inviting me here today to speak to you about my experience using the Freedom of Information Act. I know that you have my written statement, so I will just try to touch on some of its high points, and if you have any questions, feel free to ask.

I know that as makers of the law oftentimes you don't get out and see the people who use the Freedom of Information Act and use the information that is available in this country, so I would like to share with you some of my experiences. I have been to the

National Archives in College Park. I have been to reading rooms in Hanford; Oak Ridge; Germantown, MD. I guess I have seen so many documents, I am going to need glasses in the near future. But this story for me was very touching, and I would like to talk to you about that.

Two years ago I was looking at some old Atomic Energy Commission records at the National Archives in College Park. It was a Saturday, I think, and the reading room was nearly empty. Across from me, a man with reddish hair was reading some documents. He appeared to be in a state of great excitation. He would sigh occasionally and jot down some notes with one of the yellow pencils the archivists gave us. My curiosity was aroused.

During the lunch break, I ran into him in the cafeteria. He was from Virginia, as I recall, and he was on vacation. I asked him what he was researching. "The Kennedy assassination," he responded. "There were some things about the case that didn't add up," he said, inferring he had made some new discoveries.

I thought he was a dreamer as I punched the button to the elevator that would take me back up to the research room. Then it came to me what I had witnessed: the free and open access Americans have to documents about one of the most important events in the 20th century. Anybody can literally hold this history in their hands. You don't have to be a scholar, lawyer, or journalist to look at Kennedy records. They are there for everybody to read and ponder. And as one of the men this morning was speaking about the Kennedy records, I believe he was from the FBI, I thought of this man. People are out there using this information, and it is a wonderful thing to see and know that this is available in our country.

And I just want to tell you that in my opinion the Freedom of Information Act speaks to the same principles of open government. I see it as a tool for the little guy, for journalists like myself, for public interest groups, and for other taxpayers.

Very briefly, I want to just tell you my experience using the FOIA in the past, my experience using the FOIA today, and why I think that this Electronic Freedom of Information Act is just a terrific law. I feel very strongly, and I am sure other journalists do, that this will improve our country and our democracy.

Several years ago when I was working at the Albuquerque Tribune, I filed a FOIA seeking information on 18 people who were injected with plutonium during the Manhattan project. I got back a few boilerplate contracts and a couple of documents that would fit in an envelope. Then I proceeded to get the runaround. And at some point during that process I drew a line in the sand, you know. We have to do a lot of things as reporters and take a lot of insults and work long hours as everybody else does, but I just thought these are 50-year-old records, these people are dead, these are not nuclear secrets, and I felt the newspaper was entitled to them.

That began the fight. It continued for several years. In August 1992, we had to enlist the aid of the Baker & Hostetler firm. We do not use attorneys frequently, and this was a very exceptional case. I cannot tell you why we decided to do it. Most FOIA's we have to push on our own time.

The Baker & Hostetler firm then began pressing the DOE for documents, and they started to trickle in. Eventually we had

enough information to put a series together. It was a 3-day series. It prompted tremendous response in the national media and in the international media. To just give you an example of that response, it was so overwhelming that the staff could barely get the paper out. We ran out of fax paper. We ran out of Fed Ex envelopes, et cetera. It really was an extraordinary event.

As a result of our series, a number of things happened in the Government. Many records were made public. Many of those records have since been put on the Internet. I understand that some of them are being digitalized and will go on the Internet in the near future. Things have changed dramatically since 1993.

I have used the FOIA on seven occasions or so since that time. I've had very good luck. The DOE in particular seems to bear no resemblance to the agency I had been dealing with before. I feel that this Electronic Freedom of Information Act would make law many of the things that the agencies are doing already, as I heard this morning, and as I have experienced in my own information requests.

So I guess in conclusion I would like to say that I know that people change, that bureaucracies change, and that if this—if these changes were made law, then reporters such as myself and taxpayers would not be at the mercy of a FOIA officer or would not be at the mercy of an institution that we didn't understand. The law would be there, we would all know the ground rules, and we could use it.

And I also would like to say that I think—and I don't think it is any surprise to you all with so many people using computers today, I think that to be able to get information on a disk in the long run would be cheaper. And let me just say that, for example, in the case of the plutonium records I got, it was something in the neighborhood of 5, maybe 10 boxes that had to be copied and mailed out, and all of that would have fit on a disk that could have gone in a 32-cent envelope.

And so with that, I guess I will end, and I really, really appreciate your time and your interest in this bill. Thank you.

[The prepared statement of Ms. Welsome follows:]

I would like to thank the honorable Chairman Stephen Horn and members of the subcommittee for inviting me here today to speak to you about my experience using the Freedom of Information Act.

Two years ago, I was looking at some old Atomic Energy Commission records at the National Archives in College Park, Maryland. It was a Saturday, I think, and the reading room was nearly empty. Across from me, a man with reddish hair was reading some documents. He appeared to be in a state of great excitation. He would sigh occasionally and then jot down some notes with one of the yellow pencils the archivists gave us. My curiosity was aroused.

During a lunch break, I ran into him in the cafeteria. He was from Virginia, as I recall, and it seemed like he was on vacation. I asked him what he was researching. "The Kennedy assassination," he responded. There were some things about the case that didn't add up, he said, implying that he had made some new discoveries.

A dreamer, I thought, as I pushed the button for the elevator that would take me back upstairs. But then it came to me what I had witnessed: the free and open access Americans have to documents about one of the most important events of the twentieth century. Anybody can literally hold that history in his or her hands. You don't have to be a scholar, lawyer, or journalist to look at the Kennedy assassination records. They are there for everybody to read and ponder.

The Freedom of Information Act speaks to the same principles of open government. Although the FOIA is used by many different groups, I think of it primarily as a tool for the

"little guy," a law that helps reporters, public interest groups and taxpayers without subpoena power or influence obtain documents about the actions of our government.

Several years ago, when The Albuquerque Tribune, the newspaper I worked for, was in a pitched FOIA battle with the Department of Energy, I honestly felt the Freedom of Information Act was not worth the paper it was written on. In November of 1989, I filed my FOIA request with the DOE for all documents related to a 50-year-old experiment in which 18 people were injected with plutonium. This study had been described in the scientific literature and was the centerpiece of a 1986 congressional report entitled "American Nuclear Guinea Pigs: Three Decades of Radiation Experiments on U.S. Citizens." But I wanted to find out more; I wanted to find out who these 18 people were and what had happened to them.

In response to my FOIA request, I received a few boiler plate contracts and two documents that would have fit in a 32-cent envelope. When I argued that the response was inadequate, the DOE threw up numerous road blocks. They shuffled me from operations office to operations office, claimed the request was too broad and denied having any more records.

I got mad. I wasn't asking for nuclear secrets; I was asking for ancient records and I suspected if the DOE was giving me the run-around, then it was also giving hundreds of other citizens and reporters from small papers the same treatment. (Attached to my statement is a Nov. 15, 1993 article describing the newspaper's FOIA battle.)

The DOE's response seemed typical of the way agencies often respond to FOIA requests. It was not a conspiracy so much as a complete lack of interest on the part of the

bureaucrats whose job it was to dig out the documents. I can only assume that this utter indifference had developed because the people at the top placed such a low priority on filling FOIA requests. Even today, limited budgets and inadequate staff have contributed to large backlogs and long delays.

In August of 1992, the Albuquerque Tribune enlisted the aid of the newspaper's attorneys, the Baker & Hostetler firm, to re-file the FOIA request. With their aggressive help, the records began to trickle in. Soon we had enough information to publish a three-day series describing an extraordinary cover-up that spanned five decades and involved two generations of scientists.

The response from readers and public officials was overwhelming. President Clinton formed an Interagency Working Group and ordered the federal agencies to search their files for documents related to Cold War experiments on humans. The DOE set up a hotline which netted more than 20,000 calls. A federal advisory committee was impaneled to investigate all the radiation experiments and the deliberate releases of radioactivity, including Hanford's infamous Green Run.

The Trib's FOIA request helped to uncover an untapped vein of Cold War history and new information on the development of medical ethics in this country soon after the Nuremberg Code was handed down. Thousands of documents have been declassified and placed into public reading rooms. Many of the DOE records are available on the Internet. The Defense Nuclear Agency, I am told, is also in the process of preparing to do the same thing with its records. There are enough new documents in the public domain, said one archivist, to keep historians busy for two decades.

In the past 18 months or so, I have noticed a tremendous change in the way certain federal agencies have responded to my personal FOIA requests. Between June of 1994 and April 1996, I have filed seven additional FOIA requests; three with the Department of Energy, two with the Department of Defense and two with Brooks Air Force Base in San Antonio, Texas. The agencies responded promptly and completely. The DOE, in particular, appears to have made a concerted effort to improve the way it handles information requests. It bears no resemblance to the foot-dragging, obfuscating, hard-headed agency that I was dealing with only a few years ago.

But there are still many problems. Other reporters I have spoken with continue to complain of long delays or skimpy responses. In working with the Department of Defense, I was told just a month ago that FOIA officials were swamped and didn't have the staff to handle the volume of requests. Some of the proposed changes to the FOIA, such as the multi-tracking system that would allow uncomplicated requests to be filled in advance of others, would help reduce the backlog and expedite information.

The Defense Department already appears to be doing this. In April, for example, I filed two FOIA requests with the DOD's Radiation Experiments Command Center. A few days later, I received postcards from the Office of the Secretary of Defense indicating that there were 1,690 cases ahead of mine. (Copies of postcards are attached to the statement). Since I knew the information was available and readily accessible, I contacted Col. Claud Bailey and asked him if the FOIA requests could be expedited. He agreed, and within a few days, I received several packages. Making this multi-track system part of the law (which would be accomplished by the Electronic Freedom of Information Improvement Act) would

eliminate any subjectivity on the part of FOIA officers and avoid the necessity of having to grovel for information. Had this multi-track system been in place when I filed my first FOIA request in 1989, I'm confident that I would not have had to wait three or four years for crucial documents to be released.

I also strongly endorse the idea of expediting requests, particularly when the information being sought would affect public assessment of government activities that are the subject of widespread media coverage. Again, some federal agencies already seem to be leaning in this direction. The DOE, for example, expedited the Trib's FOIA request when the publication of the series generated a vast amount of national and international interest. This policy should be imprinted into the FOIA, and the EFOIA legislation that is moving through the Senate would accomplish this.

Many of the records my newspaper was seeking were so old that they were not available in electronic form. As I mentioned, many of those documents are now being made available electronically to anyone. With the widespread use of computers, it is important that the changes be implemented across the board wherever reasonable so that requesters have the opportunity to receive the documents either in paper or electronic form. Unfortunately, these practices -- especially making records available in electronic form -- apparently is not the policy at many agencies. A recent study of agency treatment of electronic records under the FOIA concludes that agencies are searching for guidance on how to properly and lawfully respond to requests for electronic information. In a paper published last year, Dr. David H. Morrissey of Colorado State University wrote:

> At the same time that new technologies have made it increasingly possible to access Washington's computerized records, federal agencies are treating some

> electronic information as a special class of data, outside the range of the Freedom of Information Act and off limits to the public. In a number of cases, agency policies have created obstacles to disclosure of computerized federal information. . . .
>
> [S]urveys (conducted by the Department of Justice in 1989, and by Dr. Morrissey in 1993 and 1994) indicate the arrival of personal computers and databases has created confusion over application of the FOIA and federal information policy. . . . Yet the surveys also reveal good will on the part of some federal information officers, and a desire to apply the new technologies properly. Some federal FOIA officers say they would like to use the new technologies to more fully satisfy FOIA requests. Some acknowledge computers make it easier to find, retrieve, and manipulate information. But most also say that because of confusion over what information disclosure actions are now proper or legal, they are hesitant to use the new technologies boldly. The FOIA was written in an era of paper documents, they say. Without guidance from Congress or the executive branch, adapting the measure to the computer age isn't easy.

Dr. David H. Morrissey, Public Policy and Electronic Government: The Status of Computerized Records Under the Freedom of Information Act, presented at the AEJMC Media, Government and Public Policy Convention, January 1995. The EFOIA legislation would seem to provide just the guidance these FOIA officers are searching for, and would make great strides toward making more government information available in more convenient formats.

In conclusion, I would like to say that I have been fortunate to have experienced personally the tremendous power of the Freedom of Information Act; how it can help dig out the facts and make our historical record more accurate. I appreciate the efforts of your subcommittee to examine the FOIA. And, on behalf of the Society of Professional Journalists, the American Society of Newspaper Editors, and the Newspaper Association of America, I urge you to pass the EFOIA legislation this year. Thank you again for your time.

sons for the inquiry are not clear.

A detailed report of the findings later was prepared and classified "Official Use Only." The DOE now says it doesn't have the report, but The Tribune obtained a copy from a former Capitol Hill staffer. In the report, the DOE deleted the names of patients, doctors, scientists and investigators. The internal inquiry focused mostly on:

• Whether patients in the 1945-47 period had given their informed consent for the experiment.

• Whether the survivors in 1973 were properly informed of the true purpose of the follow-up studies and gave their informed consent.

• Whether the relatives of the deceased patients were properly informed about the exhumations.

The answers were no, no and no.

Investigators fanned out across 14 cities, examining records and talking to scientists involved in both phases of the experiment. More than 250 documents were copied and brought back to AEC headquarters. The investigation uncovered a web of deceit that dated back 50 years. The investigators found:

• No written evidence that any of the patients were informed of the original plutonium injections or gave their consent. Witnesses claimed some patients were told orally they were going to receive a radioactive substance, but plutonium was a classified word at the time. Elmer was told only that he was to receive a radioactive substance.

• In 1973, survivors Elmer, Eda Schultz Charlton and John Mousso were not told the true reason scientists were interested in studying them. They also did not give their informed consent for the studies even though Argonne National Laboratory, as contractor with the AEC, had agreed to abide by regulations requiring such consent for human studies. Robert Loeb, spokesman for the University of Rochester Medical Center, said the hospital didn't require patients to sign informed consent forms because they were involved in excretion studies only.

• The relatives of the dead patients also were deceived or lied to about the true purpose of the exhumations.

One of the documents that illustrated the extent of the cover-up was the last paragraph of a Dec. 21, 1972, memo written by Robert Rowland, a retired scientist who at that time was director for the Center for Human Radiobiology:

"Please note that outside of CHR we will never use the word plutonium in regard to these cases. These individuals are of interest to us because they may have received a radioactive material at some time' is the kind of statement to be made, if we need to say anything at all." (The words "never" and "plutonium" are underlined in the memo.)

Rowland, who still lives in the Chicago area, said in an interview that he was given those instructions "orally" by officials in Washington, D.C. "We were not in any way, shape or form to allude to plutonium," he recalled.

A.F. Stehney, another scientist from the Center for Human Radiobiology involved in the follow-up studies, said the plutonium patients weren't told the truth because everybody was "leery of getting these people all excited."

"We were told these people were pretty elderly and might get very upset if we started talking about radioactivity in their bodies."

While scientists were contacting living survivors about follow-up studies, others were trying to secure permission from relatives of deceased plutonium patients for exhumations. Here's what they agreed to tell relatives:

"An appropriate approach would be to say that the center was investigating the composition of radioactive materials that had been injected at an earlier date in an experimental type of treatment; and that since the composition of the mixture was not well known, there would be considerable scientific interest in investigating the nature of the isotope and the effects it may have had."

On Sept. 24, 1973, the body of a 20-year-old woman identified in official records as "HP-4" was exhumed. The patient's sister had given permission for the exhumation. "Since the sister did not inquire as to the reason for the injections, the issue was not broached," the AEC report revealed.

The relatives of seven deceased patients eventually were contacted. None was told the real reason. AEC investigators found: "Disclosure to all but one of the next of kin could be judged misleading in that the radioactive isotopes were represented as having been injected as an experimental treatment for the patient's disease," the report says.

■ ■ ■

After the investigation, the AEC ordered that survivors be told the truth. Relatives of the deceased patients also were to be recontacted and told.

In May 1974, Brues, the medical director of the Center for Human Radiobiology, took a night flight to Dallas. There, he met another AEC official and the two of them drove to Milford, Texas, to tell Elmer's physician the truth behind the studies done a year earlier.

"I told him we found that the patient had received plutonium into the muscle of the sarcomatous leg three days before it was amputated, not enough in our belief to cause any trouble or to have any effect on the tumor, but that he should be carefully followed in any case because of the very small number of such cases that are liv-

THE COVER-UP CONTINUES

A cover-up that began at the dawn of the Atomic Age shows no sign of ending in the ashes of the Cold War.

Though nearly half a century has elapsed, the Department of Energy, the federal agency that inherited many functions of the wartime Manhattan Project, still refuses to reveal the identities of most of the patients injected with plutonium.

On Nov. 20, 1989, The Tribune made its first request to the DOE under the Freedom of Information Act for all documents related to the experiment.

For four years, the sprawling agency has stalled. It has released some documents but mostly has withheld critical records such as medical files and other paperwork identifying the patients.

Through the years, DOE has given a variety of reasons for refusing to release records, ranging from privacy concerns to saying it doesn't possess the documents.

The stonewalling has continued despite Secretary of Energy Hazel O'Leary's promise last spring that the department would begin systematically declassifying health and safety information for public scrutiny.

"People simply don't trust us in the Department of Energy," she said. The DOE's attitude should be, "We don't have any data that you can't have," she said.

While the rhetoric has improved under the Clinton administration, Don Hancock of the Southwest Research and Information Center said he has seen no evidence that the DOE is taking the Freedom of Information Act seriously.

"The DOE is a notorious violator of the FOIA," said Hancock. "It's a very long-term problem. They don't comply with the spirit or the letter of the law."

Officials at DOE headquarters in Washington, D.C., say they know nothing about the experiment. "You're asking me to take your word that this happened," spokesman Sam Grizzle said recently.

"I have no knowledge of this whatsoever. It probably happened years before I was born, so I don't have any historical files here to refer to whatsoever," he said.

Arjun Makhijani, president of the Institute for Energy and Environmental Research in Washington, D.C., said the plutonium experiment is important because it contains "a lot of lessons" for Americans. "It's very important that people derive the lessons and put appropriate safeguards in place to see these abuses don't happen again."

In response to The Tribune's original 1989 request, the DOE Albuquerque Operations Office said it couldn't find any records on the experiment, with the exception of one bid-erplate contract. The Tribune received two documents from DOE offices in Chicago and Germantown, Md. Other than these minor documents, The Tribune received nothing, so the newspaper appealed.

Shortly after, The Tribune began to get phone calls from John H. Carter, the DOE official in charge of all the DOE's FOIA requests.

There were a couple of off-the-record discussions with Carter. Subsequently, The Tribune dropped its appeal and received a printout describing publicly available articles related to human beings and plutonium.

More than two years elapsed.

In July 1992, the search resumed for the identities of the patients. This time The Tribune's attorneys, the Baker & Hostetler law firm in Cleveland, filed a new Freedom of Information Act request.

The seven-page request was based in part on the skimpy documents received from the DOE. But the key to pinpointing specific documents was a 1974 inspector general report and related memos prepared by the Atomic Energy Commission, the DOE's predecessor.

The DOE, however, says today it doesn't have a copy of its own 1974 inquiry. But The Tribune got its copy from John Abbotts, formerly a special assistant to a U.S. House of Representatives subcommittee that in late 1986 issued a scathing review of how Americans had been used by the DOE as "nuclear guinea pigs."

The Energy Department has contended the patients' names and medical records can be withheld because of privacy laws. But under the Freedom of Information Act guidelines, privacy considerations don't apply when a person is dead.

The following is what has happened since Aug. 28, 1992, when The Tribune's second FOIA request was filed:

• **March 1, 1993.** John Layton, inspector general of the DOE, denies The Tribune's Freedom of Information Act request. He says his office has "no materials responsive to the request." According to records obtained from Abbotts, Layton is the same DOE official who in 1986 released the AEC report and other pertinent documents in an unrelated FOIA request.

• **April 5, 1993.** The Tribune appeals the DOE's inspector general decision.

• **April 30, 1993.** The DOE's Office of Hearings and Appeals upholds the DOE's inspector general. "We find the search conducted by the IG in this case was adequate."

• **May 13, 1993.** U.S. Rep. Steve Schiff writes DOE on behalf of The Tribune, asking it to speed up their review of records.

• **May 26, 1993.** The DOE sends two packages of records collected from its Albuquerque, Oak Ridge, Tenn., and San Francisco offices. Many are triplicate and quadruplicate copies of reports and memos The Tribune had received three years ago, as well as scientific reports available through many university libraries. Nothing is provided from DOE's Chicago office — where the follow-up studies on the survivors and exhumed remains of the patients were conducted in the '70s. No patient names are included either.

• **July 6, 1993.** The Tribune appeals the May 26 response and demands information about how the search was conducted. "It is evident that a number of patient studies were conducted by agency officials during the 1970s and later, yet none of those studies was produced in response to the specific FOIA request," said Loretta Garrison, attorney for The Tribune.

• **Aug. 3, 1993.** The Tribune demands the DOE retrieve all the records related to the plutonium experiment maintained by Pamela Durbin, a scientist at Lawrence Berkeley Laboratory. Durbin had told The Tribune in an interview, "Nothing at Berkeley is ever thrown away."

• **Oct. 1, 1993.** The DOE's Chicago Operations Office sends The Tribune items purportedly responsive to six items. There's only one hitch. The documents are copies of DOE documents that The Tribune had included in its 1992 Freedom of Information Act request. DOE officials say they don't know how the mix-up occurred.

• **Oct. 8, 1993.** The DOE's Chicago office finally sends five documents. For the first time, the documents include the name of a patient: Elmer Allen. But The Tribune had uncovered Elmer Allen's identity more than a year earlier.

Nov 15, 1993

OFFICE OF THE SECRETARY OF DEFENSE
WASHINGTON, DC 20301-1400

OFFICIAL BUSINESS

Directorate for Freedom of Information
and Security Review OA\TSD(PA)
Room 2C757, Pentagon
Washington, DC 20301-1400

Ms. Eileen Welsome
725 Lafayette N.E.
Albuquerque, NM 87106

ZIP

FREEDOM OF INFORMATION ACT REQUEST INTERIM RESPONSE

1 DATE OF REQUEST	2 DATE RECEIVED	3 CASE BACKLOG	4 CASE NUMBER
3 APR 96	11 APR 96	1690	96-F-0799

This is an interim response to your Freedom of Information Act (FOIA) request, received in this directorate on the above date. Your request has been assigned a case number based upon its receipt in this directorate, and is being processed as expeditiously as possible in accordance with procedural requirements promulgated in DoD Regulation 5400.7-R at 32 CFR 286. The actual processing time will depend upon its complexity, whether it involves sensitive records, voluminous records, extensive searches, consultation among DoD components or other agencies, and our administrative backlog which is in excess of the number of cases listed in block 3 above.

If you have any questions, please call (703) 697-4026 and ask for an FOIA action officer CDR VOORHIES

Director, Freedom of Information and Security Review, OASD(PA)
The Pentagon, Room 2C757, Washington, DC 20301-1400

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OFFICE OF THE SECRETARY OF DEFENSE
WASHINGTON, DC 20301-1400

OFFICIAL BUSINESS

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and Security Review OA\TSD(PA)
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Washington, DC 20301-1400

Ms. Eileen Welsome
725 Lafayette N. E.
Albuquerque, NM 87106

ZIP

FREEDOM OF INFORMATION ACT REQUEST INTERIM RESPONSE

1 DATE OF REQUEST	2 DATE RECEIVED	3 CASE BACKLOG	4 CASE NUMBER
1 APR 96	11 APR 96	1690	96-F-0798

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Biography of Eileen Welsome

Eileen Welsome is a journalist with about 15 years of experience who has worked mostly for newspapers in Texas and New Mexico. She graduated from the University of Texas at Austin in 1980 with a bachelor's degree in journalism with honors and was a 1991-92 John S. Knight Fellow at Stanford University.

Ms. Welsome has received some of the highest awards in journalism for her financial, investigative and public service reporting. In 1994, she was awarded the Pulitzer Prize in national reporting for her series on 18 people injected with plutonium during the Manhattan Project.

Other awards include: the Selden Ring Award for Investigative Reporting, the George Polk Award for national reporting, the Investigative Reporters and Editors Gold Medal Award, the Heywood Broun Award, the Sidney Hillman Foundation Award, the James Aronson Award for Social Justice Journalism, the Society of Professional Journalists Sigma Delta Chi and First Amendment awards, the National Headliners Award, and the Scripps-Howard Foundation Award for Public Service Journalism.

Mr. HORN. Well, we thank you. Your story is a good one, as you would expect of a fine reporter, and you speak for millions of people that have had your experience and my experience. And if you sat through the session this morning, you know that Members of Congress don't get treated any differently than anybody else. They will let us sit 4 years, too.

Ms. WELSOME. What was so pleasing to me—"pleasing" may be the wrong word—was to see that, my God, we are not the only ones that this happens to. I didn't feel quite so lonely.

Mr. HORN. We are going to start the equivalent of an Alcoholics Anonymous, a pile of documents club. We can all moan to each other.

Thank you for that testimony. I know you have to catch a plane. If you could stay through some of the testimony, we would appreciate it. You are going out of National, I take it?

Ms. WELSOME. Yes. Thank you very much.

Mr. HORN. Leave when you feel you have to.

Mr. Larry Klayman is chairman of Judicial Watch, Inc., and has quite a reputation. We are glad to have you here.

Mr. KLAYMAN. Thank you. I very much appreciate the opportunity.

As you know, my name is Larry Klayman, and I am chairman of Judicial Watch. I have experience with the Federal Government going back 19 years as a trial lawyer, prosecutor, with the Department of Justice, later in private practice, now running a public interest group by the name of Judicial Watch, which is a nonpartisan ethics and legal watchdog group.

I am very happy to hear that Ms. Welsome has had a positive experience in some respects, and certainly that is a good thing. I think when the Government is engaged in releasing information, that is important not just for public interest groups, but for the press and for private citizens. However, there is a problem, and although I sat here and listened carefully to some very distinguished gentlemen from the Department of Justice, from the FBI, which is part of the Department of Justice, and other branches of Government, I am not quite as optimistic as they are that the Freedom of Information Act and Federal Advisory Committee Act and the other open Government acts are being administered in a way which truly allows for free flow of information, particularly when politically sensitive issues are involved.

And here this brings us to a number of questions. And perhaps I feel a little bit more like Rodney Dangerfield than Larry Klayman. Perhaps we don't get the respect that we should; not just Judicial Watch, but other groups who seek access to confidential sensitive information.

We had an experience with the Department of Commerce. Our group looked in these foreign trade missions that then Secretary Brown was conducting, now Secretary Kantor. It had been widely publicized that these trips were being used as a way to, in effect, sell seats to high contributors to the Democratic Party, and we wanted to see how that was happening, to be able to explain to the American people, and perhaps to Congress and others, that this was not the correct way to use Government resources.

We filed a Freedom of Information Act inquiry. We received no response. I made inquiries with the Department, spoke with the FOIA officer, who is a very fine person, and she told me candidly, there is nothing I can do about it. This matter is being handled by the Secretary's office himself. Didn't receive any response beyond that point; spoke with Melissa Moss, who was the fundraiser of the Democratic Party in 1992 and a Presidential campaign worker with Secretary Brown, and made no headway there.

The moral to the story is that eventually Judicial Watch had to file suit. And when we brought suit, fortunately it was assigned to Judge Lamberth in the U.S. District Court in the District of Columbia, who is very strong on open Government laws, and who put his foot down and required the Department of Commerce to produce 30,000 documents free of charge. They tried to charge Judicial Watch $13,000, hoping we couldn't afford to pay that, before they came up with the documents, and lo and behold, as we expected, those documents showed that, in fact, political influence was the modus operandi for choosing participants on this trip, not merit.

With no lack of respect to the Department of Commerce before which I practice in a private capacity, nor any other branch of the Government, candidly there is a serious problem that when a political issue is involved, and this is particularly true in the Clinton administration which, the Justice people could attest to, promised open Government, promised not to claim those exemptions unless absolutely necessary, there has been a tendency to withhold information not just from Judicial Watch, but to this committee and other branches of Government. It has not functioned, this openness, the way President Clinton had touted it.

To give you an example of why these things occur, and this is human nature, this request at the Commerce Department, having been handled primarily by the inner office of the Secretary, we believe was, in fact, run responding to the request by officials in that office. When I deposed, because Judge Lamberth allowed for a deposition to take place of several interoffice people, the individual who was primarily responsible, Mr. Anthony Das, he admitted to me he had never even seen three of the FOIA requests, and this was the person who signed an affidavit saying that, in fact, a full response was forthcoming.

Other individuals testified that they were producing all documents showing how the search was made, and the deposition showed that was not correct. We had gone back in front of the court and asked the court to look into this matter. After that point in time, Judicial Watch received a memorandum written by Nolanda Hill to Ron Brown. I will be brief because I know my time is about up.

Mr. HORN. Go ahead.

Mr. KLAYMAN. In this memorandum she is complaining. She is saying, I have spoken with your staff assistant, Mr. Jim Hackney. I don't know whether the document is authentic or not. It is a document I felt had to be brought in front of the committee for investigation. She is saying, I understand that you, Ron Brown, Jim Hackney, and the letter is copied on Rob Stein, who is his chief of staff in that inner office, are trying to silence, in effect, Jerry

Knight, a reporter of the Washington Post, because he broke the story about First International, the scandal involving Nolanda Hill's firm.

This points out a problem. This conscious effort to withhold information extends not just to FOIA, but to other aspects of the way Government agencies do business. If this memorandum is true, and we don't know that needs to be, I think, investigated, then it would mean that individuals working in the inner office of Secretary Brown were, in fact, working on this private matter thing which he claimed involved nothing to do with the Commerce Department and the First International scandal. That is not a proper use of Government resources.

All of that taken as a whole points out why openness in Government is really in the eyes of the beholder, that when there is an important, sensitive issue, and when these agencies perceive a threat to the individual who appointed many of their officials, they will not play by the rules. They will force public interest groups and individuals to file suit. They will withhold documents. They will sign declarations which arguably are not true, and this needs to be investigated. They will take other actions to prevent the access to Government that all Americans deserve.

It is very important for this committee, in the view of Judicial Watch, to consider three possible changes to the Freedom of Information Act. First, there should be criminal penalties for the willful withholding of information under that Freedom of Information Act. Second, the award of attorneys' fees by courts, and it is bad enough you have to bring a case, but frequently judges will not award attorneys' fees and costs because it is a discretionary act, and, in fact, that is a huge barrier to bringing these cases. We know that many news organizations wanted to look into the Commerce Department's activities, but for whatever reason they did not want to bring suit because it is cumbersome and costly.

Finally, we welcome the Oversight Committee and with committees such as your own who can certainly, by bringing out a free-flow discussion, not candy-coated, but dealing with the reality of what Washington is all about, how things really happen here, can help create a situation for Government officials which will be more responsive, and with regard to the Commerce Department, Judicial Watch has been active in many other areas as well. We have an ongoing export promotion program being carried out by Secretary Kantor.

I think it is important for Judicial Watch to continue to pursue its FOIA requests because we believe Government resources are not being properly used, and we want full disclosure. Thank you.

[The prepared statement of Mr. Klayman follows:]

Judicial Watch Inc.

TESTIMONY OF LARRY KLAYMAN
CHAIRMAN, JUDICIAL WATCH, INC.
BEFORE THE SUBCOMMITTEE ON
GOVERNMENT MANAGEMENT,
INFORMATION, AND TECHNOLOGY

Committee on Government Reform and Oversight
June 13, 1996, 9:30 a.m.

Good morning. My name is Larry Klayman and I am Chairman of Judicial Watch, Inc., a nonprofit, non-partisan ethics and legal reform watchdog group, which takes an activist approach toward protecting the public interest. I am a lawyer with 19 years of experience in government litigation and regulation. Prior to entering private practice and becoming Chairman of Judicial Watch, I was an aide to Senator Richard Schweiker of Pennsylvania, and I was a trial lawyer for the U.S. Department of Justice's Antitrust Division. It is an honor to appear before this Committee, and I would like to thank Chairman Horn for the opportunity to explain to the American people why the Freedom of Information Act, or FOIA as it is customarily called, is not currently either an effective or fair mechanism for providing access to government information.

Judicial Watch has recently been involved in a number of important cases in order to increase public awareness about the inner workings of our government, and to ensure that its officials adhere to high ethical and legal standards.

For example, in 1994, Judicial Watch used the Federal Advisory Committee Act, or FACA, to attempt to obtain information about the Presidential Legal Expense Trust. Judicial Watch was responding to concerns that the Trust -- established to assist the President and Mrs. Clinton in paying their personal legal bills amassed during the "Whitewater" investigation and the Paula Jones case -- provided lobbyists and others with improper and illegal access to influence the Presidency. When the President's Trust did not respond, Judicial Watch was forced to file suit. Unfortunately, the courts ruled that the Trust was a private entity and not engaged in governmental activity, and thus was not subject to FACA. While the Trust remains violative of our anti-gratuity laws, the Justice Department, under Attorney General Janet Reno, a Clinton Administration appointee, has thus far ignored requests from a number of public interest groups to look into its illegality.

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In addition, in 1995, Judicial Watch filed several Freedom of Information Act, or FOIA, requests with the Commerce Department in order to procure documentation and information regarding its highly advertised export promotion program. In particular, Judicial Watch was interested in the trade missions then being conducted by the late Secretary Ronald Brown, and now by Secretary Mickey Kantor. (During the 1992 Presidential elections, Ron Brown was Chairman of the Democratic National Committee, or DNC, and Mickey Kantor was then-Governor Clinton's campaign manager .) It was clear from press reports and other information, some of which were touted by the DNC itself, that corporate participation in the trade missions was being and continues to be sold to the largest campaign contributors to the Democratic Party.

Judicial Watch has also been involved in a number of other cases involving government ethics and legal reform in which it has sought information through FOIA and other means.

In 1992, when President Clinton assumed office, he touted the openness of his new administration. In so doing, he issued executive orders and policy directives directing executive departments and agencies to be more responsive to citizens' requests for government information under FOIA, and to not withhold responsive documents, under claims of exemption, unless absolutely necessary. Judicial Watch's experience, however, has proven that openness has not prevailed in the Clinton Administration and that the Freedom of Information Act continues to be manipulated by government officials when it suits their own interests.

For instance, when Judicial Watch filed its FOIA requests with the Commerce Department, it expected timely responses and good faith cooperation in accordance with the law. Nevertheless, cooperation was not forthcoming. Instead, as I will briefly describe, the Commerce Department, and in particular the Secretary's office, embarked on a course of stonewalling, evasion, and other efforts to cover up the Administration's wrongdoing.

As is regrettably typical with many government agencies, the Commerce Department initially did not respond to Judicial Watch's FOIA requests. Accordingly, Judicial Watch wrote a series of letters to the Department and I spoke personally with its FOIA officer, who advised me that the matter had been reassigned from her office to the late Secretary Brown's inner office - a highly unusual step, as the Department's FOIA officer admitted. Judicial Watch then pressed its

claim at higher levels and was directed to Melissa Moss, a former chief fundraiser at the Democratic National Committee under Ron Brown, and a member of the Commerce Department's Office of Business Liaison. Still, no documents were forthcoming.

In exasperation, and over 4 months after having filed its initial FOIA requests, Judicial Watch was forced to file suit in the U.S. District Court for the District of Columbia. Fortunately, the case was assigned to Judge Royce C. Lamberth, a jurist who respects openness in government. Miraculously, the Commerce Department announced that it was now prepared to release the responsive documents, but with one "clever" caveat: that Judicial Watch would first have to pay the cost of the Department's preparation and copying - over $13,000. Seeing through the Department's charade, Judge Lamberth ordered the Commerce Department to immediately produce all documents free of charge, under the public interest exception.

Even so, the stonewalling and deception continued. In producing the responsive documents, the Commerce Department withheld as exempt under claim of privilege over 2,000 documents, some of which involved direct communications between the late Secretary Brown and President Clinton. In conducting an "in camera" review of the withheld documents, Judge Lamberth ruled that most of the documents were in fact not exempt as claimed. In Judicial Watch's opinion, the Commerce Department had lied under oath.

Because of the Commerce Department's apparent bad faith, Judge Lamberth also took the unusual step of ordering discovery in a FOIA case, and authorized the depositions of officials in Secretary Brown's inner office, including potentially Secretary Brown himself. While Judicial Watch never deposed Secretary Brown himself, due to his tragic death, we have been able to depose officials in his inner office who, in Judicial Watch's opinion, had signed false declarations concerning the document production.

Specifically, no documents were ever produced which constituted or concerned communications between the Department and the DNC. These documents must clearly exist, given the DNC's admitted use of trade missions to raise campaign funds -- and in this regard I would refer the committee to Exhibit 1, which is a DNC brochure offering seats on the trade missions to corporate executives in exchange for substantial monetary contributions. Interestingly, the press has recently reported that members of Secretary Brown's inner office shredded a number of documents on the day of his death. Today, Judicial Watch's effort to obtain all documents continues -- 1 year and 6 months after filing its initial FOIA request.

In sum, the misuse of FOIA and what is in effect a continuing obstruction of justice is unfortunately part and parcel to the current state of the Clinton Administration's lack of adherence to the law and its own policies regarding openness in government. By essentially refusing to respond to FOIA requests unless a lawsuit is filed, the Clinton Administration has severely limited the access of citizens to government information, as the ordinary citizen cannot afford litigation.

On behalf of the public at large, Judicial Watch respectfully recommends that this Committee take appropriate actions to strengthen the penalties for government officials and agencies that fail to abide by FOIA and other related laws. In particular, Judicial Watch makes the following recommendations:

1. Criminal penalties for willful failure to obey the requirements of FOIA are necessary. Stronger penalties must be instituted in order to increase the government's respect for FOIA and to ensure compliance.

2. The awarding of attorneys fees and costs to successful FOIA plaintiffs must be made mandatory, not discretionary. As many individuals do not have the resources of organizations such as Judicial Watch, even minimal resistance by the government can successfully block individual FOIA requests by forcing extended and costly litigation.

3. Regulatory oversight hearings by this and other appropriate Congressional committees are respectfully necessary on a regular basis.

I would like to take this opportunity to thank you, Chairman Horn, and the other members of the Subcommittee for your patience, and on behalf of Judicial Watch I look forward to taking your questions.

EXHIBIT 1

Chicago Sun-Times
FRIDAY, JUNE 30, 1995

THE PRESIDENT'S PRICE LIST

ELLEN DOMKE SUN-TIMES

President Clinton and his wife, Hillary, arrive by helicopter at Meigs Field on Thursday to begin a two-day visit to Chicago.

WHAT DEM DONORS GET FOR $100,000

People who give $100,000 to the Democratic National Committee receive:

- **Invitations to two meals with the president and two meals with the vice president.**
- **An invitation to accompany Democratic party leaders on foreign trade missions.**
- **"Honored guest" status at the 1996 Democratic Convention in Chicago.**
- **Two "policy retreats" with administration officials, plus private "Home Town Briefings" by the officials when they visit the contributor's area.**
- **A "DNC staff contact" to handle their personal requests.**

Party Selling Perk Package

BY LYNN SWEET

WASHINGTON—You can't buy President Clinton, but for [illegible] $100,000 you can reserve a place at his dinner table.

In a rare, detailed example of how the White House can be used as a potent fund-raising tool, the Democratic National Committee is marketing high-level access to the president [illegible] that resembles a menu [illegible] on Marcus catalog.

A DNC brochure and related memos obtained by the Chicago Sun-Times offer party high rollers a sliding scale of opportunities to rub shoulders with Clinton and other administration officials [illegible] a minimum of $50,000.

Turn to Page 10

Donors

Continued from Page 1

fund-raisers get at least two meals with the president, another pair with Vice President Al Gore, two "policy retreats" with top administration leaders, and VIP treatment at the party's 1996 national convention in Chicago.

For $50,000 raised or contributed, one gets a presidential reception, one dinner with Gore, two special high-level briefings and the convention VIP treatment.

And the $10,000 package includes the presidential reception and the Gore dinner, the policy briefings and bestows "preferred" convention status instead of VIP, sort of like flying business instead of first class.

"And if you're the average citizen, you get nothing," said Ellen Miller, executive director of the Center for Responsive Politics, which analyzes the influence of money on politics.

■ What's photo op worth? Coffey, Page 6.

To be sure, Democrats aren't the first to exploit the White House for political fund-raising. In one Republican package put together for the 1992 campaign, those who gave or raised at least $92,000 earned a photo opportunity with then-President George Bush, lunch with Vice President Dan Quayle, breakfast with GOP congressional leaders and an invitation to a reception with Cabinet members.

And the Republican National Committee is currently raising money by offering meetings with its high-ranking officials.

Critics, such as Common Cause President Ann McBride, call such enticements "outrageous."

"What this says is that large money buys you special favors, special benefits, inside information, special meetings that the average citizen in this country could never even begin to think about," McBride said. "It says there are two classes of Americans."

In practice, major political fund-raisers reap jobs or appointments or, if they are lobbyists, [illegible] managing trustee [illegible]

ple, Lewis Manilow and John Schmidt, who co-chaired the 1992 Clinton campaign in Illinois, were both rewarded. Schmidt has a top job at the Justice Department, and Manilow was appointed to an international advisory commission. Manilow's stepson Edwin Eisendrath was appointed regional director of the U.S. Housing and Urban Development Department in Chicago.

But Chicagoan Amy Zisook, a former special assistant in the Clinton White House who helped the DNC raise $70 million in 1992 and was finance co-chair for Clinton's primary, said access is overblown. "The amount of influence that people who contribute money have is not that great," she said.

"For most people, it is a big ego trip," she said. "They want to say they went to Washington and saw the president or saw Secretary X or Secretary Y. That enhances their reputation and also, quite frankly, their reputation to raise money because it makes them look like an insider."

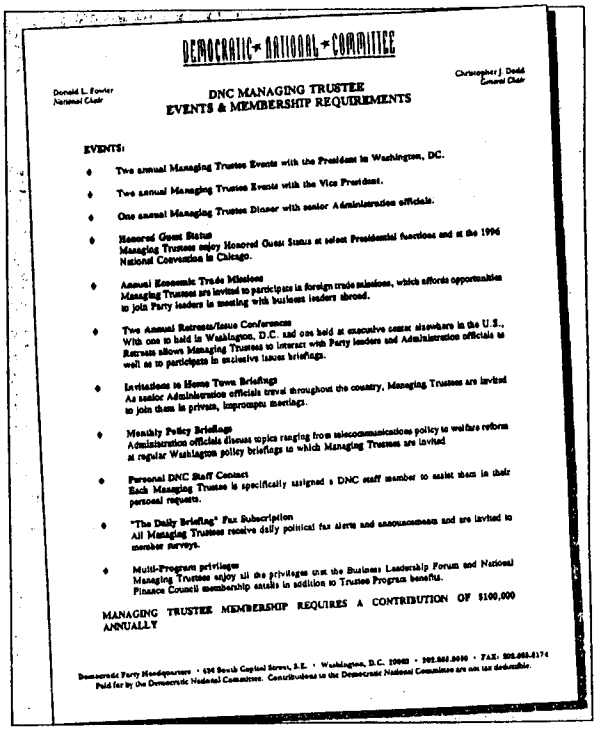
Sen. Paul Simon (D-Ill.), who once ran for president, defended the practice as distasteful but necessary, at least for the time being.

"I don't like the system," Simon said Thursday. Just the night before, he and other Democratic members of Congress mingled with donors at a DNC fund-raiser that produced $3.5 million, a record for one event. "There is no question big contributors end up having extra access, and it is not a healthy thing, and I hope we change. But you either decide to participate in the process or sit on the sidelines and criticize."

The DNC fund-raising program, designed to raise $66 million for elections next year, is separate from the Clinton/Gore '96 campaign drive that Thursday night sponsored a fund-raising dinner in Chicago featuring the president and first lady.

In the brochure and memos, the DNC offers perks that can be had for various prices. It also includes incentives tailored to female donors. For example, those who give $1,000 or raise $3,000 get invitations to events with Hillary Rodham Clinton, Gore's wife, Tipper, and female political appointees.

Those at the top donor level, reserved for contributors of at least $100,000 a year, [illegible]



DEMOCRATIC NATIONAL COMMITTEE

Donald L. Fowler, National Chair

Christopher J. Dodd, General Chair

DNC MANAGING TRUSTEE
EVENTS & MEMBERSHIP REQUIREMENTS

EVENTS:

- Two annual Managing Trustee Events with the President in Washington, DC.
- Two annual Managing Trustee Events with the Vice President.
- One annual Managing Trustee Dinner with senior Administration officials.
- **Honored Guest Status**
  Managing Trustees enjoy Honored Guest Status at select Presidential functions and at the 1996 National Convention in Chicago.
- **Annual Economic Trade Missions**
  Managing Trustees are invited to participate in foreign trade missions, which affords opportunities to join Party leaders in meeting with business leaders abroad.
- **Two Annual Retreats/Issue Conferences**
  With one to be held in Washington, D.C. and one held at executive center elsewhere in the U.S., Retreats allows Managing Trustees to interact with Party leaders and Administration officials as well as to participate in exclusive issues briefings.
- **Invitations to Home Town Briefings**
  As senior Administration officials travel throughout the country, Managing Trustees are invited to join them in private, impromptu meetings.
- **Monthly Policy Briefings**
  Administration officials discuss topics ranging from telecommunications policy to welfare reform at regular Washington policy briefings to which Managing Trustees are invited.
- **Personal DNC Staff Contact**
  Each Managing Trustee is specifically assigned a DNC staff member to assist them in their personal requests.
- **"The Daily Briefing" Fax Subscription**
  All Managing Trustees receive daily political fax alerts and announcements and are invited to member surveys.
- **Multi-Program privileges**
  Managing Trustees enjoy all the privileges that the Business Leadership Forum and National Finance Council membership entails in addition to Trustee Program benefits.

MANAGING TRUSTEE MEMBERSHIP REQUIRES A CONTRIBUTION OF $100,000 ANNUALLY

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Paid for by the Democratic National Committee. Contributions to the Democratic National Committee are not tax deductible.

This Democratic National Committee memo, one of several obtained by the Sun-Times, shows the benefits of being a "managing trustee," which requires a $100,000 annual donation.

addition to the events with the president and vice president, a DNC [illegible] managing trustee [illegible] enjoyed access to [illegible]

fords opportunities to join party leaders in meeting with business leaders abroad."

A Democratic source said there [illegible] trips and could, for example, [illegible] clude a junket to Paris with [illegible] U.S. ambassador to France, Pamela Harriman, herself a major [illegible]

Judicial Watch Inc.

LARRY KLAYMAN, born Philadelphia, Pennsylvania, July 20, 1951; admitted to bar, 1977, Florida; 1977, Supreme Court of Florida; 1977, U.S. District Court for the Southern and Middle Districts of Florida; 1977, 1991, Fifth and Eleventh Circuit Courts of Appeal; 1980, District of Columbia; 1982, District of Columbia Circuit Court of Appeals; 1982, U.S. District Court for the District of Columbia; 1982, U.S. Court of International Trade; 1988, U.S. Supreme Court; 1983, Pennsylvania; 1989, Pennsylvania Supreme Court; 1989, U.S. Court of Appeals for the Federal Circuit; 1991, U.S. Court of Appeals for the Eleventh Circuit; 1991, U.S. Tax Court. Education: Vanderbilt-in-France, Aix-en-Provence and Duke University (A.B., with honors, 1973); Hague Academy of International Law, Holland, 1975; L'Institut d'Etudes Europeennes, Belgium, Emory University (J.D., 1977). Litigation Associate, Blackwell and Walker, Miami, Florida, 1977-1979. Trial Attorney, U.S. Department of Justice, Antitrust Division, Consumer Affairs and U.S. v. AT&T Trial Sections, 1979-1981. Senior Associate, Busby, Rehm and Leonard (International Trade), Washington, D.C., 1981-1983. Aide to U.S. Senator Richard S. Schweiker, Washington, D.C., 1973-1974; Legal Intern, U.S. International Trade Commission, Washington, D.C., 1975-1976; Legal Intern, Attorney General of Georgia, 1976; Legal Intern, United States Attorney, Northern District of Georgia, Atlanta, 1977; Legal Intern, Directorate-General for Competition (DG-4), Commission of the European Communities, Brussels, Belgium, 1981. Member, Executive Finance Committee, Congressman Jack Kemp Presidential Campaign, 1986-1988. Author: "The United States International Trade Commission: Co-Equal of the FTC in Regulating Unfair Methods of Competition," 10 Lawyers of Americas 1, 1978. Co-Author: "A Fair Playing Field for Trade," Journal of Commerce August 22, 1986. Author: "Prudent Advice: Whether you're a first-time direct investor in Mexico or a seasoned player, you should be aware of major trade restrictions NAFTA didn't eliminate," World Trade, August, 1994. Member: The District of Columbia Bar (Co-Chairman, International Trade Committee of Division 12, 1983-1987), The Florida Bar, (Member: Unauthorized Practice of Law Committee, 1977-1980); American Bar Association (Member: Committee on International Litigation, Litigation Section, 1980-; Antitrust Section). Languages: French, Italian (Fluent), Spanish, Portuguese (Working Knowledge).

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Mr. HORN. We thank you. This is a good example of a case study that might occur in any administration.

With your testimony you have exhibit 1, the Chicago Sun Times piece that is titled "The President's Price List." That will be put in the record without objection.

Now, I also have in front of me the memorandum from which you referred from Nolanda Hill. Is there a problem if I read this into the record?

Mr. KLAYMAN. No, Mr. Chairman, we would ask it be made exhibit 2 to the record.

Mr. HORN. It will be included as an exhibit, but I want to get straight who is who. It is on the paper of Nolanda Hill, 2401 Pennsylvania Avenue NW, apartment 604.

Now, explain again Ms. Hill's reference to this.

Mr. KLAYMAN. Ms. Hill is writing to Ron Brown stating that she has spoken with Jim Hackney, who is the counsel to Mr. Brown at the Commerce Department, urging him not to silence Jerry Knight, a reporter at the Washington Post who, in fact, broke the story about this First International scandal.

Mr. HORN. I take it Ms. Hill is a member of the Commerce Department staff?

Mr. KLAYMAN. No. She is actually an investor who was the one who allegedly had given $500,000 to Secretary Brown for a venture that he was alleged to have taken no part in. This was a communications company. And she was a friend. There has been a lot of recent press about her in the last few weeks, particularly in the Washington Times.

Mr. HORN. And this memorandum came to you through a Freedom of Information request?

Mr. KLAYMAN. No, it came through an alternative source. It was not produced by the Commerce Department.

Mr. HORN. I wouldn't think if they read it that they would have produced it.

Mr. KLAYMAN. Not likely.

Mr. HORN. Not likely.

Go ahead if you want to read from it.

Mr. KLAYMAN. This is the type of document—would you like me to read it in the record?

Mr. HORN. Please do.

Mr. KLAYMAN. It states:

In my two conversations with Jim Hackney today, I have become concerned that you understand what I believe you and I agreed to concerning First International last night. I am not going to delineate the discussions concerning the business arrangement in this memorandum; however, we clearly agreed that dealing with public announcements would be done only after consensus as to form and substance has been reached between the two of us. It was my belief that no consensus had yet been reached, that form for delivery had not been agreed to, and that we would reach a consensus following my deliberations as to your suggestions.

I am now told by Hackney that the machine for "getting Knight off your back" has been put into motion. I trust that this information is incorrect. I explained to you my position, listened thoughtfully to yours, and trusted that you would not act unilaterally. Please notify me on my Washington answering machine (you have my number) as to whether my understanding as to your position and trust in your commitment to honor my position is well placed.

Again, I have been led to believe by your staff person that action is imminent on your part. If I am incorrect, please let me know so I do not act in a hasty and possibly irrational manner, which I might believe would protect me from unnecessary

publicity and other irreparable damage. I am more than confident we had an understanding as to my need for deliberation time as to how this might be handled vis-a-vis your suggestion last night. I hope I was not wrong and that this is, as indicated—as earlier indicated, merely a communications problem.

The letter, according to this exhibit 2, was copied on Rob Stein, chief of staff, then Secretary Brown, and Jim Hackney as counsel, and in our view it points out a number of things. As I said, it points out the Commerce Department, according to this memorandum, its officials were working to silence a reporter of the Washington Post. According to the memorandum, they were—he was working, in fact, on matters that had nothing to do with the Commerce Department, and although this does not technically relate to FOIA, it relates to human nature, it relates to the reality of Washington, it relates to why we need greater sanctions if FOIA is not followed.

And I listened to the FBI talk about the McDade case. I have a case that is very similar in Judicial Watch where an individual is wiretapped by the Cleveland Police Department. His name was smeared throughout Cleveland. He wanted to build low-income housing, provide opportunity for minorities, and apparently someone didn't like it. He was not given documents requested under FOIA. They told him wait 3 years.

He came to Judicial Watch. We filed an action on his behalf, litigated it at a fraction of what it would cost for anyone else to do it on their own. The FBI later admitted that, in fact, there was wiretapping, and they had told him there was no wiretapping.

Documents showed up. There was wiretapping. He wants the names of who wiretapped him. The FBI has been dancing around in court trying to justify why he is not entitled to who wiretapped him and smeared his name.

That is an inappropriate use of FOIA. The individual's name is John Nix. He would be available to talk with the committee. His reputation has been ruined in Cleveland. Fortunately we got Judge Charles Richey, another fine jurist in the district court, who forced the release within a few months of the information, but we must have spent, if we had been billing, over $50,000 of our time. That is not the way average people should be treated.

Mr. HORN. Thank heaven for the article III judiciaries. You suggest they shouldn't have to go that far, but they do.

You give me another point in the bill I mentioned earlier. If the White House is going to get confidential files out of the FBI, the President ought to sign his name to the paper. Maybe they will think twice before they order because it makes no sense what they ordered in the case we have coming up next week before Mr. Clinger's full committee.

And I would think we ought to get in some language on attorneys' fees, and they ought to come out of the agency's existing budget, which would be a little bit of discipline. They couldn't just kick it up to Congress to say, you pay the bill. It would come out of their existing budget, and eventually when the chief operating officer of an agency sees that happening, they get motivated to clean up the process. So a few good lawsuits doing that, I would suspect, get some executive action where there is inaction. We

would welcome your ideas on that, and staff will be working with you on that.

Ms. Kirtley, executive director, Reporters Committee for Freedom of the Press, regarding electronic freedom of information. We thank you for coming. Your group has a very good reputation also for getting action, sometimes, I suspect, with as much delay as we have described here this morning, but you are persistent.

Ms. KIRTLEY. We are that.

Mr. HORN. Please proceed.

Ms. KIRTLEY. Thank you, Mr. Chairman. We are persistent, often in the face of seemingly insurmountable odds.

Our organization is almost as old as the Freedom of Information Act. It was founded in 1970, and one of our primary occupations is to provide a free hotline for reporters who face legal obstacles in gathering the news. The vast majority of the calls we handle, and we handle about 2,000 a year, concern problems with access to Government records and Government meetings. So we have at least the advantage, I suppose, of a wide constituency from all over the country, and even all the world's journalists who turn to us in that regard.

One of the services that we provide are a number of publications including one on how to use the Federal FOI Act, which is now in its seventh edition, that makes its way around the country and around the world.

I would say that when the current administration came into office, we were extremely optimistic about the probability of some significant changes in information policy, and there is certainly no question that there have been some major good faith efforts made by this administration to curtail Government secrecy.

You heard this morning about the October 1993 memorandum from the President and the Attorney General directing agencies to have better processing procedures. You also, I think, are aware that in April 1995, the President issued a new and, in our view, very overdue order on classification, which I think is significant in light of the comments you heard earlier this morning from DOD and FBI about the great burden they have of sifting through previously classified documents.

I think if the spirit of this order is carried out, it can make a real difference, in the future certainly, but even with older records, and may simplify access for everybody concerned.

Having said all of these positive things, though, I also have to say that we have not achieved the kind of open Government that I think Congress had in mind 30 years ago when it enacted FOIA, and for that matter 20 years ago when it enacted Government in the Sunshine Act.

I am not really here to talk about the Sunshine Act today, but I do want to point out that some of the agencies that are subject to this act are the primary lobbyists to try to change the law so that they can meet in secret, and I hope that this committee will keep that in mind when you hear their testimony later on in the process.

There is an entrenched bureaucracy, I think, in place in the Federal Government. It has been there for well on to 15 years now. That makes it difficult to change some of the standard operating

procedures that have held up the release of information. The thing that we are particularly focusing on today is the failure of the agencies to make records available using the new technology that is now available to them.

I will add that the States are way ahead of the Federal Government on most of these issues. I don't know precisely why that is. It may be that they have less institutional inertia. It may be that there is a greater sense of accountability with the people that are living right there in the State and basically looking over their shoulders. I am not suggesting that all State policies are ones that the Federal Government would necessarily want to replicate, but many, many States now have in place affirmative legislation that makes clear that electronic records are public records that are subject to disclosure in the same terms that paper documents would be. And I think that that is what is needed on the Federal side, and it is something that I hope this committee will continue to work toward.

My formal testimony includes some examples of egregious situations that reporters have brought to us where they have been, for example, denied access to a log of FOIA requests at HHS that they were allowed to see in paper form, but not allowed to see now because they are in electronic form.

We have been told that some agencies won't search a data base because that is creating a record which the law does not require them to do. They charge their costs based on the per paper item cost that was established back in the days when everything was on paper. It makes no sense now when you are giving people a disk or a tape, and yet they will still charge the per item cost.

In our view, it is a commonsensical notion that electronic records should be more readily available at all levels of Government than paper records could be. For example, you heard from the FBI earlier today about the laborious process of redacting paper records through the system, the expedience of adopting software that would make it possible to key in the information initially so it would be electronically redacted. They would save themselves and the requestors a great deal of time, and this is something that, again, I think this committee, and Congress as a whole, should certainly encourage the agencies to consider as they are setting up their computer systems.

There are so many of these questions that are really creating unnecessary roadblocks to the release of a lot of valuable information of great significance to the public, and we have included in our formal testimony a number of examples from newspapers, not the Washington Post, but papers like the Pittsburgh Post-Gazette, the Syracuse Post Standard where journalists have done computer analysis of Federal Government records to report on things like recurring errors in the administration of medicine, deadly kinds of errors that have been repeated from one institution to the next, that led to reforms, including, for example, the withdrawal of a syringe that was contributing to the confusion.

There are many examples like this. I think the other thing that is troubling is the fact that the agencies are so uneven in their handling of requests of this nature. Two journalists that work for American Journal gave us their examples of how the FAA was very

cooperative on a computerized request. By contrast, the FBI was extremely difficult.

Let me conclude by saying, as was raised earlier this morning, delays of this nature really do deprive not just journalists, but the public, of valuable information, and we think the good citizens need this information while it can still be useful. We hope the work of this committee and others in Congress will help fulfill the aspirations for participatory democracy that were articulated 30 years ago in the enactment of the Freedom of Information Act.

[The prepared statement of Ms. Kirtley follows:]

The Reporters Committee for Freedom of the Press submits this testimony in support of efforts to increase the public's entitlement to government information and to speed up the delivery of that information.

The Reporters Committee is a voluntary, unincorporated association of working reporters and editors which has provided representation, legal guidance and research in cases involving press freedoms. We run a hotline for reporters who face legal difficulties in gathering and covering the news. The vast majority of our calls concern problems with access to government records and government meetings.

We produce a number of publications including *How to Use the Federal FOI Act*, which is in its seventh edition, *Access to Electronic Records in the States*, in its third edition, and *Tapping Officials' Secrets*, a compendium of open government laws in the states and the District of Columbia.

When the current administration was elected to office, several press groups appealed to the Executive Branch to improve open government. There is no question that we have seen some response to our request, including some major, good faith efforts to curtail government secrecy.

For instance, in October 1993 the President and the Attorney General issued memoranda to all federal agencies calling for better FOI processing that would release more information and limit use of the Act's exemptions. In April 1995 the President issued a new and long overdue executive order on classification intended to stem the proliferation of classified information. The Department of Justice, which has oversight over FOI matters, has been experimenting with a new standard for expediting FOI requests on issues of imminent interest to the public.

Nonetheless, in our view, we still do not enjoy the open government envisaged by Congress 30 years ago when it enacted the Freedom of Information Act or 20 years ago when it enacted the Government in the Sunshine Act. (In fact, many of the agencies subject to the Sunshine Act have openly lobbied to change that law so that they can conduct their meetings in secret.)

The continued widespread failure of federal agencies to make records available is curious in an age of spiralling information technology that ever increases the ease of creating, storing, searching and retrieving information.

Reporters tell us that agencies treat electronic records differently from paper records. For example, a reporter who had routinely viewed a log of FOI requests at the Department of Health and Human Services was told she could not see the log when it was converted to electronic format.

We have been told of agencies refusing to search a database for easily retrievable information, claiming that would be "creating" a record.

Agencies have also charged costs for databases based on a cost-per-paper-item fee rather than on the actual and far cheaper cost of copying a disk or tape.

Twenty-five years ago the New Mexico Supreme Court ruled that "the right to inspect public records should . . . carry with it the benefits arising from improved methods and techniques of recording and utilizing information contained in those records" so long as the records themselves could be safeguarded.[1]

That commonsensical notion should, in our view, make electronic records more readily available at all levels of government. Unfortunately that is not always the case. Across the board, agencies are reaping the benefits of electronic methods to record, transmit and use information more rapidly and efficiently. But FOI requesters still face problems getting that information and they are waiting longer than ever before for substantive responses.

Agencies still struggle with questions of whether electronic records are covered by the FOI Act; whether they must tailor retrieval of information to fulfill a request; whether they must provide software necessary to meaningfully analyze the information; and how much to charge a requester for electronic records.

It is unfortunate that these questions arise. They can create unnecessary roadblocks to the release of valuable information of great significance to the public. Without doubt, reporters who gain access to federal databases write rewarding stories that trigger reform where reform is needed.

The *Dayton Daily News*, after months of negotiation with the Occupational Safety and Health Administration, searched the agency's databases of work place accidents. The reporter found discrepancies in the way the agency responded to accidents, and in the monetary values it assigned to human lives. By interviewing named victims he wrote compelling stories, later cited in Congressional hearings, that helped the public evaluate OSHA's work.

The *Syracuse (N.Y.) Post Standard* used the National Bridge Inventory from the Federal Highway Administration to identify deficient bridges in central New York, a series that reminded

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[1]Ortiz v. Jaramillo, 483 P.2d 500 (N.M. 1971)

state officials of the need to attend to bridge safety.

The *Pittsburgh Post-Gazette* did a computer analysis of U.S. Food and Drug Administration tapes of incident reports to identify recurring errors in administering medicine, deadly errors that were repeated from one institution to the next. As details of the errors remained secret, they were destined to be repeated. The series led to several reforms including a manufacturer's withdrawal of a syringe design that had contributed to some of the confusion.

Reporters at *U.S. News & World Report* acquired databases from the U.S. Department of Education to study special education programs. They found discriminatory practices in the way disproportionate numbers of black children were assigned to special education classes. They also found that black children were more likely to be classified as "retarded" in situations where white children were more generally called "learning disabled." When the reporters interviewed Education Department Secretary Richard Riley on their findings, he promised to push for changes.

These are only a few of the stories identified in *IRE 100,* a compilation of computer-assisted investigatory news stories published by the Investigative Reporters and Editors, Inc., and the National Institute for Computer-Assisted Reporting.[2]

Mark Sauter and Trent Gillies of "American Journal" recounted to us an example where the system worked well when they dealt with the Federal Aviation Administration:

> The FAA did right by us and the law. We asked for and received a floppy containing hundreds of "Near Mid Air Collision" reports (of a certain type that FAA selected out for us and put on disk) from the National Aviation Safety Data Analysis Center. Then, when we asked for more details on dozens of the incidents, the FAA e-mailed them to us! . . . a great example of government openness and friendly service -- which saved everybody time and paper. The FAA officials who helped us were Anna Johnson from their FOIA office and Gary Alderman from the Analysis Center.

Sauter and Gillies contrasted their experience with the FAA to their efforts to study the FBI's dilatory response to FOI requesters:

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[2]IRE 100 Computer-Assisted Stories, Book II. Investigative Reporters and Editors, Inc., and The National Institute for Computer-Assisted Reporting. Editor: Tracy L. Barnett (1995)

The FBI refused to give us their computerized log of FOIA requests. (Since these logs seemed to be so obviously public and non-sensitive, we had asked for their release without the normal years of processing; in contrast with the FBI, the CIA gave us a paper copy of their 1995 log within three months of our request.) We spent months negotiating with them to give us a disk containing their data on all the FOIA requests they're now processing and have processed in the last year. At first they said something like this had never been done. Then they said it couldn't be done -- their computers wouldn't work that. Finally -- after we went up the chain of command and squabbled for months -- the FBI determined it could be done. But after a trial computer run, the Bureau refused to give us the data because it had been entered incorrectly and the FBI claimed releasing it to us could violate the Privacy Act (specifically because the names of people who requested files on themselves would be revealed). We kept fighting and finally got to the co-director of the DOJ's Office of Information and Privacy. He told us too bad and we could sue if we wanted. Now we must wait for this to be processed as a standard FOIA on paper -- which means a two- to three-year wait.

For journalists delays are critical. Good citizens -- and we think good citizens subscribe to newspapers and watch television news -- need information while it is useful. They need to review the credentials of a candidate before an election or plans for a V.A. hospital before it is built. Their interest in a defense base closure will wane with the military's departure. The public needs government information in time to comment to an agency, write a congressman, gather signatures on a petition or simply to understand what the government is doing. Reporters cannot serve those public needs when agencies delay response for weeks, months or years.

The government has taken steps outside the FOI Act to pass on to the public the benefit of efficient electronic recordkeeping. The Office of Management and Budget's policy statement on government information now definitively calls for opening government databases up to the public, even if to do so would displace private vendors who have profited from the sale of government information.[3] The congressional Government Printing Office is actively uploading not only the Federal Register and the Congressional Record but frequently used executive branch databases as well.

These are important steps in delivering government

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[3]Federal Resources Information Management (Circular A-130) (July 2, 1993) 58 Federal Register 36,068

information, but they do not supplant the need for prompt responses grounded in respect for the broad entitlement to records under the Freedom of Information Act. That Act, at its core, should enable requesters to see the electronic records they specifically request, not just those that the government chooses to make available.

We feel that in the absence of specific legislation to entitle FOI Act requesters to electronic records, agencies will continue to refuse to provide electronic information to requesters and will deny them the opportunity to utilize the agency's own enhanced ability to retrieve and analyze the records.

We do have some concerns that the current bill may not completely serve the need for expedited access. We hope that the legislation will be clearly understood to direct agencies to expedite processing whenever records are requested that would enlighten the public on matters where public concern is strong, and not just for those areas that are already the subject of fervent media attention.

We are also concerned that agencies will misuse the provision that limits expedited review for so-called "aggregate" requests. We have seen agencies aggregate requests for fee purposes merely because they are made by an individual requester, and hope that the prohibition on aggregation of unrelated multiple requests will be strictly construed.

In considering the Electronic Freedom of Information Act, Congress has an opportunity to fulfill the aspirations for participatory democracy that it articulated 30 years ago at passage of the original Act. In an age when technology makes the genuine, widespread distribution of government information possible, the FOI Act can make public access to this rich national resource of information a reality.

We greatly appreciate the opportunity to testify.

Mr. HORN. I thank you for your most helpful statement. Attached to your written statement is an exhibit entitled "The Clinton Administration and the News Media." It is a summary of 305 actions by the Clinton administration aimed at restricting access from Government information and intruding on editorial freedom.

I notice in some of the examples you gave, and you didn't get into these that take up 42 pages, and they are simply little capsule summaries, do you feel after listening to your colleagues in the media, after going after some of these requests where the agency really tightens up and circles the wagons, if you will, in the old western terms, when someone in the agency has their name in the file revealed, the agency would not be held in good standing, or its image would be harmed. Do you think that has given differential treatment in some of the agencies, or do we just have a few crotchety types that don't like doing things?

Ms. KIRTLEY. I suspect a combination of both. I think it is fair to say that perhaps as a legacy of former administrations, there is a tendency in the agencies to invoke the privacy exemption in ways that I would characterize sometimes as opportunistic. We are all concerned about protecting people's privacy, although with all due respect, I think the government is really the biggest invader of the citizens' privacy by collecting information in the first instance. There are sometimes good reasons for that, sometimes less compelling reasons.

Having said that, though, the privacy exemption, its misuse, in our experience, has become the No. 1 obstacle to gaining access to information.

Mr. HORN. Are there any other portions of the other three laws we are considering that have also some impact on that delay in bringing up that hurdle that you are aware of?

Ms. KIRTLEY. The Federal Advisory Committee Act and so forth?

Mr. HORN. Right.

Ms. KIRTLEY. I think there are certain serious issues with the Federal Advisory Committee Act. Back when I was working in private practice, one of the first cases I litigated had to do with the Federal Advisory Committee Act, what we said was a Federal Advisory Committee Act agency, and we were told by the courts it is not.

I think it a problematic area. If someone had told me about 3 months after the Clinton administration came into office that we would be filing a friend of the court brief in support of those seeking access to the health care task force, I would have been chagrined, to say the least. There are problems there.

As I said earlier, I do think that the Sunshine Act amendments that are being proposed by the American Bar Association and others bear serious scrutiny, and I don't mean that in a positive sense. There is self-interest involved here, oftentimes well-meaning, on the part of some of the members, collegial agencies that are suggesting that they would work better in secret. But I truly think that the history of our democracy has shown that public oversight is essential, not only to make sure that the government functions well, but also so that citizens may see the government function well.

Mr. HORN. Without objection, all of the exhibits and all of the testimony will be put in the record just after the individual is introduced.

We now have another working reporter, Mr. Byron York, reporter for the American Spectator.

Mr. York.

Mr. YORK. I am here because of a story I wrote in late 1993. At the time, Vice President Al Gore had just released his plan to reinvent government. To unveil the work, Mr. Gore and President Clinton stood on the White House lawn surrounded by huge piles of documents they said represented the reams of needless regulations and paperwork in Government. They said reinventing government would save the taxpayers $108 billion. But as the Vice President praised the many people who had worked on the project, and the exhaustive work they had done, a question occurred to me: How much did reinventing government itself cost?

It seemed like a reasonable inquiry. At the time, there were similar questions about the administration's other big task force, the one on health care reform. You may remember the administration originally said that one cost $100,000, a figure they later upped to $200,000. Much later, the GAO discovered it was more like $14 million.

So the day after the reinventing government roll-out, I sent a Freedom of Information Act request seeking the financial facts of the Gore task force. My questions were standard stuff: What is the overall budget, how many employees are there, how much do they make, how much is spent on offices, travel, consultants, and the like.

A few days later, Todd Campbell, counsel to the Vice President, sent me a letter that said simply, "FOIA does not entitle you to records or other materials of * * * the National Performance Review." And that was that.

Now, I knew that some parts of the White House are indeed exempt from FOIA. But I also knew that that didn't apply to the entire Executive Office of the President. For example, I had successfully FOIA'd documents from the Office of National Drug Control Policy about the travels of then drug czar Lee Brown. Surely the reinventing government task force fell into that sort of category.

I called the Justice Department. Spokesman Carl Stern told me that Government experts believed there were legal grounds to argue that the Vice President's Office is not subject to FOIA. But then he said, "It is a matter that hasn't been litigated, so you could argue it either way."

The administration's position became a little ironic a few weeks later when President Clinton sent a memo to the chiefs of all Government agencies ordering them to cooperate fully with FOIA requests. "Openness in government is essential to accountability," the President said, "and the act has become an integral part of that process." And then he said it's not enough for agencies simply to be more open to FOIA requests; he wanted the Government to distribute information on its own so the public would not have to resort to FOIA to find out what was going on.

On the same day, Attorney General Janet Reno said the Justice Department would no longer routinely defend agencies that refused

to release information requested under the act. Experts I talked to at the time thought the action was long overdue. They pointed to Reagan and Bush administration agencies that had stonewalled and dragged their feet on FOIA requests and said they hoped the Clinton administration's action would signal a new day.

I pointed these things out to the people at the National Performance Review. There's a new policy on FOIA, I said. You guys are supposed to be more open. Their answer remained the same: No.

Then I pointed out the part of the President's statement in which he said citizens shouldn't have to rely on FOIA to get information about their Government. I sent a letter to the NPR asking that—in the spirit of the President's directive—they simply release the financial records of the reinventing government group.

The answer was still no.

This went on for quite a while, a few months. Although I was able to get snippets of information from other agencies that were involved in the project, my article about the price of reinventing government turned into an article about how it was impossible to learn the price of reinventing government. I called it "Reinventing Secrecy."

Mr. HORN. That is very helpful.

Let me ask some general questions. You have all had different experiences, but I am trying to get a collective experience here based on the fact that you have worked the system.

You have each testified about the difficulties in getting timely responses to Freedom of Information Act requests. Now, based on your collective experience, where are the delays the longest? Which agencies resist fulfilling these requests the most? What is the longest delay that requestors, either yourself or those that you represent or have done work for experienced? Where have they encountered these problems obtaining responses from these agencies? Where is the stiffing of these agencies? They stiffed the minority in this Congress, in the 103d Congress. We were on health care task force from day one, just as we were on Travelgate, but we never got anywhere until we got the majority and the subpoena power. You don't have the subpoena power.

What are we going to do? Can you point us in the direction of where the problems are?

Who would like to be first in? Why don't we go backward down the line. Mr. York.

Mr. YORK. The problem is you are asking them stuff they don't want to tell you. The bigger the agency, the longer it takes. I've had different experiences with smaller groups. I FOIA'd in the last days of Lawrence Walsh's Iran/Contra investigation. I FOIA'd the office for some of his financial records. They were good. They gave me the stuff and answered my questions, and I did a story that was very critical of his spending, but I thought it all worked the way it should.

Later I did a piece for the Wall Street Journal about some of the expenses of Andrew Cuomo, one of the top officials at HUD. This was really like pulling teeth. They didn't want to tell me anything. One of his top assistants at the time was Mark Fabiani, who is now working for the White House. I just had a terrible time trying to find out things. I eventually received some stuff, but I believe

to this day I did not get a full accounting of what I was looking for.

So the real problem occurs when you are asking for information about somebody who is political and they don't want to tell you.

Mr. HORN. Ms. Kirtley, you have got quite a few clients you represent, so you must have a lot of experiences you hear about. Which agencies seem to be worse than most, if that is possible?

Ms. KIRTLEY. I think the FBI probably gets that dubious distinction. It is an experience that we hear repeatedly from the folks that call us. It is an experience we are dealing with now. I have a request before the FBI, I think, that's been pending.

Ms. WELSOME. For years.

Mr. HORN. You are about due for a reply then. You should have a happy smile on your face.

Ms. KIRTLEY. I got a reply, but in terms of getting the substance, it is still going to be a while.

One of the examples in the Clinton administration report, which you have for the record speaks of a journalist for the Post Standard in Syracuse who got a letter from the Department of Army Intelligence and Security Command 5 years after he filed the request saying that his request about the Pan Am crash in Scotland would not be answered within the 10-day timeframe.

There have been problems with the Departments of the Army, Navy, Air Force. The Marines are a little bit better, I think, in most people's experience. DOE has had a bad reputation in the past, as have many of the scientific agencies. NASA, for example, closed down quite a bit after the *Challenger* disaster, ironically enough, I think. We have had a lot of complaints from journalists who cover the scientific beat about having difficulty getting information out of NIH and some of the other, again, scientific agencies. So those would be sort of my top five list.

Mr. HORN. Your comment on defense reminded me, and I was sharing this experience with some of the staff the other night, when I was in the Army Strategic Intelligence Reserve and put in some of my summertime at the Pentagon. I actually did see a top civilian employee take the New York Times, put the "Top Secret" stamp on it and file it. I thought, gee, that is the weirdest thing I have ever seen. It couldn't have happened again. When I share that with others, they say, yeah, we have been in the Pentagon, and we have seen that, too.

Ms. KIRTLEY. It is absolutely true. Many journalists who ask the FBI and other agencies for their records on themselves will find their own stories in those files many years later.

Mr. HORN. I guess they have enemies lists all over town, the media, Congress, et cetera.

How about you, Mr. Klayman, what is your worst example?

Mr. KLAYMAN. I have a number of worst examples, and it stems from a basic problem that is the lack of independence and decision-making in the agencies. Certainly we have had bad experiences with Commerce, though the FOIA officer, if she had been able to make the decision herself, would have done the right thing. The problem was taken away from her by the Secretary's Office.

This happens frequently when political appointees step in who have an interest, as you pointed out, in protecting information.

That is why I raised this issue with the staff of late Secretary Brown is that they had an interest in not having our FOIA information come out. They were working with him and apparently in other respects as well. So we need an independent entity really calling the shots at these Departments.

And what makes it doubly troubling is this: If you do have to bring a lawsuit, as we have had to do on a number of occasions, the agency that defends is the Department of Justice. Now, that is an executive branch agency. No one in their right mind, if it's a highly sensitive issue like selling trade missions for dollars, is going to willy nilly follow Mr. Clinton's policies to release everything.

And what you have here is a politicization of the Justice Department, and I am an alumnus, like I have never seen in 20 years, where the Attorney General apparently, either she or those under her, must step in and make a decision to put up roadblocks to not allow this information to be released. When you compare to the policy that President Clinton put in when he took office, we are going to release everything even if it's arguably confidential, when it is carried out, particularly when it concerns him and one of his appointees, you would think you were not living in the United States, you would think you are back in the Soviet Union with regard to the lack of desire to allow anyone to see the work. To me it has been very disillusioning.

We need a way that the Justice Department or some other entity can handle a lawsuit such that the Attorney General does not put his or her imprint on whether that case is going to be defended and stonewalled and carried out to the point where ordinary citizens can't pursue their rights.

Mr. HORN. Well, it was mentioned that in some cases the Department of Justice has said, we will not defend you. Now, certainly if people were violating the law, they would get the message, hey, I don't want to have to go get my own lawyer. So what is your feeling as to how we solve that problem? Should we create an independent commission or office where appeals could be made outside of the agency where they are protecting their image and corporate culture and political hide and all the rest?

Mr. KLAYMAN. I think that something like that would be preferable.

You mentioned something earlier about attorneys' fees. I also feel that it is one thing to have the Government pay, but if the individuals who are responsible for the stonewalling had to pay out of their own pocket, they might be less likely to stonewall.

Mr. HORN. Well, and also it might be we will never get an employee in one of these operations.

Mr. KLAYMAN. Maybe.

Mr. HORN. Somewhere eventually we will work out something.

Ms. WELSOME. I would agree with Mr. Klayman about the attorneys' fees. I would like to see it come out of the pockets of the people who are doing the stonewalling. I know that is impractical, but it would probably do wonders for the backlog.

And I also agree with them that certain records political in nature are withheld. My experience has been that the long delays come when there is classified material involved; that is, I have one

request at the DOD for 1,952 documents. It went from Los Alamos National Labs to the DOE to the DOD, and it is under review there. Then it will go back to Los Alamos and back to me, long after—I won't need it anymore. It will be no longer needed information.

I found records are withheld mostly in cases when there is classified information, and it seems like—and I am not a software expert. It is just like with privacy records, if there were records where you could segregate classified information electronically so that you could sort your documents and then, when there was a FOIA request, release those by pushing a button of a computer. That is coming.

So that was just an idea I had, and one thing I forgot to mention earlier is that I would like you to put my statement into the record.

Mr. HORN. It is automatic. Your full statement will appear, and so will your testimony.

Ms. WELSOME. Thank you, sir.

Mr. HORN. I must say, when I listen to the Departments' panel of witnesses this morning mention the First World War and records were still around from there, that did pique my interest, and we are going to pursue that with staff as to what are the records that are still closed from the First World War.

Now, I do know one who was in that war who is still alive. Fred Humer of the Long Beach area plays Taps, and he was in the First World War, but I am just curious what they are sitting on over there that is so delicate.

Ms. WELSOME. It is incredible what they are sitting on, even the DOE. FOIA people have told me they go into Suitland Record Center and say that is scary in there. Good luck, because we need to get that information now.

Mr. HORN. Let me close on questions for this panel since some of you have mentioned that part of electronic transfer. Has anyone on the panel found the Internet or specifically agency Web sites useful in obtaining information from agencies? Has there been any experience in—I am about to put in an electronic reporting bill. That is why I am interested in this.

Ms. KIRTLEY. A lot of our callers have found it quite useful. Journalists tend to be Internet-savvy users, and they are good at plugging into things. The Thomas system, for example, which is not executive branch, it is congressional, has been very useful certainly to my small organization, which really can't afford to pay for the proprietary provision of government information. It is a godsend to us and many other similarly situated groups.

I think that the promise of what this can mean in terms of real citizen access from every corner of the globe, not to mention within the borders of this country, is really phenomenal, and those agencies that have affirmatively moved to put things on-line without being directed to do so deserve to be complimented.

Mr. HORN. Thank you for saying that, because the Library of Congress has done a superb push operation with the Thomas system, named for Thomas Jefferson, and that is—the Speaker's main goal to get every single congressional document that we have in document rooms on digital computer, and any American could tap into that, and you don't have to pay a lobbyist $1,000 a day to get

the report for you. So the goal is to make this place completely accessible to the average citizen.

On electronic records in general as opposed to the Internet agency web sites, we would be interested in your ideas on this, if you think they ought to be in legislation, because we are just in the process of rounding out the draft on that bill. So either let the staff know privately or whatever, write us a note or send Mr. George a note, and that will be very helpful.

Well, I thank you very much. There are a lot more questions we can ask. Our staff might be sending some. We would be grateful if you would take the time to respond. It will be in the record somewhere. Thank you.

We have two more panels. I would like to combine those panels so we can sort of have a play relationship there, since we have both Government officials and people that represent private entities, and I think we can probably make sure we keep our time commitments to the next group that is in here. So if Mr. Wagner, Mr. Dean, Mr. May, and Mr. Kamenar come forward, we will swear you in and begin that panel.

[Witnesses sworn.]

STATEMENTS OF G. MARTIN WAGNER, ASSOCIATE ADMINISTRATOR, OFFICE OF POLICY, PLANNING AND EVALUATION, GENERAL SERVICES ADMINISTRATION, ACCOMPANIED BY JAMES L. DEAN, DIRECTOR, COMMITTEE MANAGEMENT SECRETARIAT STAFF, GENERAL SERVICES ADMINISTRATION; RANDOLPH J. MAY, ESQ., SUTHERLAND, ASBILL & BRENNAN; AND PAUL KAMENAR, EXECUTIVE DIRECTOR, WASHINGTON LEGAL FOUNDATION

Mr. HORN. All four witnesses have confirmed. We will begin with Mr. Wagner, associate administrator of the Office of Policy, Planning and Evaluation, General Services Administration.

Mr. WAGNER. I will keep my remarks brief. Accordingly I respectfully request the full text of my prepared statement will be entered into the record.

Mr. HORN. Full text is automatically entered. We would like to have you look us in the eye and summarize it in 5 minutes if you could. That will leave more time for questions from Mrs. Maloney and myself.

Mr. WAGNER. Mr. Chairman, members of the subcommittee, I am pleased to discuss with you today the relationship of the Federal Advisory Committee Act [FACA] to Federal information policy. I am accompanied by James. L. Dean, director of GSA's Committee Management Secretariat.

The FACA addresses the importance of an open process allowing the public to know who is providing advice and recommendations to the Government's policymakers. For more than a quarter century before the enactment of the act in 1972, the Federal Government began to recognize the important role played by the advisory committees in developing effective policies.

As the influence and number of advisory committees grew in the post-World War II period, so did concerns regarding their management, cost, and accountability. FACA addresses these issues by establishing a continuing process for evaluating the need for estab-

lishing and continuing advisory committees. While FACA generally is recognized for its emphasis on controlling the number and cost of these advisory committees, its provisions governing access to committee meetings and records are equally important.

Where FOIA provisions, for example, apply to pre-existing documents, FACA's goal is to provide contemporaneous access to meetings and materials generated for use by Federal advisory committees during their deliberations. One of the first access statutes, FACA requires that each meeting be open to the public except as otherwise allowed for by the Sunshine Act; the timely notice of each meeting be provided; that the public be allowed to participate in committee sessions; and that committee documents and minutes be made available.

The fundamental information management policy reflected in FACA is found to have stood the test of time. During fiscal year 1994, 4,109 advisory committee meetings were held. Of that number, 2,603, or 63 percent of the total, were open to or partially open to the public. During this period 1,245 committee reports were issued and made available to the public.

The executive branch is also increasing its efforts to make it easier for the public to participate in its decisionmaking processes through other means. For example, the public is becoming more actively involved through use of satellite video conferencing, the Internet and other tools, such as 800 numbers. With increasing pressure to reduce costs while at the same time providing for expanded opportunities for the public to become actively involved in the Government, agencies using advisory committees can leverage these complementary tools to boost the availability of information.

GSA's Committee Management Secretariat, mandated by section 7 of FACA, issues guidelines, provides governmentwide policy and oversight of approximately 1,000 advisory committees, prepares the annual report of the President on Federal Advisory Committees, annually reviews the continuing need for existing groups, and provides a range of assistance to Federal agencies on FACA issues. These activities provide a broad base of information which is made available to the Congress and members of the public who are interested in participating in committee activities or obtaining information.

As a result of the administration's efforts to encourage greater local participation and decisionmaking, more advisory committee activities are being targeted to support field initiatives. The Secretariat is continuing to work with both headquarters and field staffs to assure compliance with FACA, and in particular to develop specific strategies to achieve maximum public access.

In the future, the question will not be, "should we include the public in the design and implementation of Federal policies and programs." Instead, if we are going to truly be effective, the issue will be how do we develop policies which fully recognize the value of the public participation as a strategic asset? Given the rapid changes that are taking place, changes which dramatically alter the public's expectations of government, we must be prepared to provide timely policy guidance, training, and support to front-line Federal managers. GSA is committed to meeting that challenge.

Mr. Chairman, members of the subcommittee, that concludes my oral summary. I would be pleased to answer any questions you may have.

[The prepared statement of Mr. Wagner follows:]

TESTIMONY OF G. MARTIN WAGNER
ASSOCIATE ADMINISTRATOR
FOR POLICY, PLANNING AND EVALUATION
U.S. GENERAL SERVICES ADMINISTRATION

BEFORE THE
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT,
INFORMATION AND TECHNOLOGY

HOUSE COMMITTEE ON
GOVERNMENT REFORM AND OVERSIGHT

June 13, 1996

Mr. Chairman, Members of the Subcommittee, I am pleased to discuss with you today the relationship of the Federal Advisory Committee Act (FACA) to Federal information policy. I am accompanied by James L. Dean, Director of GSA's Committee Management Secretariat.

For more than a quarter century before the enactment of FACA in 1972, the Federal Government began to recognize the important role played by advisory committees in developing effective policies. While the use of citizen-advisors has its roots in the earliest efforts of the Nation's leaders to obtain objective and informed advice, it was not until after the end of World War II that advisory committees became institutionalized as a preferred tool of democratic government. For example, it was an advisory committee, the Hoover Commission, whose work laid the foundation for the creation of GSA in 1949.

As the influence and number of advisory committees grew, so did concerns within the Executive and Legislative Branches regarding their management, cost, and accountability. In 1962, President Kennedy issued Executive Order 11007 establishing guidelines for using such groups. These guidelines were expanded in 1964, with the issuance of the original Bureau of the Budget Circular A-63.

Federal information policy relating to the accessibility of government records was revised in 1966, following the enactment of the Freedom of Information Act (FOIA). In 1972, similar openness policies were applied to the use of advisory committees through the enactment of FACA. Later in the 1970's, the two remaining cornerstones of Federal access policy, the Privacy Act (1974) and the Government in the Sunshine Act (1976) were enacted by the Congress.

This Administration has also recognized the significant role played by advisory committees and has taken steps to assure they are effectively managed. Through the issuance of Executive Order 12838, President Clinton directed that advisory committees whose missions were no longer supportive of national interests, or whose work resulted in duplication of effort, be terminated. Resources saved through the elimination of such groups have been re-deployed into other high-priority public participation efforts, such as those focused on regulatory reform. These actions have helped to assure that agencies will continue to emphasize those initiatives which will result in less bureaucracy and a more responsive and cost-effective government.

FACA's Information Policy Provisions

While FACA is generally recognized for its emphasis on controlling the number and costs of advisory committees, its provisions governing access to committee meetings and records are equally important. Where FOIA's provisions, for example, apply to pre-existing documents, FACA's goal is to provide contemporaneous access to meetings and materials generated for use by Federal advisory committees during their deliberations. In particular, Section 10 of the Act provides that:

- Each meeting of an advisory committee shall be open to the public, except for those closed or partially-closed pursuant to specific exemptions in the Government in the Sunshine Act;
- Timely notice of each meeting must be published in the Federal Register;
- Interested persons may appear, or file statements, before an advisory committee, subject to reasonable operating procedures;
- Documents prepared for or by, or otherwise made available to, an advisory committee must be accessible for public inspection and copying at a single location, subject to exclusions provided under the FOIA; and
- Minutes of each meeting must be kept and made available to the public.

These provisions are designed to ensure that the ebb and flow of information to and from an advisory committee is maximized, and that committees are accountable to the public, two of the underlying rationales of FACA.

Achievement of Policy Goals

During fiscal year 1994, 4,109 advisory committee meetings were held. Of that number, 2,603, or 63 percent of the total, were open or partially open to the public. However, several agencies such as the Departments of Defense and Health and Human Services, the National Endowment of the Arts, and the National Science Foundation must schedule a significant number of closed meetings. Taken together, the number of such meetings conducted by these agencies represented 79 percent of all closed and partially-closed meetings held during fiscal year 1994. Examples of sessions which may be closed include those involving discussions of classified information; reviews of proprietary data submitted in support of Federal grant applications; and deliberations involving consideration of information which, if disclosed, would harm an individual's right to privacy.

In addition to holding formal meetings, which are subject to FACA's openness provisions, the Executive Branch is increasing its efforts to make it easier for the public to participate in its decisionmaking processes. For example:

- Satellite videoconferencing is being used to conduct "national town halls" where the public can readily learn about, and provide feedback on, Federal programs.
- The Internet provides greatly expanded access to government documents, as well as a wealth of information on how to obtain services.

- "800" numbers are being increasingly made available to provide recorded or live access to current advisory committee meeting schedules and events.

With increasing pressure to reduce operating costs while, at the same time, providing for expanded opportunities for the public to become actively involved in government, agencies using advisory committees can leverage these complementary tools to boost the availability of information.

GSA Efforts to Maximize Access to Committee Information

GSA's Committee Management Secretariat, mandated by Section 7 of FACA, issues guidelines (41 CFR Part 101-6), provides governmentwide policy and oversight of approximately 1,000 advisory committees; prepares the Annual Report of the President on Federal Advisory Committees; annually reviews the continuing need for existing groups; and provides a range of assistance to Federal agencies on FACA issues. These activities provide a broad base of information which is made available to the Congress and members of the public who are interested in participating in committee activities or obtaining information.

The Secretariat also directly collaborates with agency Committee Management Officers to enhance committee operations. GSA sponsors the Interagency Committee on Federal Advisory Committee Management, which meets quarterly, to review and resolve common problems, share best practices, and prepare timely guidance on issues of major concern.

As a result of the Administration's efforts to encourage greater local participation in decisionmaking, more advisory committee activities are being targeted to support Field initiatives. The Secretariat is continuing to work with both Headquarters and Field staffs to assure compliance with FACA and, in particular, to develop specific strategies to achieve maximum public access.

The Act's information policy provisions are extensively covered as a part of the Secretariat's FACA management training course which is conducted in Washington, DC on a quarterly basis and in the Field as part of special efforts to address complex public participation programs. Since it began, GSA has trained over 2,000 committee managers, including site-specific requirements of the Department of Agriculture, the Centers for Disease Control, and the Department of Energy.

Future Directions

In the future, the question will not be, "Should we include the public in the design and implementation of Federal policies and programs?" Instead, if we are going to be truly effective, the issue will be, "How do we develop policies which fully recognize the value of public participation as a strategic asset?"

The fundamental information management policy reflected in FACA is sound and has stood the test of time. However, given the rapid changes that are taking place --

changes which dramatically alter the public's expectations of government -- we must be prepared to provide timely policy, guidance, training, and support to front-line Federal managers. GSA is committed to meeting that challenge.

Mr. Chairman, Members of the Subcommittee, that concludes my prepared statement. I would be pleased to answer any questions you may have.

Mr. HORN. Thank you very much. We will wait until all of you are done. Then we will have 10 minutes to a side here.

Mr. Dean, please proceed.

Mr. DEAN. I have no public statement. I will yield to the next witness, thank you.

Mr. HORN. OK. Mr. May.

Mr. MAY. I am Randolph May, a partner in Sutherland, Asbill & Brennan. I appear before you today principally in my capacity as the former chairman of the Committee to Review the Government Sunshine Act of the Administrative Conference of the United States. The special committee was established in the spring of 1995 in response to a request by SEC Commissioner Steven Wallman and 12 other present and former agency Commissioners asking that the Congress take a fresh look at how the Government in the Sunshine Act is working in practice composed of ex-officials, public interest representatives, lawyers who practice before agencies, and academics.

The committee held several meetings and a public hearing before reaching these conclusions in October 1995. It released its report recommending changes in the Sunshine Act, and I would like to devote my testimony to summarizing briefly how the law operates and the report's recommendations.

The Sunshine Act requires with only a few exceptions that all meetings among members of multimember agencies and commissions, such as SEC and FCC and so forth, be held in public after at least 7 days' advance notice. A meeting is defined as "deliberations of at least a number of agency members required to take action on behalf of the agency where such deliberations determine or result in the joint disposition or conduct of official agency business."

The law does not restrict, for example, the EPA Administrator from having nonpublic meetings at any time with her staff officials. The primary stated goal of the Sunshine Act is to enhance the public's understanding of the agency's decisionmaking process.

The special committee found considerable evidence, however, that the act is not working as intended to provide the public with meaningful access to agency decisionmaking. What is more, it found considerable evidence that the law is having a harmful impact on the quality of agency decisionmaking at the agencies by impeding collegial deliberation.

A principal reason Congress creates multimember agencies is to gain the benefits that result from agency members with differing political philosophies, experiences, and expertise deliberating collectively. If the Sunshine Act is, in fact, impeding collegial deliberation, then two expressions of congressional intent are indeed working at cross purposes with each other.

In the time allotted for my testimony, I can't detail all the reasons why meaningful collective deliberation as opposed to mere announcements by individual agency members who previously arrived at positions generally does not take place at the public meetings. For now suffice it to say that the committee found a widespread consensus that, in fact, collective deliberation does not take place. Agency members most often do little more than announce or briefly explain decisions they have already reached.

Rather than being able to hash out the pros and cons of a particular decision in a collective deliberative process, agency members rely on their staffs to negotiate with the staffs of other agency members or in one-on-one meetings with other Commissioners. While that mode of operation enhances the power of Commissioner staffs and requires an extraordinary increase in time and effort when agency members hold a series of one-on-one meetings with other Commissioners, it does little to promote collegiality among the Commissioners.

The necessity to avoid all nonpublic discussions of agency business necessarily inhibits the development of trusting and trust, and cooperative relationships among Commissioners who each have an equal vote and responsibility for the agencies' communications, which must take place indirectly through intermediaries, suffer from all the infirmities inherent in any process of third-party communication.

What to do. Some who agree that the Sunshine Act generally is not providing the public with a real view of agency decisionmaking say that the fault lies with all of us as agency members. They are public officials, some say, and they should be forced to deliberate in public. In other words, it is not the Sunshine Act that needs reforming, it is the public officials.

The Administrative Conference Committee concluded otherwise, recommending that Congress modify the act to establish a pilot program for a period of 5 to 7 years to allow agency members to meet in private to discuss agency business if such members are memorialized by detailed summary of the meeting to be placed in the public record within 5 days of such meeting. The summary would allow the public to know that a meeting had been held to discuss a particular subject and to know the general nature of the discussion. This is more information about the status and nature of the consideration of a matter than the public now receives when closed-door deliberations are conducted through the staff or through one-on-one meetings between agency members.

Importantly, before an agency could participate in the pilot program allowing private meetings subject to the detailed memorialization requirement, it would have to agree to the extent practicable to conduct votes and take other official actions on all significant public matters and in regularly scheduled open meetings rather than employ notation or circulate voting procedures which are now common in many agencies.

Keep in mind that the Sunshine Act does not prohibit agencies from voting on major issues by circulating written proposals among the Commissioners. Of course, issues are decided by notation. The voting public has no access whatever to the deliberative process.

The special committee's recommendation for change, at least on a trial basis, which would then be evaluated carefully, is premised on the belief that it ought to be possible through modifications to the act to achieve the twin goals of actually enhancing the public's understanding of the agency decisionmaking process. Doing so by making more information available, and also fostering true collegial decisionmaking in a way that too often today is missing in our multimember agencies.

I appreciate the opportunity to appear before the committee today, and hopefully the conference committee recommendation will spur interest in taking a fresh look at how the Sunshine Act is really working at present and whether its operation can be improved. Thank you, Mr. Chairman.

[The prepared statement of Mr. May follows:]

PREPARED TESTIMONY OF RANDOLPH J. MAY

Before The

House Subcommittee on Government Management, Information and Technology

Mr. Chairman and members of the Committee, I am Randolph J. May, a partner in the law firm of Sutherland, Asbill & Brennan. I appear before you today at this hearing examining the Sunshine Act principally in my capacity as the former Chairman of the Special Committee to Review the Government in the Sunshine Act of the Administrative Conference of the United States ("ACUS"). The Special Committee was established in the Spring of 1995 in response to a request by SEC Commissioner Steven Wallman and twelve other present and former agency commissioners asking that the Conference take a fresh look at how the Government in the Sunshine Act is working in practice. The ACUS Special Committee, composed of agency officials, public interest representatives, lawyers who practice before agencies, a trade association official, and an academic, held several meetings and a public hearing before reaching its conclusions. In October 1995, it released its Report recommending changes in the Sunshine Act, and I would like to devote my testimony to summarizing briefly how the law operates and the Report's recommendations. I request that the attached copy of the ACUS Report be associated with my testimony in the hearing record.

It has been twenty years since passage of the Sunshine Act, so it is appropriate to consider whether the Act is fulfilling its purpose, or whether instead the law can be improved so as not

to impede the effective functioning of some of our most important government agencies, while still providing the public with at least as much access to the agency decisionmaking process as the public enjoys today.

The Sunshine Act requires, with only a few exceptions, that all "meetings" among members of multi-member agencies and commissions, such as the SEC, CFTC, FTC, and the FCC, be held in public, after at least seven days advance public notice. A meeting is defined as the "deliberations of at least the number of agency members required to take action on behalf of the agency where such deliberations determine or result in the joint conduct or disposition of official agency business." The law does not restrict, for example, the EPA Administrator from having a non-public meeting at any time with her top staff officials.

The primary stated goal of the Sunshine Act is to enhance the public's understanding of the agency decisionmaking process by allowing the public to witness government officials actually making decisions. This is certainly a laudable objective. The ACUS Special Committee found considerable evidence, however, that the Act is not working as intended to provide the public with meaningful access to agency decisionmaking. What's more, it found considerable evidence that the law is having a harmful impact on the quality of decisionmaking at the agencies by impeding collegial deliberation.

A principal reason that Congress creates multi-member agencies, rather than departments headed by a single secretary or

administrator, is to gain the benefits that result from agency members with differing political philosophies, experiences, and expertises deliberating collectively. Indeed, that's why many of the enabling statutes for the agencies require a balanced representation in terms of political affiliation. If the Sunshine Act is, in fact, impeding collective deliberation, two expressions of Congressional intent are working at cross-purposes with each other.

Why does the Sunshine Act inhibit the collegial decisionmaking process that is the very rationale for a multi-member agency? Based upon the testimony of a number of agency members and a review of studies on the subject, the Committee found several reasons why meaningful collective deliberation (as opposed to mere announcements by individual agency members of previously-arrived at positions) generally does not take place at the public meeting. Among the reasons: concern that providing initial views publicly, without sufficient thought and information, may harm the public interest by irresponsibly introducing uncertainty or confusion to industry, financial markets, or the general public; a desire on the part of members to speak with a uniform voice on matters of particular importance or to develop negotiating strategies which might be thwarted if debated publicly; reluctance of an agency member to embarrass another agency member or himself through inadvertent, argumentative, or exaggerated statements; concern that an agency member's statements may be used against the agency in subsequent litigation, or be misunderstood by the public

or the press, as for example, when the agency member is testing a position by "playing devil's advocate" or merely "thinking out loud" in the early stages of deliberation.

While one may argue about whether some or all of these concerns **should** inhibit vigorous give-and-take debate at agency public meetings, the Committee found a fairly widespread consensus that, in fact, they **do**. Most observers agree that Sunshine meetings typically are sterile affairs, with agency members most often doing little more than announcing or briefly explaining decisions they've already reached. (Of course, in most cases, the decisions announced at the public meeting will be released promptly to the public in the form of agency orders and opinions fully setting forth the basis and purpose of the agency action and fully subject not only to judicial review but public debate.)

Rather than being able to hash out the pros and cons of a particular decision in a collective deliberative process--by testing a position, gauging reaction, thinking out loud about the reaction, and reformulating an idea-- agency members instead rely on their staffs (who are not subject to the Sunshine Act) to "negotiate" with the staff members of other commissioners, or on one-on-one meetings with other commissioners. (Note that even one-on-one meetings are prohibited if the agency has three or less members.) While this mode of operation enhances the power of the commissioners' staffs, and requires an extraordinary increase in time and effort if agency members hold a series of rotating one-on

one meetings with their fellow agency members, it does little to promote collegiality among the commissioners.

The necessity to avoid at all times all non-public face-to-face substantive discussions of agency business necessarily inhibits the development of trusting and cooperative relationships among commissioners who each have an equal vote and responsibility for the agency's actions. Communications which must take place indirectly through intermediaries obviously suffer from all of the infirmities inherent in any process of third-party communication.

What to do? Some who agree that Sunshine meetings generally do not provide the public with a real view of agency decisionmaking say that the fault lies with the agency members. They are public officials and despite the concerns cited above, they should be **forced** to "deliberate" in public. In other words, it's not the Sunshine Act that needs reforming, it's the public officials.

The ACUS Committee concluded otherwise, recommending that Congress modify the Act by establishing a pilot program to last for five to seven years which would allow agency members to meet in private to discuss agency business if such meetings are memorialized by a detailed summary of the meeting to be made public no later than five days after the meeting. The summary, which would include the date, time, participants, subject matter discussed, and a review of the nature of the discussion, would allow the public to know that a meeting had been held to discuss a particular subject and to know the general nature of the

discussion. This is more information about the status and nature of the consideration of a matter than the public now receives when closed-door deliberations are conducted through staff or through one-on-one meetings of agency members. In these cases, the public doesn't even know a matter is being discussed.

Importantly, under the ACUS Recommendation, before an agency could participate in the pilot program allowing private meetings subject to the detailed memorialization requirement, it would have to agree, to the extent practicable, to conduct votes and take other official actions on all significant public matters in regularly-scheduled open meetings, rather than employing "notation" or "circulation" voting procedures which are now common at many agencies. (The Sunshine Act does not prohibit agencies from voting on major issues by circulating written proposals among the commissioners; it merely requires that all discussions which fit the definition of "meetings" be public.) Thus, under the present regime, nothing prevents an agency from **not** having public meetings to decide important matters. Of course, when issues are decided by notation voting, the public has no access whatever to the deliberative process.

The Special Committee made other recommendations designed to improve the agencies' implementation of their Sunshine Act responsibilities in a way that would maximize the public's understanding of agency decisionmaking processes. While I won't discuss these in my prepared testimony, these recommendations are set forth in the Special Committee's Report.

The Special Committee's recommendation for change, at least on a trial basis which would then be evaluated carefully, is premised on the belief that it ought to be possible, through modifications to the Sunshine Act, to achieve the twin goals of actually enhancing the public's understanding of the agency decisionmaking process by making more information available and fostering true collegial decisionmaking in a way that today is too often missing in our multi-member agencies.

I appreciate the opportunity to appear before the Committee today. Hopefully, the ACUS Committee's recommendation will spur interest in Congress, in the agencies, and among the public in taking a fresh look at how the Sunshine Act is really working at present and whether it can be improved, consistent with remaining faithful to the fundamental objective of promoting openness in our government.

Administrative Conference of the United States

Reform of the Government in the Sunshine Act

Special Committee to Review the Government in the Sunshine Act

October 10, 1995

This report and recommendation was prepared by a Special Committee appointed by the Chair of the Administrative Conference of the United States. The views expressed are those of the Committee as a group. The names of the members are listed on the inside cover. The full membership of the Conference did not have an opportunbity to consider this report before the agency ceased operations.

Special Committee to Review the Government in the Sunshine Act

Chairman

Randolph J. May, Esq.
Sutherland, Asbill & Brennan
Washington, DC

Members

Daniel Campbell, Esq.
General Counsel
National Transportation Safety Board
Washington, DC

Professor Martha Derthick
Government and Foreign Affairs
University of Virginia
Charlottesville, VA

Lewis A. Engman, Esq. *
President
Generic Pharmaceutical Industry Ass'n.
Washington, DC

Hon. Edward J. Gleiman
Chairman
Postal Rate Commission
Washington, DC

Hon. Paul M. Igasaki
Vice Chairman
Equal Employment Opportunity Comm.
Washington, DC

Paul D. Kamenar, Esq.
Executive Legal Director
Washington Legal Foundation
Washington, DC

Alan. B. Morrison, Esq.
Public Citizen Litigation Group
Washington, DC

Marianne K. Smythe, Esq.
Wilmer, Cutler & Pickering
Washington, DC

* *Mr. Engman died during the pendency of this project*

Staff

Jeffrey S. Lubbers, ACUS Research Director

REFORM OF THE GOVERNMENT IN THE SUNSHINE ACT

Report and Recommendation by the Special Committee to Review the Government in the Sunshine Act

The Government in the Sunshine Act, enacted in 1976, requires federal agencies headed by a collegial body, a majority of whose members are appointed by the President and confirmed by the Senate, to open its meetings. About 50 federal agencies are subject to the Act, including the major independent regulatory commissions such as the Securities and Exchange Commission, Federal Trade Commission, Federal Communications Commission and the National Labor Relations Board. (Departments, and many agencies headed by a single individual, are not covered by the Act.) The Act's ten enumerated exemptions generally parallel those in the Freedom of Information Act (FOIA), with one important exception. The Sunshine Act has no exemption that parallels the fifth exemption in the FOIA for interagency and intra-agency "pre-decisional" memoranda and letters. The Act also prescribes in detail the procedures that agencies must follow to invoke an exemption and to close a meeting. The Act's primary purposes are to provide the public with information regarding the decisionmaking processes of federal agencies, and to improve those processes, while protecting the rights of individuals and the ability of the government to carry out its responsibilities.

In a letter dated February 17, 1995, signed by over one dozen current and former commissioners of multi-member agencies and several private organizations, the Chair of the Administrative Conference of the United States (ACUS) was asked to review the effectiveness of the Government in the Sunshine Act. The letter's signatories stated strong support for the Act's underlying goal of enhancing public understanding of agency decisionmaking, but expressed concern as to whether the Act is, in fact, meeting this goal as well as it might. They also suggested that the Act has adversely affected the decisionmaking at multi-member agencies because of the Act's "chilling effect" on the willingness and ability of agency members to engage in collegial deliberations A copy of the February 17 letter is attached to this report as Exhibit 1.

In a letter to the ACUS Chair, dated May 11, 1995, the members of the Federal Trade Commission, referring to the February 17 letter, endorsed an examination of the effectiveness of the Act. The FTC Commissioners stated: "Notwithstanding the laudable goals of this legislation, having operated under the Act for more than fifteen years, questions may be raised whether it provides for the proper balance between public access and candor in agency deliberations and whether the purposes arguably served by the Act are not adequately addressed by other statutes such as the Administrative Procedure Act." A copy of the May 11 letter from the FTC is attached to this Report as Exhibit 2.

The Chair established the Special Committee to study issues raised by these letters. The Committee, in a series of open meetings held from May to September, and at a public hearing held on

September 12, 1995,[1] heard from numerous agency officials and reviewed articles written for ACUS and others to the effect that public meetings under the Act often lack meaningful substantive exchange of ideas and real collective deliberation on issues being decided. Among the reasons given for the inhibiting effect of public meetings on collective decisionmaking are the following: concern that providing initial deliberative views publicly, without sufficient thought and information, may harm the public interest by irresponsibly introducing uncertainty or confusion to industry or the general public; a desire on the part of members to speak with a uniform voice on matters of particular importance or to develop negotiating strategies which might be thwarted if debated publicly; reluctance of an agency member to embarrass another agency member, or to embarrass himself, through inadvertent, argumentative, or exaggerated statements; concern that an agency member's statements may be used against the agency in subsequent litigation, or misinterpreted or misunderstood by the public or the press, as for example, when the agency member is testing a position by "playing devil's advocate" or merely "thinking out loud"; and concerns that a member's statements may affect financial markets.

In addition, the Committee has received extensive and credible testimony that the restrictions imposed by the Act have had the effective of not only diminishing discussions on the merits of issues before agencies, but also preventing debate concerning agency priorities and the establishment of agency agendas, even though such discussions of a preliminary nature may not technically constitute a "meeting" otherwise required to be held in public under the Act.[2] While it may be permissible pursuant to a literal interpretation of "meeting"[3] for a quorum of agency members to conduct preliminary discussions on an issue, as a practical matter it is extremely difficult for an agency member to make the distinction between actions that actually dispose of agency business and those that merely constitute preliminary discussions. Agency members, and agency general counsel who advise them, are understandably--and appropriately--concerned about engaging in discussions with a quorum of agency members that could be perceived, even arguably, as crossing the line, even though the discussions may, in fact, not dispose of official agency business. And, of course, it is difficult, *a priori*, to know whether a conversation that is anticipated to be preliminary will turn into a conversation that takes on a more definitive cast.

Although there obviously are exceptions, and open meetings held under the current Act are valuable in that they allow an agency to explain publicly the results of its prior decisionmaking, the Committee believes that, generally, true collective decisionmaking does not occur at agency public meetings. Further, the Committee believes the Act also promotes inefficient practices within agencies which themselves contribute to the erosion of collegial decisionmaking and, correspondingly, to a decline in the quality of agency decisions that the public receives. For example, in order to avoid having a meeting of a quorum, the Act has the effect of encouraging agencies to use one-on-one "rotating" meetings in order to reach consensus among the agency's members. This is obviously an inefficient way for a multi-member body to conduct business, just in terms of the additional time spent by agency members in conducting such meetings, compared to a group meeting at which all members could

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[1] A copy of the Federal Register notice, dated August 8, 1995 (60 Fed. Reg. 40302) is attached to the Report as Exhibit 3. The hearing transcript is attached as Exhibit 4.

[2] A "meeting" means the "deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations determine or result inn the joint conduct or disposition of official agency business...." 5 USC 552(a)(2).

[3] See FCC v. ITT World Communications, Inc., 466 US 463 (1984).

deliberate together. More importantly, serial meetings of this type are no substitute for collective decisionmaking; the outcomes of such meetings may significantly vary from those that might have resulted from a free exchange of views among all the members of a multi-member agency. Another consequence of the Act has been that it encourages the deliberative process to be conducted by and through the staff of the agency members, enhancing the power of the intermediary staff members *vis a vis* the agency members and, perhaps, reducing the accountability of appointed agency members.

The Committee is also aware of and is concerned about the tendency for agencies subject to the Sunshine Act to rely increasingly on notation voting (i.e., voting on an item by circulation based on a memorandum without discussion in a public meeting) when taking action on important substantive matters. The Sunshine Act does not prohibit notation voting, and notation voting was used to some extent prior to enactment of the Sunshine Act to deal with routine or emergency matters. Nevertheless, the routine use of this mode of decisionmaking, at least with regard to important substantive matters, does not further the Act's goal of openness and improved public access to agency decisionmaking. Thus, to the extent that the Sunshine Act has increased this use of notation voting, it has diminished whatever opportunity for collective decisionmaking would have existed at a meeting attended by the agency members.

In light of the above, the Committee is concerned that the public is neither receiving the enhanced access to the governmental decisionmaking process that the Act envisioned, nor as discussed below, is it receiving the benefit of better agency decisions through collegial decisionmaking. It should be noted that the Committee also heard from representatives of several major press-related organizations who, while not disputing the view that agency members are generally reluctant to have substantive discussions in public meetings, expressed the view that such public officials should change their behavior and be admonished to do so. These representatives tended to believe that the Act itself was not the problem. The Committee was nevertheless persuaded that the Act does need to be adjusted, and it offers the following recommendations for changes in the Act (and in agency behavior) in the belief that these adjustments will increase collegial decisionmaking among the members of multi-member agencies, and at the same time improve, or at least not diminish, the public's access to the agency's actual deliberative process.

The Committee notes that concerns with respect to the effectiveness of the Act and its impact on the collegiality of agency decisionmaking have been the subject of debate for some time.[4] Moreover, it must be remembered that the principal reason that Congress has established multi-member agencies in the first place is because Congress has made the judgment that, for the matters subject to the agency's jurisdiction, there is a benefit from a collegial decisionmaking process that brings to bear on the ultimate decisions the diverse viewpoints of agency members who have differing philosophies, experiences, and expertise. If the Act has had the effect, as a matter of fact, of diminishing, or in some cases negating, the collegial decisionmaking process that is the *raison d'être* for a multi-member agency, without enhancing public understanding of the agency decisionmaking process, it is appropriate to consider alternative models that are consistent with achievement of the objectives of the Act.

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[4] See ACUS Recommendation 84-3, "Improvements in the Administration of the Government in the Sunshine Act, 1 CFR 305.84-3, 49 Fed. Reg. 29942, (July 25, 1984).

Therefore, the Committee recommends that Congress establish a time-limited pilot program that would allow agencies more leeway to have private meetings, subject to appropriate memorialization, if they opt to make commitments to avoid undue use of notation voting and to hold regular open meetings. The Committee recommends five to seven years as the time period--enough time to allow an assessment of the pilot to see whether the approach encompassed in it achieves the twin purposes of increasing the availability of information to the public and increasing collegial decisionmaking in the agencies. If Congress finds that the pilot worked well, it could amend the Act accordingly; if the assessment shows problems or bad faith on the part of agency decisionmakers in carrying it out, it could be terminated at that point.

More specifically, the pilot program should authorize an agency subject to the Government in the Sunshine Act to allow its members to meet in private, without advance notice, provided that the agency requires such meetings to be memorialized by "a detailed summary" of the meeting, made public no later that five working days after the meeting, that would indicate the date, time, participants, subject matters discussed, and a review of the nature of the discussion. Before such pilot program may go into effect, the participating agency also would have to agree (1) to conduct votes and take other official actions on important substantive matters (not covered by the Act's exemptions) in open public meetings and to refrain, to the extent practicable, from using notation voting procedures for such matters, and (2) to hold open public meetings, to the extent practicable at regular intervals, at which it would be in order for members to address issues discussed in private sessions or items disposed of by notation. This opportunity for discussion is not intended to imply that finality of matters previously voted on by notation would be affected by such discussions except to the extent that the agency acts consistently with its own procedures for reconsideration. The results of such a pilot program should be examined carefully by Congress and other appropriate entities before it is extended or made permanent.

The Committee recommends, in addition to the institution of the pilot program, that the Act be amended to require agencies to develop and publish rules or policy statements outlining their procedure for notation voting and the types of issues for which it will normally be used. The Committee also recommends that agencies hold regularly scheduled open meetings at which it would be in order for members to discuss, among other things, items disposed of by notation.

The Committee was also convinced that there is a special problem caused by the Act with regard to agencies operating in an adjudicative capacity. The Act currently contains an exemption that permits closure of meetings involving the "initiation, conduct, or disposition by the agency of a particular case of formal adjudication pursuant to the procedures in section 554 of [the APA] or otherwise involving a determination on the record after opportunity for a hearing." Agencies such as the Federal Trade Commission and the Occupational Safety and Health Review Commission (OSHRC) frequently and properly close meetings to discuss the disposition of such cases. The problem occurs when, after such a meeting, the commissioners begin writing the opinions necessary in such cases. Should they wish to discuss the wording of such an opinion, as would an appellate court, the members have to notice, and vote to close, another "meeting" under the Act. Obviously, this inefficiency is heightened in the case of a three-member commission such as the OSHRC where no two members can ever discuss agency business in private because they would constitute a quorum. Therefore the Committee recommends that the Act be amended to make clear that, when an agency properly closes a meeting under exemption 10, any subsequent meeting to discuss the same specific adjudicatory matter

need not be subject to the notice and closure procedures under the Act. The Committee recognizes that this proposal should perhaps be extended to follow-up discussions to meetings closed under other exemptions as well, but it did not have enough time to study that question.

The Committee also heard testimony about special problems caused by the above-quoted wording of exemption 10 at the United States International Trade Commission (ITC). The ITC has several types of adjudicative proceedings, some of which are governed by section 554 of the APA, and therefore clearly fall within the terms of exemption 10, and others of which would appear to fit the definition by "otherwise involving a determination on the record after a opportunity for a hearing." The ITC, perhaps due to an abundance of caution, has declined to invoke this exemption for any of its adjudications. The Administrative Conference has already urged the ITC to revisit this issue and seek a statutory clarification if necessary.[5]

Finally, the Committee believes that agencies could and should consider steps to make the open meetings more useful and to increase the flow of information to the public. The Committee reiterates the suggestions made by ACUS in 1984[6] and adds a few more.

In addition to the recommendations set forth below, the Committee considered several other ideas. The Committee rejected some of them, such as repealing the Act (which was not supported by any of the participants in the Committee meetings or public hearing), amending it to permit each agency to develop its own openness regulations, or amending it to cover only meetings of the full board or commission. Other proposals, beyond those recommended below, and including some of those contained in the August 8 Federal Register[7] notice, may be worthy of further consideration., in lieu of or even in conjunction with, the recommendations contained herein

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[5] In Recommendation 91-10, "Administrative Procedures Used in Antidumping and Countervailing Duty Cases," Part D, ACUS made the following recommendation to the ITC:

> "To encourage collegial decisionmaking, the ITC should exchange drafts, views and other information before entering into formal deliberations. The Commission should decide whether informal meetings to discuss the disposition of AD/CVD cases constitute meetings exempt from the Sunshine Act under exemption 10. If the Commission determines that such meetings are subject to the Sunshine Act, then Congress should consider amending the Tariff Act to provide that the Sunshine Act does not apply to informal meetings held to discuss the disposition of AD/CVD cases."

[6] The Committee subscribes to the earlier ACUS recommendation made to the agencies in this regard in Recommendation 84-3 (1):

> "Agencies should continually strive to reflect fully in their activities the basic purpose of the Government in the Sunshine Act, which is to enlarge public access to information about the operations of government. Agencies are strongly encouraged to review periodically their sunshine policies and practices in light of experience and the spirit of the law for the purpose of making adjustments that would enlarge public access to meaningful information, such as (a) invoking the exemptions of the Act only where there is substantial reason to do so; and (b) making open meetings more useful through comprehensible discussion of agenda items and provision of background material and documentation pertaining to the issues under consideration."

[7] See, e.g., the various proposals outlined in the Federal Register notice, supra note 1.

Recommendation

(1) Congress should establish a pilot program, to last for five to seven years, that would authorize an agency subject to the Government in the Sunshine Act to allow its members to meet in private, without advance notice, provided that (a) the agency requires such meetings to be memorialized by "a detailed summary" of the meeting, made public no later than five working days after the meeting, that would indicate the date, time, participants, subject matters discussed, and a review of the nature of the discussion, and (b) that before such pilot program may go into effect, the participating agency also (i) agrees to conduct votes and take other official actions on important substantive matters (not covered by the Act's exemptions) in open public meetings and to refrain, to the extent practicable, from using notation voting procedures for such matters, and (ii) agrees to hold open public meetings, to the extent practicable at regular intervals, at which it would be in order for members to address issues discussed in private sessions or items disposed of by notation. This opportunity for discussion is not intended to imply that finality of matters previously voted on by notation would be affected by such discussions except to the extent that the agency acts consistently with its own procedures for reconsideration. The results of such a pilot program should be examined carefully by Congress and other appropriate entities before it is extended or made permanent.

(2) Congress should also amend the Sunshine Act in several particulars:

(a) to require agencies subject to the Act to develop and publish rules or policy statements outlining their procedure for notation voting and the types of issues for which it will normally be used.

(b) to make clear that when an agency properly closes a meeting under exemption 10, any subsequent meeting to discuss the same matter need not be subject to the notice and closure procedures under the Act.

(3) Agencies subject to the Sunshine Act should develop regulations (or policies) that maximize the amount of information made available to the public before, during, and after agency meetings. For example, agencies should strive to publish meeting notices further in advance of the date for meetings where feasible; to provide more complete summaries of upcoming agenda items; to make available relevant non-privileged documents before or during meetings; offer closed circuit television coverage of meetings where there is enough interest; and to release minutes, summaries, and decisional opinions as soon as feasible after meetings.

(4) The United States International Trade Commission should follow ACUS Recommendation 91-10[8] and revisit the issue of whether its adjudications are covered by exemption 10 of the Act.

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[8] See note 1, supra.

Mr. HORN. Thank you very much for that most helpful statement.

Our last witness is Paul Kamenar, the executive director of the Washington Legal Foundation.

Mr. Kamenar.

Mr. KAMENAR. Thank you Mr. Chairman.

I am Paul Kamenar. My correct title is executive legal director, but close enough.

The Washington Legal Foundation is a nonprofit public interest law and policy center based here in Washington, DC. We are dedicated to the principles of promoting the free enterprise system as well as a limited and accountable Government. We advance our objectives through litigation in the courts and by publishing materials in our legal studies division. Since its founding in 1977, our foundation has represented over 650 Members of Congress, State legislators, State attorneys general, Governors, municipalities, victims' rights groups and civic organizations, property rights groups, and small business owners in promoting the principles of our foundation.

I would like to focus my remarks this afternoon on our litigation under the Federal Advisory Committee Act and maybe address some of the other issues as well.

Our main case that we filed in 1985 was against the American Bar Association's Committee on Federal Judiciary to have them come under the Federal Advisory Committee Act. As you know, the coverage under the act extends to all committees that are, established and utilized, by Government agencies. While the ABA committee was not established by the Federal Government, they certainly are utilized by the Justice Department and by the President in terms of evaluating the character and qualifications of judicial nominees.

In 1985 we sued the committee and its chairman, Robert Fiske, Jr., because they were sharing and leaking information about their judicial nominees with liberal activist groups, particularly the Alliance for Justice. When we got wind of that, we asked Mr. Fiske to give us the information and requested to attend their meetings, and they said no, we are not subject to the Advisory Committee Act; go away.

We ended up in court. The district court ruled that certainly the ABA committee comes within the coverage and purview of the Federal Advisory Committee Act because they are certainly utilized by the Justice Department. However, the district court held it would be a violation of separation of powers for the act to apply to the ABA because of the President's nominating powers, even though there was no evidence in the court record at all that there would be any interference with the President's nominating powers. This was particularly a strange argument to make since the Federal Advisory Committee Act was being successfully applied to the President's Advisory Committee on Ambassadorial Appointments, which performed precisely the same function that the ABA committee did with judicial candidates.

Public Citizen finally joined in our case, and we took it to the Supreme Court. The Supreme Court ruled in a very much criticized opinion that the ABA committee really isn't utilized by the Justice

Department as Congress intended when they passed the Federal Advisory Committee Act. They said, we are going to interpret the word "utilize" to mean that the putative advisory committee must be controlled or managed by the Government agency, and since there was no evidence that the Justice Department actually controls the ABA committee, the ABA committee gets this free ride in terms of being exempted from the Federal Advisory Committee Act.

We think that is a serious problem under the law. There has been other litigation since then where the lower courts have used the ABA case to exempt coverage under the Federal Advisory Committee Act to organizations out there.

I would like to bring up another example that raises a different problem. Our suit against the Sentencing Commission which has an advisory committee that is advising it on establishing sentencing guidelines for environmental offenses. We asked to attend those meetings and to get the documents. The Sentencing Commission made the amazing argument that they are not even a Government agency. Here's the way they made that argument: If you look at the FOIA, Federal Advisory Committee Act, Sunshine Act, they all apply to Government agencies as defined by the Administrative Procedure Act. The Administrative Procedure Act defines a Government agency as everything under the sun except Congress and the courts. And the Sentencing Commission says if you squint at that word "court," it really means the entire judicial branch; and since we are the judicial branch, we get a free ride from being accountable to the American people.

We argued that case to the court of appeals. The chief judge agreed with the Sentencing Commission, and threw us out. We are in that court again raising another argument that if we can't get documents under the Advisory Committee Act, or FOIA, or anything else, we should get them under the common law doctrine of public access to records. That is the same doctrine that news agencies use to go into courts to get the videotapes of depositions and transcripts of audiotapes, because, of course, courts are exempt from FOIA.

How do news agencies get it? They use the common law doctrine of public records. If you are a court for the purposes of the Federal Advisory Committee Act, we should get the documents under the common law doctrine. The Commission came in on the second lawsuit and said, we are not a court, so you can't get them under that theory either. They are playing a shell game. This case was argued about 8 months ago, and we expect a decision any day.

Another suit we filed just recently is one on behalf of Members of Congress against EPA for failing to submit a cost benefit report. The report on the Clean Air Act also involves the use of an advisory committee which simply doesn't even keep minutes of its meetings, something as basic as that. They failed to have minutes of their meeting.

And finally, I know you are also looking at the FOIA application and the Justice Department. I noticed the Justice Department was here earlier this morning and testified, giving you glowing reviews of how great they are applying the law and so forth. Yet we have heard a lot of cases where they are actually blocking access, and

I just want to submit for the record what I have attached to my testimony.

I asked the Justice Department recently to send me a list of all criminal cases on wetland violators because that is a big policy issue that is going on, and they sent me a document that is redacted. All of the defendants—it is United States versus blank, and you have redaction because of concerns of privacy. These are criminal cases that are held in public trials, and some of these cases have already been decided years ago. And yet for fear of an unwarranted invasion of personal privacy, they are leaving out the name of the defendant in these cases; and the Justice Department has the nerve to come up here and say how they are the leader in terms of providing access under FOIA.

So there are a lot of problems here. I urge this committee to address them and will be glad to answer any questions that you might have. Thank you.

[The prepared statement of Mr. Kamenar follows:]

Mr. Chairman and Members of the Committee, I am Paul D. Kamenar, Executive Legal Director of the Washington Legal Foundation. I am pleased to be here today at the invitation of the committee to discuss with you our views of the administration of the Federal Advisory Committee Act and related statutes.

The Washington Legal Foundation (WLF) is a non-profit public interest law and policy center based here in Washington, D.C., with supporters nationwide. WLF is dedicated to supporting the free enterprise system and promoting the principles of a limited and accountable government. WLF advances its objectives through litigation and participation in administrative proceedings, as well as by publishing educational materials through its Legal Studies Division. Since its founding in 1977, WLF has represented over 650 Members of Congress, state legislators, state attorneys general, governors, municipalities, victims' rights and civic organizations, property rights groups, and small business owners. WLF does not lobby for the passage or defeat of legislation, and nothing in this statement or my remarks should be construed as such. WLF is appearing before the committee solely in response to a written invitation by this Committee to give our views on the public interest aspects of the administration of the Federal Advisory Committee Act and related statutes.

As I stated at the outset, one of the principles that WLF promotes is a limited and accountable government. Accountability for the actions taken by federal agencies and officials can be realized to a great extent by the proper implementation of the Federal Advisory Committee Act (FACA), the Freedom of Information Act (FOIA), and the Government in the Sunshine Act. Accordingly, WLF has been involved in litigation over the years that address important issues under these statutes, particularly the FACA.

I should also note that as a member of the Administrative Conference of the United States (ACUS) from 1982 until 1995, I became familiar with the way agencies viewed the application of FACA, FOIA, and the Sunshine Act to their activities. In 1995, I was a member of the Special Committee of ACUS to Review the Government in the Sunshine Act, and I am pleased to be testifying today on a panel with the chairman of that committee, Randolph May, who will focus his remarks on the work of that committee.

FACA was enacted in 1972 by the Congress to regulate the proliferation and operation of the thousands of advisory committees composed primarily of private citizens and "established or utilized" by the President, agencies, and government officials, and which provide "advice or recommendations" to the agency or agency officials. 5 U.S.C. app. 2, §§ 2, 3. As an "open government" law, FACA can be viewed as an amalgam of both the FOIA and the Sunshine Act in that the advisory committee meetings are required for the most part to be open to the public and that advisory committee documents are disclosable in much the same way as they are required to be disclosed under FOIA. FACA, § 10. The General Services Administration (GSA) has been charged by Congress under FACA to administer the Act and has promulgated regulations governing the operation of advisory committees. See 41 C.F.R. Subpart 101-6.10.

Over the years, WLF has litigated issues regarding the application of FACA that raise fundamental issues about the coverage of the Act that may be of interest to this Committee. In particular, litigation has centered around what Congress meant by the terms "established or utilized" in FACA to determine what committees are covered by the law. For example, WLF filed a lawsuit in 1985 against the American Bar Association's Standing Committee on

the Federal Judiciary and its Chairman, Robert B. Fiske, Jr., seeking declaratory and injunctive relief that FACA applied to the ABA Committee's advisory role with the Department of Justice in the screening and selection of judicial candidates for nomination by the President. WLF filed its suit after the ABA Committee refused to share information about its proceedings with WLF following our discovery that the ABA Committee was secretly sharing information about judicial candidates with certain liberal activist groups such as the Alliance for Justice, and had been unfairly rating the qualifications of conservative judicial candidates. *See WLF v. ABA Standing Comm. of Fed. Judiciary*, 648 F. Supp. 1353 (D.D.C. 1986) (*WLF I*); *WLF v. U.S. Dep't of Justice*, 691 F. Supp. 483 (D.D.C. 1988) (*WLF II*).

The district court agreed with us in *WLF II* that inasmuch as the ABA Committee is "utilized" by DOJ, it does indeed come within the coverage of the "established or utilized" definitional language in FACA. However, the court further ruled that applying FACA to the ABA Committee would violate the separation of powers between Congress and the President insofar as it would interfere with the President's authority to select judicial nominees. However, there was no testimony or record evidence in the case suggesting that applying FACA to the ABA would *in fact* interfere with the President's nominating powers under Article II; indeed, FACA was successfully applied to the President's Advisory Committee on Ambassadorial Appointments (42 Fed. Reg. 64940 (1977)) that performed essentially the same function for ambassadorial candidates that the ABA Committee did for judicial candidates. In addition, WLF argued that the Senate's advice and consent powers for judicial and other nominees justified Congress's power to have FACA apply to the nominating

process to ensure that the screening of nominees by quasi-official organizations like the ABA Committee was done properly.

Public Citizen agreed with our position and subsequently intervened in the case on our side, and we both argued the case in the Supreme Court. The majority of the Court concluded in a much criticized decision that while the ABA Committee would seem to come within the literal terms of FACA because the ABA Committee is "utilized" by DOJ, the Court nevertheless ruled that the ABA would enjoy an exemption from the law because the committee is not controlled by the Justice Department. *Pub. Citizen v. Dep't of Justice*, 491 U.S. 440 (1989). This judicially created "control" test has been subsequently used in later cases to exempt other advisory committees that are utilized by agencies from complying with FACA.

In more recent litigation, WLF sought to apply FACA to a secret advisory committee to the U.S. Sentencing Commission, co-chaired by two commissioners, which refused to open up its meetings to the public or provide documents regarding its recommendations on the promulgation of sentencing guidelines. Those proposals would impose draconian fines on small businesses for technical violations of the environmental laws where no environmental damage even occurred. *Washington Legal Foundation v. U.S. Sentencing Comm'n*, 17 F.3d 1446, 1450 (D.C. Cir. 1994). In that case, like the ABA case, there was no question that the advisory committee was both established *and* utilized by the Sentencing Commission. However, the Commission argued that it was not covered by FACA, FOIA, or the Sunshine Act, because the Sentencing Commission was simply not an agency of the government. To be more precise, the Commission argued that all of the Sunshine laws applied to government

agencies as the term "agency" is defined in the Administrative Procedures Act, 5 U.S.C. § 551(1)(B). An agency is defined as any authority under the government except for "Congress" and the "courts." The Sentencing Commission argued that even though it was not a court, the term "courts" should be broadly construed beyond its plain meaning to mean the entire "judicial branch" of government which would include the Sentencing Commission and other administrative agencies within the judicial branch. In our case, then-Chief Judge Abner Mikva, writing for the court, agreed that the Sentencing Commission need not comply with FACA because it was in the judicial branch, and further ruled that Congress impliedly exempted the Commission from the Sunshine laws when it enacted the Sentencing Reform Act establishing the Commission. The court also dismissed our alternative argument that the environmental advisory committee advises an Executive branch official inasmuch as Attorney General Janet Reno is an ex-officio member of the Sentencing Commission, and that two DOJ employees were on the secret panel. The court of appeals dismissed that argument relying on the "control test" language from the Supreme Court in the ABA case, ruling while DOJ does "utilize" the advisory committee, DOJ does not control it.

Accordingly, the Sentencing Commission, because of judicial interpretations which we believe are wrong and frustrate the intent of Congress, is able to avoid all public scrutiny and accountability under the open government laws unlike any other government agency, including the Department of Justice, the Federal Bureau of Investigation, and the State Department. I should note that the court of appeals is considering yet another appeal of WLF's case against the Sentencing Commission that raises the argument that under the common law doctrine of access to public records, WLF is entitled to obtain the advisory

committee's records even if the agency is not subject to FOIA. The common law doctrine of public records is routinely employed by the media and the public as the basis for obtaining documents and audio and video tape recordings of court proceedings from the courts because the federal courts are not subject to FOIA as I mentioned earlier.

As the Supreme Court pronounced in a major case regarding access to certain Watergate audio tape recordings, "[i]t is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents." *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597 (1978) (citations omitted). The U.S. Court of Appeals for the D.C. Circuit has characterized this general right as "a precious common law right, one that predates the Constitution itself." *U.S. v. Mitchell*, 551 F.2d 1252, 1260 (D.C. Cir. 1976). There simply can be no question that the "common law has long recognized a right to inspect and copy public records" and that this "right to inspect public records *extends to* judicial records is clear." *Id.* at 1258-59 (emphasis added). Thus, the common law right to public records did not begin and end with the right of access to judicial records.

> The common law right is not some arcane relic of ancient English law. To the contrary, the right is fundamental to a democratic state. As James Madison warned, 'A popular Government without popular information, or the means of acquiring it, is but a Prologue to a Farce or Tragedy: or perhaps both. . . . A people who mean to be their own Governors, must arm themselves with the power which knowledge gives.'

Mitchell, 551 F.2d at 1258. Indeed, in some states like New Jersey, the common law right of access to public records is *broader* than the language of the state's right-to-know law. *See Higg-A-Rella, Inc. v. County of Essex*, 647 A.2d 862, 864 (N.J. App. Div. 1994) (common-

law definition of public records is very broad, encompassing "almost every document recorded, generated, or produced by public officials, whether or not 'required to be made, maintained or kept on file' as required under [state Right-to-Know Law]").

However, the Sentencing Commission -- which had argued that it was a "court" for purposes of getting itself exempted from FACA and FOIA -- is now arguing through the other side of its mouth that it is *not* a court for purposes of the common law doctrine of public records and therefore should not be covered under that theory either. We argued in the second appeal of our case, that regardless of whether the Commission is a "court" or not, the common law doctrine applies to it as a government agency. The court of appeals heard oral argument in that case over eight months ago, and we expect a decision in that case soon. *WLF v. U.S. Sentencing Comm'n*, No. 94-5534, (D.C. Cir.) (appeal pending).

Last December, WLF filed a lawsuit in federal court in Washington, D.C. on behalf of itself and a dozen U.S. Senators and Representatives against the EPA and its Administrator Carol Browner for failing to file with the Congress a cost/benefit report on the Clean Air Act as required by law, and for violating provisions of FACA. *WLF v. EPA*, No. 95CV02396 (D.D.C.) (amended complaint filed March 8, 1996). The report was due to be filed in November 1991 and is almost five years overdue. The EPA would certainly not tolerate such delay by businesses that must submit reports to the EPA under numerous environmental laws and regulations. The FACA counts in that complaint allege that the Advisory Council on Clean Air Compliance Analysis (ACCACA) established by Congress in the Clean Air Act Amendments of 1990 and administered by the EPA, 42 U.S.C. § 7612(f), have failed to comply with FACA, most notably by not maintaining minutes of its meetings.

In addition, WLF alleges that the Physical Effects Review Subcommittee of ACCACA is not truly a subcommittee because all but one of its members are not even members of the parent committee, and because the subcommittee reports directly to the EPA Administrator. If this "subcommittee" is in fact a separate entity, it must be chartered as any other advisory committee under the terms of FACA. Equally perplexing is the way the EPA uses its Science Advisory Board, which is itself an advisory committee, as an overseer of ACCACA and other advisory committees.

Indeed, this Committee or the GSA may very well want to investigate how the EPA establishes and terminates its advisory committees and subcommittees. President Clinton's Executive Order on advisory committees required agencies to reduce the number of advisory committees. However, I suspect what may have happened in some cases is that while an advisory committee may have been abolished on paper, its functions have simply been transferred to another advisory committee with a subcommittee continuing the work of the abolished committee. The result is that it may look like the agencies are cutting out wasteful and unnecessary advisory committees, only to have them re-appear "off-the-books" as a subcommittee of another advisory panel.

WLF also filed a brief in another FACA case that raises an issue of FACA's coverage. In *Sofomor Danek Group, Inc. v. Gaus*, 61 F.3d 929 (D.C. Cir. 1995), the court of appeals ruled that panels of medical experts and consumers established by HHS's Agency for Health Care Policy to promulgate Clinical Practice Guidelines (CPGs) for the treatment of various physical ailments was not covered by FACA because Congress intended that the CPGs be used by private medical providers even though the CPGs are used by the Health

Care Financing Administration as a source of advice and guidance for reimbursement under the Medicare and Medicaid programs. The court of appeals concluded that even though the panels are "utilized" by HHS and would seem to be covered by FACA, HHS did not intend to control the panels at the time of their creation. The end result is that agencies can now take advantage of judicially created loopholes by establishing advisory committees without any express intent to use them, or to have the committees advise the public at large, and then subsequently utilize those same committees without having to comply with FACA.

While my remarks focused primarily on FACA's administration, I understand that these oversight hearings are also covering FOIA issues as well. In that regard, I would like to bring to the Committee's attention a recent example of abuse by the Department of Justice in responding to a request by WLF for certain public documents. In what we thought would be a routine FOIA request, we asked DOJ for agency documents listing their criminal wetland enforcement cases by case name and docket number. What we got was a heavily redacted document that deleted the name of the personal defendants, making it impossible for us to examine the court records in that case. The DOJ's stated reason for doing so was that providing the name of a person who was prosecuted by DOJ in a public criminal trial would somehow constitute an unwarranted invasion of personal privacy under FOIA and the Privacy Act. For the Committee's information, I am attaching the relevant correspondence with DOJ on this matter, and with the Committee's permission, submit it for the record.

Thank you for the opportunity to present our views to the Committee. I will be glad to answer any questions that you or the members of the Committee may have.

WASHINGTON LEGAL FOUNDATION
2009 MASSACHUSETTS AVENUE, N.W.
WASHINGTON, D. C. 20036
202 588-0302

May 15, 1996

FREEDOM OF INFORMATION APPEAL

Co-Director
Office of Information and Privacy
U.S. Department of Justice
Flag Building
Suite 570
Washington, DC 20530

Re: Appeal in FOIA No. 96.035

Dear Sir/Madam:

Pursuant to the Freedom of Information Act, 5 U.S.C. 552(a)(6)(A), and 28 C.F.R. 16.8(a), the Washington Legal Foundation hereby appeals the partial denial of release of agency documents requested in our original FOIA dated March 1, 1996.

In particular, we requested information on criminal wetland cases at the post-indictment stage, particularly case names and docket numbers. Your reply, dated April 16, 1996 and received by us on April 18 (see attached) included a list of 29 such cases. None of the cases included their respective docket numbers. More troubling was the redaction of the names of the defendants in 21 of those cases. DOJ's denial was based on the Privacy Act, 5 U.S.C. 552a(b), and Exemption 7(C) of the Freedom of Information Act that relates to law enforcement records that "could reasonably be expected to constitute an unwarranted invasion of personal privacy."

Unless these indictments are currently under seal and the trial proceedings have been kept secret, we are at a loss to understand how the release of the names of the defendants in a public criminal proceeding could possibly constitute a violation of the Privacy Act or an "unwarranted invasion of personal privacy" under FOIA. Furthermore, it is standard practice for the U.S. Attorneys to issue press releases when indictments are issued by grand juries that contain the names of the defendants in wetland and other cases. If anything, it is the investigation and prosecution of many of these cases by DOJ and EPA that constitute an unwarranted invasion of personal privacy by the government, such as the raid on a lawyer's office in U.S. v. Hartford Associates by no less than ten FBI and EPA Special Agents searching the small office for eight hours and seizing numerous confidential documents, and the use of hidden video surveillance cameras in other cases. As we indicated in our original

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request, the release of the information would assist us in determining questionable wetland enforcement practices that would be of significant interest to the public and Members of Congress. In short, we believe that DOJ's reasons for withholding the release of the agency documents requested are frivolous.

We expect a prompt and favorable disposition of this appeal with the release of all agency documents indicating the complete case name and docket numbers in these wetland cases, such as the copy of the indictment in each of those cases. Also, we would like to know the date and source of the redacted document that was released to us since there is no identifying information on the document to enable us to ensure its timeliness and accuracy.

If you have any questions regarding this appeal, please feel free to contact me.

Sincerely yours,

Paul D. Kamenar
Executive Legal Director

encl

U.S. Department of Justice

Environment and Natural Resources Division

Policy, Legislation, and Special Litigation Section

Washington, D.C. 20530

April 16, 1996

Paul D. Kamenar
Washington Legal Foundation
2009 Massachusetts Avenue, N.W.
Washington, D.C. 20036

FOIA No.: 96.035

Dear Mr. Kamenar:

In response to your Freedom of Information Act request concerning criminal wetlands cases in the past decade, please find attached the following document:

* List of twenty-nine wetlands cases.

We have redacted this document in part pursuant to the Privacy Act, 5 U.S.C. 552a(b), and Exemption 7(C) of the Freedom of Information Act, 5 U.S.C. 552a(b)(7)(C), which relates to law enforcement records that "could reasonably be expected to constitute an unwarranted invasion of personal privacy." See, e.g., U.S. Dept. of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749 (1989); SafeCard Servs. v. SEC, 926 F.2d 1197, 1206 (D.C. Cir. 1991).

This determination may be appealed under 28 C.F.R. 16.8(a) and 5 U.S.C. 552(a)(6)(A) within thirty days of receipt of this letter by writing to the Co-Director, Office of Information and Privacy, U.S. Department of Justice, Flag Building, Suite 570, Washington D.C. 20530. You should clearly mark your envelope and letter: "Freedom of Information Appeal."

If any further assistance is needed, please contact Jessica Wodatch at (202) 514-4362.

Sincerely,

Louise F. Milkman
Assistant Chief

Enclosures

There are now 29 wetland cases, all of which have reached post-indictment disposition.

US v. Interstate General Co.(IGC), et al. (D.Md.)

US v. [redacted]

US v. Action Cleaning Corporation of San Diego (S.D.Calif.)

US v. Bethship-Sabine Yard (E.D.Tex.)

US v. [redacted]

US v. [redacted]

US v. [redacted]

US v. [redacted]

US v. [redacted]

US v. [redacted]

US v. Hartford Associates (D.Md.)

US v. [redacted]

US v. [redacted]

US v. [redacted]

US v. Sunrise Excavation, Inc., et al. (M.D.Pa.)

US v. [redacted]

US v. Joseph G. Enterprises (S.D. Calif.)

US v. [redacted]

US v. [redacted]

US v. [redacted]

U.S. v. [redacted]

US v. [redacted]

US v [redacted]

U.S. v. [redacted]

U.S. v. The Bill L. Walters Companies (BLWC), 88-Cr.375 (D.Col.)

U.S. v. Ocean Spray Cranberries, Inc., Cr.88-13-N (D.Mass.)

U.S. v. [redacted]

U.S. v. [redacted]

U.S. v. [redacted]

Mr. HORN. Mrs. Maloney will question you for 5 minutes. I am going to respond to the rollcall that is going on on the floor. She will have to leave after 5 minutes to come over and join me in that vote. We will be in recess from between 10 and 15 minutes in order for me to get back.

Mrs. MALONEY. Thank you, Mr. Chairman.

I would like to ask Mr. Wagner, the President in his 1994 report to Congress on Federal advisory committees committed July 10, 1959, stated that he directed GSA to review actions to involve citizens more thoroughly in the development of decisions. He indicated a possible legislative proposal to promote such participation. And your statement lists certain of these actions, such as the Internet and teleconferencing of townhall meetings. Please tell us what things GSA has done or planned to help integrate the public into Federal policy or management.

Before that, I would really like to ask the chairman, I am sure he wouldn't object to submitting it into the record, an article on the Bush administration and news media, the Reporter's Committee on the Freedom of the Press. They put in such a chronology in the Clinton administration. I think it is only fair to have the chronology likewise put in on the Bush administration. Hearing no objection?

All right, thank you.

Mr. WAGNER. I think it would be best if Mr. Dean, who runs the Committee Management Secretariat, would address that question.

Mr. DEAN. I will try to answer your question. During the past 2 years there has been an explosion across the country for Federal agencies to reach out and deal more effectively with the public. GSA has been looking at many different ways to help these agencies deal not only with the FACA issue, but also to help them address other tools that are available to them in terms of bringing the public in and giving them better access.

For example, we have been beefing up our training activities. We have been going to the field and helping people understand what FACA is because until recently a lot of folks in the field didn't even understand what the Federal Advisory Committee Act was. They couldn't even spell FACA. We had to go out and reach out and touch those folks. We have been talking to them and trying to learn about what they do in the field, and spending most of our time in Washington has been really enlightening to find out what kind of problems they have, what kind of constituents they have, everything from dealing with people in the forest to dealing with urban issues and so forth.

So we have spent a considerable amount of time, for example, working with the folks involved in the President's forest plan in Portland, OR. We have dispatched training people in Boise, ID. Folks involved in environmental issues spent a lot of time in Denver working with the Department of Energy to find out what is happening with the cleanup of the nuclear waste site. A great deal of what we have learned, quite frankly, is that one size does not fit all.

Mrs. MALONEY. Has any legislation been developed, as you suggested, in his directive?

Mr. DEAN. Not yet, but I think we are still learning. The world is changing a lot. A lot of agencies are using the Internet, the World Wide Web, they are using satellite video conferencing, they are experimenting with a lot of things, and we are not quite sure how it is going to shake out. We see a lot of innovative things going on.

Mrs. MALONEY. What elements might any legislation develop that you have contained? Have you given any thought to it?

Mr. DEAN. I think we have. I think as Mr. Wagner mentioned, the basic policy contained in FACA is sound. I think it has withstood the test of time. First of all, committees should be open and accessible, and costs should be contained and numbers reduced to assist with the Government's needs.

Again, what we have learned is while the process associated with setting up the committees at the macro level is pretty straightforward and streamlined, the biggest complaint—actually two big complaints—it takes too long to create a committee in a department, whether it is the Department of Widgets or whatever. The internal process they go through to get management approval can sometimes take days, weeks, months, or a year. That is not necessarily bad because it depends upon what issue is being discussed. You need to get the stakeholders to agree that that is a necessary thing to do.

That is the positive side. The downside is that—and we have been working with agencies on this—is to try to find ways to get things done faster. If you need a committee, it is a validated requirement you shouldn't have to wait a year.

Mrs. MALONEY. The committee—the 5-minute bell has been called for a vote, and we will recess for 10 minutes.

[Brief recess.]

Mr. HORN. The subcommittee hearing will resume. The first question I am going to ask, let me deal primarily with GSA, but on any of these questions, you two gentlemen are welcome to chime in on your views also. This is offered to me by Congressman Ramstad of Minnesota, a venerable Member of the House, and it's regarding the U.S. Forest Service interpretation of the Federal Advisory Committee Act, which you administer. And he notes, we have heard complaints from the public about how the Federal Advisory Committee Act has been interpreted by the U.S. Forest Service in a way that discourages citizen input on the management of Federal lands. Among other things, the Federal Advisory Committee Act was intended to prevent advisory committees, which were established or utilized by Federal agencies, from being inappropriately influenced by a special interest.

Now, the Federal Advisory Committee Act was not intended to prevent citizen groups that approach the Government on their own initiative from providing input and advice. However, the Forest Service has used the Federal Advisory Committee Act as a reason to disband citizen work groups such as those formed to provide public involvement for the limits of acceptable change process, referred to in forest terminology as the LAC process.

The Forest Service has taken the position that the Federal Advisory Committee Act requires it to reject consensus-based information from citizen groups. Can you tell us why the Forest Service

has taken such an extreme position in its interpretation of the Federal Advisory Committee Act and what, if anything, is being done about it? And is the General Services Administration aware of that interpretation?

Mr. WAGNER. Mr. Chairman, I think Mr. Dean has some specific information.

Mr. HORN. Mr. Dean.

Mr. DEAN. Thank you, Mr. Wagner. Mr. Chairman, 2 years ago we were approached by the Forest Service as they were launching several initiatives to actively involve their citizens in their programs. It was brought to our attention that the Forest Service—there was some confusion over the applicability of the Federal Advisory Committee Act to pre-existing groups such as groups formed by the citizens on their own volition and whether or not those groups could come to the Government and offer advice and recommendations.

Last year, in the late fall, GSA and the Department of Justice met with the Forest Service and senior officials from USDA and we helped them craft a new piece of guidance that was issued on October 2, 1995, which largely addressed these kinds of concerns. The Chief of the Forest Service has clarified, and I think corrected, the earlier misperceptions or confusion regarding the status of outside groups. His guidance clearly provides, for example, that if citizens who have created a group on their own initiative come to the Forest Service, it's OK to meet with them and to accept their advice and recommendations.

I am not aware at this point in time of any major problem across the country with regard to the current guidance. However, I would like to suggest that we contact the Forest Service and see if this is still an issue and if it is, we would like to work with them on training or whatever it takes to clear it up.

Mr. HORN. Well, I would appreciate that. And if you could, we will keep the record open for a few weeks. We will get an answer from you, maybe jointly with the Forest Service, as to what is the situation now.

Mr. DEAN. Sure.

Mr. HORN. Because I am also going to include in the record an article from the fall 1994 issue of—well, I don't seem to have a decent citation here, but it was attached and we will figure it out. The headline is, "Forest Service Disbands Citizen Work Groups, Otherwise Known As CWGs," and it goes back to some of the explanation of their side at this time. And I would like to just round that out, because it seems sort of silly to me that you are disbanding—or they were disbanding citizen work groups and saying, sorry, the law says we don't need you.

Mr. DEAN. Mr. Chairman, I do have a copy of that article.

Mr. HORN. What is the source of that?

Mr. DEAN. It appears to be a publication of the Forest Service in the Frank Church River of No Return area, and I would just like to note for the record that this article is dated in 1994, which, of course, is before the Forest Service had changed its policy.

Mr. HORN. Yes.

Mr. DEAN. I believe today that we would not see an article of this type being published in this area.

Mr. WAGNER. We will get with the Forest Service and give you an up-to-date status.

Mr. HORN. If we have a policy and a policy statement, let's put that in the record and share it with Mr. Ramstad.

Mr. DEAN. We would be happy to.

[The information referred to follows:]

United States Department of Agriculture | Forest Service | Washington Office | 14th & Independence SW
P.O. Box 96090
Washington, DC 20090-6090

File Code: 1620/1300
Route To : 1000/1600

Date: OCT 2 1995

Subject: Recent Federal Advisory Committee Act Interpretations

To: All Employees

The Forest Service has a long-standing tradition of providing opportunities for State, local, tribal, and private stakeholders to share with us their values and opinions. Efforts to inform and involve the public have yielded substantial benefits for everyone involved. However, employees and members of the public continue to raise questions about the applicability of the Federal Advisory Committee Act (FACA) to external relations.

Recently, we have been meeting with the USDA Office of the General Counsel, USDA Office of White House Liaison, General Services Administration, and Department of Justice to make sure we are in compliance with FACA while being responsive to our stakeholders. In light of these discussions, I have decided to update my policy letters of July 12, 1994, and January 17, 1995. This letter replaces my two previous letters. However, the public participation principles described in the July 12, 1994, letter hold. We can do no less to keep the best external relations possible. For ease of reference, I reiterate them here:

Make It Timely. The process allows enough time for the public to participate fully, with enough advance notice for all activities and crucial points in the process.

Make Your Process "Free." The public is able to participate at minimum cost and commitment of time, while meeting your public involvement objectives.

Emphasize Fairness. Participants agree that the process is fair, that all views offered are considered.

Practice Openness. Dialogue is welcomed and facilitated among all interests. Anyone who wishes to participate can. Information to the public (documents, etc.) is accessible to all and is in language that people can understand.

Make Involvement Early and Continuous. The public is involved from beginning to end, and relationships are built over the long term.

Make It Tangible. Results of the public's input are clearly demonstrated, and the public understands how public involvement affected the decision or outcome.

To help clarify if FACA applies to meetings with outside groups, I offer these general guidelines:

Meetings With State, Local, and Tribal Elected Officials--Under Section 204 of the Unfunded Mandates Reform Act (Public Law 104-4), meetings among Forest Service personnel and elected officials of State, local, or tribal governments, or their designees, are not subject to FACA. Such meetings can be held to obtain consensus advice relative to the implementation of Federal programs, or simply for exchanging information. Section 204 is currently in effect.

Groups Not Controlled by the Federal Government--FACA does not apply to groups established, organized, and managed by entities outside the Federal Government. Examples include businesses, environmental organizations, trade or industry associations, and citizens' groups. You may meet with such groups to hear their opinions, views, and advice; however, no group can become a preferred source of advice for the agency without sparking FACA concerns. Remember, too, that public perception is everything. If people observe you holding repeated private meetings with the same group, they may feel excluded and assume that FACA committee-formation requirements are being violated. If you become aware of members of the public having such feelings, find a way to include those citizens. Every interested party that wishes to be heard, should be heard. Not only will you then receive a broader range of views and opinions, you will minimize any perception of bias or unfairness in your decisionmaking. (See also Enclosure 1.)

Make <u>sure</u> there is sufficient separation between the Federal Government and outside groups. The Federal Government cannot control the group, its organization, or its operations, nor can the Federal Government have someone else establish a group for it. Federal control would be inferred if the Federal Government funds, selects members, or sets the agenda of the group. Federal control could also be inferred if the Federal Government indirectly funds, selects members, or sets the agenda of a group.

Federal employees may attend meetings of groups not controlled by the Federal Government and represent the Forest Service at such meetings, as long as the Federal employees are not in a position to determine, directly or indirectly, the group's activities, and their participation does not create a conflict of interest or violate any other principle of ethical conduct as codified in the Department of Agriculture "Employee Responsibility and Conduct Handbook." However, do not let any group become a preferred source for advice. Remember to practice the public participation principles presented on the previous page.

Groups Controlled Even in Part by the Federal Government--If the Federal Government organizes or controls even in part a group containing private citizens or organizations, there is a high probability that it violates the committee-formation requirements of FACA. Examples of groups not covered by FACA are included in Enclosure 1. The two exemptions most commonly found in the Forest Service are: 1) meetings we hold to obtain the advice from individuals rather than consensus advice or recommendations from groups, and 2) meetings or committees whose function is not advice-giving. Here is further elaboration:

Group is set up to provide advice--If Federal employees seek advice from a group, then that advice must be obtained on an individual basis without group

deliberation. Yet, if you are at a meeting and the group chooses to offer consensus advice:

Explain to the group that you convened them to hear individual advice, not a group consensus.

Explain that group advice could prove to be a problem because they are not a chartered advisory group. And if you were to accept their consensus advice, it could be challenged in court and the Forest Service could be enjoined from using the advice-- something no one wants.

There are occasions when, in fact, what you need is an advisory committee. While Executive Order 12838 limits the number of advisory committees the Department may charter, it does not eliminate them completely. Forward requests for new advisory committees to the Public Affairs Office for review. Any legitimate request will be forwarded to the Secretary and GSA for action.

The best way to address concerns about the committee-formation requirements of FACA is to practice good public involvement. Even if you are confident that FACA does not apply, if you are seeking public opinions that will influence your decisions, be sure that it is sought in the most public manner possible and made available to the public as a matter of public record.

We will continue to provide you with updated information regarding compliance with FACA. I believe we are making progress in removing real and perceived barriers to working with our intergovernmental and public partners while complying with the law.

Joan M Conaway

for JACK WARD THOMAS
Chief

Enclosure

ENCLOSURE 1

The Code of Federal Regulations addresses FACA in 41 CFR 101. Section 101-6.1004 lists examples of meetings or groups not covered by FACA. Here are the exemptions that would apply most commonly to the Forest Service:

(a) Any committee composed wholly of full-time officers or employees of the Federal Government;

(f) Any local civic group whose primary function is that of rendering a public service with respect to a Federal program, or any State or local committee, council, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies;

(g) Any committee which is established to perform primarily operational as opposed to advisory functions. Operational functions are those specifically provided by law, such as making or implementing Government decisions or policy. An operational committee may be covered by the Act if it becomes primarily advisory in nature. It is the responsibility of the administering agency to determine whether such a committee is primarily operational. If so, it would not fall under the requirements of the Act and this subpart, but would continue to be regulated under relevant laws, subject to the direction of the President and the review of the appropriate legislative committees;

(h) Any meeting initiated by the President or one or more Federal official(s) for the purpose of obtaining advice or recommendations from one individual;

(i) Any meeting initiated by a Federal official(s) with more than one individual for the purpose of obtaining the advice of individual attendees and not for the purpose of utilizing the group to obtain consensus advice or recommendations. However, agencies should be aware that such a group would be covered by the Act when an agency accepts the group's deliberations as a source of consensus advice or recommendations;

(j) Any meeting initiated by a group with the President or one or more Federal official(s) for the purpose of expressing the group's views, provided that the President or Federal official(s) does not use the group recurrently as a preferred source of advice or recommendations;

(l) Any meeting with a group initiated by the President or one or more Federal official(s) for the purpose of exchanging facts or information.

Mr. HORN. Let me go into some general questions on advisory committees. In a study the General Accounting Office did, and I think you referred to it in 1987, there were 992 advisory committees, consisting of 19,837 members. That cost to the Government was $79 million.

Now, according to the information supplied by GSA, there are currently 967 advisory committees, which are less advisory committees, consisting of over 30,000 members, which are roughly one-third more. It went from 20,000 to 30,000, costing the Federal Government an estimated $160 million, roughly double the amount in 1987. And the actual 1994 figure here was $133 million.

Now, the question is obvious. Isn't the Federal Advisory Committee Act's purpose to reduce the number of these committees and their cost to the government?

Mr. WAGNER. Before passing the question on to Mr. Dean, who has some specific figures on the dollars, I would agree that one of the purposes of the Federal Advisory Committee Act is to minimize costs, but I think it's also important that we focus on the level playing field, the giving of access. Sometimes I get concerned that in our desire to have cost-effectiveness, which is important within the various processes that we run, we also want openness—it is better sometimes to have an advisory committee and spend some money than it would be to have no advisory committee at all.

But we also share your concern in terms of cost. We have taken some steps in that direction. I believe Mr. Dean has some specifics on what those trends are doing.

Mr. HORN. Please.

Mr. DEAN. Mr. Chairman, I would like to, if there's no objection, talk a little bit about what the administration has done to reduce the number of cost of advisory committees. In February 1993, as one of his first official acts, President Clinton signed Executive Order 12838, which addressed the questions you posed.

He directed the executive branch to terminate at least one-third of the number of so-called discretionary committees. Discretionary committees are defined as those which are created under the general authority of agencies or those which are authorized by Congress, but which are not directed.

At the time, we had a baseline based upon the end of 1992 numbers of 801 discretionary committees and we terminated 267, actually 284 of those groups, and the President has set an effective ceiling of 534 discretionary committees that is currently in effect. I would like to note for the record that we have maintained that ceiling and we are presently 24 committees under, as a matter of fact.

Mr. HORN. In other words, if you want a new committee somewhere in the executive branch, you—and you are near the ceiling, there would have to be a tradeoff of closing down another committee?

Mr. DEAN. Quite possibly. Quite possibly. This is a process that is designed to continually review the viability of existing groups. It is, in effect, forcing agencies to make choices. What the President was trying to do, I believe, was to terminate committees that were marginal or committees that were duplicating effort between other committees or other agencies, to try to see if we could save some

money, save some resources and focus our attention on groups that had a higher priority.

Mr. HORN. The question would be, who decides when these advisory committees are unnecessary or duplicative? Is that the agency head in which the number of advisory committees exist? Is it GSA? Is it the White House? Where does responsibility rest?

Mr. DEAN. The responsibility rests with the agency head. The way this process works is, agencies are given flexibility within their assigned ceilings to determine which committees stay and which committees go.

We do provide agencies with input based upon their annual report submissions that we get each year as to what we think are the marginal committees, the committees that perhaps are not as strong as some of the other ones, and we give them advice on what we think. OMB will also give agencies advice, but it's the agency's responsibility to really manage their advisory committee program and to live within those ceilings.

Mr. HORN. I have served in the past on some of these advisory committees and I must say, they were excellent committees. They are a hard working group of people, a group of experts you couldn't get without very high cost in the private sector. They were giving days to Government policy and really taking days out of their particular career to do it, even though they were only reimbursed for actual expenses, that kind of thing. So I have had a lot of faith in many of these advisory committees, but I will tell you, one thing that sort of worries me is the idea of these notational run advisory committees, where it seems the staff runs them, sends memoranda around which advisory committee members initial.

And I would think the whole purpose of an advisory committee is to bring people that represent different views of a particular area of public policy together, let them share those views, let them build a consensus, let them sort out what ought to be the policy thrusts, what are the priorities, so forth. I helped—two of us wrote the law for the National Institute of Corrections, which is partly an advisory committee, but also an operating agency.

The advisory committee actually has the authority to recommend the director to the Attorney General, and we also built in six top Federal officials with a series of categories of practitioners, people that are interested in the field, so forth. So it was the only place in Washington where you had those six different agency heads or subheads, met together to talk about a common subject. This was way before the drug czar bit. In fact, we helped suggest the drug czar bit. But I think they are useful in that sense but not with the idea of just sending around memoranda and not having them meet, not having a dialog where people will change their views based on the expressions there and learning something about the subject. So how many of those sort of notational advisory committees are still floating around?

Mr. DEAN. Mr. Chairman, I cannot answer your question because I don't have any firsthand knowledge of those kinds of groups.

Mr. HORN. OK.

Mr. DEAN. However, I would like to say while we don't do as much as we would like, we do try to get the staff out to attend meetings or to review minutes as much as we can. With so many

meetings and minutes to acquire, of course, it's impossible to get a real good—a real good sense of what's going on.

But one of the things that the minutes tell you, or attending a meeting will tell you, it will give you a strong sense as to how the meeting is being run. We share your concerns that advisory committee meetings should not be rubber stamps.

Mr. HORN. Right.

Mr. DEAN. They should not be.

Mr. HORN. It should be a vigorous dialog, to get your money's worth or lack of money's worth as the case may be.

Mr. DEAN. Right. Nor should it be meetings where the members are brought in and literally briefed to death and sent home groggy.

Mr. HORN. That's right. Weary.

Mr. DEAN. Yes. It should be a give and take type of discussion.

Mr. HORN. Now, are you at GSA familiar with the Administrative Conference's final recommendations that, as I gather, included a pilot program allowing for more closed meetings? Has that recommendation come across your purview?

Mr. DEAN. For advisory committees?

Mr. HORN. Yes, as I understand it.

Mr. DEAN. I am not aware of that, no.

Mr. HORN. No.

Mr. DEAN. We had worked closely with agencies, but I was not aware that they were applying that to the actual advisory committees.

Mr. HORN. Mr. May, you were involved with the Administrative Conference.

Mr. MAY. Yes, Mr. Chairman, I think that recommendation refers to changes in the Sunshine Act, possibly, and I am familiar with it.

Mr. HORN. I see.

To whom would that relate, to which instrumentalities or entities? Would that relate to advisory committees?

Mr. MAY. No. It would really relate to the agencies which are covered by the Sunshine Act. If I may, Mr. Chairman, basically, what the Administrative Conference concluded, and I referred to a committee that was put together to study this, actually, Mr. Kamenar, sitting to my left—I referred to public interest members of that committee and Mr. Kamenar was one and also another public interest representative was Alan Morrison of the Public Citizen Litigation Project. These two gentlemen occupy probably fairly disparate ends of the political spectrum, but they both agreed the Sunshine Act really wasn't working that well and so the recommendation was that at least on a pilot project basis, the Congress ought to change the act so that the commissioners could meet in private if they detailed a summary of their meeting and put it in the public record shortly after the meeting, so that they could have collegial discussions.

But another significant part of the recommendation was that in order to participate in this pilot program, the agency would have to agree not to use circulation or notation voting for important substantive actions, because as you know, the Sunshine Act doesn't prohibit an agency from taking action by circulating written proposals at all. It only applies to something that comes within the

definition of a meeting. So when an agency votes on an item by circulation, of course, the public has had no access to that decision-making process.

So the idea of the committee was that, if we could reduce circulation voting so that agencies—agency members always vote in a public, open, regularly scheduled meeting so that the public can hear them announce and explain their actions, if we would do——

Mr. HORN. Let me interrupt, if I might. Do they really explain their actions? They don't explain the reasoning that led to it because that fight has occurred behind closed doors.

Mr. MAY. Well, that's a——

Mr. HORN. Hasn't it?

Mr. MAY. That's exactly right. I mean, the problem is, what I should have said, is that at the Sunshine Act meetings, Mr. Chairman, they announce their position, really. They usually don't explain much, but the one thing that most people agree doesn't happen is that they don't debate, or there's not a back and forth or a deliberative process, and that's really the problem.

They come in to a meeting and they will announce that I am going to vote for so and so, but you really don't have that debate. It takes place now behind closed doors and it takes place by virtue of the staff members of the commissioners meeting so that they can negotiate, report back to their principals, to the commissioners. Or the commissioners can have a one-on-one meeting with another commissioner, if there are more than three members.

If it's only a three-member agency, they can never talk to each other. If there are only three members, it's impossible. So we think there really should be changes and that with these changes, if there were a pilot program that—the public could actually gain greater access by knowing what's happened in this deliberative process, letting the commissioners meet and we could also reduce the circulation or notation voting to which the Sunshine Act doesn't even apply.

Mr. HORN. Well, I am curious, what type of agencies or what specific agencies feel hurt by the existing law which says meet in the open unless you meet certain specified criteria, which permits you, let's say, on a land purchase and hiring of legal counsel, discussing legal cases, whatever, what agencies are seeking this?

Mr. MAY. Most of the agencies. You know, we had a public hearing at which commissioners——

Mr. HORN. In other words, everybody is a suspect in this?

Mr. MAY. Yes, that's the problem. In order to believe the Sunshine Act, you know, the problem is with the agency members. You would have to really believe all of the agency members in Washington, and, you know, I don't know exactly how many that includes but a heck of a lot. You have to believe that they really, you know——

Mr. HORN. Does that include the Members of Congress?

Mr. MAY [continuing]. Want to operate that way and don't want to—or just operate in bad faith. And I think that's not really realistic to think that they all want to operate that way. But what they almost all universally say, both in public—we had a lot of public testimony—is that you just can't have a real deliberative process that takes place in public and so, therefore, the Sunshine meetings

are meetings that, again, in which the commissioners come in and say, this is my position but they are not really deliberating and the inability for them to deliberate in private—this is really the key point.

The Administrative Conference found, this has been found by other studies as well, that the inability to deliberate in private in a collegial way impacts the collegial relationships of the agencies and, therefore, when Congress establishes a multimember agency, to get the benefit of a group of people working together, they don't really—they are not able to work together in a collegial way.

Mr. HORN. Well, how do the GSA people and how, Mr. Kamenar, how do you all feel about it? I mean, is it possible for members of an advisory committee, 30,000 of them, to sit down in public and hammer out an issue, even though some of them are on there because of their specific semi-extreme views, be they left or right, and come to a solution in terms of how you try to solve a particular agency problem? Have you heard and seen of these difficulties?

Mr. WAGNER. Well, we have. On the advisory committee meetings, some of them are opened and some of them are closed. I will yield to Mr. Dean on that. I am not sure how applicable what we know about advisory committees would apply to a body like, and I believe Mr. May is referring to bodies like the Federal Communications Commission, and they just may be different.

Mr. HORN. Well, that's a different type of organ. That's a quasi-judicial, administrative, legislative independent agency and it isn't just any other advisory committee, where you have people change. Those people are nominated by the President of the United States, confirmed by the Senate of the United States. So I think they are far different than the categories I thought we were talking about, that have 30,000 individuals spread over several hundred advisory committees.

Mr. WAGNER. But if I understood Mr. May, it—your comments applied to entities like the Federal Communications Commission.

Mr. HORN. OK. Are they only applied to, say, the Federal Trade Commission and those?

Mr. MAY. The Federal Trade Commission, the Securities and Exchange Commission, the Federal Communications Commission, Commodities Futures Trading Commission. It applies to the independent regulatory commissions.

Mr. HORN. OK. So it was not thought to apply, then, to these advisory committees?

Mr. MAY. No. But if I can comment on this and then Mr. Kamenar might as well. But I think the advisory—to my way of thinking, the advisory committees are in somewhat of a different situation in that they are constituted to focus on one subject. They are put together and there's a topic, whatever it is, and they focus on that subject and I think when they meet in public, they are all, you know, concentrating on that one area.

The problem with an agency like the FCC or whatever is that, just from an administrative efficiency point of view as well, they have multiple agendas. If you go to an FCC meeting, there may be 12—10 or 12 items they are considering in a Sunshine meeting and this happens every 2 weeks. And one problem with the way the Sunshine Act works is for them to want—and these items, they are

looking at rulemakings and policies and whatever. They are coming around all the time.

In order to have any discussion about any of those items, as opposed to this one topic, for a Federal advisory committee, they have to have the advance public notice, the 7 days' notice. And again, these things are coming along on a continual basis and it's just very difficult to do that from an efficiency point of view, as well.

Mr. KAMENAR. I would just like to comment a little bit more on that. I think where the Federal Advisory Committee Act comes in in the whole process is that act is essentially an amalgam between FOIA and the Sunshine Act so that advisory committee meetings for the most part must comply with the Sunshine Act in terms of deciding when they can open their meetings and when they can close them.

In terms of the problem of whether they avoid meeting at all because of the constraints of the Sunshine Act as incorporated into the Federal Advisory Committee Act, many of these members are from disparate parts of the country and so forth. It doesn't seem to me that that is essentially a problem as it is when you have members of a commission that are on the same floor of an office that meet each other in the elevator and so forth. Are they starting a meeting or not, or should they be talking to each other?

So I think that problem is not as much there, although as I told you in my testimony you had the Sentencing Commission which has an advisory committee of people in the D.C. area that refuse to meet in the open, saying that this law doesn't apply to them and that it shouldn't apply to them. They said it would inhibit their robust give and take, of exchange of ideas.

I think they were basically exaggerating that concern, because I think preeminent here is the fact that these are open Government laws, that they are there for the public interest; the public is entitled to know what's going on. The report that the administrative conference came out with I thought was a reasonable approach to try to have both of those interests taken together to have some kind of a compromise measure there that would serve both of those interests as well.

I attended an advisory committee just last week of the EPA's Clean Air Act Advisory Council, and the debate was, I thought, fairly robust. There were a couple of people there who were clearly wanting to object to where they thought the committee was going, but at the same time, there is that concern in terms of advisory committees are supposed to be essentially independent. Our concern is that in some cases advisory committees are beholden to their parent agency and may hedge their views to that agency for fear of maybe not being nominated to the committee again if they don't give the right recommendation or what have you. We have to, of course, rely on the integrity of the members to do that.

But one final point with respect to the Executive order reducing the number of committees. I suspect that what may be happening in some of these cases is that on paper, the committee may be abolished, but then it is moved as a subcommittee of another advisory committee so it's still there, and there's a little shell game going on there.

Mr. HORN. They are prolific as ameba.

Before yielding to Mrs. Maloney, just let's round this out. The staff is instructed to write the various Federal commissions as to their reaction to that Administrative Conference proposal and we will get their views in the record. So at least they can't say they weren't heard. I am sorry we didn't have some of them here. I didn't know it was limited strictly to them.

The ranking member, Mrs. Maloney of New York.

Mrs. MALONEY. Thank you, Mr. Chairman.

Mr. May, the conference hearing that you had mentioned and the chairman mentioned last October, several press groups raised a number of concerns about your committee's recommendations for changes in the Sunshine Act, some of which were critical. Would you summarize the concerns that they raised?

Mr. MAY. Yes. I think I would characterize it this way: I think the press groups would say—and they did say in their testimony before the—we had a public hearing of the Administrative Conference Committee, and they said they agreed that the Sunshine Act doesn't work very well presently because when you go to the meetings, they are pretty much sterile affairs, as I have characterized them. So I think they would agree with that. And where they disagree is then what to do about it.

And their view is that public officials, the agency members are public officials and they should debate in public and they shouldn't be afraid to debate in public and so forth and that it's really the commissioners that need to change and we don't need to change the act.

And I think the Administrative Conference Committee, which, again, had a public watch group representation, just felt like that realistically was not the answer and that there ought to be changes in the act. So I would say that their view was that the agency officials just need to change.

Mrs. MALONEY. Recently, when we passed a procurement reform on the Federal level, immediately States and cities are sort of following our lead, calling, wanting copies and indicating that they are going to change their procedures to meet the Federal standard. Many people fear that if we change the sunshine law on the Federal level, allowing more private meetings or behind-the-scenes meetings, that immediately State and local governments would follow suit and change their laws to coincide with the Federal directive.

Do you see that as a problem or do you share that fear?

Mr. MAY. Not really. I mean, I am not an expert on how the States and localities would operate, but I don't think certainly they wouldn't—they wouldn't have to follow the Federal Government. And I guess I would say more to the point——

Mrs. MALONEY. Many times they do, though.

Mr. MAY. They may. I just don't know. But I would say actually that some of the State and Federal laws which are held up as sunshine laws and which are called sunshine laws, they don't all operate in the same way that the Federal law does in this sense, that they don't necessarily—some do and others don't, but they don't all prohibit some of the preliminary types of meetings that are prohibited under the Federal law.

Now, they do require that when a city council has a meeting that it hold the meeting in public or that some State boards do, but they don't operate in the same way in terms of prohibiting all of the preliminary deliberations that tend to be prohibited under the Federal law.

Mrs. MALONEY. Mr. Wagner, and Mr. Dean, you mentioned earlier the President's letter which was forwarded to Congress, his proposal to eliminate 31 statutory advisory committees and the Executive order to terminate one-third of advisory committees. And I would like to ask you, since this directive has gone into effect, how many new agency advisory committees have been approved by OMB since the Executive order?

Mr. DEAN. I don't have a precise figure, Congresswoman, on that. I brought the numbers of the committees that currently exist today in the aggregate.

Mrs. MALONEY. Do you have any information that you could show us, a breakdown by agency, of advisory committees——

Mr. DEAN. Yes, I do.

Mrs. MALONEY [continuing]. And the purpose of them?

Mr. DEAN. Yes, I do. I would be happy to provide that to you.

Mrs. MALONEY. I would love a copy of that for my office, and possibly the chairman would, too.

Mr. HORN. Yes.

Mr. DEAN. Sure.

Mrs. MALONEY. The across the board——

Mr. HORN. I might add that that will be put in the record, without objection.

Mr. DEAN. We will provide that.

[The information referred to follows:]

List of all discretionary Federal Advisory Committees created since E.O. 12838 was issued on February 10, 1993.

Provided in response to Congresswoman's Maloney's request on page 214 of the transcript of the June 13, 1996 hearing before the House Subcommittee on Government Management, Information and Technology.

AGENCY	C-ID	NAME	AUTH	Type	CHARTER
ATBCB	234	Recreation Access Advisory Committee	AGEN	EST	6/25/93
ATBCB	1849	Americans with Disabilities Act Accessibility Guidelines (ADAAG) Review Advisory Committee	AUTH	EST	4/18/94
DOC	1892	Census Advisory Committee of Professional Associations	AGEN	EST	4/07/94
DOC	1893	Environmental Technologies Trade Advisory Committee	AGEN	EST	6/03/94
DOD	1505	Armament Retooling and Manufacturing Support Executive Advisory Committee	AGEN	EST	7/16/93
DOD	1506	Cultural and Natural Resources Committee for the Yakima Training Center and Expansion Area	AGEN	EST	7/16/93
DOD	1807	Advisory Board of the Investigative Capability of the Department of Defense	AGEN	EST	11/27/93
DOD	1848	Department of Defense Historical Advisory Committee	AGEN	EST	1/24/94
DOD	1891	Defense Labor-Management Partnership Council	AGEN	EST	7/14/94
DOD	1996	Military Health Care Advisory Committee	AGEN	EST	5/09/95
DOD	2027	Ballistic Missile Defense Advisory Committee	AGEN	EST	6/19/95
DOD	5111	Marshall Center Board of Visitors	AGEN	EST	5/01/96
DOE	1889	Environmental Management Site Specific Advisory Board	AGEN	EST	6/10/94
DOE	1941	Advisory Committee on External Regulation of DOE Nuclear Safety	AGEN	EST	1/25/95
DOI	1902	Pea Ridge national Military Park Advisory Team	AGEN	EST	9/12/94
DOI	1928	Office of Surface Mining Advisory Board	AGEN	EST	2/07/95
DOI	1929	Negotiated Rulemaking Committee on Coal Refuse Disposal	AGEN	EST	4/18/95
DOI	1992	Bay-Delta Advisory Council	AGEN	EST	4/12/95
DOI	2040	Front Range Resource Advisory Council	AUTH	EST	8/21/95
DOI	2041	Northwest Resource Advisory Council	AUTH	EST	8/21/95
DOI	2042	Southwest Resource Advisory Council	AUTH	EST	8/21/95
DOI	2050	Alaska Resource Advisory Council	AGEN	EST	10/01/95
DOI	2051	Arizona Resource Advisory Council	AGEN	EST	10/01/95
DOI	2052	Bakersfield Resource Advisory Council	AGEN	EST	10/01/95
DOI	2053	Susanville Resource Advisory Council	AGEN	EST	10/01/95
DOI	2054	Ukiah Resource Advisory Council	AGEN	EST	10/01/95
DOI	2055	Lower Snake River Resource Advisory Council	AGEN	EST	10/01/95
DOI	2056	Upper Columbia-Salmon/Clearwater Resource Advisory Council	AGEN	EST	10/01/95
DOI	2057	Upper Snake River Resource Advisory Council	AGEN	EST	10/01/95
DOI	2058	Butte Resource Advisory Council	AGEN	EST	10/01/95
DOI	2059	Lewistown Resource Advisory Council	AGEN	EST	10/01/95

AGENCY	C-ID	NAME	AUTH	Type	CHARTER
DOI	2060	Miles City Resource Advisory Council	AGEN	EST	10/01/95
DOI	2061	Dakotas Resource Advisory Council	AGEN	EST	10/01/95
DOI	2062	Mojave-Southern Great Basin Resource Advisory Council	AGEN	EST	10/01/95
DOI	2063	Northeastern Great Basin Resource Advisory Council	AGEN	EST	10/01/95
DOI	2064	Sierra Front-Northwestern Great Basin Resource Advisory Council	AGEN	EST	10/01/95
DOI	2065	New Mexico Resource Advisory Council	AGEN	EST	10/01/95
DOI	2066	John Day-Snake Resource Advisory Council	AGEN	EST	10/01/95
DOI	2067	Southeast Oregon Resource Advisory Council	AGEN	EST	10/01/95
DOI	2068	Eastern Washington Resource Advisory Council	AGEN	EST	10/01/95
DOI	2069	Utah Resource Advisory Council	AGEN	EST	10/01/95
DOI	2070	Wyoming Resource Advisory Council	AGEN	EST	10/01/95
DOI	5110	Green River Basin Advisory Committee	AGEN	EST	2/14/96
DOJ	1886	Citizens' Advisory Panel	AGEN	EST	3/16/94
DOJ	1926	Advisory Committee on Federalization	AGEN	EST	7/20/94
DOJ	1946	Criminal Justice Information Services (CJIS) Advisory Policy Board	AGEN	EST	12/15/94
DOJ	1980	Advisory Committee on Violence Against Women	AGEN	EST	2/15/95
DOL	1454	Commission on the Future of Worker-Management Relations	AGEN	EST	5/24/93
DOL	1896	Task Force on Excellence in State and Local Government through Labor-Management Cooperatio	AGEN	EST	6/24/94
DOL	1927	National Advisory Committee for the North American Agreement on Labor Cooperation	AGEN	EST	1/19/95
DOL	1947	Advisory Committee on Elimination of Pneumoconiosis Among Coal Mine Workers	AGEN	EST	5/01/95
DOL	1976	Maritime Advisory Committee for Occupational Safety and Health	AGEN	EST	2/08/94
DOL	2000	Advisory Council for the School-to-Work Opportunities	AGEN	EST	7/13/95
DOS	1473	Secretary of State's Panel on El Salvador	AGEN	EST	4/28/93
DOS	1846	United States International Telecommunication Advisory Committee	AGEN	EST	2/15/94
DOT	2015	Chicago Drawbridge Negotiated Rulemaking Committee	AGEN	EST	5/15/95
DOT	2032	Department of Transportation Partnership Council	AGEN	EST	8/02/95
ED	1850	Guaranty Agency Reserves Negotiated Rulemaking Advisory Committee	AUTH	EST	1/19/94
EPA	1717	National Environmental Justice Advisory Council	AGEN	EST	9/30/93
EPA	1937	Common Sense Initiative Council	AGEN	EST	10/17/94
EPA	1986	Urban Wet Weather Flows	AGEN	EST	4/14/95
EPA	2028	Pesticide Program Dialogue Committee	AGEN	EST	11/14/95
EPA	2073	National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances	AGEN	EST	11/14/95

AGENCY	C-ID	NAME	AUTH	Type	CHARTER
FCC	1895	Advisory Committee for the 1997 World Radiocommunication Conference	AGEN	EST	5/31/94
FCC	2016	Public Safety Wireless Advisory Committee	AGEN	EST	6/26/95
FCC	2048	North American Numbering Council	AGEN	EST	10/05/95
HHS	765	Advisory Committee for Energy-Related Epidemiologic Research	AUTH	EST	3/24/95
HHS	1518	Advisory Committee on Head Start Quality and Expansion	AGEN	EST	6/30/93
HHS	1804	Health Care Policy and Research Special Emphasis Panel	AUTH	EST	10/01/93
HHS	1841	Dietary Guidelines Advisory Committee	AUTH	EST	1/18/94
HHS	1852	National Task Force on Acquired Immune Deficiency Syndrome (AIDS) Drug Development	AUTH	EST	12/15/93
HHS	1860	Multidisciplinary Sciences Special Emphasis Panel	AUTH	EST	1/03/94
HHS	1861	Microbiological and Immunological Sciences Special Emphasis Panel	AUTH	EST	1/03/94
HHS	1862	Chemistry and Related Sciences Special Emphasis Panel	AUTH	EST	1/03/94
HHS	1863	Biological and Physiological Sciences Special Emphasis Panel	AUTH	EST	1/03/94
HHS	1864	Clinical Sciences Special Emphasis Panel	AUTH	EST	1/03/94
HHS	1865	Sensory Sciences Initial Review Group	AUTH	EST	1/03/94
HHS	1866	Neurological Sciences Initial Review Group	AUTH	EST	1/03/94
HHS	1867	Biobehavioral and Social Sciences Initial Review Group	AUTH	EST	1/03/94
HHS	1868	Technology and Applied Sciences Initial Review Group	AUTH	EST	1/03/94
HHS	1869	Surgery, Radiology, and Bioengineering Initial Review Group	AUTH	EST	1/03/94
HHS	1870	Infectious Diseases and Microbiology Initial Review Group	AUTH	EST	1/03/94
HHS	1871	Immunological Sciences Initial Review Group	AUTH	EST	1/03/94
HHS	1872	AIDS and Related Research Initial Review Group	AUTH	EST	1/03/94
HHS	1873	Biophysical and Chemical Sciences Initial Review Group	AUTH	EST	1/03/94
HHS	1874	Biochemical Sciences Inital Review Group	AUTH	EST	1/03/94
HHS	1875	Oncological Sciences Initial Review Group	AUTH	EST	1/03/94
HHS	1876	Genetic Sciences Inital Review Group	AUTH	EST	1/03/94
HHS	1877	Cell Development and Function Initial Review Group	AUTH	EST	1/03/94
HHS	1878	Endocrinology and Reproductive Sciences Initial Review Group	AUTH	EST	1/03/94
HHS	1879	Pathophysiological Sciences Initial Review Group	AUTH	EST	1/03/94
HHS	1880	Cardiovascular Sciences Initial Review Group	AUTH	EST	1/03/94
HHS	1881	Musculoskeletal and Dental Sciences Initial Review Group	AUTH	EST	1/03/94
HHS	1882	Nutritional and Metabolic Sciences Initial Review Group	AUTH	EST	1/03/94
HHS	1883	Health Promotion and Disease Prevention Initial Review Group	AUTH	EST	1/03/94

AGENCY	C-ID	NAME	AUTH	Type	CHARTER
HHS	1906	Advisory Committee on Services for Families with Infants and Toddlers	AUTH	EST	6/29/94
HHS	1909	Citizens Advisory Committee on Public Health Service Activities and Research at the Depart	AGEN	EST	12/01/94
HHS	1910	Disease, Disability, and Injury Prevention and Control Special Emphasis Panel	AUTH	EST	10/12/94
HHS	1919	Board of Scientific Counselors, National Center for Human Genome Research	AUTH	EST	7/15/94
HHS	1949	Secretary's Business Advisory Committee to Assist White House Conference on Aging	AUTH	EST	10/07/94
HHS	1957	National Institute of Mental Health Initial Review Group	AUTH	EST	9/30/94
HHS	1959	National Institute of Mental Health Special Emphasis Panel	AUTH	EST	9/30/94
HHS	1960	National Institute of Dental Research Special Emphasis Panel	AUTH	EST	9/30/94
HHS	1961	National Institute of Allergy and Infectious Diseases Special Emphasis Panel	AUTH	EST	9/30/94
HHS	1962	National Institute of General Medical Sciences Special Emphasis Panel	AUTH	EST	9/30/94
HHS	1963	Board of Scientific Counselors, National Center for Research Resources	AUTH	EST	9/30/94
HHS	1985	White House Conference on Aging, Advisory Committee on Disabilities	AUTH	EST	12/29/94
HHS	2025	Board of Scientific Counselors, Division of Computer Research and Technology	AUTH	EST	9/29/95
HHS	2026	Ad Hoc Advisory Committee on Creutzfeldt-Jakob Disease	AUTH	EST	6/09/95
HHS	2078	National Institute of Environmental Health Sciences Special Emphasis Panel	AUTH	EST	9/29/95
HHS	2080	Peer Review Oversight Group	AUTH	EST	9/29/95
HHS	2081	National Library of Medicine Special Emphasis Panel	AUTH	EST	9/29/95
HHS	2083	National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel	AUTH	EST	9/29/95
HHS	2084	National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Pan	AUTH	EST	9/29/95
HHS	2085	National Center for Human Genome Research Special Emphasis Panel	AUTH	EST	9/29/95
HHS	2086	National Institute of Nursing Research Special Emphasis Panel	AUTH	EST	9/29/95
HHS	5122	The Board of Governors of the Warren Grant Magnuson Clinical Center	AUTH	EST	4/26/96
HUD	1956	Negotiating Rulemaking Advisory Committee on the Vacancy Rule	AGEN	EST	3/27/95
HUD	2093	Negotiated Rulemaking Advisory Committee on Mortgage Broker Disclosures	AGEN	EST	2/16/96
NASA	200	NASA/NIH Advisory Committee on Biomedical and Behavioral Research	AGEN	EST	3/01/93
NASA	1805	Earth Systems Science and Applications Advisory Committee	AGEN	EST	8/20/93
NLRB	1897	National Labor Relations Board Committee on Agency Procedures	AGEN	EST	6/01/94
NSF	1751	Advisory Panel for Ecological Studies	AGEN	EST	10/01/93
NSF	1752	Advisory Panel for Long-Term Projects in Environmental Biology	AGEN	EST	10/01/93
NSF	1753	Advisory Panel for Systematic and Population Biology	AGEN	EST	10/01/93
NSF	1754	Special Emphasis Panel in Biological Sciences	AGEN	EST	10/01/93
NSF	1755	Advisory Committee for Geosciences	AGEN	EST	10/01/93

AGENCY	C-ID	NAME	AUTH	Type	CHARTER
NSF	1756	Special Emphasis Panel for Geosciences	AGEN	EST	10/01/93
NSF	1757	Advisory Panel for Anthropological and Geographic Sciences	AGEN	EST	10/01/93
NSF	1758	Advisory Panel for Cognitive, Psychological and Language Sciences	AGEN	EST	10/01/93
NSF	1759	Advisory Panel for Economics, Decision and Management Sciences	AGEN	EST	10/01/93
NSF	1760	Advisory Panel for Science, Technology, and Society	AGEN	EST	10/01/93
NSF	1761	Advisory Panel for Social and Political Sciences	AGEN	EST	10/01/93
NSF	1765	Special Emphasis Panel in Educational System Reform	AGEN	EST	10/01/93
NSF	1766	Special Emphasis Panel in Social, Behavioral and Economic Research	AGEN	EST	10/01/93
NSF	1982	Task Force on the Future of the NSF Supercomputer Centers Program	AGEN	EST	2/22/95
SBA	1857	South Carolina District Advisory Council	AUTH	EST	10/01/93
SBA	1858	Florida State District Advisory Council	AUTH	EST	10/01/93
SBA	1859	Kentucky District Advisory Council	AUTH	EST	10/01/93
SBA	1977	Washington, D. C. District Advisory Council	AGEN	EST	11/21/94
SEC	1847	Consumer Affairs Advisory Committee	AGEN	EST	2/18/94
SEC	1987	Advisory Committee on the Capital Formation and Regulation Processes	AGEN	EST	2/24/95
SSA	1974	Representative Payment Advisory Committee	AUTH	EST	10/24/94
USDA	1917	Livestock Grazing Fee Incentive Program Advisory Committee	AGEN	EST	7/13/94
USDA	1923	Intergovernmental Advisory Committee to the Regional Interagency Executive Committee	AGEN	EST	9/20/94
USDA	1925	Advisory Committee to the Provincial Interagency Executive Committee	AGEN	EST	9/20/94
USDA	1930	Agriculture Technical Advisory Committee for Trade in Animal and Animal Products	AUTH	EST	3/28/94
USDA	1931	Agriculture Technical Advisory Committee for Trade in Fruits and Vegetables	AUTH	EST	3/28/94
USDA	1932	Agriculture Technical Advisory Committee for Trade in Grain, Feed and Oilseeds	AUTH	EST	3/28/94
USDA	1933	Agriculture Technical Advisory Committee for Trade in Sweetners	AUTH	EST	3/28/94
USDA	1934	Agriculture Technical Advisory Committee for Trade in Tobacco, Cotton, and Peanuts	AUTH	EST	3/28/94
USDA	1975	Ski Area Fee System Advisory Committee	AGEN	EST	1/25/95
USDA	2005	Fresh Products Shipping Point Inspection Program	AGEN	EST	6/12/95
USTR	2002	Trade Advisory Committee for Africa	AGEN	EST	9/01/95
VA	1778	Persian Gulf Expert Scientific Committee	AGEN	EST	10/26/93
VA	2017	Medical Research Service Merit Review Committee	AGEN	EST	5/25/95
VA	2018	Medical Research Service Cooperative Studies Evaluation Committee	AGEN	EST	5/25/95
VA	2019	Rehabilitation Research and Development Science Scientific Merit Review Board	AGEN	EST	5/25/95
VA	2020	Scientific Review and Evaluation Board for Health Services Research and Development Servic	AGEN	EST	5/25/95

AGENCY	C-ID	NAME	AUTH	Type	CHARTER
VA	2021	Medical Research Service Career Development Committee	AGEN	EST	5/25/95
VA	2072	Research Realignment Advisory Committee	AGEN	EST	10/11/95
VA	2095	Residency Realignment Review Committee	AGEN	EST	1/24/96

List of all Federal Advisory Committees by agency, function, authority and GSA Committee ID.

Provided in response to Congresswoman's Maloney's request on page 214 of the transcript of the June 13, 1996 hearing before the House Subcommittee on Government Management, Information and Technology.

KEY TO ACRONYMS:

AUTH (Authority)

STAT:	Directed by Statute
AUTH:	Authorized by Statute
AGEN:	Created by Agency
PRES:	Created by Presidential Directive

FUNCTION

NSPA:	Non-Scientific Program Advisory
NPI:	National Policy Issue
STPA:	Scientific-Technical Program Advisory
GR:	Grant Review
REGNEG:	Regulatory Negotiating

STATUS

C:	Continuing

AGENCY	C-ID	NAME	AUTH	FUNCTION	STATUS
ADF	250	African Development Foundation Advisory Council	STAT	NSPA	C
ATBCB	1849	Americans with Disabilities Act Accessibility Guidelines (ADAAG) Review Advisory Committee	AUTH	NPI	C
ATBCB	2088	Accessibility Guidelines for Play Facilities Negotiated Rulemaking Advisory Committee	PRES	REGNEG	C
ATBCB	5123	Telecommunications Access Advisory Committee	AGEN	NSPA	C
CCR	251	Alabama Advisory Committee	STAT	NSPA	C
CCR	253	Alaska Advisory Committee	STAT	NSPA	C
CCR	254	Arizona Advisory Committee	STAT	NSPA	C
CCR	255	Arkansas Advisory Committee	STAT	NSPA	C
CCR	256	California Advisory Committee	STAT	NSPA	C
CCR	257	Colorado Advisory Committee	STAT	NSPA	C
CCR	258	Connecticut Advisory Committee	STAT	NSPA	C
CCR	259	Delaware Advisory Committee	STAT	NSPA	C
CCR	260	District of Columbia Advisory Committee	STAT	NSPA	C
CCR	261	Florida Advisory Committee	STAT	NSPA	C
CCR	262	Georgia Advisory Committee	STAT	NSPA	C
CCR	263	Hawaii Advisory Committee	STAT	NSPA	C
CCR	264	Idaho Advisory Committee	STAT	NSPA	C
CCR	265	Illinois Advisory Committee	STAT	NSPA	C
CCR	266	Indiana Advisory Committee	STAT	NSPA	C
CCR	267	Iowa Advisory Committee	STAT	NSPA	C
CCR	268	Kansas Advisory Committee	STAT	NSPA	C
CCR	269	Kentucky Advisory Committee	STAT	NSPA	C
CCR	270	Louisiana Advisory Committee	STAT	NSPA	C
CCR	271	Maine Advisory Committee	STAT	NSPA	C
CCR	272	Maryland Advisory Committee	STAT	NSPA	C
CCR	273	Massachusetts Advisory Committee	STAT	NSPA	C
CCR	274	Michigan Advisory Committee	STAT	NSPA	C
CCR	275	Minnesota Advisory Committee	STAT	NSPA	C
CCR	276	Mississippi Advisory Committee	STAT	NSPA	C
CCR	278	Montana Advisory Committee	STAT	NSPA	C
CCR	279	Nebraska Advisory Committee	STAT	NSPA	C

AGENCY	C-ID	NAME	AUTH	FUNCTION	STATUS
CCR	280	Nevada Advisory Committee	STAT	NSPA	C
CCR	281	New Hampshire Advisory Committee	STAT	NSPA	C
CCR	282	New Jersey Advisory Committee	STAT	NSPA	C
CCR	283	New Mexico Advisory Committee	STAT	NSPA	C
CCR	284	New York Advisory Committee	STAT	NSPA	C
CCR	285	North Carolina Advisory Committee	STAT	NSPA	C
CCR	286	North Dakota Advisory Committee	STAT	NSPA	C
CCR	287	Ohio Advisory Committee	STAT	NSPA	C
CCR	288	Oklahoma Advisory Committee	STAT	NSPA	C
CCR	289	Oregon Advisory Committee	STAT	NSPA	C
CCR	290	Pennsylvania Advisory Committee	STAT	NSPA	C
CCR	291	Rhode Island Advisory Committee	STAT	NSPA	C
CCR	292	South Carolina Advisory Committee	STAT	NSPA	C
CCR	293	South Dakota Advisory Committee	STAT	NSPA	C
CCR	294	Tennessee Advisory Committee	STAT	NSPA	C
CCR	295	Texas Advisory Committee	STAT	NSPA	C
CCR	296	Utah Advisory Committee	STAT	NSPA	C
CCR	297	Vermont Advisory Committee	STAT	NSPA	C
CCR	298	Virginia Advisory Committee	STAT	NSPA	C
CCR	299	Washington Advisory Committee	STAT	NSPA	C
CCR	300	West Virginia Advisory Committee	STAT	NSPA	C
CCR	301	Wisconsin Advisory Committee	STAT	NSPA	C
CCR	302	Wyoming Advisory Committee	STAT	NSPA	C
CCR	1517	Missouri Advisory Committee	STAT	NSPA	C
CFTC	304	Advisory Committee on CFTC-State Cooperation	AGEN	NSPA	C
CFTC	305	Agricultural Advisory Committee	AGEN	NSPA	C
CFTC	306	Financial Products Advisory Committee	AGEN	NSPA	C
CNCS	1903	Civilian Community Corps Advisory Board	STAT	NPI	C
CPC	309	Competitiveness Policy Council	STAT	NPI	C
DOC	18	National Acid Precipitation Assessment Program Oversight Review Board	AGEN	STPA	C
DOC	100	Sea Grant Review Panel	STAT	NSPA	C
DOC	104	Travel and Tourism Advisory Board	STAT	NPI	C

AGENCY	C-ID	NAME	AUTH	FUNCTION	STATUS
DOC	181	Transportation and Related Equipment Technical Advisory Committee	STAT	STPA	C
DOC	182	Biotechnology Technical Advisory Committee	STAT	STPA	C
DOC	189	Regulations and Procedures Technical Advisory Committee	STAT	NSPA	C
DOC	313	2000 Census Advisory Committee	AGEN	NPI	C
DOC	315	Advisory Council on Children's Educational Television	STAT	NSPA	C
DOC	317	Board of Overseers of the Malcolm Baldrige National Quality Award	STAT	STPA	C
DOC	320	Census Advisory Committee on Agriculture Statistics	AGEN	STPA	C
DOC	321	Census Advisory Committee on the American Indian and Alaska Native Populations	AGEN	NSPA	C
DOC	322	Census Advisory Committee on the African-American Population	AGEN	NSPA	C
DOC	323	Committee of Chairs of Industry Advisory Committees for Trade Policy Matters	STAT	NPI	C
DOC	324	Computer System Security and Privacy Advisory Board	STAT	STPA	C
DOC	327	Exporters' Textile Advisory Committee	AGEN	NPI	C
DOC	328	Fastener Advisory Committee	STAT	STPA	C
DOC	329	Florida Keys National Marine Sanctuary Advisory Council	STAT	NSPA	C
DOC	332	Industry Functional Advisory Committee on Customs Matters for Trade Policy Matters	STAT	NPI	C
DOC	333	Industry Functional Advisory Committee on Intellectual Property Rights for Trade Policy Ma	STAT	NPI	C
DOC	334	Industry Functional Advisory Committee on Standards for Trade Policy Matters	STAT	NPI	C
DOC	335	Industry Policy Advisory Committee for Trade Policy Matters	STAT	NPI	C
DOC	336	Industry Sector Advisory Committee on Aerospace Equipment for Trade Policy Matters (ISAC 1	STAT	NPI	C
DOC	337	Industry Sector Advisory Committee on Capital Goods for Trade Policy Matters (ISAC 2)	STAT	NPI	C
DOC	338	Industry Sector Advisory Committee on Chemicals and Allied Products for Trade Policy Matte	STAT	NPI	C
DOC	339	Industry Sector Advisory Committee on Consumer Goods for Trade Policy Matters (ISAC 4)	STAT	NPI	C
DOC	340	Industry Sector Advisory Committee on Electronics and Instrumentation for Trade Policy Mat	STAT	NPI	C
DOC	341	Industry Sector Advisory Committee on Energy for Trade Policy Matters (ISAC 6)	STAT	NPI	C
DOC	342	Industry Sector Advisory Committee on Ferrous Ores and Metals for Trade Policy Matters (IS	STAT	NPI	C
DOC	343	Industry Sector Advisory Committee on Footwear Leather and Leather Products for Trade Poli	STAT	NPI	C
DOC	344	Industry Sector Advisory Committee on Building Products and Other Materials for Trade Poli	STAT	NPI	C
DOC	345	Industry Sector Advisory Committee on Lumber and Wood Products for Trade Policy Matters (I	STAT	NPI	C
DOC	346	Industry Sector Advisory Committee on Nonferrous Ores and Metal for Trade Policy Matters (	STAT	NPI	C
DOC	347	Industry Sector Advisory Committee on Paper and Paper Products for Trade Policy Matters (I	STAT	NPI	C
DOC	348	Industry Sector Advisory Committee on Services for Trade Policy Matters (ISAC 13)	STAT	NPI	C
DOC	349	Industry Sector Advisory Committee on Small and Minority Business for Trade Policy Matters	STAT	NPI	C

AGENCY	C-ID	NAME	AUTH	FUNCTION	STATUS
DOC	350	Industry Sector Advisory Committee on Textiles and Apparel for Trade Policy Matters (ISAC	STAT	NPI	C
DOC	351	Industry Sector Advisory Committee on Transportation Construction and Agricultural Equipme	STAT	NPI	C
DOC	352	Industry Sector Advisory Committee on Wholesaling and Retailing for Trade Policy Matters (	STAT	NPI	C
DOC	356	Judges Panel of the Malcolm Baldrige National Quality Award	STAT	STPA	C
DOC	359	Marine Fisheries Advisory Committee	AGEN	NPI	C
DOC	360	Materials Technical Advisory Committee	STAT	STPA	C
DOC	361	Materials Processing Equipment Technical Advisory Committee	STAT	STPA	C
DOC	363	National Medal of Technology Nomination Evaluation Committee	AGEN	STPA	C
DOC	364	National Technical Information Service Advisory Board	STAT	NSPA	C
DOC	366	President's Export Council	PRES	NPI	C
DOC	367	President's Export Council Subcommittee on Export Administration	PRES	NPI	C
DOC	368	Public Advisory Committee for Trademark Affairs	AGEN	NSPA	C
DOC	370	Sensors Technical Advisory Committee	STAT	STPA	C
DOC	375	U.S. Automotive Parts Advisory Committee	STAT	NPI	C
DOC	377	Visiting Committee on Advanced Technology	STAT	STPA	C
DOC	1395	Spectrum Planning and Policy Advisory Committee	AUTH	STPA	C
DOC	1396	Census Advisory Committee on the Asian and Pacific Islander Populations	AGEN	NSPA	C
DOC	1397	Census Advisory Committee on the Hispanic Population	AGEN	NSPA	C
DOC	1683	Modernization Transition Committee	STAT	NSPA	C
DOC	1892	Census Advisory Committee of Professional Associations	AGEN	NSPA	C
DOC	1893	Environmental Technologies Trade Advisory Committee	AGEN	NPI	C
DOC	2075	Information Systems Technical Advisory Committee	STAT	NSPA	C
DOD	16	Defense Intelligence Agency Scientific Advisory Board	AGEN	STPA	C
DOD	31	Joint Advisory Committee on Nuclear Weapons Surety	AGEN	STPA	C
DOD	75	Board of Visitors, United States Military Academy	STAT	NSPA	C
DOD	78	National Board for the Promotion of Rifle Practice	STAT	NSPA	C
DOD	79	U.S. Army Coastal Engineering Research Board	STAT	STPA	C
DOD	94	Navy Planning and Steering Advisory Committee	AGEN	NSPA	C
DOD	137	Telecommunications Service Priority System Oversight Committee	AGEN	NPI	C
DOD	190	Defense Environmental Response Task Force	STAT	NPI	C
DOD	241	Board of Visitors, National Defense University	AGEN	NSPA	C
DOD	381	Advisory Council on Dependents' Education	STAT	NSPA	C

AGENCY	C-ID	NAME	AUTH	FUNCTION	STATUS
DOD	383	Advisory Group on Electron Devices	AGEN	STPA	C
DOD	386	Armed Forces Epidemiological Board	AGEN	STPA	C
DOD	389	U.S. Army Science Board	AGEN	STPA	C
DOD	390	Board of Advisors to the President Naval War College	AGEN	NSPA	C
DOD	391	Board of Advisors to the Superintendent, Naval Postgraduate School	AGEN	NSPA	C
DOD	392	Board of Regents, Uniformed Services University of the Health Sciences	STAT	NSPA	C
DOD	393	Board of Visitors, Air University	AGEN	NSPA	C
DOD	394	Board of Visitors, Community College of the Air Force	AGEN	NSPA	C
DOD	396	Board of Visitors, Defense Information School	AGEN	NSPA	C
DOD	397	Board of Visitors, Joint Military Intelligence College	AGEN	NSPA	C
DOD	398	Board of Visitors, U.S. Air Force Academy	STAT	NSPA	C
DOD	399	Board of Visitors, U.S. Naval Academy	STAT	NSPA	C
DOD	400	Chief of Engineers Environmental Advisory Board	AGEN	STPA	C
DOD	401	Chief of Naval Operations Executive Panel	AGEN	NPI	C
DOD	402	Command and General Staff College Advisory Committee	AUTH	NSPA	C
DOD	404	Department of Defense Wage Committee	AUTH	NSPA	C
DOD	405	Defense Advisory Committee on Military Personnel Testing	AGEN	STPA	C
DOD	407	Defense Advisory Committee on Women in the Services	AGEN	NPI	C
DOD	411	Defense Policy Advisory Committee for Trade	AUTH	NPI	C
DOD	412	Defense Policy Board Advisory Committee	AGEN	NSPA	C
DOD	414	Defense Science Board	AGEN	STPA	C
DOD	417	Department of Defense Education Benefits Board of Actuaries	STAT	STPA	C
DOD	419	Department of Defense Retirement Board of Actuaries	STAT	STPA	C
DOD	422	Inland Waterways Users Board	STAT	NSPA	C
DOD	423	National Security Agency Scientific Advisory Board	AGEN	STPA	C
DOD	424	National Security Education Board	STAT	NSPA	C
DOD	425	Naval Research Advisory Committee	AUTH	STPA	C
DOD	429	Overseas Dependents Schools National Advisory Panel on the Education of Handicapped Depend	STAT	NSPA	C
DOD	430	President's National Security Telecommunications Advisory Committee	PRES	STPA	C
DOD	431	Scientific Advisory Board of the Armed Forces Institute of Pathology	AGEN	STPA	C
DOD	435	Special Operations Policy Advisory Group	AUTH	NPI	C
DOD	437	Strategic Environmental Research and Development Program Scientific Advisory Board	STAT	STPA	C

AGENCY	C-ID	NAME	AUTH	FUNCTION	STATUS
DOD	438	Technical Advisory Committee for Water Management at Army Corps of Engineers	STAT	STPA	C
DOD	439	U.S. Air Force Scientific Advisory Board	AGEN	STPA	C
DOD	441	U.S. Strategic Command Strategic Advisory Group	AGEN	STPA	C
DOD	1481	Department of Defense Government-Industry Advisory Committee on the Operation and Moderniz	STAT	NSPA	C
DOD	1505	Armament Retooling and Manufacturing Support Executive Advisory Committee	AGEN	NSPA	C
DOD	1506	Cultural and Natural Resources Committee for the Yakima Training Center and Expansion Area	AGEN	NPI	C
DOD	1848	Department of Defense Historical Advisory Committee	AGEN	NSPA	C
DOD	1891	Defense Labor-Management Partnership Council	AGEN	NSPA	C
DOD	1900	Semiconductor Technology Council	STAT	STPA	C
DOD	1995	President's Advisory Board on Arms Proliferation	PRES	NSPA	C
DOD	1996	Military Health Care Advisory Committee	AGEN	NSPA	C
DOD	2027	Ballistic Missile Defense Advisory Committee	AGEN	STPA	C
DOD	2044	Presidential Advisory Committee on Gulf War Veterans Illnesses	PRES	STPA	C
DOD	5111	Marshall Center Board of Visitors	AGEN	NSPA	C
DOD	5112	Defense Acquisition University Board of Visitors	STAT	NSPA	C
DOE	10	Inertial Confinement Fusion Advisory Committee, Defense Programs	AGEN	STPA	C
DOE	12	Environmental Management Advisory Board	AGEN	STPA	C
DOE	82	American Statistical Association Committee on Energy Statistics	AGEN	STPA	C
DOE	95	Federal Advisory Committee to Develop On-Site Innovative Technologies for Environmental Re	AGEN	NPI	C
DOE	133	Basic Energy Sciences Advisory Committee	AGEN	STPA	C
DOE	178	High Energy Physics Advisory Panel	AGEN	STPA	C
DOE	236	National Electric and Magnetic Fields Advisory Committee	STAT	STPA	C
DOE	443	Advisory Committee on Demonstration and Commercial Application of Renewable Energy and Ene	STAT	NSPA	C
DOE	444	Fusion Energy Advisory Committee	AGEN	STPA	C
DOE	445	Health and Environmental Research Advisory Committee	AGEN	STPA	C
DOE	447	Metal Casting Industrial Advisory Board	STAT	STPA	C
DOE	449	National Coal Council	AGEN	NPI	C
DOE	452	National Petroleum Council	AGEN	NPI	C
DOE	453	Secretary of Energy Advisory Board	AGEN	NSPA	C
DOE	459	State Energy Advisory Board	STAT	NSPA	C
DOE	460	Technical Advisory Committee on Verification of Fissile Material and Nuclear Warhead Contr	STAT	STPA	C
DOE	1884	Advisory Commitee on Human Radiation Experiments	PRES	NPI	C

AGENCY	C-ID	NAME	AUTH	FUNCTION	STATUS
DOE	1889	Environmental Management Site Specific Advisory Board	AGEN	STPA	C
DOE	1941	Advisory Committee on External Regulation of DOE Nuclear Safety	AGEN	STPA	C
DOI	5	Exxon Valdez Oil Spill Public Advisory Group	AGEN	NSPA	C
DOI	6	Aquatic Nuisance Species Task Force	STAT	STPA	C
DOI	14	Earth Observing System Land Processes Distributed Active Archive Center Science Advisory P	AGEN	STPA	C
DOI	20	Fort Union Regional Coal Team	AGEN	NPI	C
DOI	21	Green River-Hams Fork Regional Coal Team	AGEN	NPI	C
DOI	22	Powder River Regional Coal Team	AGEN	NPI	C
DOI	23	San Juan River Regional Coal Team	AGEN	NPI	C
DOI	42	Advisory Committee on Water Data for Public Use	AGEN	STPA	C
DOI	49	Minerals Management Advisory Board	AGEN	STPA	C
DOI	71	Acadia National Park Advisory Commission	STAT	NSPA	C
DOI	72	Mississippi River Corridor Study Commission	STAT	NSPA	C
DOI	101	Golden Gate National Recreation Area Advisory Commission	AGEN	NSPA	C
DOI	122	Colorado River Basin Salinity Control Advisory Council	STAT	NSPA	C
DOI	152	Sudbury, Assabet, and Concord Rivers Study Committee	STAT	NSPA	C
DOI	153	National Capital Memorial Commission	AUTH	NPI	C
DOI	154	Mississippi River Coordinating Commission	STAT	NSPA	C
DOI	156	Underground Railroad Advisory Committee	STAT	NSPA	C
DOI	162	Native American Graves Protection and Repatriation Review Committee	STAT	NSPA	C
DOI	199	Little Bighorn National Monument Advisory Committee	STAT	NSPA	C
DOI	210	Sport Fishing and Boating Partnership Council	AGEN	NSPA	C
DOI	240	Missouri Recreational River Advisory Group	STAT	NSPA	C
DOI	243	Mary McLeod Bethune Council House National Historic Site Commission	STAT	NSPA	C
DOI	245	National Cooperative Geologic Mapping Program	STAT	STPA	C
DOI	485	Cape Cod National Seashore Advisory Commission	STAT	NSPA	C
DOI	493	Chesapeake and Ohio Canal National Historical Park Commission	AUTH	NSPA	C
DOI	499	Committee for the Preservation of the White House	PRES	OTHER	C
DOI	502	Delaware Water Gap National Recreation Area Citizen Advisory Commission	STAT	NSPA	C
DOI	503	Delta Region Preservation Commission	AUTH	NSPA	C
DOI	510	Farmington River Study Committee	STAT	NSPA	C
DOI	511	Garrison Diversion Unit Federal Advisory Council	STAT	STPA	C

AGENCY	C-ID	NAME	AUTH	FUNCTION	STATUS
DOI	513	Gauley River National Recreation Area Advisory Committee	STAT	NSPA	C
DOI	514	Gettysburg National Military Park Advisory Commission	STAT	NSPA	C
DOI	515	Gila Box Riparian National Conservation Area Advisory Committee	STAT	NSPA	C
DOI	522	Iditarod National Historic Trail Advisory Council	STAT	NSPA	C
DOI	524	Jimmy Carter National Historic Site Advisory Commission	STAT	NSPA	C
DOI	525	Joint Tribal/Bureau of Indian Affairs/Department of Interior Advisory Task Force on Bureau	STAT	NPI	C
DOI	527	Kalaupapa National Historical Park Advisory Commission	AUTH	NSPA	C
DOI	529	Klamath Fishery Management Council	STAT	STPA	C
DOI	530	Klamath River Basin Fisheries Task Force	STAT	STPA	C
DOI	539	Maine Acadian Culture Preservation Commission	STAT	NSPA	C
DOI	550	Natchez National Historical Park Advisory Commission	STAT	NSPA	C
DOI	551	National Earthquake Prediction Evaluation Council	STAT	STPA	C
DOI	552	National Park Service Subsistence Resource Commission-Aniakchak National Monument	STAT	NSPA	C
DOI	553	National Park Service Subsistence Resource Commission-Cape Krusenstern National Monument	STAT	NSPA	C
DOI	554	National Park Service Subsistence Resource Commission-Denali National Park	STAT	NSPA	C
DOI	555	National Park Service Subsistence Resource Commission-Gates of the Arctic National Park	STAT	NSPA	C
DOI	556	National Park Service Subsistence Resource Commission-Kobuk Valley National Park	STAT	NSPA	C
DOI	557	National Park Service Subsistence Resource Commission-Lake Clark National Park	STAT	NSPA	C
DOI	558	National Park Service Subsistence Resource Commission-Wrangell-St. Elias National Park	STAT	NSPA	C
DOI	559	National Park System Advisory Board	AGEN	NPI	C
DOI	560	National Park of American Samoa Advisory Board	STAT	NSPA	C
DOI	564	Niobrara Scenic River Advisory Commission	STAT	NSPA	C
DOI	567	Petroglyph National Monument Advisory Commission	STAT	NSPA	C
DOI	571	Poverty Point National Monument Advisory Commission	STAT	NSPA	C
DOI	592	Salt River Bay National Historical Park and Ecological Preserve at St. Croix, Virgin Islan	STAT	NSPA	C
DOI	593	San Francisco Maritime National Historical Park Advisory Commission	AUTH	NSPA	C
DOI	596	San Pedro Riparian National Conservation Area Advisory Committee	STAT	NSPA	C
DOI	597	Santa Fe National Historic Trail Advisory Council	STAT	NSPA	C
DOI	600	Sleeping Bear Dunes National Lakeshore Advisory Commission	STAT	NSPA	C
DOI	607	Trail of Tears National Historic Trail Advisory Council	STAT	NSPA	C
DOI	608	Trinity River Basin Fish and Wildlife Task Force	STAT	STPA	C
DOI	609	Uinta-Southwestern Utah Regional Coal Team	AGEN	NSPA	C

AGENCY	C-ID	NAME	AUTH	FUNCTION	STATUS
DOI	611	Upper Delaware Citizens Advisory Council	STAT	NSPA	C
DOI	625	Zuni-Cibola National Historical Park Advisory Commission	STAT	NSPA	C
DOI	1410	Silvio Conte National Fish and Wildlife Refuge Advisory Committee	STAT	NSPA	C
DOI	1415	Keweenaw National Historical Park Advisory Commission	STAT	NSPA	C
DOI	1528	Western Interior Alaska Subsistence Regional Advisory Council	STAT	NPI	C
DOI	1529	Seward Peninsula Subsistence Regional Advisory Council	STAT	NSPA	C
DOI	1530	Bristol Bay Subsistence Regional Advisory Council	STAT	NSPA	C
DOI	1531	Southeast Alaska Subsistence Regional Advisory Council	STAT	NSPA	C
DOI	1532	Southcentral Alaska Subsistence Regional Advisory Council	STAT	NSPA	C
DOI	1533	Eastern Interior Alaska Subsistence Regional Advisory Council	STAT	NSPA	C
DOI	1534	Yukon/Kuskokwim Delta Subsistence Regional Advisory Council	STAT	NSPA	C
DOI	1535	North Slope Subsistence Regional Advisory Council	STAT	NSPA	C
DOI	1536	Kodiak/Aleutians Subsistence Regional Advisory Council	STAT	NSPA	C
DOI	1537	Northwest Arctic Subsistence Regional Advisory Council	STAT	NSPA	C
DOI	1657	Preservation Technology and Training Board	STAT	NSPA	C
DOI	1739	President's Council on Sustainable Development	PRES	NPI	C
DOI	1763	Manzanar National Historic Site Advisory Commission	STAT	NSPA	C
DOI	1902	Pea Ridge national Military Park Advisory Team	AGEN	NSPA	C
DOI	1915	Federal Gas Valuation Negotiated Rulemaking Committee	AGEN	STPA	C
DOI	1928	Office of Surface Mining Advisory Board	AGEN	STPA	C
DOI	1929	Negotiated Rulemaking Committee on Coal Refuse Disposal	AGEN	STPA	C
DOI	1940	Colorado River Basin Salinity Control Advisory Council	STAT	STPA	C
DOI	1991	Indian Gas Valuation Negotiated Rulemaking Committee	AGEN	STPA	C
DOI	1992	Bay-Delta Advisory Council	AGEN	STPA	C
DOI	2001	Cape Cod National Seashore Off-road Vehicle Use Negotiated Rulemaking Advisory Committee	PRES	REGNEG	C
DOI	2006	Indian Self-Determination Negotiated Rulemaking Committee	PRES	REGNEG	C
DOI	2039	Alaska Land Managers Forum	AGEN	NSPA	C
DOI	2040	Front Range Resource Advisory Council	AUTH	NSPA	C
DOI	2041	Northwest Resource Advisory Council	AUTH	NSPA	C
DOI	2042	Southwest Resource Advisory Council	AUTH	NSPA	C
DOI	2043	Yakima River Basin Conservation Advisory Group	STAT	STPA	C
DOI	2045	Juan Bautista De Anza National Historic Trail Advisory Council	STAT	NSPA	C

AGENCY	C-ID	NAME	AUTH	FUNCTION	STATUS
DOI	2050	Alaska Resource Advisory Council	AGEN	NSPA	C
DOI	2051	Arizona Resource Advisory Council	AGEN	NSPA	C
DOI	2052	Bakersfield Resource Advisory Council	AGEN	NSPA	C
DOI	2053	Susanville Resource Advisory Council	AGEN	NSPA	C
DOI	2054	Ukiah Resource Advisory Council	AGEN	NSPA	C
DOI	2055	Lower Snake River Resource Advisory Council	AGEN	NSPA	C
DOI	2056	Upper Columbia-Salmon/Clearwater Resource Advisory Council	AGEN	NSPA	C
DOI	2057	Upper Snake River Resource Advisory Council	AGEN	NSPA	C
DOI	2058	Butte Resource Advisory Council	AGEN	NSPA	C
DOI	2059	Lewistown Resource Advisory Council	AGEN	NSPA	C
DOI	2060	Miles City Resource Advisory Council	AGEN	NSPA	C
DOI	2061	Dakotas Resource Advisory Council	AGEN	NSPA	C
DOI	2062	Mojave-Southern Great Basin Resource Advisory Council	AGEN	NSPA	C
DOI	2063	Northeastern Great Basin Resource Advisory Council	AGEN	NSPA	C
DOI	2064	Sierra Front-Northwestern Great Basin Resource Advisory Council	AGEN	NSPA	C
DOI	2065	New Mexico Resource Advisory Council	AGEN	NSPA	C
DOI	2066	John Day-Snake Resource Advisory Council	AGEN	NSPA	C
DOI	2067	Southeast Oregon Resource Advisory Council	AGEN	NSPA	C
DOI	2068	Eastern Washington Resource Advisory Council	AGEN	NSPA	C
DOI	2069	Utah Resource Advisory Council	AGEN	NSPA	C
DOI	2070	Wyoming Resource Advisory Council	AGEN	NSPA	C
DOI	2097	Western Water Policy Review Commission	STAT	NPI	C
DOI	5110	Green River Basin Advisory Committee	AGEN	NSPA	C
DOJ	15	Coalition for Juvenile Justice	STAT	NSPA	C
DOJ	626	Advisory Corrections Council	STAT	NSPA	C
DOJ	627	Immigration and Naturalization Service User Fee Advisory Committee	STAT	NPI	C
DOJ	1793	National Stolen Auto Part Information System Federal Advisory Committee	STAT	NPI	C
DOJ	1886	Citizens' Advisory Panel	AGEN	NSPA	C
DOJ	1926	Advisory Committee on Federalization	AGEN	NSPA	C
DOJ	1946	Criminal Justice Information Services (CJIS) Advisory Policy Board	AGEN	NSPA	C
DOJ	1950	Coordinating Council on Juvenile Justice and Delinquency Prevention	STAT	NSPA	C
DOJ	1980	Advisory Committee on Violence Against Women	AGEN	NSPA	C

AGENCY	C-ID	NAME	AUTH	FUNCTION	STATUS
DOJ	1998	DNA Advisory Board	STAT	NSPA	C
DOJ	2007	Task Force on Prison Construction Standardization and Techniques	STAT	NSPA	C
DOL	170	National Advisory Committee on Occupational Safety and Health	STAT	STPA	C
DOL	630	Advisory Committee on Construction Safety and Health	STAT	NSPA	C
DOL	632	Advisory Committee on Veterans' Employment and Training	STAT	NPI	C
DOL	637	Business Research Advisory Council to the Bureau of Labor Statistics	AGEN	NSPA	C
DOL	639	Federal Advisory Council on Occupational Safety and Health	PRES	OTHER	C
DOL	640	Federal Committee on Apprenticeship	AGEN	NSPA	C
DOL	641	Glass Ceiling Commission	STAT	NPI	C
DOL	642	Immigration Nursing Relief Advisory Committee	STAT	STPA	C
DOL	644	Labor Advisory Committee for Trade Negotiations and Trade Policy	STAT	OTHER	C
DOL	645	Labor Research Advisory Council to the Bureau of Labor Statistics	AGEN	NSPA	C
DOL	648	National Commission for Employment Policy	STAT	NPI	C
DOL	649	President's Committee on the International Labor Organization (ILO)	PRES	NPI	C
DOL	651	Advisory Council on Employee Welfare and Pension Benefit Plans	STAT	NSPA	C
DOL	1409	Native American Employment and Training Council	STAT	NSPA	C
DOL	1896	Task Force on Excellence in State and Local Government through Labor-Management Cooperatio	AGEN	NSPA	C
DOL	1898	Steel Erection Negotiated Rulemaking Advisory Committee	PRES	REGNEG	C
DOL	1927	National Advisory Committee for the North American Agreement on Labor Cooperation	AGEN	NPI	C
DOL	1947	Advisory Committee on Elimination of Pneumoconiosis Among Coal Mine Workers	AGEN	NSPA	C
DOL	1976	Maritime Advisory Committee for Occupational Safety and Health	AGEN		C
DOL	2000	Advisory Council for the School-to-Work Opportunities	AGEN	STPA	C
DOS	157	Advisory Committee on International Economic Policy	AGEN	NPI	C
DOS	158	Overseas Security Advisory Council	AGEN	NSPA	C
DOS	159	Shipping Coordinating Committee	AGEN	STPA	C
DOS	160	Overseas Schools Advisory Council	AGEN	NSPA	C
DOS	165	Secretary of State's Advisory Committee on Private International Law	AGEN	NSPA	C
DOS	204	Advisory Committee to the U.S. National Section of the Inter-American Tropical Tuna Commis	STAT	NPI	C
DOS	656	Advisory Committee on Historical Diplomatic Documentation	STAT	NSPA	C
DOS	657	Advisory Committee on International Communications and Information Policy	AGEN	NPI	C
DOS	660	Advisory Committee on International Law	AGEN	NPI	C
DOS	663	Advisory Committee to the U.S. National Section of the International Commission for the Co	STAT	NPI	C

AGENCY	C-ID	NAME	AUTH	FUNCTION	STATUS
DOS	665	Defense Trade Advisory Group	AGEN	OTHER	C
DOS	669	Advisory Committee for Studies of Eastern Europe and the Independent States of the Former	STAT	GR	C
DOS	1846	United States International Telecommunication Advisory Committee	AGEN	STPA	C
DOS	1945	Advisory Panel to the United States Section of the North Pacific Anadromous Fish Commissio	STAT		C
DOT	52	National Recreational Trails Advisory Committee	STAT	NSPA	C
DOT	68	National Offshore Safety Advisory Committee	AGEN	STPA	C
DOT	97	Houston-Galveston Navigation Safety Advisory Committee	STAT	NSPA	C
DOT	194	National Boating Safety Advisory Council	STAT	NPI	C
DOT	197	Aviation Rulemaking Advisory Committee	AGEN	STPA	C
DOT	675	Air Traffic Procedures Advisory Committee	AGEN	STPA	C
DOT	677	Aviation Security Advisory Committee	AGEN	NPI	C
DOT	679	Chemical Transportation Advisory Committee	AGEN	STPA	C
DOT	681	Commercial Fishing Industry Vessel Advisory Committee	STAT	NPI	C
DOT	682	Commercial Space Transportation Advisory Committee	AGEN	NPI	C
DOT	685	Intelligent Transportation Society of America	AGEN	STPA	C
DOT	687	Lower Mississippi River Waterway Safety Advisory Committee	STAT	NSPA	C
DOT	688	Merchant Marine Personnel Advisory Committee	AGEN	NPI	C
DOT	689	Minority Business Resource Center Advisory Committee	STAT	NPI	C
DOT	690	Motor Vehicle Safety Research Advisory Committee	AGEN	STPA	C
DOT	691	National Driver Register Advisory Committee	STAT	STPA	C
DOT	692	National Highway Safety Advisory Committee	STAT	NSPA	C
DOT	693	National Motor Carrier Advisory Committee	AGEN	NSPA	C
DOT	695	Navigation Safety Advisory Council	STAT	NPI	C
DOT	696	New York Harbor Traffic Management Advisory Committee	AGEN	NSPA	C
DOT	699	Radio Technical Commission for Aeronautics	AGEN	STPA	C
DOT	700	Research, Engineering, and Development Advisory Committee	STAT	STPA	C
DOT	701	Saint Lawrence Seaway Development Corporation Advisory Board	STAT	NSPA	C
DOT	702	Technical Hazardous-Liquid Pipeline Safety Standards Committee	STAT	STPA	C
DOT	703	Technical Pipeline Safety Standards Committee	STAT	STPA	C
DOT	704	Towing Safety Advisory Committee	STAT	NSPA	C
DOT	705	Transit Industry Technology Development Advisory Committee	STAT	STPA	C
DOT	1511	Northeast Corridor Safety Committee	STAT	NSPA	C

AGENCY	C-ID	NAME	AUTH	FUNCTION	STATUS
DOT	1512	Commerical Motor Vehicle Safety Regulatory Review Panel	STAT	NSPA	C
DOT	2015	Chicago Drawbridge Negotiated Rulemaking Committee	AGEN	NSPA	C
DOT	2027	Transportation Statistics Advisory Council	STAT	NSPA	C
DOT	2032	Department of Transportation Partnership Council	AGEN	NSPA	C
DOT	2038	Negotiated Rulemaking Headlamp Advisory Committee	PRES	REGNEG	C
DOT	2099	Railroad Safety Advisory Committee	PRES	REGNEG	C
ED	98	National Advisory Committee on Institutional Quality and Integrity	STAT	NSPA	C
ED	115	Advisory Committee on Student Financial Assistance	STAT	NSPA	C
ED	147	President's Advisory Commission on Educational Excellence for Hispanic Americans	PRES	NPI	C
ED	232	Historically Black Colleges and Universities Capital Financing Advisory Board	STAT	NSPA	C
ED	707	Advisory Council on Education Statistics	STAT	STPA	C
ED	711	National Advisory Council on Indian Education	STAT	OTHER	C
ED	712	National Board of the Fund for the Improvement of Postsecondary Education	STAT	OTHER	C
ED	714	National Institute for Literacy Advisory Board	STAT	NSPA	C
ED	715	President's Board of Advisors on Historically Black Colleges and Universities	PRES	NPI	C
ED	1948	National Educational Research Policy and Priorities Board	STAT	NSPA	C
ED	1989	National Library of Education Advisory Task Force	STAT	NSPA	C
EEOC	2049	Negotiated Rulemaking Advisory Committee for Regulatory Guidance on Unsupervised Waivers o	PRES	REGNEG	C
EPA	117	Local Government Advisory Committee	AGEN	NPI	C
EPA	119	Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel	STAT	STPA	C
EPA	121	Clean Air Act Advisory Committee	AGEN	NPI	C
EPA	124	Council on Clean Air Compliance Analysis	STAT	NPI	C
EPA	125	National Environmental Education Advisory Council	STAT	NPI	C
EPA	163	National Drinking Water Advisory Council	STAT	STPA	C
EPA	169	Risk Assessment and Management Commission	STAT	STPA	C
EPA	719	Clean Air Scientific Advisory Committee	STAT	STPA	C
EPA	723	Environmental Financial Advisory Board	AGEN	STPA	C
EPA	726	Federal Facilities Environmental Restoration Dialogue Committee	AGEN	OTHER	C
EPA	728	Gulf of Mexico Program Policy Review Board	AGEN	STPA	C
EPA	730	National Advisory Council for Environmental Policy and Technology	AGEN	STPA	C
EPA	734	Science Advisory Board	STAT	STPA	C
EPA	1717	National Environmental Justice Advisory Council	AGEN	NSPA	C

AGENCY	C-ID	NAME	AUTH	FUNCTION	STATUS
EPA	1777	Small Nonroad Engine Negotiated Rulemaking Advisory Committee	PRES	REGNEG	C
EPA	1885	Small Town Environmental Planning Task Force	STAT	NPI	C
EPA	1912	Advisory Committee on Personal Motor Vehicle Greenhouse Gas Reductions	PRES	NPI	C
EPA	1914	Governmental Committee to the United States Government Representative to the North America	PRES	STPA	C
EPA	1916	National Advisory Committee to the United States Government Representative to the North Am	PRES	STPA	C
EPA	1937	Common Sense Initiative Council	AGEN	STPA	C
EPA	1942	Good Neighbor Environmental Board	STAT	STPA	C
EPA	1986	Urban Wet Weather Flows	AGEN	STPA	C
EPA	2010	Environmental Laboratory Advisory Board	AGEN	NSPA	C
EPA	2028	Pesticide Program Dialogue Committee	AGEN	STPA	C
EPA	2029	Industrial Non-Hazardous Waste Policy Dialogue Committee	AGEN	STPA	C
EPA	2073	National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances	AGEN	STPA	C
EXIM	736	Advisory Committee of the Export-Import Bank of the United States	STAT	NSPA	C
FASAB	172	Federal Accounting Standards Advisory Board	AGEN	OTHER	C
FCAH	738	Arts and Artifacts Indemnity Panel	AUTH	OTHER	C
FCC	740	Advisory Committee on Advanced Television Service	AGEN	OTHER	C
FCC	742	National Advisory Committee	AGEN	NPI	C
FCC	744	Network Interoperability and Reliability Council	AGEN	NSPA	C
FCC	1895	Advisory Committee for the 1997 World Radiocommunication Conference	AGEN	NSPA	C
FCC	2016	Public Safety Wireless Advisory Committee	AGEN	NSPA	C
FCC	2048	North American Numbering Council	AGEN		C
FEC	746	Clearinghouse Advisory Panel	AGEN	NSPA	C
FEMA	134	Board of Visitors for the Emergency Management Institute	AGEN	NSPA	C
FEMA	747	Advisory Committee of the National Urban Search and Rescue System	AGEN	NPI	C
FEMA	748	Board of Visitors for the National Fire Academy	STAT	NSPA	C
FEMA	1554	Federal Emergency Management Agency Advisory Board	AGEN	NPI	C
FEMA	2096	Technical Mapping Advisory Council	STAT	NSPA	C
FMCS	2009	FMCS Grants Program Review and Advisory Committee	AGEN	GR	C
FRTIB	1489	Employee Thrift Advisory Council	STAT	NSPA	C
GSA	751	General Services Administration Business Advisory Board	AGEN	NSPA	C
HHS	35	Oncologic Drugs Advisory Committee	AUTH	STPA	C
HHS	36	Advisory Commission on Childhood Vaccines	STAT	STPA	C

AGENCY	C-ID	NAME	AUTH	FUNCTION	STATUS
HHS	80	Advisory Board on Child Abuse and Neglect	STAT	NPI	C
HHS	81	Science Board to the Food and Drug Administration	AUTH	STPA	C
HHS	85	National Cancer Institute Special Emphasis Panel	AUTH	GR	C
HHS	86	Board of Scientific Counselors, National Cancer Institute	AUTH	STPA	C
HHS	90	Cancer Research Manpower and Education Review Committee	AUTH	GR	C
HHS	92	National Advisory Board for Arthritis and Musculoskeletal and Skin Diseases	STAT	STPA	C
HHS	108	Dermatologic and Ophthalmic Drugs Advisory Committee	AUTH	STPA	C
HHS	109	Anti-Infective Drugs Advisory Committee	AUTH	STPA	C
HHS	110	National Kidney and Urologic Diseases Advisory Board	STAT	STPA	C
HHS	111	National Institute of Neurological Disorders and Stroke Special Emphasis Panel	AUTH	GR	C
HHS	112	National Institute of Neurological Disorders and Stroke Initial Review Group	AUTH	GR	C
HHS	113	National Toxicology Program Board of Scientific Counselors	AUTH	STPA	C
HHS	127	Biological Response Modifiers Advisory Committee	AUTH	STPA	C
HHS	128	National Diabetes and Digestive and Kidney Diseases Advisory Council	STAT	OTHER	C
HHS	129	National Arthritis and Musculoskeletal and Skin Diseases Advisory Council	STAT	OTHER	C
HHS	130	National Digestive Diseases Advisory Board	STAT	OTHER	C
HHS	131	National Diabetes Advisory Board	STAT	OTHER	C
HHS	142	National Advisory Board on Medical Rehabilitation Research	STAT	OTHER	C
HHS	143	Board of Scientific Counselors, National Institute of Allergy and Infectious Diseases	AUTH	STPA	C
HHS	145	Board of Scientific Counselors, National Center for Biotechnology Information, National Li	AUTH	STPA	C
HHS	148	Food Advisory Committee	AUTH	STPA	C
HHS	166	National Advisory Environmental Health Sciences Council	STAT	OTHER	C
HHS	167	Board of Regents of the National Library of Medicine	STAT	OTHER	C
HHS	179	Hospital Infection Control Practices Advisory Committee	AUTH	STPA	C
HHS	183	Substance Abuse and Mental Health Services Administration National Advisory Council	STAT	NPI	C
HHS	184	Center for Mental Health Services National Advisory Council	STAT	NPI	C
HHS	185	Center for Substance Abuse Prevention National Advisory Council	STAT	NPI	C
HHS	186	Center for Substance Abuse Treatment National Advisory Council	STAT	NPI	C
HHS	188	Advisory Committee for Women's Services	STAT	NSPA	C
HHS	192	Deafness and Other Communication Disorders Programs Advisory Committee	AUTH	STPA	C
HHS	196	Technical Electronic Product Radiation Safety Standards Committee	STAT	STPA	C
HHS	202	Board of Scientific Counselors, National Institute for Occupational Safety and Health	AUTH	STPA	C

AGENCY	C-ID	NAME	AUTH	FUNCTION	STATUS
HHS	212	Advisory Panel on Alzheimer's Disease	STAT	OTHER	C
HHS	218	National Institute on Aging Initial Review Group	AUTH	GR	C
HHS	222	Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry	AUTH	STPA	C
HHS	223	Arthritis Advisory Committee	AUTH	STPA	C
HHS	224	Blood Products Advisory Committee	AUTH	STPA	C
HHS	225	Board of Scientific Counselors, Clinical Center	AUTH	STPA	C
HHS	230	Board of Scientific Counselors, National Eye Institute	AUTH	STPA	C
HHS	238	National Institute on Deafness and Other Communication Disorders Special Emphasis Panel	AUTH	STPA	C
HHS	248	Board of Scientific Counselors, National Institute of Arthritis and Musculoskeletal and Sk	AUTH	STPA	C
HHS	752	AIDS Research Advisory Committee, NIAID	STAT	OTHER	C
HHS	762	Acquired Immunodeficiency Syndrome Research Review Committee	AUTH	GR	C
HHS	763	Acrylonitrile Study Advisory Panel	AUTH	STPA	C
HHS	765	Advisory Committee for Energy-Related Epidemiologic Research	AUTH	STPA	C
HHS	767	Advisory Committee on Childhood Lead Poisoning Prevention	AUTH	STPA	C
HHS	768	Advisory Committee on Immunization Practices	AUTH	STPA	C
HHS	769	Advisory Committee on Infant Mortality	AUTH	NPI	C
HHS	772	Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of	AUTH	STPA	C
HHS	774	Advisory Committee to the Director, Centers for Disease Control	AUTH	NSPA	C
HHS	775	Advisory Committee to the Director, National Institutes of Health	AUTH	OTHER	C
HHS	776	Advisory Council for the Elimination of Tuberculosis	STAT	STPA	C
HHS	777	Advisory Council on Hazardous Substances Research and Training	STAT	OTHER	C
HHS	778	National Advisory Council on Nurse Education and Practice	STAT	NPI	C
HHS	779	Advisory Panel for the Evaluation of the Job Opportunities and Basic Skills (JOBS) Trainin	STAT	NSPA	C
HHS	781	National Institute on Alcohol Abuse and Alcoholism Initial Review Group	AUTH	GR	C
HHS	783	National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel	AUTH	GR	C
HHS	784	Allergenic Products Advisory Committee	AUTH	STPA	C
HHS	785	Allergy, Immunology, and Transplantation Research Committee	AUTH	GR	C
HHS	787	Biomedical Library Review Committee	AUTH	GR	C
HHS	788	Anesthetic and Life Support Drugs Advisory Committee	AUTH	STPA	C
HHS	789	Antiviral Drugs Advisory Committee	AUTH	STPA	C
HHS	792	Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee	AUTH	GR	C
HHS	796	Behavioral and Neurosciences Special Emphasis Panel	AUTH	GR	C

AGENCY	C-ID	NAME	AUTH	FUNCTION	STATUS
HHS	799	Board of Scientific Counselors, National Heart Lung and Blood Institute	AUTH	STPA	C
HHS	801	Board of Scientific Counselors, National Institute of Child Health and Human Development	AUTH	STPA	C
HHS	802	Board of Scientific Counselors, National Institute of Dental Research	AUTH	STPA	C
HHS	803	Board of Scientific Counselors, National Institute of Diabetes and Digestive and Kidney Di	AUTH	STPA	C
HHS	804	Board of Scientific Counselors, National Institute of Environmental Health Sciences	AUTH	STPA	C
HHS	805	Board of Scientific Counselors, National Institute of Mental Health	AUTH	STPA	C
HHS	806	Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke	AUTH	STPA	C
HHS	807	Board of Scientific Counselors, National Institute on Aging	AUTH	STPA	C
HHS	808	Board of Scientific Counselors, National Institute on Alcohol Abuse and Alcoholism	AUTH	STPA	C
HHS	809	Board of Scientific Counselors, National Institute on Deafness and Other Communication Dis	AUTH	STPA	C
HHS	810	Board of Scientific Counselors, National Institute on Drug Abuse	AUTH	STPA	C
HHS	811	Board of Scientific Counselors, National Library of Medicine	AUTH	STPA	C
HHS	812	Board of Scientific Counselors, National Center for Infectious Diseases	AUTH	STPA	C
HHS	814	National Cancer Institute Initial Review Group	AUTH	GR	C
HHS	817	Cardiovascular and Renal Drugs Advisory Committee	AUTH	STPA	C
HHS	820	National Institute of General Medical Sciences Initial Review Group	AUTH	GR	C
HHS	821	Centers for Disease Control Advisory Committee on HIV and STD Prevention	AUTH	STPA	C
HHS	826	Clinical Laboratory Improvement Advisory Committee	AUTH	STPA	C
HHS	830	Clinical Trials Review Committee	AUTH	GR	C
HHS	834	Communication Disorders Review Committee	AUTH	GR	C
HHS	836	Council on Graduate Medical Education	STAT	NPI	C
HHS	841	Device Good Manufacturing Practice Advisory Committee	STAT	STPA	C
HHS	842	Diabetes and Digestive and Kidney Diseases Special Grants Review Committee	AUTH	GR	C
HHS	845	Division of Research Grants Advisory Committee	AUTH	STPA	C
HHS	847	Drug Abuse Advisory Committee	AUTH	STPA	C
HHS	848	National Institute on Drug Abuse Initial Review Group	AUTH	GR	C
HHS	850	National Institute on Drug Abuse Special Emphasis Panel	AUTH	GR	C
HHS	852	Drug Testing Advisory Board	AUTH	STPA	C
HHS	854	End-Stage Renal Disease Data Advisory Committee, HCFA, NIDDK	STAT	OTHER	C
HHS	855	Endocrinologic and Metabolic Drugs Advisory Committee	AUTH	STPA	C
HHS	857	Environmental Health Sciences Review Committee	AUTH	GR	C
HHS	869	Federal Council on the Aging	STAT	NPI	C

AGENCY	C-ID	NAME	AUTH	FUNCTION	STATUS
HHS	870	Federal Hospital Council	STAT	NPI	C
HHS	871	Advisory Committee for Reproductive Health Drugs	AUTH	STPA	C
HHS	872	Fogarty International Center Advisory Board	AUTH	OTHER	C
HHS	873	Frederick Cancer Research and Development Center Advisory Committee	AUTH	STPA	C
HHS	874	Gastrointestinal Drugs Advisory Committee	AUTH	STPA	C
HHS	875	National Center for Research Resources Initial Review Group	AUTH	GR	C
HHS	878	Advisory Committee for Pharmaceutical Science	AUTH	STPA	C
HHS	879	Genetic Basis of Disease Review Committee	AUTH	GR	C
HHS	881	Human Genome Research Initial Review Group	AUTH	GR	C
HHS	883	Health Professions and Nurse Education Special Emphasis Panel	AUTH	GR	C
HHS	885	Hanford Thyroid Morbidity Study Advisory Committee	STAT	STPA	C
HHS	888	Health Care Technology Study Section	AUTH	GR	C
HHS	890	HRSA AIDS Advisory Committee	AUTH	STPA	C
HHS	891	Health Services Research Dissemination Study Section	AUTH	GR	C
HHS	894	Health Services Research and Developmental Grants Review Committee	AUTH	GR	C
HHS	896	Heart, Lung, and Blood Program Project Review Committee	AUTH	GR	C
HHS	898	Heart, Lung, and Blood Special Emphasis Panel	AUTH	GR	C
HHS	900	Substance Abuse and Mental Health Services Administration Special Emphasis Panel I	AUTH	GR	C
HHS	906	Injury Research Grant Review Committee	AUTH	GR	C
HHS	907	Interagency Committee on Smoking and Health	STAT	STPA	C
HHS	910	Literature Selection Technical Review Committee	AUTH	OTHER	C
HHS	913	National Institute of Child Health and Human Development Special Emphasis Panel	AUTH	GR	C
HHS	914	Maternal and Child Health Research Grants Review Committee	AUTH	GR	C
HHS	916	Medical Devices Advisory Committee	STAT	STPA	C
HHS	917	Medical Imaging Drugs Advisory Committee	AUTH	STPA	C
HHS	926	National Institute of Child Health and Human Development Initial Review Group	AUTH	GR	C
HHS	931	Microbiology and Infectious Diseases Research Committee	AUTH	GR	C
HHS	932	Mine Health Research Advisory Committee	STAT	STPA	C
HHS	933	Minority Programs Review Committee	AUTH	GR	C
HHS	938	National Advisory Allergy and Infectious Diseases Council	STAT	OTHER	C
HHS	939	National Advisory Child Health and Human Development Council	STAT	OTHER	C
HHS	940	National Advisory Committee on Rural Health	AUTH	NPI	C

AGENCY	C-ID	NAME	AUTH	FUNCTION	STATUS
HHS	942	National Advisory Council for Health Care Policy, Research, and Evaluation	STAT	STPA	C
HHS	943	National Advisory Council for Human Genome Research	AUTH	GR	C
HHS	944	National Advisory Council for Nursing Research	STAT	OTHER	C
HHS	945	National Advisory Council on Aging	STAT	OTHER	C
HHS	946	National Advisory Council on Alcohol Abuse and Alcoholism	STAT	OTHER	C
HHS	947	National Advisory Council on Drug Abuse	STAT	OTHER	C
HHS	949	National Advisory Council on Migrant Health	STAT	OTHER	C
HHS	950	National Advisory Council on the National Health Service Corps	STAT	NPI	C
HHS	951	National Advisory Dental Research Council	STAT	OTHER	C
HHS	952	National Advisory Eye Council	STAT	OTHER	C
HHS	953	National Advisory General Medical Sciences Council	STAT	OTHER	C
HHS	954	National Advisory Mental Health Council	STAT	OTHER	C
HHS	955	National Advisory Neurological Disorders and Stroke Council	STAT	OTHER	C
HHS	956	National Advisory Research Resources Council	STAT	OTHER	C
HHS	960	National Cancer Advisory Board	STAT	OTHER	C
HHS	963	National Commission on Alcoholism and Other Alcohol-Related Problems	STAT	NPI	C
HHS	965	National Committee on Vital and Health Statistics	STAT	STPA	C
HHS	966	National Deafness and Other Communication Disorders Advisory Board	STAT	OTHER	C
HHS	967	National Deafness and Other Communication Disorders Advisory Council	STAT	OTHER	C
HHS	969	National Heart, Lung, and Blood Advisory Council	STAT	OTHER	C
HHS	970	National Institute of Dental Research Special Grants Review Committee	AUTH	GR	C
HHS	971	National Vaccine Advisory Committee	STAT	NPI	C
HHS	977	National Institute on Aging Special Emphasis Panel	AUTH	GR	C
HHS	980	National Institute of Nursing Research Initial Review Group	AUTH	GR	C
HHS	984	Nonprescription Drugs Advisory Committee	AUTH	STPA	C
HHS	990	Peripheral and Central Nervous System Drugs Advisory Committee	AUTH	STPA	C
HHS	991	Pharmacological Sciences Review Committee	AUTH	GR	C
HHS	998	Practicing Physicians Advisory Council	STAT	NPI	C
HHS	1001	President's Cancer Panel	STAT	OTHER	C
HHS	1003	President's Committee on Mental Retardation	PRES	NPI	C
HHS	1004	President's Council on Physical Fitness and Sports	PRES	NSPA	C
HHS	1009	Psychopharmacologic Drugs Advisory Committee	AUTH	STPA	C

AGENCY	C-ID	NAME	AUTH	FUNCTION	STATUS
HHS	1011	Pulmonary-Allergy Drugs Advisory Committee	AUTH	STPA	C
HHS	1013	Recombinant DNA Advisory Committee	AUTH	OTHER	C
HHS	1016	National Center for Research Resources Special Emphasis Panel	AUTH	GR	C
HHS	1018	Research Training Review Committee	AUTH	GR	C
HHS	1021	Safety and Occupational Health Study Section	AUTH	GR	C
HHS	1023	Science Advisory Board to the National Center for Toxicological Research	AUTH	STPA	C
HHS	1026	Sickle Cell Disease Advisory Committee	AUTH	OTHER	C
HHS	1031	Substance Abuse and Mental Health Services Administration Special Emphasis Panel II	AUTH	GR	C
HHS	1034	Task Force on Aging Research	STAT	OTHER	C
HHS	1035	Technical Advisory Committee for Diabetes Translation and Community Control Programs	AUTH	STPA	C
HHS	1037	Training Grant and Career Development Review Committee	AUTH	GR	C
HHS	1041	Vaccines and Related Biological Products Advisory Committee	AUTH	STPA	C
HHS	1042	Veterinary Medicine Advisory Committee	AUTH	STPA	C
HHS	1045	National Eye Institute Special Emphasis Panel	AUTH	GR	C
HHS	1483	National Cancer Institute Board of Scientific Advisors	AUTH	STPA	C
HHS	1671	National Mammography Quality Assurance Advisory Committee	STAT	STPA	C
HHS	1750	National Commission on Allied Health	STAT	OTHER	C
HHS	1804	Health Care Policy and Research Special Emphasis Panel	AUTH	GR	C
HHS	1843	Commission on Research Integrity	STAT	STPA	C
HHS	1844	Sleep Disorders Research Advisory Board	STAT	STPA	C
HHS	1845	Workers' Family Protection Task Force	STAT	STPA	C
HHS	1852	National Task Force on Acquired Immune Deficiency Syndrome (AIDS) Drug Development	AUTH	MPI	C
HHS	1854	Alternative Medicine Program Advisory Council	STAT	STPA	C
HHS	1860	Multidisciplinary Sciences Special Emphasis Panel	AUTH	GR	C
HHS	1861	Microbiological and Immunological Sciences Special Emphasis Panel	AUTH	GR	C
HHS	1862	Chemistry and Related Sciences Special Emphasis Panel	AUTH	GR	C
HHS	1863	Biological and Physiological Sciences Special Emphasis Panel	AUTH	GR	C
HHS	1864	Clinical Sciences Special Emphasis Panel	AUTH	GR	C
HHS	1865	Sensory Sciences Initial Review Group	AUTH	GR	C
HHS	1866	Neurological Sciences Initial Review Group	AUTH	GR	C
HHS	1867	Biobehavioral and Social Sciences Initial Review Group	AUTH	GR	C
HHS	1868	Technology and Applied Sciences Initial Review Group	AUTH	GR	C

AGENCY	C-ID	NAME	AUTH	FUNCTION	STATUS
HHS	1869	Surgery, Radiology, and Bioengineering Initial Review Group	AUTH	GR	C
HHS	1870	Infectious Diseases and Microbiology Initial Review Group	AUTH	GR	C
HHS	1871	Immunological Sciences Initial Review Group	AUTH	GR	C
HHS	1872	AIDS and Related Research Initial Review Group	AUTH	GR	C
HHS	1873	Biophysical and Chemical Sciences Initial Review Group	AUTH	GR	C
HHS	1874	Biochemical Sciences Inital Review Group	AUTH	GR	C
HHS	1875	Oncological Sciences Initial Review Group	AUTH	GR	C
HHS	1876	Genetic Sciences Inital Review Group	AUTH	GR	C
HHS	1877	Cell Development and Function Initial Review Group	AUTH	GR	C
HHS	1878	Endocrinology and Reproductive Sciences Initial Review Group	AUTH	GR	C
HHS	1879	Pathophysiological Sciences Initial Review Group	AUTH	GR	C
HHS	1880	Cardiovascular Sciences Initial Review Group	AUTH	GR	C
HHS	1881	Musculoskeletal and Dental Sciences Initial Review Group	AUTH	GR	C
HHS	1882	Nutritional and Metabolic Sciences Initial Review Group	AUTH	GR	C
HHS	1883	Health Promotion and Disease Prevention Initial Review Group	AUTH	GR	C
HHS	1907	White House Conference on Aging Advisory Committee	STAT	NSPA	C
HHS	1908	Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities	STAT	GR	C
HHS	1909	Citizens Advisory Committee on Public Health Service Activities and Research at the Depart	AGEN	NSPA	C
HHS	1910	Disease, Disability, and Injury Prevention and Control Special Emphasis Panel	AUTH	GR	C
HHS	1913	1995 White House Conference on Aging Policy Committee	STAT	NSPA	C
HHS	1918	Office of AIDS Research Advisory Council	STAT		C
HHS	1919	Board of Scientific Counselors, National Center for Human Genome Research	AUTH	STPA	C
HHS	1951	Advisory Committee on Research on Women's Health	STAT	STPA	C
HHS	1952	Breast and Cervical Cancer Early Detection and Control Advisory Committee	STAT	NSPA	C
HHS	1957	National Institute of Mental Health Initial Review Group	AUTH	GR	C
HHS	1959	National Institute of Mental Health Special Emphasis Panel	AUTH	GR	C
HHS	1960	National Institute of Dental Research Special Emphasis Panel	AUTH	GR	C
HHS	1961	National Institute of Allergy and Infectious Diseases Special Emphasis Panel	AUTH	GR	C
HHS	1962	National Institute of General Medical Sciences Special Emphasis Panel	AUTH	GR	C
HHS	1963	Board of Scientific Counselors, National Center for Research Resources	AUTH	GR	C
HHS	1964	Advisory Committee for Injury Prevention and Control	STAT	NSPA	C
HHS	1972	Commission on Child and Family Welfare	STAT	NSPA	C

AGENCY	C-ID	NAME	AUTH	FUNCTION	STATUS
HHS	2023	National Nutrition Advisory Council	STAT	NSPA	C
HHS	2025	Board of Scientific Counselors, Division of Computer Research and Technology	AUTH	NSPA	C
HHS	2026	Ad Hoc Advisory Committee on Creutzfeldt-Jakob Disease	AUTH	STPA	C
HHS	2078	National Institute of Environmental Health Sciences Special Emphasis Panel	AUTH	GR	C
HHS	2080	Peer Review Oversight Group	AUTH	GR	C
HHS	2081	National Library of Medicine Special Emphasis Panel	AUTH	GR	C
HHS	2083	National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel	AUTH	GR	C
HHS	2084	National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Pan	AUTH	GR	C
HHS	2085	National Center for Human Genome Research Special Emphasis Panel	AUTH	GR	C
HHS	2086	National Institute of Nursing Research Special Emphasis Panel	AUTH	GR	C
HHS	2087	Presidential Advisory Council on HIV/AIDS	PRES	NPI	C
HHS	5101	Commission on Dietary Supplement Labels	PRES	STPA	C
HHS	5122	The Board of Governors of the Warren Grant Magnuson Clinical Center	AUTH	STPA	C
HUD	1049	National Manufactured Home Advisory Council	STAT	NSPA	C
HUD	1492	Task Force on Lead-Based Paint Hazard Reduction and Financing	STAT	NPI	C
HUD	2093	Negotiated Rulemaking Advisory Committee on Mortgage Broker Disclosures	AGEN	NSPA	C
ICC	1953	National Grain Car Council	STAT	NSPA	C
IDCA	164	Advisory Committee on Voluntary Foreign Aid	AGEN	NPI	C
IDCA	1053	Board for International Food and Agricultural Development	STAT	STPA	C
IDCA	1056	Malaria Vaccine Project Advisory Committee	AUTH	STPA	C
ISOO	1740	National Industrial Security Program Policy Advisory Committee	PRES	NSPA	C
JBEA	126	Advisory Committee on Actuarial Examinations	AGEN	NSPA	C
KFHC	540	Martin Luther King, Jr., National Historic Site Advisory Commission	STAT	NSPA	C
KFHC	1058	Martin Luther King, Jr. Federal Holiday Commission	STAT	NPI	C
MMC	1059	Committee of Scientific Advisors on Marine Mammals	STAT	STPA	C
NARA	1061	Advisory Committee on Preservation	AGEN	STPA	C
NARA	1062	Advisory Committee on Presidential Libraries	AGEN	NSPA	C
NARA	1064	Advisory Committee on the Records of Congress	STAT	NSPA	C
NASA	24	Minority Business Resource Advisory Committee	AGEN	NSPA	C
NASA	136	Aerospace Safety Advisory Panel	STAT	STPA	C
NASA	1065	Aeronautics Advisory Committee	AGEN	STPA	C
NASA	1067	Life and Microgravity Sciences and Applications Advisory Committee	AGEN	STPA	C

AGENCY	C-ID	NAME	AUTH	FUNCTION	STATUS
NASA	1071	NASA Advisory Council	AGEN	STPA	C
NASA	1073	Space Science Advisory Committee	AGEN	STPA	C
NASA	1074	Advisory Committee on the International Space Station	AGEN	STPA	C
NASA	1075	Technology and Commercialization Advisory Committee	AGEN	STPA	C
NASA	1805	Earth Systems Science and Applications Advisory Committee	AGEN	STPA	C
NBRC	2077	National Bankruptcy Review Commission	STAT	NSPA	C
NEA	116	Federal Advisory Committee on International Exhibitions	STAT	NSPA	C
NEA	135	National Council on the Arts	STAT	OTHER	C
NEA	1078	Advisory Council on Arts Education	STAT	NSPA	C
NEA	1079	Arts in Education Advisory Panel	STAT	OTHER	C
NEA	1080	Challenge/Advancement Advisory Panel	STAT	OTHER	C
NEA	1081	Dance Advisory Panel	STAT	OTHER	C
NEA	1082	Design Advisory Panel	STAT	OTHER	C
NEA	1083	Expansion Arts Advisory Panel	STAT	OTHER	C
NEA	1084	Folk and Traditional Arts Advisory Panel	STAT	OTHER	C
NEA	1085	International Advisory Panel	STAT	OTHER	C
NEA	1086	Literature Advisory Panel	STAT	OTHER	C
NEA	1087	Media Arts Advisory Panel	STAT	OTHER	C
NEA	1088	Museum Advisory Panel	STAT	OTHER	C
NEA	1089	Music Advisory Panel	STAT	OTHER	C
NEA	1090	Public Partnership Advisory Panel	STAT	OTHER	C
NEA	1091	Opera-Musical Theater Advisory Panel	STAT	OTHER	C
NEA	1092	Presenting Advisory Panel	STAT	OTHER	C
NEA	1093	President's Committee on the Arts and the Humanities	PRES	NPI	C
NEA	1094	Theater Advisory Panel	STAT	OTHER	C
NEA	1096	Visual Arts Advisory Panel	STAT	OTHER	C
NEH	1098	Humanities Panel	AUTH	GR	C
NEH	1099	National Council on the Humanities	STAT	OTHER	C
NLRB	1897	National Labor Relations Board Committee on Agency Procedures	AGEN	NSPA	C
NRC	207	Advisory Committee on Reactor Safeguards	STAT	STPA	C
NRC	1100	Advisory Committee on Nuclear Waste	AGEN	STPA	C
NRC	1102	Advisory Committee on the Medical Uses of Isotopes	AGEN	STPA	C

AGENCY	C-ID	NAME	AUTH	FUNCTION	STATUS
NRC	1104	Licensing Support System Advisory Review Panel	AGEN	NSPA	C
NRC	1105	Nuclear Safety Research Review Committee	AGEN	STPA	C
NSF	30	Council for Continental Scientific Drilling	AGEN	STPA	C
NSF	57	Special Emphasis Panel in Graduate Education	AGEN	STPA	C
NSF	59	Special Emphasis Panel in Elementary, Secondary, and Informal Education	AGEN	NSPA	C
NSF	61	Advisory Committee for Small Business Industrial Innovation	AGEN	NSPA	C
NSF	66	Advisory Committee for Mathematical and Physical Sciences	AGEN	STPA	C
NSF	139	Advisory Panel for Presidential Faculty Fellows	AGEN	NSPA	C
NSF	173	Special Emphasis Panel in Engineering Education and Centers	AGEN	GR	C
NSF	1110	Advisory Committee for Biological Sciences	AGEN	NSPA	C
NSF	1115	Advisory Committee for Computer and Information Science and Engineering	AGEN	NSPA	C
NSF	1119	Advisory Committee for Education and Human Resources	AGEN	NSPA	C
NSF	1130	Advisory Committee for Polar Programs	AGEN	NSPA	C
NSF	1134	Advisory Panel for Biochemistry and Molecular Structure and Function	AGEN	GR	C
NSF	1136	Advisory Panel for Cell Biology	AGEN	GR	C
NSF	1141	Advisory Panel for Developmental Mechanisms	AGEN	GR	C
NSF	1149	Advisory Panel for Genetics and Nucleic Acids	AGEN	GR	C
NSF	1158	Advisory Panel for Neurosciences	AGEN	GR	C
NSF	1160	Advisory Panel for Physiology and Behavior	AGEN	GR	C
NSF	1170	Advisory Committee for Engineering	AGEN	NSPA	C
NSF	1171	Advisory Committee for Social, Behavioral and Economic Sciences	AGEN	NSPA	C
NSF	1172	Alan T. Waterman Award Committee	AUTH	OTHER	C
NSF	1173	Committee on Equal Opportunities in Science and Engineering	STAT	NSPA	C
NSF	1176	DOE/NSF Nuclear Science Advisory Committee	AGEN	NSPA	C
NSF	1177	Federal Networking Council Advisory Committee	AGEN	NSPA	C
NSF	1182	President's Committee on the National Medal of Science	PRES	NSPA	C
NSF	1185	Special Emphasis Panel in Advanced Scientific Computing	AGEN	GR	C
NSF	1186	Special Emphasis Panel in Astronomical Sciences	AGEN	GR	C
NSF	1189	Special Emphasis Panel in Bioengineering and Environmental Systems	AGEN	GR	C
NSF	1191	Special Emphasis Panel in Chemistry	AGEN	GR	C
NSF	1192	Special Emphasis Panel in Computer and Computational Research	AGEN	GR	C
NSF	1193	Special Emphasis Panel in Cross Disciplinary Activities	AGEN	GR	C

AGENCY	C-ID	NAME	AUTH	FUNCTION	STATUS
NSF	1194	Special Emphasis Panel in Design Manufacture, and Industrial Innovation	AGEN	GR	C
NSF	1196	Special Emphasis Panel in Electrical and Communication Systems	AGEN	GR	C
NSF	1199	Special Emphasis Panel in Human Resource Development	AGEN	GR	C
NSF	1200	Special Emphasis Panel in Information Robotics and Intelligent Systems	AGEN	GR	C
NSF	1201	Special Emphasis Panel in International Programs	AGEN	GR	C
NSF	1203	Special Emphasis Panel in Materials Research	AGEN	GR	C
NSF	1204	Special Emphasis Panel in Mathematical Sciences	AGEN	GR	C
NSF	1205	Special Emphasis Panel in Civil and Mechanical Systems	AGEN	GR	C
NSF	1206	Special Emphasis Panel in Microelectronic Information Processing Systems	AGEN	GR	C
NSF	1207	Special Emphasis Panel in Networking and Communications Research and Infrastructure	AGEN	GR	C
NSF	1208	Special Emphasis Panel in Physics	AGEN	GR	C
NSF	1209	Special Emphasis Panel in Polar Programs	AGEN	GR	C
NSF	1210	Special Emphasis Panel in Research, Evaluation and Communication	AGEN	GR	C
NSF	1211	Special Emphasis Panel in Science Resources Studies	AGEN	NSPA	C
NSF	1214	Special Emphasis Panel in Undergraduate Education	AGEN	GR	C
NSF	1215	Advisory Panel for Instrumentation and Instrument Development	AGEN	GR	C
NSF	1373	Special Emphasis Panel in Science and Technology Infrastructure	AGEN	STPA	C
NSF	1569	Earth Sciences Proposal Review Panel	AGEN	GR	C
NSF	1751	Advisory Panel for Ecological Studies	AGEN	STPA	C
NSF	1752	Advisory Panel for Long-Term Projects in Environmental Biology	AGEN	STPA	C
NSF	1753	Advisory Panel for Systematic and Population Biology	AGEN	STPA	C
NSF	1754	Special Emphasis Panel in Biological Sciences	AGEN	STPA	C
NSF	1755	Advisory Committee for Geosciences	AGEN	STPA	C
NSF	1756	Special Emphasis Panel for Geosciences	AGEN	NSPA	C
NSF	1757	Advisory Panel for Anthropological and Geographic Sciences	AGEN	STPA	C
NSF	1758	Advisory Panel for Cognitive, Psychological and Language Sciences	AGEN	STPA	C
NSF	1759	Advisory Panel for Economics, Decision and Management Sciences	AGEN	STPA	C
NSF	1760	Advisory Panel for Science, Technology, and Society	AGEN	STPA	C
NSF	1761	Advisory Panel for Social and Political Sciences	AGEN	STPA	C
NSF	1765	Special Emphasis Panel in Educational System Reform	AGEN	OTHER	C
NSF	1766	Special Emphasis Panel in Social, Behavioral and Economic Research	AGEN		C
NSF	1982	Task Force on the Future of the NSF Supercomputer Centers Program	AGEN	STPA	C

AGENCY	C-ID	NAME	AUTH	FUNCTION	STATUS
NWBC	244	National Women's Business Council	STAT	NPI	C
OPM	105	Federal Prevailing Rate Advisory Committee	STAT	NSPA	C
OPM	146	Federal Salary Council	STAT	NSPA	C
OPM	1223	President's Commission on White House Fellowships	PRES	NSPA	C
OPM	1830	National Partnership Council	PRES	NSPA	C
OSTP	1227	National Critical Technologies Panel	STAT	STPA	C
OSTP	1228	President's Committee of Advisors on Science and Technology	PRES	NPI	C
PBGC	2046	Reportable Events Negotiated Rulemaking Advisory Committee	PRES	REGNEG	C
RRB	1229	Actuarial Advisory Committee with Respect to the Railroad Retirement Accounts	STAT	OTHER	C
SBA	47	National Small Business Development Center Advisory Board	STAT	NSPA	C
SBA	1230	Advisory Committee on Veterans Business Affairs	AUTH	NSPA	C
SBA	1231	Investment Advisory Council	AUTH	NPI	C
SBA	1232	National Advisory Council	AUTH	NSPA	C
SBA	1574	Augusta District Advisory Council	AUTH	NSPA	C
SBA	1575	Boston District Advisory Council	AUTH	NSPA	C
SBA	1576	Concord District Advisory Council	AUTH	NSPA	C
SBA	1577	Hartford District Advisory Council	AUTH	NSPA	C
SBA	1578	Montpelier District Advisory Council	AUTH	NSPA	C
SBA	1579	Providence District Advisory Council	AUTH	NSPA	C
SBA	1580	Buffalo District Advisory Council	AUTH	NSPA	C
SBA	1581	Newark District Advisory Council	AUTH	NSPA	C
SBA	1582	New York District Advisory Council	AUTH	NSPA	C
SBA	1583	Puerto Rico/Virgin Islands District Advisory Council	AUTH	NSPA	C
SBA	1586	Clarksburg District Advisory Council	AUTH	NSPA	C
SBA	1588	Pittsburgh District Advisory Council	AUTH	NSPA	C
SBA	1591	Atlanta District Advisory Council	AUTH	NSPA	C
SBA	1592	Birmingham District Advisory Council	AUTH	NSPA	C
SBA	1595	Jackson District Advisory Council	AUTH	NSPA	C
SBA	1600	Chicago District Advisory Council	AUTH	NSPA	C
SBA	1601	Cleveland District Advisory Council	AUTH	NSPA	C
SBA	1604	Indianapolis District Advisory Council	AUTH	NSPA	C
SBA	1605	Madison District Advisory Council	AUTH	NSPA	C

AGENCY	C-ID	NAME	AUTH	FUNCTION	STATUS
SBA	1606	Minneapolis District Advisory Council	AUTH	NSPA	C
SBA	1608	Dallas District Advisory Council	AUTH	NSPA	C
SBA	1609	El Paso District Advisory Council	AUTH	NSPA	C
SBA	1610	Houston District Advisory Council	AUTH	NSPA	C
SBA	1611	Little Rock District Advisory Council	AUTH	NSPA	C
SBA	1614	New Orleans District Advisory Council	AUTH	NSPA	C
SBA	1616	San Antonio District Advisory Council	AUTH	NSPA	C
SBA	1623	Casper District Advisory Council	AUTH	NSPA	C
SBA	1625	Fargo District Advisory Council	AUTH	NSPA	C
SBA	1626	Helena District Advisory Council	AUTH	NSPA	C
SBA	1627	Salt Lake City District Advisory Council	AUTH	NSPA	C
SBA	1630	Honolulu District Advisory Council	AUTH	NSPA	C
SBA	1632	Los Angeles District Advisory Council	AUTH	NSPA	C
SBA	1633	Phoenix District Advisory Council	AUTH	NSPA	C
SBA	1634	San Diego District Advisory Council	AUTH	NSPA	C
SBA	1635	San Francisco District Advisory Council	AUTH	NSPA	C
SBA	1636	Santa Ana District Advisory Council	AUTH	NSPA	C
SBA	1639	Portland District Advisory Council	AUTH	NSPA	C
SBA	1857	South Carolina District Advisory Council	AUTH	NSPA	C
SBA	1858	Florida State District Advisory Council	AUTH	NSPA	C
SBA	1859	Kentucky District Advisory Council	AUTH	NSPA	C
SBA	1977	Washington, D. C. District Advisory Council	AGEN		C
SEC	1249	Market Transactions Advisory Committee	STAT	NPI	C
SEC	1847	Consumer Affairs Advisory Committee	AGEN	NSPA	C
SEC	1987	Advisory Committee on the Capital Formation and Regulation Processes	AGEN	NPI	C
SSA	1901	1994 Advisory Council on Social Security	STAT	NSPA	C
SSA	1974	Representative Payment Advisory Committee	AUTH	NSPA	C
TDPOB	1894	Affordable Housing Advisory Board	STAT		C
TRES	120	Advisory Committee on Commercial Operations of the U.S. Customs Service	STAT	NSPA	C
TRES	246	Internal Revenue Service Information Reporting Program Advisory Committee	AGEN	NSPA	C
TRES	1252	Advisory Committee to the National Center for State, Local, and International Law Enforcem	AGEN	NSPA	C
TRES	1253	Advisory Group to the Commissioner of Internal Revenue	AGEN	NPI	C

AGENCY	C-ID	NAME	AUTH	FUNCTION	STATUS
TRES	1254	Art Advisory Panel of the Commissioner of Internal Revenue	AGEN	NSPA	C
TRES	1256	Treasury Borrowing Advisory Committee of the Public Securities Association	AGEN	NPI	C
TRES	2076	Community Adjustment and Investment Program Advisory Committee	STAT	NSPA	C
TRES	2094	Community Development Advisory Board	STAT	NSPA	C
USDA	99	Advisory Committee on Meat and Poultry Inspection	STAT	NPI	C
USDA	138	Northern Allegheny National Wild and Scenic River Advisory Council	STAT	NSPA	C
USDA	151	Southern Allegheny National Wild and Scenic River Advisory Council	STAT	NPI	C
USDA	193	National Agricultural Research and Extension Users Advisory Board	STAT	NSPA	C
USDA	1257	Advisory Committee on Emerging Democracies	STAT	NPI	C
USDA	1258	Advisory Committee on Foreign Animal and Poultry Diseases	AGEN	STPA	C
USDA	1259	Advisory Committee on Swine Health Protection	STAT	STPA	C
USDA	1260	Advisory Committee on Universal Cotton Standards	AGEN	NPI	C
USDA	1262	Agricultural Biotechnology Research Advisory Committee	AGEN	STPA	C
USDA	1263	Agricultural Policy Advisory Committee for Trade	AUTH	NSPA	C
USDA	1264	Agricultural Science and Technology Review Board	STAT	STPA	C
USDA	1275	Animal Health Science Research Advisory Board	STAT	NSPA	C
USDA	1276	Blue Mountains Natural Resources Institute Advisory Board	STAT	NSPA	C
USDA	1277	Burley Tobacco Advisory Committee	AGEN	NSPA	C
USDA	1278	Cascade Head Scenic-Research Area Advisory Council	STAT	NSPA	C
USDA	1280	Committee of Nine	STAT	STPA	C
USDA	1281	Committee of State Foresters	STAT	NSPA	C
USDA	1282	Forestry Research Advisory Council	STAT	NSPA	C
USDA	1284	Federal Grain Inspection Service Advisory Committee	STAT	NSPA	C
USDA	1285	Florida National Scenic Trail Advisory Council	STAT	NSPA	C
USDA	1286	Flue-Cured Tobacco Advisory Committee	AGEN	NSPA	C
USDA	1287	General Conference Committee of the National Poultry Improvement Plan	AGEN	STPA	C
USDA	1288	Global Climate Change Technical Advisory Committee	STAT	STPA	C
USDA	1291	Joint Council on Food and Agricultural Sciences	STAT	STPA	C
USDA	1294	National Advisory Committee on Microbiological Criteria for Foods	AGEN	STPA	C
USDA	1295	National Advisory Committee for Tobacco Inspection Services	STAT	NPI	C
USDA	1296	National Advisory Council on Commodity Distribution	STAT	NPI	C
USDA	1297	National Advisory Council on Maternal, Infant, and Fetal Nutrition	STAT	NSPA	C

AGENCY	C-ID	NAME	AUTH	FUNCTION	STATUS
USDA	1298	National Agricultural Costs of Production Standards Review Board	STAT	NSPA	C
USDA	1299	National Animal Damage Control Advisory Committee	AGEN	NSPA	C
USDA	1301	National Genetic Resources Advisory Council	STAT	STPA	C
USDA	1302	National Nutrition Monitoring Advisory Council	STAT	STPA	C
USDA	1303	National Organic Standards Board	STAT	NPI	C
USDA	1305	National Sustainable Agriculture Advisory Council	STAT	NPI	C
USDA	1306	National Urban and Community Forestry Advisory Council	STAT	NSPA	C
USDA	1307	Newberry National Volcanic Monument Advisory Council	STAT	NSPA	C
USDA	1308	Nez Perce National Historic Trail Advisory Council	STAT	NSPA	C
USDA	1309	Plant Variety Protection Advisory Board	STAT	STPA	C
USDA	1312	Science and Education National Research Initiative Advisory Committee	AGEN	STPA	C
USDA	1315	Wildcat River Advisory Commission	STAT	NSPA	C
USDA	1557	Brule River (Wisconsin and Michigan) Study Committee	STAT	NSPA	C
USDA	1558	Carp River Study Committee	STAT	NSPA	C
USDA	1559	Little Manistee River Study Committee	STAT	NSPA	C
USDA	1560	White River Study Committee	STAT	NSPA	C
USDA	1561	Ontonagon River Study Committee	STAT	NSPA	C
USDA	1562	Paint River Study Committee	STAT	NSPA	C
USDA	1563	Presque Isle River Study Committee	STAT	NSPA	C
USDA	1564	Sturgeon River (Ottawa National Forest) Study Committee	STAT	NSPA	C
USDA	1565	Sturgeon River (Hiawatha National Forest) Study Committee	STAT	NSPA	C
USDA	1566	Tahquamenon River Study Committee	STAT	NSPA	C
USDA	1567	Whitefish River Study Committee	STAT	NSPA	C
USDA	1570	Hawaii Tropical Forest Recovery Task Force	STAT	NSPA	C
USDA	1923	Intergovernmental Advisory Committee to the Regional Interagency Executive Committee	AGEN	NPI	C
USDA	1925	Advisory Committee to the Provincial Interagency Executive Committee	AGEN	NPI	C
USDA	1930	Agriculture Technical Advisory Committee for Trade in Animal and Animal Products	AUTH		C
USDA	1931	Agriculture Technical Advisory Committee for Trade in Fruits and Vegetables	AUTH		C
USDA	1932	Agriculture Technical Advisory Committee for Trade in Grain, Feed and Oilseeds	AUTH		C
USDA	1933	Agriculture Technical Advisory Committee for Trade in Sweetners	AUTH		C
USDA	1934	Agriculture Technical Advisory Committee for Trade in Tobacco, Cotton, and Peanuts	AUTH		C
USDA	2004	Marine Mammal Negotiated Rulemaking Advisory Committee	PRES	REGNEG	C

AGENCY	C-ID	NAME	AUTH	FUNCTION	STATUS
USDA	2089	Advisory Committee on Agricultural Concentration	STAT		C
USIA	1316	Advisory Board for Cuba Broadcasting	STAT	NSPA	C
USIA	1317	Book and Library Advisory Committee	AGEN	NSPA	C
USIA	1319	Cultural Property Advisory Committee	STAT	NPI	C
USIA	1320	English Language Programs Advisory Panel	STAT	NSPA	C
USIA	1322	United States Advisory Commission on Public Diplomacy	STAT	NPI	C
USIA	1856	Advisory Panel on Radio, Marti, and TV Marti	STAT	NSPA	C
USTR	1324	Advisory Committee for Trade Policy and Negotiations	STAT	NPI	C
USTR	1325	Intergovernmental Policy Advisory Committee on Trade	AUTH	NPI	C
USTR	1326	Investment and Services Policy Advisory Committee	AUTH	NPI	C
USTR	1979	Trade and Environmental Policy Advisory Committee	PRES	NSPA	C
USTR	2002	Trade Advisory Committee for Africa	AGEN	NSPA	C
USTR	2098	Commission on United-Pacific Trade and Investment Policy	PRES	NPI	C
VA	28	Veterans' Advisory Committee on Education	STAT	NSPA	C
VA	33	Advisory Committee on Prosthetics and Special-Disabilities Programs	STAT	NPI	C
VA	34	Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities	STAT	STPA	C
VA	48	Veterans' Advisory Committee on Rehabilitation	STAT	NSPA	C
VA	64	Geriatrics and Gerontology Advisory Committee	STAT	STPA	C
VA	195	Department of Veterans Affairs Voluntary Service National Advisory Committee	AGEN	NSPA	C
VA	1328	Advisory Committee on Cemeteries and Memorials	STAT	NSPA	C
VA	1330	Advisory Committee on Former Prisoners of War	STAT	NSPA	C
VA	1331	Advisory Committee on the Readjustment of Vietnam and Other War Veterans	AGEN	STPA	C
VA	1332	Advisory Committee on Women Veterans	STAT	STPA	C
VA	1336	Department of Veterans Affairs Wage Committee	AGEN	NSPA	C
VA	1351	Special Medical Advisory Group	STAT	STPA	C
VA	1352	Veterans' Advisory Committee on Environmental Hazards	STAT	NPI	C
VA	1778	Persian Gulf Expert Scientific Committee	AGEN	STPA	C
VA	1983	Advisory Committee on Minority Veterans	STAT	NSPA	C
VA	1984	Veterans' Claims Adjudication Commission	STAT	NSPA	C
VA	2017	Medical Research Service Merit Review Committee	AGEN	STPA	C
VA	2018	Medical Research Service Cooperative Studies Evaluation Committee	AGEN	STPA	C
VA	2019	Rehabilitation Research and Development Science Scientific Merit Review Board	AGEN	STPA	C

AGENCY	C-ID	NAME	AUTH	FUNCTION	STATUS
VA	2020	Scientific Review and Evaluation Board for Health Services Research and Development Servic	AGEN	STPA	C
VA	2021	Medical Research Service Career Development Committee	AGEN	STPA	C
VA	2072	Research Realignment Advisory Committee	AGEN	STPA	C
VA	2095	Residency Realignment Review Committee	AGEN	STPA	C

Mrs. MALONEY. The across-the-board one-third cut in agency advisory committees must have caused a lot of dislocations, delays, and complications. Has that been the case? What has been done to diminish such possible effects? Was there a problem with this one-third requirement diminishing?

Mr. DEAN. Initially, there was a lot of concern, particularly in the science agencies, as to how this process would work. For example, I know in HHS and NIH, which does a lot of grant review through advisory committees, there were some concerns about the disruption in terms of handling the caseload. For that reason, we worked with them and OMB to work out a plan, if you will, that addressed that concern. And so they weren't forced to do it by the end of the fiscal year. We gave them an extension, and I believe that they have successfully met that challenge. There are no problems, that I am aware of, in that area.

Mrs. MALONEY. Do you believe that Congress should place a termination date on all statutory advisory committees?

Mr. DEAN. The short answer to your question is, yes.

Mrs. MALONEY. You do?

Mr. DEAN. As a matter of fact, I would like to mention that the administration, including the Vice President, of course, has asked Congress to do two things: First, is to show restraint in creating new statutory committees in the first place, and the reason for that is we would like to be able to work with Congress to choose the tool that fits best in terms of meeting the public participation initiative or objective, and a statutory committee is not always the best thing to do. We would like to see what the other options are.

Second, the President has asked Congress to take a look at the inventories of existing statutory groups to see which of those could be terminated. Currently, there are, I believe, 421 committees directed by statute, and while I would certainly not recommend that all of them be terminated because many of them do good work, it certainly provides a starting point to look at this.

Mrs. MALONEY. Do you think you should sunset them every 5 years? What would you do to control it?

Mr. DEAN. The Federal Advisory Committee, as a course, provides for a 2-year sunset——

Mrs. MALONEY. A 2-year sunset.

Mr. DEAN [continuing]. Of the committees that are created by the executive branch. My suggestion, my commonsense suggestion, is to impose a similar requirement for statutory committees and make them subject to congressional reauthorization. Of course, FACA does require Congress to perform oversight of committees so it would be a logical nexus, if you will, to do that actually at the same time.

Mrs. MALONEY. In your testimony, you were talking about the membership on committees.

Mr. DEAN. Yes.

Mrs. MALONEY. And it jumped dramatically from 1988 to, I think it was 1994, roughly 20,000 membership to 30,000 membership. And why the dramatic increase in membership on these committees when you have had all of these directives to decrease the committees?

Mr. DEAN. That's a question——

Mrs. MALONEY. And even though you haven't increased the number of committees has the membership grown tremendously?

Mr. DEAN. That's a logical question.

Mrs. MALONEY. How do you account for that?

Mr. DEAN. First of all, the number of members reported to the Congress are the number of members that serve at any time during the year. So it doesn't mean, for example, that today we have 30,000 members.

The second part of your question, I would answer it that the committees that have been left, if you will, after the Executive order terminations, have had to work harder. And let me give you an example.

Again, in HHS and NSF, and some of the other grant recipient agencies, instead of using a typical advisory committee model where you set up an advisory committee to handle each discrete grant area they now have set up new models where they bring folks in, or people in, experts in, as required. So I believe that the answer to your question, at least in part, is that we are moving a lot more members through the system each year and that tends to be inflating the numbers.

Mr. WAGNER. With fewer hours per member.

Mr. DEAN. With fewer hours per member. Hopefully, less cost per member.

Mrs. MALONEY. That makes sense.

Also, when we began this hearing, Senator Leahy was testifying on his bill to really have electronic FOIA's and to modernize the whole FOIA law. Do you have any feelings on that or would any of you like to comment on the law that he is proposing?

Mr. DEAN. I think that as far as advisory committee records go, I think it's a logical—it's almost a no-brainer to me. I think that some agencies are already making their records available through the Internet and World Wide Web and other ways.

At GSA, I work with Marty Wagner. He is, of course, our new policy chief. We are redesigning our home pages and we plan, for example, to put up the annual report, our regulations, and other materials that may be useful such as training materials. So we are on board.

I think that the experience with other agencies is perhaps a bit uneven. There is no, you know, centralized effort underway that I am aware of, but I think some agencies are trying to do it.

Mr. WAGNER. We are moving as quickly as we can to put as much information as we can out on the World Wide Web. It's a good way to communicate. We also are trying to do it in a somewhat more systematic way. There has been a problem.

Basically, everybody is putting everything on the Web and it's all there. You just can't find it. We are trying to do it in a way that gives it more structure so that when you click on our home page you see how it hangs together and there's a nice outline. And also, by the way, that doesn't require you to have very high speed lines because of all the pretty images that we send to you. But that is one of our big pushes.

In fact, the Administrator of GSA is pushing all of GSA to have Internet access by tomorrow, Flag Day, and he has also got a broader push to make as much of the information within GSA as

accessible via the Internet to our constituencies, including the Congress, and we are working very hard to do that.

Mrs. MALONEY. Thank you very much, Mr. Chairman. I have no further questions. I just would like to request that my opening statement be put in the record as read.

Mr. HORN. I thank you very much.

Unfortunately, Mr. Condit couldn't make it. I just want to say that Mr. Condit has done a splendid job over the years in developing some of the confidentiality standards for medical records in particular, and the committee will be following that up. And I am sorry he was not able at the last minute to join with us, but he is an excellent legislator.

Let me just thank those who have helped prepare the hearing on both sides, starting on my left and your right, with J. Russell George, the staff director and chief counsel for the Subcommittee on Government Management, Information, and Technology; Mark Uncapher, the professional staff member and counsel; Council Nedd, professional staff member; Mark Brasher, professional staff member; Andrew Richardson, our clerk; Ian Davison, staff assistant; and on the minority staff, Mark Stephenson and David McMillen, both professional staff members. The official reporters have been Katie Stewart, Bob Cochran, and Mindi Colchico.

We thank you all. With that, this hearing is adjourned.

[Whereupon, at 3:45 p.m., the subcommittee was adjourned.]

[Additional information submitted for the hearing record follows:]

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
450 FIFTH STREET, N.W.
WASHINGTON, D.C. 20549

STEVEN M.H. WALLMAN
COMMISSIONER
(202) 942-0800
FAX: (202) 942-9563

June 12, 1996

The Honorable Stephen Horn
Chairman
Subcommittee on Government, Management,
Information & Technology
U.S. House of Representatives
B-373 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Horn:

Thank you for the invitation to participate in that portion of your June 13, 1996 hearings relating to the Government in the Sunshine Act. Unfortunately, although I would very much like to participate, I will be unable to do so due to a prior obligation. I would like, however, to provide some background concerning current efforts to examine the Sunshine Act and, with your staff's permission, submit materials for your hearing record. I believe your efforts to examine the efficacy of the Sunshine Act as currently codified are extremely important to furthering the Act's dual goals of enhancing the public's access to the deliberative process and improving the quality of agency decision making. I commend you for leading these hearings, and wholeheartedly support your efforts. The views discussed herein and in the enclosed materials are my own and do not necessarily represent the views of the Commission or its staff.

As explained more fully in the enclosed testimony that I submitted to the Administrative Conference of the United States ("ACUS") on the Sunshine Act, I am an ardent supporter of the goal of public openness that underlies the Act. I oppose any effort to repeal the Act. The Act was well-intentioned and has laudatory motivations. However, the Act is not satisfying its intended goals. Instead, open meetings held in the "sunshine" are largely scripted events. They usually announce the results of prior decision making -- decision making made without the benefit of collegial deliberation among the Presidentially appointed and Senate confirmed executives. Those deliberations are conducted instead by and through assistants and agents of the appointees. Though these agents do an able job, their intermediation can be no substitute for real deliberations among the people nominated, confirmed and appointed to make decisions. It was that collective deliberation by the appointees that was the expected primary benefit of multiheaded agencies. Consequently, both the public's access to the deliberative process, and the quality of agency decision making, suffer. It was my desire to improve agency decision making and the public's access thereto that prompted me to begin studying the Act.

In February 1995, after several months of discussion and along with a dozen other sitting and former commissioners of federal agencies and a number of representatives of public interest organizations, I requested that ACUS review the Sunshine Act to evaluate the Act's effectiveness in meeting its intended goals. At that time, ACUS was the agency with both the authority and expertise to evaluate and recommend amendments to laws like the Sunshine Act.

ACUS established a Special Committee which, after much review of the Act, recommended substantial changes designed to achieve more effectively the Act's underlying goals. The recommendation of the ACUS Special Committee, and my recommendation, is to *maintain in public everything that currently occurs in public.* Specifically, the final actions of agencies to propose or adopt regulations or take other final action would still be made in the "sunshine". The Committee's recommendation differs from the current Act by permitting at non-public meetings the opportunity for collective deliberations among those accountable for the decisions -- deliberations that do *not now occur at all.* These deliberations would then have to be summarized and made public. The result will be *more* information being made available to the public than under the current system.

There is one question that is easy to ask and hard to answer, unless one has actually been there. The question is "why don't agency officials just deliberate in public"? Too easily and too often, those who pose that question assert that the only answer is that decision makers must want to avoid the embarrassment of real debate. But there are a great number of other more compelling reasons for a reluctance to deliberate publicly. And they vary from agency to agency and circumstance to circumstance. Fundamentally, people are less likely to have robust debate in public -- to explore, for example, positions that deserve to be tested and debated, but may be dismissed as unsuitable at the end of the day. People may desire to avoid making statements that, in retrospect, could be criticized as misleading or confusing. This is acutely true in agencies that regulate major sectors of the economy where a miscue about a decision maker's position can have real, immediate and deleterious effects on the public and the regulated industry. In addition, decision makers often need to develop negotiating positions that -- simply put -- are useless if discussed publicly, and the members of an agency may desire to speak with a unified voice where possible on matters of particular importance. To a lesser extent, the mechanical requirements of the Act -- which generally require seven days public notice of the matter to be discussed before agency members may have even a five minute conversation on a matter -- are also bars to collective decision making. Thus, for many of the reasons that the legislative process benefits from meaningful deliberation both on *and* off the floor, agency decision making would also benefit.

I also want to raise one final but important point. The very notion of Sunshine Act reform has a tendency to evoke passionate reactions from those who would view *any* thought of changing the Act as an affront to the public's right to government openness. A desire to

change the Act to make it work *better* to serve that important goal is sometimes portrayed as a desire to undermine the Act. Sound bites as opposed to thoughtful analysis become paramount. This is truly unfortunate. We have a choice. We can continue to live with a fiction that somehow the current Act is accomplishing its intended purposes when we know now that it does not, or we can try to make the Act work better -- and actually accomplish those purposes -- by adopting the ACUS Special Committee's recommendations or other improvements. The question is not whether one is for or against openness. I am emphatically for openness. Rather it is how to achieve this goal and have federal agencies work better for the benefit of the public.

The Subcommittee's review is timely and necessary if we are to ensure that the Act operates to achieve its intended goals. I would be pleased to participate in any other hearings you may have, or otherwise assist you and your staff in your efforts. Enclosed is a copy of my testimony before the ACUS Special Committee on September 12, 1995. I understand the full report of the Committee has already been submitted to your hearing record.

Very truly yours,

Steven M.H. Wallman
Commissioner
U.S. Securities and Exchange Commission

Enclosures

cc: Representative Carolyn B. Maloney

U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

REMARKS OF COMMISSIONER STEVEN M.H. WALLMAN BEFORE THE SPECIAL COMMITTEE OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES EVALUATING THE GOVERNMENT IN THE SUNSHINE ACT

September 12, 1995

The views expressed herein are those of Commissioner Wallman and do not necessarily represent those of the Commission, other Commissioners or the staff.

Introduction

I would like to thank the members of the Special Committee for conducting this review of the effectiveness of the Government in the Sunshine Act (the "Sunshine Act" or "Act").1/ Openness in government is essential not only to facilitating public understanding of how government operates, but also to ensuring that government maintains the public confidence necessary to operate effectively and in the public interest. Today's hearing recognizes the obligation of those of us in government and the private sector periodically to reassess existing laws and consider novel ideas designed to enhance government openness.

I also commend the Special Committee for the inclusive nature of its review. Although almost everyone agrees that the underlying goals of the Sunshine Act are laudable, there are significant differences in opinion with respect to how these goals might best be achieved. Notwithstanding the sometimes emotional nature of this subject, the Special Committee's meetings have involved a broad range of interested persons including agency officials, representatives of private organizations, and various press organizations, among others. Having attended the meetings of the Special Committee and conducted follow-up discussions with some of the participants, I believe that we have all benefited from being exposed to diverse viewpoints.

My remarks today are divided into two main sections. The first part of this statement provides a brief overview of what I and some others perceive are concerns posed by the current Act. The second section sets forth a proposal to amend the Act in a manner that will improve both public access to the agency decision making process and facilitate better agency decisions through collective deliberations. The main points of my remarks may be summarized as follows:

- The underlying goals of the Act -- to enhance the public's understanding of the deliberative process and improve agency decision making -- should be supported both by government officials and members of the general public. *Therefore, I am opposed to repeal of the Act and I believe that any efforts to reform the Act should ensure that the public receives at least as much information regarding Federal agency decision making as that currently afforded under the Act.*

- Nevertheless, for a variety of reasons, the Act is not working as well as it might. Some of the reasons are technical, or logistical. Others relate to the underlying premise that agencies can be *required* to deliberate jointly in public, as opposed to not deliberating jointly *at all*. As a general matter, however, the reluctance of agency officials to deliberate publicly often is based on the sincerely held

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1/ 5 U.S.C. 552b.

view that such deliberation would be inconsistent with the fulfillment of the agency's primary statutory mandate.

- I initiated this effort because of a strong belief that the public is not being well served by the current operation of agencies under the Act. There appears to be a current perception -- a misperception -- that agencies generally deliberate jointly in open meetings. In fact, agencies generally do not deliberate jointly at all. What the public and press see at open meetings is the collected results of individual agency member determinations, as opposed to joint agency member deliberation.

- This is, I believe, a "lose-lose" situation for all. The public and the press lose because they receive neither the promise of joint deliberations engaged in openly, the benefit of improved agency decision-making, or access to the agency's deliberative process. Agencies lose by being deprived of the expected advantages of collective decision-making that would otherwise have resulted from the joint deliberative process.

- Consequently, the usual debate over the Sunshine Act -- often framed in terms of the competing interests of agency officials and the public -- misperceives the real issue. The focus of our concern always should be on achieving the best we can for the public. The real competing interests under the Act are the promise -- some would say unrealized and coupled with the somewhat misleading perception -- of openness and joint public deliberation, versus the benefits of joint private deliberation in connection with agency decision making. As noted, the public ultimately pays the cost of our failure to address and balance these public interests appropriately. Simply put, if the Act functions less well than it should, the public suffers, both in terms of insufficient access to and understanding of agency decision making and through a decline in the quality of agency decisions occasioned by the loss of collective deliberation.

- Therefore, the fundamental question facing us is whether we continue with the current form of the Act which, based on our experience over the past two decades, has been acknowledged by many as deficient in terms of achieving its underlying goals, or whether we try to craft an alternative that might better achieve these goals.

- For the reasons and as described more fully below, I believe the Act's underlying goals *can* be better achieved. That can be accomplished simply by *expanding* the scope of the Act to include all meetings pertaining to agency business involving a quorum of agency members, while permitting such

meetings to occur in private *provided* that minutes of the meeting are memorialized for the public within a very short time period thereafter. It may also be possible to couple this requirement of minutes with a requirement for a delayed release of a transcript of the private meeting. Such a requirement, however, may well still discourage joint deliberations.

- Finally, this is not an issue that is in crisis stage. Agencies have operated under the Act for almost two decades, and the public interest has not noticeably suffered during this time. However, the fact that there is not a pressing need to reform the Act does not mean that we should be satisfied with the status quo. Instead, we should always focus exactly on the primary issue before us today, namely, enhancing the public interest in better government.

I. Concerns Associated with the Current Act.

A. Background

The Act was promulgated in 1976 and is founded on the principle that the "government should conduct the public's business in public." 2/ At that time, Congress was concerned about the public's relatively low opinion of the operation of the Federal government and agency decision making. 3/ The Act was an extension of previously enacted legislation -- including the Freedom of Information Act 4/ (enacted in 1966) and the Federal Advisory Committee Act 5/ (enacted in 1972) -- designed to open the government's decision making process to the public.

2/ S. Rep. No. 345, 94th Cong., 1st. Sess. 1 (1975).

3/ One leading pollster summed up public opinion in this regard as follows:

> [P]eople are roundly fed up with what they feel is incompetence, inefficiency, corruption, lack of real public interest, and just plain lack of decency in the governing circle of this country ***. Id. at 4.

See also, Tucker, Sunshine -- the Dubious New God, 32 Admin. L. Rev. 537, 537 (1980)(noting that the Act stemmed from a belief that government had become too secretive and remote from the people).

4/ 5 U.S.C. 552.

5/ 5 U.S.C. App. I.

The central provisions of the Act provide that, subject to limited enumerated exceptions, meetings in which a collegial agency conducts business must be open to the public. 6/ The Act sets forth ten grounds on which agency meetings may be closed to the public and information regarding such meetings withheld from the public. The Act also provides specific procedures governing the closing of agency meetings, which include a vote of agency members, a public announcement that a meeting will be closed, and guidelines with respect to memorializing closed meetings. 7/

The stated purpose of the Act is to make available to the public the fullest practicable information regarding the decision making process of the Federal government, while protecting the rights of individuals and the ability of the government to carry out its responsibilities. 8/ Congress believed that achievement of this purpose would have several ancillary benefits. Initially, it was thought that open meetings would help increase the public's confidence in government by permitting firsthand observation of the responsible manner in which agency members carry out their duties. To the extent that government was not functioning effectively, the view was that it would be less damaging to the government if this were openly disclosed to the public and press, rather than having problems emerge through leaks or scandal. 9/

Congress was also of the view that the Act would greatly enhance the public's understanding of government decision making. By requiring significant decisions to be made openly, the Act intended to foster greater public understanding of agency decisions. 10/

Improved decision making by Federal agencies themselves was a final intended benefit. Congress believed that wide dissemination of information pertaining to matters before an agency would result in more careful decision making by agencies. 11/ As discussed below, the Act has been somewhat successful in partially achieving certain of these intended goals. However, ACUS and others have noted that the Act has had a serious adverse impact on joint deliberative

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6/ The Act does not apply to agencies headed by a single individual.

7/ 5 U.S.C. 552b(d).

8/ Pub. Law. No. 94-409, Section 2.

9/ S. Rep. No. 354, 94th Cong., 1st Sess. 5 (1975).

10/ Id.

11/ Id. at 6

decision making among agency members. 12/ *I also believe the Act, as currently crafted, results in less public disclosure of agency deliberations than would be the case under a modified version (as described below).* The task then is to design modifications to the Act to facilitate its achieving its intended goals better, without adverse impacts.

B. Issues Related to the Effectiveness of the Act

Notwithstanding its exemplary motivations, there are a number of adverse consequences that result from the current structure of the Act. They affect both the public's access to and understanding of the agency decision making process and the quality of agency decisions.

1. Effect of the Act on Public Access to and Understanding of the Decision Making Process.

It would appear that the vast majority of agency open meetings under the Act are ineffective in achieving the Act's underlying -- and primary -- goal of allowing the public to observe the decision making *process* of federal agencies. For example, at both the proposing and adopting stages of most agency rulemaking proceedings, there is typically a meeting open to the public in which agency members discuss the recommendation at issue, frequently make statements on the matter at hand, and ask the staff for its views on various issues of concern. Under the Act, the role of the public in these meetings is limited to one of observation; public attendees and the press do not have a right to participate in agency meetings by asking questions of either agency members or staff. 13/

As described below, these open meetings *do* serve a very valuable role in presenting agency members an opportunity to present their views to the public and the press and to provide, for the record, agency members' opinions on the matters at hand. But these open meeting presentations -- *which should be maintained and which agency members would generally demand be maintained to preserve them with their forum for public statements* -- should not be confused with public deliberations.

With respect to understanding or viewing the actual deliberative process, the public

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12/ ACUS Recommendation 84-3, 49 FR 29937 (July 25, 1995)(noting that "one of the clearest and most significant results of the Sunshine Act is to diminish the collegial character of the agency decision making process.").

13/ Instead public participation in the decision making process of Federal agencies is normally limited to providing comments on proposed agency action pursuant to the notice and comment procedures for rulemaking contained in the Administrative Procedures Act (the "APA"). 5 U.S.C. 553.

receives, at best, limited benefits from observing these open meetings. Meetings are typically short -- in many instances lasting less than one hour for multiple matters. With their formal structures, required advance notices, and media coverage these meetings simply do not present either the time or the place for in-depth reviews of an issue. Frequently, for example, additional information or additional persons must be contacted or consulted to obtain answers to detailed questions, and matters would have to be carried from meeting to meeting to meeting before decisions actually could be made. In addition, the public would be quite surprised, and should be quite chagrined, if the entire deliberative process were in fact what transpires at these open meetings. Moreover, whether for purposes of efficiency, to avoid embarrassment, out of respect for the wishes of their members, or otherwise, many agencies strive to avoid surprises at open meetings.

As a result, all or almost all issues pertaining to agency rulemaking are resolved in advance with the staff or through the use of intermediaries. Issues discussed at the open meeting are for the record -- to make a statement -- rather than to further the deliberative process. 14/ As a result, open meetings are either opportunities for statements to the press and the public, or they are difficult to understand public continuations of private conversations with the staff intended for an agency member to reaffirm a position previously taken. 15/

In addition, in many instances the opening statements and questions of agency members either are prepared by or shared with the staff prior to the meeting to allow the staff to formulate appropriate responses. This procedure appropriately ensures that certain factors deemed important to an agency member are disclosed in a public forum. The scripted nature of the proceeding provides the public the benefit of knowing what an agency member believes to be important. But contrary to expectations, it is not a spontaneous exchange of views associated with collective deliberation as contemplated by Congress when the Act was adopted. 16/

14/ See Welborn, The Federal Government in the Sunshine Act and Agency Decision Making at 471, Administration & Society (February 1989).

15/ See ACUS Recommendation 84-3, 49 FR 29937 (July 25, 1984) (noting that discussion in open meetings is sometimes inadequate to allow those in attendance to fully understand the proceedings); Tucker, supra at 543 (noting that because "Federal decision making meetings represent merely the end result of what is often a very long process dealing with complex issues, opening such meetings will be generally not only unenlightening, but also boring to even a highly intelligent spectator.").

16/ See S. Rep. No. 354, 94th Cong., 1st Sess. 5-6 (1975) ("As citizens listen to debate between the heads of an agency, they will be able to identify precisely the issues that are of most concern to the agency") (emphasis added).

In sum, what the public currently observes is a discussion of the broad policy reasons underlying a particular proposal (which, while important, are only one piece of the puzzle), the agency member's individual views on the proposal, and the agency member's particular concerns. These statements, of course, are all extremely important and valuable to the press and those members of the public with a stake in the outcome. But they do not exhibit for the public, or allow the public to observe, the process of the decision being made. They certainly are not joint deliberations on the matter. Arguably, the interests actually served by the open meetings could be better served by agency members' distributing opening statements and scripted questions and answers in written form, rather than by forcing the press and the public to take notes in an attempt to transcribe scripted material from oral statements.

Moreover, as some have noted, the fact that a release setting forth the decision and rationale of an agency on the subject matter of the meeting is often available at the meeting itself (or shortly thereafter) -- proving of course that all the decision making has already occurred -- should cause the press and the public to question whether in fact they are witnessing any actual decision making process. 17/

These observations are not meant to imply that the Act is of no benefit to the public. To the contrary, open meetings under the Act are extremely useful for what they are; namely, an opportunity for agencies and agency members to explain publicly the *results* of the decision making process -- just as various courts take the opportunity to announce their decisions. Requiring agencies to justify significant decisions in a public forum helps, I believe, ensure individual and collective accountability and engenders public confidence in the decision making process. *Therefore, at a minimum, we should ensure that any proposed alternative to the current Act provides the public the opportunity to view that which is currently available under the Act.* However, provided we satisfy ourselves that there will be no diminution in the benefits afforded to the public under the current Act, there would appear to be little justification for refusing to implement creative and novel ideas that might enhance both the public's understanding of, and the quality of, an agency's decision making process.

2. Effect on Agency Decision Making

The restrictions imposed by the Act on private meetings among agency members substantially reduce or eliminate the ability of such members to deliberate jointly in a full and appropriate manner. Notwithstanding the overriding goal of openness underlying the Act with respect to joint deliberations, the reality is that there generally are no joint deliberations. Under the Act, members are often isolated from one another, forced to deliberate, at best, one-on-one

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17/ See Cawley, Sunshine Law Overexposure and the Demise of Independent Agency Collegiality, 1 Widener Journal of Public Law 43, 71 (1992).

or rely heavily on agency staff to communicate their concerns to other members. With extraordinarily rare exceptions, agency members come to an open meeting with their minds made up and, therefore, without the benefit of collective deliberations. 18/ This result is directly in conflict with the free exchange of views necessary to enable an agency member to fulfill his or her delegated duties adequately.

The practical effect of the Act is inconsistent with the underlying premise of the collegial agencies to which the Act exclusively applies. Presumably, multi-headed agencies were thought to provide a number of benefits, including collegial decision making where the collective thought process of a number of tenured, independent appointees would be better than one. Unfortunately, the Act often turns that goal on its head, resulting in greater miscommunication and poorer decision making by precluding, as a matter of fact, the joint deliberation of the members.

Another consequence of the Act is that it limits the ability of agency members to consider and properly establish an agency's agenda. Because agency members are generally restricted from meeting privately to develop an agency agenda, agency staff members are frequently subject to an increased burden of both determining and effectuating an agency's agenda without the benefit of the collective guidance of the members. 19/ Even where the agenda of an agency is committed to the discretion of the chairman of an agency, the Act precludes the chairman from deliberating privately with his or her fellow commissioners with respect to a proposed agenda. 20/ This contributes to a decline in the quality of coordinated policymaking and, more importantly, a lack of accountability in agency decisions. Especially now, as government has grown in importance and become more pervasive, it is imperative that agency members be held accountable for their agencies' actions and agenda, and that agencies be responsive to the public interest.

As a separate matter, ambiguities under the Act often encourage agencies to engage in practices and procedures designed to avoid inadvertently triggering the Act, but which frequently also entail significant inefficiencies. These practices and procedures focus on avoiding instances in which agency members could be deemed to have "deliberated" or to have engaged in deliberations that "determine or result in the joint conduct or disposition of official agency

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18/ See Welborn at 471, 475 (noting that, under the Act, most important agency decisions have not emerged from authentic collegial discussions).

19/ For example, staff members may experience difficulty in "ascertaining clearly the thinking of members and relating the views of one member to those of others." Id. at 476.

20/ Such is the case with the Securities and Exchange Commission, for example.

business ***" within the meaning of the Act. 21/

3. The Responsibility of Agency Members.

It would be disingenuous -- and wrong -- not to recognize that, in the view of many, including myself, much of this problem is within the control of agency members. Notwithstanding technical concerns with respect to the Act, 22/ we could, in fact, simply deliberate in public. However, for a variety of reasons, this simple solution just does not work.

Some matters cannot be deliberated publicly without a substantial or complete loss of agency effectiveness. For example, an agency's attempt at arriving at an effective negotiating strategy with an interested party, or a position on a legislative matter, would be precluded by having to discuss the matter in public. Yet that is what the Act would require. In other cases, agency members believe that it would be counterproductive to provide initial deliberative views on the record and publicly because of a need to make appropriate modifications or even reverse positions later. They believe that if views have to be placed on the record without enough thought or information, there will be additional and substantial costs imposed on the public and on interested parties. This will occur through confusion as to where the agency is really headed, or misperceptions that ill-thought out initial statements are considered and firmly held beliefs. On still other matters, human nature, including a desire not to look indecisive, uninformed, or incapable of thinking quickly, the potential for embarrassment, and concern about making substantive statements publicly that come back to haunt after more information is known, further make this solution untenable for many agency members. In addition, on matters of particular importance agencies may wish to speak with one voice, making the ability to work through

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21/ The substantive and procedural restrictions of the Act are triggered only where there is a "meeting" within the meaning of the Act. There are essentially four elements of a meeting for purposes of the Act: (1) a quorum of agency members, (2) acting jointly, (3) to conduct deliberations, (4) that result in the disposition of official agency business. 5 U.S.C. § 552b(a)(2)

Many agencies use general guidelines to avoid inadvertently triggering the open meeting requirements of the Act. These guidelines -- some of which are set forth in the attached Appendix A -- contribute to what numerous observers have seen as inefficiency in government.

22/ For example, the timing of notice required under the Act presents logistical difficulties. These difficulties could possibly be addressed either by scheduling open meetings every few days with the agenda listing most of the items then pending for agency member review, or by amending the Act to provide more flexible notice requirements.

issues, but only if it can be accomplished in private, that much more important. It is no accident that, to my knowledge, every major federal agency subject to the Act has independently devolved procedures and a format for its open meetings that avoids the Act's expectation of joint public deliberations. If the Act's model worked well and appropriately, one would have expected most if not all agencies to have embraced it, especially because it is the model prescribed by the Act. Notwithstanding the best of intentions then, the fact that just the opposite has occurred -- through both Democratic and Republican majorities in agencies, through almost 20 years, and through scores of agency members -- should be the best proof that the Act's procedure simply is not working well and its goals are not being satisfied. Instead decision making and the public's interest are being harmed.

4 Summary.

The Act has not been particularly effective in fully achieving either of its stated primary or secondary goals. The primary benefit of agency meetings under the Act is now the opportunity for agencies and agency members to announce and justify publicly the *results of prior individual* deliberations. Agency open meetings rarely involve substantive deliberation of matters on the agenda, and therefore are of marginal benefit at best in terms of providing the public an opportunity to observe the decision making process of Federal agencies. Similarly, the Act does little to improve the quality of agency decisions. Specifically, in light of the limitations imposed by the Act on the deliberative processes of agency members, the Act actually appears to be counterproductive to the goal of improved agency decision making.

II. Proposed Alternative to the Act.

A. Structure of Proposal.

The concerns expressed above with respect to the Act have been fairly well documented. 23/ What is less clear is precisely what should be done to address them. As I initially noted, I strongly support the goals of the Act and would, therefore, not be in favor of a repeal of the Act. Instead, I would like to set forth a proposal for consideration that, in my view, would enhance the Act's underlying primary goal of increasing the public's access to the collective deliberations of agencies. This proposal would also simultaneously encourage more collective decision making among agency officials and, thereby, provide the public with the benefit of

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23/ See e.g. ACUS Recommendation 84-3, supra at n. 12; Tucker, supra at n. 3; Welborn, supra at n. 14; Cawley, supra at n. 17; Longstreth, A Little Shade, Please -- the Government in the Sunshine Act Isn't Working, Washington Post (July 25, 1989).

better agency decisions. 24/ I also believe that as agency members deliberate jointly in private, there will also be a spill over where those matters that can, to some extent, be appropriately debated in public will, at least to that extent, start to be deliberated in public.

This alternative -- a "Modified Sunshine Act" or "MSA"-- would involve the establishment of a Congressionally enacted pilot program. Under the pilot, in return for electing to be subject to the broadened scope of the Modified Sunshine Act, agency members would be permitted more flexibility to meet privately provided that they memorialize their meetings for the public. Under the Modified Sunshine Act, agencies would be exhorted to have as open meetings all deliberations the agency believed could be appropriately handled in that fashion.

Under the pilot, the definition of a "meeting" subject to the Modified Sunshine Act would be expanded to include *all* meetings involving a quorum of agency officials and the discussion of agency business. There no longer would be any distinction between deliberative and nondeliberative meetings. The MSA would continue, however, to retain the exemptions of the current Act. That is, enforcement, internal personnel and certain other matters exempt from the open meeting requirements under the current Act would continue to be exempt from the parallel requirements of the MSA. 25/

In contrast to the current Act, under the Modified Sunshine Act agency members would be permitted to meet collectively in private to discuss agency business in those instances where agency members today would otherwise be required to meet in an open meeting -- or more practically and realistically speaking, not meet at all under the Act. To the extent such private meetings under the MSA occurred, agencies would be required to document them in a public file by the close of the second business day after the date of the meeting. For example, if the members of an agency met privately on a matter on a Monday, the documentation would have to be submitted to the public file by the close of business on the following Wednesday.

The scope of this notice and documentation of private meetings under the Modified Sunshine Act, obviously, is of central importance. Ideally, any record of the meeting would

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24/ The approach described -- the Modified Sunshine Act -- is one way in which the issues posed by the Act might be addressed in a generic fashion across agencies. Clearly, there are other ideas -- some of which have been suggested in ACUS' notice of this hearing -- which merit consideration. Without advocating any particular idea other than the one described herein, additional possibilities for consideration might include those designed to enhance the ability of the public to *participate* in (as opposed to observe) agency meetings.

25/ See 5 U.S.C. 552b(c).

be detailed enough reasonably to apprise the public of the occurrence and substance of the meeting, yet not so detailed that it would dampen the collective deliberation necessary to obtain the benefit of better agency decision making sought to be encouraged as one goal of the pilot program. In attempting to achieve this admittedly difficult balance, I propose that the Special Committee consider the following items as essential elements of any minutes of private meetings among agency officials:

- A list of the participants at the meeting;
- A description of the time, date and duration of the meeting;
- A description of the subject matter of the meeting; and
- A review of the meeting sufficiently detailed to apprise the public of the *general* nature of the discussion at the meeting. The review is not intended to be a transcript or a verbatim summary of statements made at the meeting, rather it is intended to provide enough information so that a person familiar with the subject matter would be reasonably apprised of the issues or matters discussed.

In order to ensure public awareness of these minutes and review, agencies would also be required to provide public access -- either through an agency newsletter, electronic bulletin board or similar medium of widespread publication -- of the minutes memorializing private meetings. 26/

Public announcement of all final agency action requiring agency member approval -- such as official votes on rule proposals or adoption of agency rules -- would be required under the MSA to be taken either at an open meeting, which would be strongly encouraged, or through notational voting. Because a material amount of the business of many agencies requiring agency member approval consists of routine matters conducted by notational voting, the MSA, like the Act, would not mandate that all final votes be made in public. In order to encourage as much openness as possible, however, the MSA would explicitly permit any member to require any matter to be calendared for an open meeting instead of being acted upon by notation, and provide agency members an opportunity at the next subsequent open meeting to discuss any matters that were disposed of by notational voting. In order to avoid uncertainty, however, any matter that was acted upon by notation would, as is currently the case, be final at the time that it received the requisite approval under the notation process.

26/ A number of agencies currently use newsletters or electronic media to provide information on their activities. For example, both the Securities and Exchange Commission and the Federal Communications Commission have daily newsletters and electronic bulletin boards.

The pilot program would extend for a limited time, such as two years. The legislation could direct ACUS to conduct an evaluation of the pilot at the conclusion of this period. This review would include a survey of all interested parties including Federal agencies, private and public interest organizations and members of the press. Based on its review, ACUS could then make a recommendation to Congress as to whether the current Act should be amended to reflect the terms of the pilot, whether the Act should remain in its current form, or whether the pilot should be extended for some additional period of time.

B. Discussion.

There are several potential benefits to the Modified Sunshine Act approach. The scope of the current Act would be broadened to include all meetings involving a quorum of agency members where agency business is discussed. This proposal would eliminate the distinction between agency meetings that involve deliberations which determine or result in the joint conduct or disposition of agency business and those discussions which are preliminary in nature.27/

More importantly, the broadened scope of the Modified Sunshine Act and the associated written reviews of private meetings among agency members will result in the receipt of *more* information by the public than is currently received under the Act. As discussed above, almost no public joint deliberative meetings occur. Because of an aversion to triggering the requirements of the Act, very few private pre-deliberative meetings occur either. In any event, when such pre-deliberative meetings do occur, there is no requirement that the meeting be disclosed to the public. Thus, under the Act, the public currently receives little, *if any* information regarding either the important, or the day-to-day, deliberative or pre-deliberative, activities of agency members.

By contrast, under the Modified Sunshine Act, private meetings among a quorum of agency members would be publicly disclosed without regard to whether such meetings were preliminary or involved a deliberation. For *the first time,* members of the public and the press would have a comprehensive view of the issues occupying the time of agency members. We would all know which issues are important agenda items to particular agency members and to the agency as a whole. As a result, even in the absence of a verbatim transcript of the meeting, this information would be a valuable public resource and better enable interested

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27/ This would directly address one of the more vexing problems presented by the current Act, and preclude any evasions of the Act through determinations that "deliberations" did not occur.

parties to direct their attention to agency priorities and ask appropriate follow-up questions.28/

Moreover, the Modified Sunshine Act would *not* alter what the public currently has the opportunity to observe under the Act. Notwithstanding that there is nothing in the Act requiring agencies to hold open meetings -- there is always the option of handling all matters by notational voting -- agencies obviously hold such meetings and they do so for a variety of reasons. Such reasons include, among others, to obtain publicity for important agenda items or to explain publicly the rationale for particularly difficult or controversial decisions. Those incentives remain for agencies to hold public meetings of the type that are currently held and previously described. The expectation under the MSA that members might provide observations or remarks on matters disposed of by notation will likely expand, at least in some cases, the matters discussed at public meetings.

Importantly, and ironically, the ability of agency members to become familiar with the concerns of their respective colleagues in private would, I believe, encourage *more* candid dialogue and debate among the members in public. Part of the refusal to deliberate publicly stems from a concern about what can be appropriately stated in public, what has been sufficiently considered so as not to be irresponsible if stated in public, a desire not to be embarrassed in public due to a lack of understanding of others arguments or the facts, etc. But after some private deliberation, public deliberation would become easier. Consequently, the Act's goal of allowing the public to observe the process of agency member deliberations would be more likely to be achieved, in the manner sought by the Act, by permitting private deliberations.

Further, the Modified Sunshine Act approach also is more consistent with the underlying goal of multi-headed agencies. By facilitating collective deliberations among the members of an agency, the proposal moves us closer to ensuring that the public receives the benefit of the collective wisdom of a collegial body as opposed to the collected views of individual commissioners.

Finally, there are benefits associated with conducting the Modified Sunshine Act

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28/ This approach is similar to the policy of many agency officials of memorializing all meetings with members of the public interested in a pending rulemaking under the Administrative Procedures Act. Minutes of such meetings are typically placed in the public file relating to the rulemaking. Members of the press, industry competitors and others review such files carefully. By way of anecdote, on several occasions following the submission of a notice of such a meeting to the public file, I have received follow-up telephone calls from reporters and other parties interested in what occurred at the meeting. This type of minute would be even more valuable if it reflected private conversations among commissioners, for which there is currently no information.

proposal as a pilot program. First, in recognition of the importance of the Act to public openness, conducting the proposal as a pilot allows us to proceed cautiously and deliberately, without venturing down an unchartered course wholeheartedly. Second, because each agency would elect whether to be governed by the Modified Sunshine Act, the proposal provides each agency flexibility to adopt an approach most suited to its needs. Assuming that not all agencies will find it desirable to opt-in to the proposal, 29/ Congress, ACUS, agencies, and members of the press and general public will have an opportunity to evaluate, both objectively and subjectively, which scheme better promotes the public's trust. If the ultimate conclusion is that the pilot is not serving its purpose, it will sunset and the original Act would be retained without modification.

C. Additional Possibilities

Notwithstanding the potential benefits and limited downside of the MSA pilot relative to the Act, some may have reservations about the proposal. These concerns may be based on the view that, regardless of the safeguards imposed under the MSA to protect the public interest in openness, allowing any private deliberation among officials at collegial agencies is unacceptable. If that is the case, there would seem to be little that we can do to benefit the public interest short of hoping that things will improve sometime over the next twenty years. If, however, the reservation is focused (more appropriately) on whether the MSA as proposed -- and the documentation of private meetings through the use of minutes in particular -- will sufficiently further the goal of public openness, it may be possible to address this concern within the context of the MSA pilot.

If necessary, it would be possible to add a requirement that meetings newly permitted to be held privately under the MSA be recorded or transcribed and that such recordings or transcriptions be made available to the public after some period. The key determination here is the time period that would be permitted to elapse prior to making such transcripts or recordings publicly available. If the period is too short, this approach would do little to further collegial deliberations at Federal agencies.

To the extent the Special Committee were to consider an overlay of this approach on the MSA, I would propose that the verbatim record of private meetings be made available only after a sufficient time so that agency members would be encouraged to use this procedure for joint deliberations. The goal is to ensure that the public can have access to the agency

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29/ For example, agencies that engage primarily in adjudicatory meetings rather than rulemaking proceedings may find no benefit to electing to be governed by the MSA. Such adjudicatory proceedings, which involve the rights and obligations of specific parties rather than more general policy determinations of agency rulemaking, are more easily and appropriately conducted in an open forum.

members' deliberative process, which is clearly less time sensitive than ensuring access to late-breaking news. It is important to keep in mind that, although there are obviously outside limits with respect to the usefulness of certain information, the records of private meetings still become news once they are released. Therefore, it is likely that -- like the minutes of the meetings of the Federal Reserve Open Market Committee -- they would be of interest to the public and press notwithstanding that they are not released immediately or even relatively shortly after the meeting.

Consequently, I believe the distribution of the verbatim record should be made available no later than on the date the agency takes action with respect to the matter, such as by proposing or adopting a rule with respect to the matter, or 180 days after the meeting. In the instance of a negotiated rule making or a strategy for legislative discussions, the agency would have to be granted the discretion of delaying the release of the record until the rulemaking or negotiation is over, or the matter should be exempt from the requirement for a verbatim record to be released altogether.

Conclusion

ACUS, members of Federal agencies and the press, and other interested parties should be commended for their willingness to engage in this review of the Sunshine Act. The Act is of vital importance to ensuring public confidence in government. It is incumbent on us all to ensure that the Act works as efficiently as possible and is effective in achieving its underlying goals of enhancing public understanding of agency decision making and providing the public with the benefit of better agency decisions.

Based on our experience with the Act over the last 19 years, I do not believe the Act achieves either of its goals as well as it might. There are any number of reasons for this -- some of which may be more acceptable to us than others. The primary issue at this time, however, is not so much *why* the Act is not functioning as well as we would like. Rather, the issue is whether we should continue to insist on an increasingly unrealistic and unrealized and, perhaps, misleading view that the Act is somehow providing the benefit of public openness, while we are all paying the cost of possible better information to the press and public and better agency decision making.

One possible alternative to the Act involves establishing a pilot program permitting agencies to elect to be subject to a Modified Sunshine Act with a broader scope than the current Act. In exchange, agency members would be provided greater discretion to deliberate collectively in private provided such meetings were memorialized through minutes for the public shortly thereafter. The potential benefits of such an approach are many, with no real disadvantages compared to the current practice. Among other benefits, the public and the

press would obtain information not currently available and deliberation privately would, possibly, facilitate joint public deliberation as originally contemplated by the Act. Moreover, what is currently in the public eye under the Act would remain in the public eye under the MSA. If viewed as necessary to ensure public openness, the MSA proposal could be combined with a requirement that recordings or transcripts of private meetings under the MSA be made publicly available after the lapse of a designated period. Even this later variation on the MSA, which would reduce its utility, would be preferable to our collective current status under the Act.

If wrong, the MSA pilot would be halted after a couple of years. Compared to the current practice, the downside is hard to construct and an unwillingness to consider such an approach would appear to be based solely on a fear of the unknown. In light of this, and our experience with the Act over the last two decades, we ought to have the courage to *try* to achieve better for the public the benefits Congress envisioned when it enacted the Sunshine Act.

Thank you for your attention. I would be pleased to assist in ongoing efforts to examine and reform the Act in any way I am able.

Appendix A: Guidelines Used to Avoid Inadvertently Triggering the Act

The following are examples of guidelines utilized by some agencies to avoid triggering the open meeting requirements of the Act:

- Use of Bright-line Tests. Many agencies invoke bright-line policies to avoid inadvertently violating the Act. However, these policies may hinder effective agency decision making. For example, because of the difficulty in distinguishing between preliminary conversations, which are outside of the Act -- and deliberations -- which trigger the Act, many agencies prohibit the gathering of a quorum of agency members as a matter of general policy. By adopting this approach, the issue of determining when agency members become engaged in deliberations or have disposed of agency business becomes irrelevant, as the Act is not triggered in the absence of a quorum of agency members.

  Bright-line, prophylactic policies have the obvious benefits of being easy to apply and effective, in a mechanical sense, in preventing inadvertent violations of the Act. Notwithstanding this, they are often over-inclusive and, in many instances, they prohibit discussion of even the most preliminary views among agency members. In doing so, these policies leave little room for flexibility in the exchange of member views and often harm the quality of agency decision making.

- One-on-One Meetings of Agency Members. Where there is a general policy of precluding agency members from meeting in groups constituting a quorum, members may be forced to resort to one-on-one conversations on matters of agency interest. These discussions are useful, but limited, in that in order to be most effective, there must be a series of such meetings so that the views of all agency members are known. Such a series of meetings remind one of the children's game of "telephone" where, after a number of one-on-one relays in which a message is repeated from child to child the message is stated out loud to see how garbled it could become. This model of government decision making obviously leaves a great deal to be desired.

- Use of Intermediaries. Another manner in which agencies try to avoid inadvertently triggering the Act is by using intermediaries to discuss agency business. For example, the legal counsel of agency members may meet to discuss issues that will require decision making by their principals. Because these meetings do not involve the actual members of an agency -- as opposed to their respective representatives -- the restrictive provisions of the Act governing open meetings are not implicated.

  Because not every issue or follow-up concern related to a particular matter can be anticipated in advance of such meetings, however, and intermediaries are constrained in their ability to respond to new proposals on behalf of their principals, several conferences

among intermediaries frequently are required with respect to even the most minor decisions. This is remarkably inefficient and frequently results in comprehension and interpretation problems that hinder agency decision making.

THE WHITE HOUSE

WASHINGTON

October 4, 1993

MEMORANDUM FOR HEADS OF DEPARTMENTS AND AGENCIES

SUBJECT: The Freedom of Information Act

I am writing to call your attention to a subject that is of great importance to the American public and to all Federal departments and agencies -- the administration of the Freedom of Information Act, as amended (the "Act"). The Act is a vital part of the participatory system of government. I am committed to enhancing its effectiveness in my Administration.

For more than a quarter century now, the Freedom of Information Act has played a unique role in strengthening our democratic form of government. The statute was enacted based upon the fundamental principle that an informed citizenry is essential to the democratic process and that the more the American people know about their government the better they will be governed. Openness in government is essential to accountability and the Act has become an integral part of that process.

The Freedom of Information Act, moreover, has been one of the primary means by which members of the public inform themselves about their government. As Vice President Gore made clear in the National Performance Review, the American people are the Federal Government's customers. Federal departments and agencies should handle requests for information in a customer-friendly manner. The use of the Act by ordinary citizens is not complicated, nor should it be. The existence of unnecessary bureaucratic hurdles has no place in its implementation.

I therefore call upon all Federal departments and agencies to renew their commitment to the Freedom of Information Act, to its underlying principles of government openness, and to its sound administration. This is an appropriate time for all agencies to take a fresh look at their administration of the Act, to reduce backlogs of Freedom of Information Act requests, and to conform agency practice to the new litigation guidance issued by the Attorney General, which is attached.

Further, I remind agencies that our commitment to openness requires more than merely responding to requests from the public. Each agency has a responsibility to distribute information on its own initiative, and to enhance public access through the use of electronic information systems. Taking these steps will ensure compliance with both the letter and spirit of the Act.

William J. Clinton

Office of the Attorney General
Washington, D. C. 20530

October 4, 1993

MEMORANDUM FOR HEADS OF DEPARTMENTS AND AGENCIES

SUBJECT: The Freedom of Information Act

President Clinton has asked each Federal department and agency to take steps to ensure it is in compliance with both the letter and the spirit of the Freedom of Information Act (FOIA), 5 U.S.C. § 552. The Department of Justice is fully committed to this directive and stands ready to assist all agencies as we implement this new policy.

First and foremost, we must ensure that the principle of openness in government is applied in each and every disclosure and nondisclosure decision that is required under the Act. Therefore, I hereby rescind the Department of Justice's 1981 guidelines for the defense of agency action in Freedom of Information Act litigation. The Department will no longer defend an agency's withholding of information merely because there is a "substantial legal basis" for doing so. Rather, in determining whether or not to defend a nondisclosure decision, we will apply a presumption of disclosure.

To be sure, the Act accommodates, through its exemption structure, the countervailing interests that can exist in both disclosure and nondisclosure of government information. Yet while the Act's exemptions are designed to guard against harm to governmental and private interests, I firmly believe that these exemptions are best applied with specific reference to such harm, and only after consideration of the reasonably expected consequences of disclosure in each particular case.

In short, it shall be the policy of the Department of Justice to defend the assertion of a FOIA exemption only in those cases where the agency reasonably foresees that disclosure would be harmful to an interest protected by that exemption. Where an item of information might technically or arguably fall within an exemption, it ought not to be withheld from a FOIA requester unless it need be.

It is my belief that this change in policy serves the public interest by achieving the Act's primary objective -- maximum responsible disclosure of government information -- while preserving essential confidentiality. Accordingly, I strongly encourage your FOIA officers to make "discretionary disclosures"

whenever possible under the Act. Such disclosures are possible under a number of FOIA exemptions, especially when only a governmental interest would be affected. The exemptions and opportunities for "discretionary disclosures" are discussed in the Discretionary Disclosure and Waiver section of the "Justice Department Guide to the Freedom of Information Act." As that discussion points out, agencies can make discretionary FOIA disclosures as a matter of good public policy without concern for future "waiver consequences" for similar information. Such disclosures can also readily satisfy an agency's "reasonable segregation" obligation under the Act in connection with marginally exempt information, see 5 U.S.C. § 552(b), and can lessen an agency's administrative burden at all levels of the administrative process and in litigation. I note that this policy is not intended to create any substantive or procedural rights enforceable at law.

In connection with the repeal of the 1981 guidelines, I am requesting that the Assistant Attorneys General for the Department's Civil and Tax Divisions, as well as the United States Attorneys, undertake a review of the merits of all pending FOIA cases handled by them, according to the standards set forth above. The Department's litigating attorneys will strive to work closely with your general counsels and their litigation staffs to implement this new policy on a case-by-case basis. The Department's Office of Information and Privacy can also be called upon for assistance in this process, as well as for policy guidance to agency FOIA officers.

In addition, at the Department of Justice we are undertaking a complete review and revision of our regulations implementing the FOIA, all related regulations pertaining to the Privacy Act of 1974, 5 U.S.C. § 552a, as well as the Department's disclosure policies generally. We are also planning to conduct a Department-wide "FOIA Form Review." Envisioned is a comprehensive review of all standard FOIA forms and correspondence utilized by the Justice Department's various components. These items will be reviewed for their correctness, completeness, consistency, and particularly for their use of clear language. As we conduct this review, we will be especially mindful that FOIA requesters are users of a government service, participants in an administrative process, and constituents of our democratic society. I encourage you to do likewise at your departments and agencies.

Finally, I would like to take this opportunity to raise with you the longstanding problem of administrative backlogs under the Freedom of Information Act. Many Federal departments and agencies are often unable to meet the Act's ten-day time limit for processing FOIA requests, and some agencies -- especially

those dealing with high-volume demands for particularly sensitive records -- maintain large FOIA backlogs greatly exceeding the mandated time period. The reasons for this may vary, but principally it appears to be a problem of too few resources in the face of too heavy a workload. This is a serious problem -- one of growing concern and frustration to both FOIA requesters and Congress, and to agency FOIA officers as well.

It is my hope that we can work constructively together, with Congress and the FOIA-requester community, to reduce backlogs during the coming year. To ensure that we have a clear and current understanding of the situation, I am requesting that each of you send to the Department's Office of Information and Privacy a copy of your agency's Annual FOIA Report to Congress for 1992. Please include with this report a letter describing the extent of any present FOIA backlog, FOIA staffing difficulties and any other observations in this regard that you believe would be helpful.

In closing, I want to reemphasize the importance of our cooperative efforts in this area. The American public's understanding of the workings of its government is a cornerstone of our democracy. The Department of Justice stands prepared to assist all Federal agencies as we make government throughout the executive branch more open, more responsive, and more accountable.

U.S. Department of Justice
Office of Information and Privacy

Washington, D.C. 20530

February 1, 1994

MEMORANDUM

TO: All Department of Justice FOIA/PA Coordinators

FROM: Richard L. Huff
Daniel J. Metcalfe
Co-Directors

SUBJECT: Expediting FOIA Requests as a Matter of Agency Discretion to Promote Public Accountability

As you are aware, many Department of Justice components are unable to meet the FOIA's deadlines for responding to requests. Following Open America v. Watergate Special Prosecution Force, 547 F.2d 605, 614-16 (D.C. Cir. 1976), those components process their requests on a "first-in, first-out" basis, ordinarily taking requests out of order only when they satisfy one of the two court-recognized grounds for expediting the processing of FOIA requests: a threat to life or safety, or the loss of substantial due process rights. See FOIA Update, Summer 1983, at 3.

As a matter of agency discretion, the Attorney General has determined that the Department of Justice will expedite the processing of a third category of FOIA requests, based upon the Department's institutional interest in promoting public accountability. This category consists of those FOIA requests for which the Director of Public Affairs expressly finds that:

1. there exists widespread and exceptional media interest in the requested information; and

2. expedited processing is warranted because the information sought involves possible questions about the government's integrity which affect public confidence.

The goal of such expedited processing is to permit the public to make a prompt and informed assessment of the propriety of the government's actions in exceptional cases. It is recognized that in some cases (e.g., those involving ongoing law enforcement investigations) the Department's ability to disclose requested records without harm to protectible interests will be greatly limited. An expedited FOIA response in those cases will nevertheless provide the maximum public assurance possible through the

FOIA process. All requests for expedited FOIA processing in this new category should be forwarded to the Office of Public Affairs.

Finally, we suggest that future Open America declarations should take cognizance of this third category when describing the circumstances under which a component will expedite the processing of a FOIA request.

U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

December 13, 1993

MEMORANDUM

TO: Michael E. Shaheen, Jr.
Counsel
Office of Professional Responsibility

FROM: Philip B. Heymann
Deputy Attorney General

SUBJECT: Disclosure of the Results of Investigation of Alleged Professional Misconduct by Department Attorneys

I understand that the Department in the past has publicly disclosed the results of investigations conducted by the Office of Professional Responsibility only in rare cases in which OPR found knowing and intentional misconduct by senior officials. Upon reviewing that policy, I have concluded that more frequent disclosure of the results of OPR's findings concerning professional misconduct by attorneys will promote public accountability and further the fair administration of justice and the law enforcement process. Accordingly, I hereby adopt a policy that will result in the disclosure of findings in a larger number of cases.

While we must respect legitimate privacy interests of Department employees, we must also recognize that serving as an attorney with the Department of Justice carries with it a responsibility to observe high ethical standards. The public's interest in knowing whether all of our attorneys are consistently satisfying those standards should be weighed in the balance when making the determination about whether disclosure is appropriate.

Accordingly, in the future the Department will disclose the final disposition, after all available administrative reviews have been completed, of any matter in the following categories:

1. Any finding by the Department of intentional or knowing professional misconduct by a Department attorney in the course of an investigation or litigation conducted under the authority of the Department of Justice, where the Attorney General or Deputy Attorney General finds that the public interest in

disclosure outweighs the privacy interest of the attorney and any law enforcement interests.

2. Any case involving an allegation of serious professional misconduct where there has been a demonstration of public interest in the disposition of the allegation, including matters where there has been a public referral to the Department by a court or bar association, where the Attorney General or Deputy Attorney General finds that the public interest in disclosure outweighs the privacy interest of the attorney and any law enforcement interests.

3. Any case in which the attorney requests disclosure, where law enforcement interests are not compromised by the disclosure.

Prior to any disclosure in category (1) or (2), the attorney whose name is to be released will receive notice of the planned disclosure and will be given an opportunity to object in writing to the public disclosure. The Deputy Attorney General shall resolve any such objections.

In each disclosed case, the Department will disclose the name of the employee, sufficient facts to explain the context of the allegation, and the disposition of the allegation, including any final action taken by the Department.

Please ensure that procedures are implemented in your office so that each matter falling within one of the above categories is forwarded to the Deputy Attorney General after resolution by your office. Your referral should include your recommendation about whether disclosure is appropriate. If you believe that disclosure is appropriate, please include a brief summary of the matter appropriate for public release.

Depending upon the degree of public interest in the matter, we may release the information when the matter is resolved or include it in OPR's annual report.

U.S. Department of Justice
Office of Information and Privacy

Vol. XV, No. 2
Spring 1994

FOIA UPDATE

Attorney General Reno Celebrates Annual Freedom of Information Day

Furthering the strong spirit of government openness that has been a hallmark of her leadership at the Department of Justice, Attorney General Janet Reno celebrated annual Freedom of Information Day this year with a speech at the National Press Club on the subject of openness in government.

Before a capacity crowd of journalists and other media members at the National Press Club's annual FOIA Day celebration on March 16, Attorney General Reno gave a luncheon address that outlined the full range of openness-in-government initiatives undertaken by the Department of Justice during the past year, including the major policy changes made by the Department under the Freedom of Information Act. Through such actions, she emphasized, "[o]ur goal is to create meaningful, lasting change."

Attorney General Reno remarked that she and President Clinton share "a broad philosophy of open government" that is manifested both in President Clinton's FOIA Memorandum of October 4, 1993, and the Department of Justice's initiatives in the following policy activity areas:

▸ **New FOIA Policy Standards**--Establishment of an overall "presumption of disclosure" applicable to FOIA decisionmaking; a new "foreseeable harm" standard governing the application of FOIA exemptions; and an accompanying emphasis on the making of discretionary disclosures of exempt information whenever possible under the Act. See FOIA Update, Summer/Fall 1993, at 1-5. Attorney General Reno observed that "in many instances, these discretionary disclosures can satisfy the goals of the Act" without harming an agency's or a private party's interests. (See pages 3-6 of this issue of FOIA Update for further policy guidance.)

▸ **FOIA Litigation Review**--Rescission of the Justice Department's former standards for the defense of FOIA litigation, together with a review of the merits of all pending and prospective FOIA litigation cases in accordance with the Department's new FOIA policy standards. This review has led to the complete resolution of several FOIA lawsuits, in some instances where all of the information withheld in the case was disclosed as a matter of administrative discretion and in others in which so much of it was disclosed that the FOIA requester then dropped the suit as to the remainder.

Perhaps the most notable example of a FOIA case disposed of through this new process of litigation review, Attorney General Reno told her FOIA Day audience, is the recent case involving a report recommending the exclusion from the United States of former U.N. Secretary-General Kurt Waldheim, Mapother v. Department of Justice, 3 F.3d 1533 (D.C. Cir. 1993). The Department's new litigation review process included that case, she noted, and it triggered a decision to disclose the report entirely as a matter of administrative discretion. "Even though there was a substantial legal basis for withholding, affirmed by the court of appeals," Attorney General Reno pointed out, "the new FOIA policy resulted in disclosure."

▸ **FOIA Form Review**--Comprehensive reviews of all forms and standard correspondence formats used by the more than thirty different components of the Justice Department in their individual administration of the Act. The Department has made numerous improvements in the content, clarity and consistency of many of its components' written communications with FOIA requesters through this process, and it strongly advises other agencies to do the same.

An example of a major change made through the Justice Department's FOIA Form Review process is the Office of Information and Privacy's recommendation that all FOIA correspondence contain a telephone number at which requesters can contact appropriate agency FOIA officers with any questions that they might have. (OIP, as an example, now includes its telephone number as part of its pre-printed letterhead on all of its correspondence for this purpose.) This simple step alone can facilitate better and more efficient communications with FOIA requesters and has been implemented widely within the Justice Department.

Attorney General Reno emphasized the importance of this in her FOIA Day presentation, stressing the strong connection between FOIA communications and the customer-service objectives of the National Performance Review: "The goal of our review, a goal being implemented governmentwide by the Vice President's National Performance Review, is to remind everybody that FOIA requesters are our customers. . . . Our procedures, forms and letters should treat FOIA requesters with the respect they deserve."

▸ **Backlog Reduction**--Attention to all existing backlogs of FOIA requests, both within the Justice Department

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. . . Justice Dep't Openness Initiatives

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and governmentwide, with emphasis on backlog reduction to the maximum extent possible. Through the Attorney General's governmentwide call for agency backlog data in her FOIA Memorandum of October 4, 1993, the Department has compiled information showing backlog problems existing at nearly two-thirds of all federal agencies. Within her own agency, the Attorney General is focusing on all possible means of backlog reduction, including the development of automated FOIA-processing systems through the National Performance Review process, especially at such components as the FBI and INS where the problem is most severe. See also FOIA Update, Summer/Fall 1993, at 8-9.

To ensure that the importance of timely FOIA compliance is appreciated by all Justice Department employees, including those who are relied upon by FOIA officers to support the processes of FOIA administration, Attorney General Reno sent a memorandum to all Department components last year urging a "new institutional attitude" on everyone's part. See FOIA Update, Summer/Fall 1993, at 5. At the National Press Club program, she announced that the Department also would be disseminating this same strong message to each and every employee of the Justice Department directly through a special mailing that would be included "with their next paycheck" as well.

▸ Expedited Access--Establishment of a new Justice Department policy affording expedited access under the Act for certain FOIA requests that meet exceptional standards of media-related interest. By a memorandum to all Justice Department components dated February 1, 1994, OIP announced that the Department was expanding its policy of granting requests for expedited FOIA processing beyond the existing judicially recognized grounds of either threatened physical safety or the loss of substantial due process rights. It established a third category of requests entitled to expedited access ahead of other FOIA requesters--consisting of all "FOIA requests for which the Director of [the Justice Department's Office of] Public Affairs expressly finds that:

- there exists widespread and exceptional media interest in the requested information; and
- expedited processing is warranted because the information sought involves possible questions about the government's integrity which affect public confidence."

Attorney General Reno highlighted this new Justice Department policy in her FOIA Day presentation, and the Department formally encourages all other federal agencies to adopt similar such policies for the treatment of media-related requests seeking expedited FOIA access. Additionally, the Justice Department's Director of Public Affairs, Carl Stern, is scheduled to make a keynote presentation at the American Society of Access Professionals' Annual Symposium this summer addressing the operation of this openness-in-government initiative.

▸ **New Disclosure Policy for Professional Misconduct Investigations**--Creation of a mechanism for affirmative disclosure of the results of investigations conducted by the Department's Office of Professional Responsibility in accordance with a new public interest disclosure standard. The Attorney General also described the Department's "new policy requiring the quick handling and appropriate public disclosure of investigations . . . into complaints of misconduct by Justice Department attorneys and investigators." This policy provides for disclosure of findings of intentional wrongdoing and also of the results of investigations in which no wrongdoing is found, based upon a new "public accountability" standard developed and applied through OIP. It encourages other agencies to adopt their own such policies, under applicable Privacy Act "routine use" regulations.

In addition to her FOIA Day speech at the National Press Club, which was televised by C-SPAN, Attorney General Reno made similar openness-in-government presentations before other media organizations during the spring.

Supreme Court Decides *FLRA* Privacy Issue

Following a "somewhat convoluted path of statutory cross-references" between the FOIA, the Privacy Act of 1974, and the Federal Service Labor-Management Relations Act (FSLMRA), the United States Supreme Court unanimously reaffirmed its Reporters Committee "core purpose" test for determining the "public interest" under the FOIA's privacy exemptions, holding that the home addresses of federal employees are protected under Exemption 6.

In DOD v. FLRA, 114 S. Ct. 1006 (1994), the Court resolved a split among the circuit courts of appeals stemming from the Federal Labor Relations Authority's efforts to compel disclosure of employee home addresses to labor unions under the FSLMRA--which provides that "agencies must, 'to the extent not prohibited by law,' furnish unions with data that is necessary for collective-bargaining purposes." Finding that the employee addresses are covered by the Privacy Act, it ruled that "unless FOIA would require release . . . , their disclosure is 'prohibited by law,' and the agencies may not reveal them to the unions."

Turning to whether disclosure of the records would constitute a clearly unwarranted invasion of personal privacy, the Supreme Court determined that "the employees' interest in nondisclosure is not insubstantial." As to the public interest side of the balance, it held that under Reporters Committee the "relevant public interest" was "negligible, at best"--even though disclosure "might allow the unions to communicate more effectively with employees"--because it "would reveal little or nothing about the employing agencies or their activities." The Court concluded by flatly rejecting the FLRA's attempt to transfer to the FOIA the congressional finding of "public interest" in "labor organizations and collective bargaining" embodied in the FSLMRA.

U.S. Department of Justice
Office of Information and Privacy

Vol. XVI, No. 1
Winter 1995

FOIA UPDATE

Agencies Place Increasing Emphasis on Affirmative Information Disclosure

As a growing trend within the federal government, federal agencies are placing increasing emphasis on the processes by which they can affirmatively make agency records available to the public, rather than providing them only in response to particular record requests. Agency efforts in this direction can significantly benefit their administration of the Freedom of Information Act.

Where an agency makes records available to the public on its own initiative, there is less likelihood that those records will become the subjects of FOIA requests filed by persons who are interested in obtaining them. If an agency can determine in advance that a certain type of records or information is likely to be of such interest to members of the public, and that it can be disclosed without concern for any FOIA exemption sensitivity, then the agency is in a position to meet much or all of the public demand for it without the necessity of a FOIA request and the more cumbersome steps of FOIA processing. Doing so can be of mutual benefit to both the agency and the members of the public who are interested in obtaining access to such information.

In fact, making records readily available as a matter of affirmative agency practice usually is the most efficient way in which to achieve public disclosure. Most significantly, it also leaves an agency's FOIA office that much freer to devote its resources to meeting disclosure demands that can be met only through formal FOIA processes, such as where exempt records are involved. Especially in this era of extremely scarce administrative resources, it is important that an agency make efforts to apply its limited FOIA resources where they are most needed--by avoiding any unnecessary encumbrance of its FOIA processes with requests for records that can best be disclosed through some other means.

OMB Circular A-130

Such a policy of affirmative agency information disclosure in order to meet public demands is contained in Office of Management and Budget Circular No. A-130--entitled "Management of Federal Information Resources"--which has recently been revised with greater emphasis on agency information dissemination, including through electronic means. See 59 Fed. Reg. 37905 (July 25, 1994).

In accordance with OMB Circular A-130, federal agencies are paying increased attention to their responsibility to provide information to the public not just in response to the receipt of a FOIA request for it, but by "actively distributing" it "at the initiative of the agency." 59 Fed. Reg. at 37920. As part of its overall system of information resources management, each agency must determine which of its records, or potential "information products," are appropriate for such treatment. OMB Circular A-130 encourages agencies to recognize that even agency information that is not necessarily "meant for public dissemination . . . may be the subject of requests from the public," and that if an agency "establishes that there is a public demand" for that information, it "may decide to disseminate it automatically." 59 Fed. Reg. at 37922. Where an agency does so, of course, that minimizes the need for use of the FOIA in connection with that information.

Anticipation of Public Demand

The anticipation of public demand for agency records or information is not an entirely unfamiliar concept under the FOIA. The Act itself provides for the "automatic" public disclosure of basic items of information regarding agency structure and operations, through Federal Register publication under FOIA subsection (a)(1), and for the routine public availability in agency "reading rooms" of such items as final adjudicative opinions, staff manuals and certain agency policy statements under FOIA subsection (a)(2). See FOIA Update, Summer 1992, at 3-4 (detailing FOIA's "automatic" disclosure requirements).

Some agencies have built upon this "reading room" mechanism of subsection (a)(2) to meet anticipated public demands for records that are not required to be placed there under the Act. For example, the Federal Bureau of Investigation maintains a reading room into which it places copies of many of its most commonly requested files--such as its investigative files on the assassination of Dr. Martin Luther King, Jr.--in the form in which they previously have been processed for disclosure in response to FOIA requests made under subsection (a)(3) of the Act. These records are made

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The four center pages of this issue of FOIA Update contain an updated list of the principal FOIA administrative and legal contacts at federal agencies.

. . . Non-FOIA Disclosure Most Efficient

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available for public inspection, just as subsection (a)(2) records are, and members of the public may conveniently obtain photocopies of pages that are of particular interest to them without having to make a formal, and time-consuming, access request for them under FOIA subsection (a)(3).

It must be remembered, of course, that an agency cannot convert a subsection (a)(3) record into a subsection (a)(2) record (which cannot be the subject of a FOIA request under subsection (a)(3)) just by voluntarily placing it into its reading room. In other words, only those records that are truly required to be placed into an agency's reading room under subsection (a)(2) are subject to availability through that mechanism only; any other record can properly be sought by a FOIA requester with a request filed under subsection (a)(3)--if the requester chooses to make one. See FOIA Update, Spring 1991, at 5 (advising that FOIA requesters may not be deprived of (a)(3) access rights through voluntary "reading room" availability). Nevertheless, agency efforts to meet public demand for records through "reading room" availability in this fashion hold strong potential for reducing the overall volume of FOIA requests.

Public Affairs Office Disclosure

Another way in which agencies disclose records most efficiently through channels other than the FOIA is through their public affairs offices, which regularly deal with a wide range of inquiries and requests for information or records from members of the news media. Typically, agency public affairs officers will work with individual offices within the agency to identify particular records that are likely to be of news media interest so that they can be made available even in advance of any request through public affairs channels. Where there is no FOIA exemption sensitivity to such records, they can be disclosed most efficiently through this non-FOIA channel once the news media interest in obtaining them is identified.

At the Department of Justice, for example, the Office of Public Affairs works closely with the Department's components to facilitate disclosure of nonexempt information and records to news media requesters. That office, led by Director of Public Affairs Carl Stern, strives to handle such requests through the most efficient means possible in each case. It encourages media requesters to narrow the focus of their interest to particular agency records and, in coordination with the Office of Information and Privacy, it actively seeks to determine whether those records are readily disclosable by the component involved. The result often is the satisfaction of such requests for agency records without any need for them to ever become FOIA requests.

Electronic Information Availability

Additionally, the use of electronic information technology holds rapidly increasing potential for meeting the needs of potential FOIA requesters without the necessity of a FOIA request. As more and more members of the public gain an "on-line" access capability, their government information needs can be met through the availability of information in electronic form. Electronic information dissemination can be highly cost-effective and is specifically encouraged for agency use under OMB Circular A-130. See 59 Fed. Reg. at 37911-12. Simply by establishing electronic sites on the Internet (see related article below), federal agencies can provide ready access to any agency record or information that the public might be interested in obtaining.

Through such affirmative disclosure mechanisms, and the proactive identification of records that most likely otherwise would be sought under the FOIA, agencies can more readily meet public access demands and reduce their FOIA workloads, thereby conserving their FOIA resources.

FOIA Publications Now Available on Internet

In keeping with efforts by agencies throughout the federal government to increase the public availability of information through electronic means, the Department of Justice is now making its Freedom of Information Act publications available to the public "on-line" through the Internet.

Last year, after completion of the 1994 edition of its annual "Justice Department Guide to the Freedom of Information Act," the Office of Information and Privacy arranged to have both that publication and its accompanying "Privacy Act Overview" publication placed on the Justice Department's new "gopher server" for Internet access. Segments of FOIA Update publications are being added as well.

The Justice Department established this Internet computer site in 1994 as a location at which it can place existing documents and new information for ready electronic access by the general public. It can be accessed through "gopher @usdoj.gov" and FOIA-related items can be found at its listing for the Office of Information and Privacy. A range of other information items, such as press releases issued by the Department's Office of Public Affairs, are also available at this electronic site. Currently, the Justice Department is developing a more comprehensive and more sophisticated Internet site through the use of World Wide Web technology.

Additionally, the Office of Information and Privacy is making arrangements with the General Services Administration to place a joint Justice Department/GSA publication entitled "Your Right to Federal Records" at this Internet site as well. This publication is the federal government's general public information brochure on access to federal agency information, one designed to answer the basic questions of any person who is interested in exercising his or her statutory access rights under the FOIA or the Privacy Act. It is made available to the public in paper form through GSA's Consumer Information Center and is one of the most heavily requested such brochures.

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Vol. XVI, No. 3
Fall 1995

FOIA UPDATE

Attorney General Reno Institutes New FOIA-Related Performance Standards

As part of the Department of Justice's efforts to enhance its Freedom of Information Act operations and to reduce existing backlogs of FOIA requests, Attorney General Janet Reno has instituted the use of new work performance standards for all Department of Justice employees whose work supports the various aspects of FOIA administration in any way.

On August 28, Attorney General Reno issued a directive to all Department of Justice components calling for them to establish FOIA-related work performance standards as part of their regular performance-evaluation processes for "all employees who have any FOIA-related responsibilities so as to include an appropriate element for compliance with FOIA requirements."

This initiative is primarily designed to cover Department of Justice employees who may be regarded as "non-FOIA personnel," but whose cooperation is often essential to the completion of the FOIA's administrative process and whose lack of timely assistance could cause significant delays in complying with FOIA requests. Such personnel can include, for example, employees who participate in searches for records responsive to FOIA requests and employees who must coordinate with FOIA personnel in the determination of any record sensitivity from the standpoint of a particular agency program or activity.

Under this new rule, all components of the Department of Justice are required to have FOIA-related performance standards for all such employees, as well as for those engaged in FOIA work on a day-to-day basis, that place specific emphasis on the timeliness of their work in connection with all of their FOIA-related activities. To facilitate this, model work performance standards were prepared by the Department of Justice for a range of different job categories.

Previous FOIA Memoranda

This step by Attorney General Reno follows up on previous memoranda issued by her addressing the processes of FOIA administration and the importance of timely compliance with FOIA-related responsibilities on the parts of all agency employees. That subject, most specifically in connection with agency backlog-reduction efforts, was first addressed in both Attorney General Reno's FOIA Memorandum of October 4, 1993, and in the FOIA-policy memorandum that was issued by President Clinton at that same time. See Attorney General's Memorandum for Heads of Departments and Agencies regarding the Freedom of Information Act, reprinted in FOIA Update, Summer/Fall 1993, at 4-5; President's Memorandum for Heads of Departments and Agencies regarding the Freedom of Information Act, 29 Weekly Comp. Pres. Doc. 1999 (Oct. 4, 1993), reprinted in FOIA Update, Summer/Fall 1993, at 3.

It also was emphasized in Attorney General Reno's follow-up memorandum of December 13, 1993, to the heads of Department of Justice components, in which she spoke of the importance of the "institutional attitude" that is held toward the FOIA throughout an agency, including by "the many Department employees on whom FOIA officers depend for timely assistance." FOIA Update, Summer/Fall 1993, at 5.

This personnel initiative is a significant part of the Justice Department's continuing efforts to reduce FOIA backlogs and to improve the timeliness of the handling of requests and records by the personnel involved at all stages of the FOIA's administrative process.

Praise from FOIA-Requester Community

Attorney General Reno's establishment of these work performance standards has drawn praise from the FOIA-requester community, most particularly from the American Society of Newspaper Editors, which complimented the Justice Department's efforts in this regard and expressed the hope that they could serve as a model for other federal agencies as well.

Agencies interested in obtaining these new Department of Justice work performance standards for possible use for their FOIA-related personnel may do so either by contacting the Office of Information and Privacy or by going through interagency personnel-office channels.

Inside *Update*

U.S. Department of Justice
Office of Information and Privacy

Vol. XVII, No. 1
Winter 1996

FOIA UPDATE

Agencies Explore Use of Document Imaging in Automated FOIA Processing

In their administration of the Freedom of Information Act, federal agencies are increasingly looking to the use of document imaging and the potential of automated FOIA processing as a means of enhancing the efficiency and cost-effectiveness of their operations. Rapid advances in document-imaging technology in recent years have provided strong impetus to such efforts at several agencies.

Document Imaging

Document-imaging technology converts the information contained in paper records into an electronic form. Once in that form, the information can either be stored as images or converted into text that can be searched and modified electronically at a computer terminal.

The first step in the imaging process is to convert printed material into digital form by using a document scanner. This document "capture" is generally the most expensive part of the process, but the costs have decreased with advances in imaging technology. The scanned images are then stored on magnetic media or optical disks as part of an imaging system. For imaging systems that require more capacity than a single optical disk or magnetic tape can accommodate, the system can be configured to use robotic arms that retrieve and activate the particular disk selected. Images can be viewed on standard computer monitors, although high-resolution monitors are available.

On Agency Practice

The stored documents must be indexed for purposes of retrieval. Users of the system can search the documents' indexed elements or fields by entering key words or phrases and then the system's search-and-retrieval software responds with a list of documents that contain the element sought. Portions of documents can be focused on individually in this way.

As a general rule, electronic documents take much less time to find, handle, refile, and route. They also can potentially be "processed" for FOIA disclosure in an automated fashion, rather than by hand. This led federal agencies--especially those with large-volume FOIA operations, such as the Department of State and the Federal Bureau of Investigation at the Department of Justice--to begin exploring the use of this technology for FOIA purposes.

Automated Processing at the FBI

The FBI's program for automated FOIA processing is being developed to include electronic tracking of requests and records as well. "By 1999, we will have an electronic imaging system installed at FBI Headquarters and at all field offices for the tracking and processing of information requested under the FOIA and Privacy Act," predicts Kimberli Jones-Holt, Project Manager for the FBI's FOIA/PA Document Processing System. "Using electronic imaging management, we can develop a methodology for tracking and processing paper documents in an automated way from the time a document is received by the FBI to its final disposition," she says.

Automated FOIA processing is a vital part of the FBI's plans for the development of its electronic information management systems. Several years ago, a preliminary "proof-of-concept" system for automated processing was installed in the FOIA/PA Section at FBI Headquarters. That application was designed to demonstrate that document processors could redact documents electronically, both quickly and cleanly, if the right supporting system could be developed.

That proved to be a groundbreaking FOIA application for imaging technology. In 1993, when Justice Department representatives of Vice President Gore's National Performance Review team were looking for possible projects to sponsor that would use technology to make the federal government more efficient and customer friendly, this FBI automation project was identified as an excellent one for increased funding and development.

This led to the creation in 1994 of a National Performance Review "FOIA Lab," a prototype electronic document imaging system within the FBI's Information Resources Division. See FOIA Update, Summer 1994, at 6. This prototype system operates as a "client-server environment," with one server containing the imaging software and four connected workstations at which document processors can

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The four center pages of this issue of FOIA Update contain an updated list of the principal FOIA administrative and legal contacts at federal agencies.

. . . Advanced Information Technology

Cont'd from preceding page

access or download electronic documents for processing. Instead of "browning out" information with a marking pen or using some other manual redaction tool, they can delete words electronically--but in a way in which FOIA requesters can still see where redactions are made.

This prototype system is being developed further for FBI use through this NPR Lab and, with NPR funding, other components of the Justice Department can build on it for application to their FOIA processing.

Automation at the CIA

The Central Intelligence Agency has developed an electronic imaging system known as MORI, an acronym for "Management of Officially Released Information." At the present time, 25 FOIA analysts at CIA Headquarters are making use of the system on a regular basis.

"Our system is in extended customer testing at the present time," says Lee S. Strickland, the CIA's Information and Privacy Coordinator. "By late 1996, 50 analysts and supervisors at Headquarters and 50 analysts in the four CIA directorates will have access to the system."

At the CIA, the hardware and software for this electronic system are provided by three separate commercial companies. One company provides the equipment that is used for image capture, management, and redaction. The document images are stored on, and can be retrieved from, a combination of magnetic media and optical disks. Fortunately, over the years, all information released to the public by the CIA under the Freedom of Information Act and the Privacy Act was placed on microfiche. These images have now been simply converted to optical disks.

A separate database of ASCII-formatted records is managed by a second commercial product, using "OCR"--optical character recognition--the technique by which characters are identified and then converted into computer-processable codes. A third commercial product provides the software that stores the indexing and tracking data for the CIA's documents and requests. Its system is a structured database, which means that it has defined fields and allows users to search by several different FOIA request characteristics.

The CIA intends to use this new imaging system as much as possible for automated FOIA processing. One of the most significant early tests of its performance will be in its processing of the FOIA request of Jennifer Harbury, an American attorney who married a Guatemalan guerrilla leader now missing and possibly deceased in Guatemala. Her FOIA/Privacy Act request to the CIA for all records pertaining to her or her husband involves thousands of pages of documents and the CIA's new processing system is now being used for this high-profile request.

"I think the document imaging technology will perform to everyone's satisfaction," predicts Strickland. "Imaging technology will greatly facilitate the redaction of documents. We can print out a black-out copy of a document for the requester, a gray-out copy for the court, or even a full-text version. And I think the requester is going to be satisfied with the legibility of the final product."

At the Department of Energy

"We have had an optical imaging system installed and operating satisfactorily for about five months," says GayLa D. Sessoms, Director of the FOIA/PA Division at the Department of Energy. "All of our FOIA requests for 1996 are being electronically filed. This means that for all 1996 requests, we can go into the system, pull up the request, and have access to all the documents relevant to that request--including the documents released, worksheets, correspondence, and tracking information. However, because the system is still new, we are holding onto our paper copies."

Additionally, all records in Energy's public reading room are being electronically scanned into its system. In this case, though, the paper copies have not been kept, because the various offices and divisions are the actual repositories of original records and the reading room maintains only copies of records. Users can now access the records electronically by using keyword searches. As Sessoms describes it: "A requester can just walk into the reading room, ask for a document, and we can pull it off the screen. I believe that with this kind of action, the requester is going to be very satisfied."

At the present time, seven analysts at Energy's Headquarters are processing records using imaging technology. When they search for records, however, they rely on the traditional methods of manual searches and telephone inquiries. Eventually, Sessoms hopes to have all of Energy's program offices and divisions interconnected by this information system. When they reach that point, an analyst could scan a FOIA request into the system and then electronically send the request to a program office, where a program assistant would conduct an electronic search for records and electronically send them to the analyst for automated processing.

So far, this technology has been used for one major project at Energy: More than 20,000 pages of records on the subject of human radiation experimentation have been scanned into the system. "These records are frequently requested," Sessoms explains. "Now, if anyone wants access to them, they are already processed and ready to go." This example holds strong potential for more efficient FOIA processing, particularly for such large project cases.

"Our system is still in a pilot stage, but I think it is working well," says Sessoms. "More than anything, I see a lot of potential. There are major time-saving advantages in being able to interact electronically with the other offices and in decreasing the amount of paper associated with FOIA processing. The system has the potential to enable us to work faster and more efficiently."

This potential is one that should be developed further by these and other federal agencies as the technologies for document imaging, automated FOIA processing, and related electronic information management continue to advance.

When an agency makes a referral of requested records to another agency that originated those records, does it retain any responsibility with respect to those records in connection with that FOIA request?

Yes. The administrative practice of making record referrals under the FOIA can facilitate the processing of requests, and be advantageous to the overall process of FOIA administration, but agencies should make sure that requesters are not placed at any disadvantage through their referral practices. As a practical matter, when an agency processes a request that encompasses records that originated with another agency, it often will be most efficient for it to refer those records to that originating agency for its direct disclosure determination and response to the FOIA requester. See FOIA Update, Summer 1991, at 3-4 ("OIP Guidance: Referral and Consultation Procedures"). This is a matter of longstanding administrative practice, one that allows a FOIA disclosure determination to be made directly by the agency that is best able to do so. See id. at 4; see also, e.g., Stone v. Defense Investigative Serv., No. 91-2013, slip op. at 1 (D.D.C. Feb. 24, 1992) ("Pursuant to a longstanding practice among agencies, the DIS referred those documents to the originating agencies for direct response."), aff'd, 978 F.2d 744 (D.C. Cir. 1992). In most instances, such a referral will lead to the resolution of the FOIA request with respect to the referred records by the agency of origination.

At bottom, however, the agency that receives a FOIA request retains the responsibility to defend any action taken with respect to the records found responsive to that request--including any records referred to another agency. Therefore, in defending a FOIA lawsuit brought regarding a request that involved referred records, an agency should not overlook its responsibility to defend any nondisclosure action taken with respect to those records. In a case decided last year, for example, Williams v. FBI, No. 92-5176, slip op. at 2 (D.C. Cir. May 7, 1993), the D.C. Circuit reminded the defendant agency of its duty to defend the nondisclosure of a record that had been referred elsewhere. This obligation can be met by obtaining an applicable Vaughn affidavit from the agency of origination, through the coordination of litigation counsel. See, e.g., Gray v. Department of Justice, No. 92-775, slip op. at 3 (D.D.C. Sept. 24, 1993).

Additionally, agencies either making or receiving record referrals should ensure that the requester is not disadvantaged by the timing of that process. The agency receiving a referral should handle it on a first-in, first-out basis among its other FOIA requests--but it should do so according to the date of the request's initial receipt at the referring agency (not the date of the referral), which should be specified by the referring agency. Accord Freeman v. Department of Justice, 822 F. Supp. 1064, 1067 (S.D.N.Y. 1993) (requester should "receive her rightful place in line as of the date upon which her request was received"). Similarly, in those cases in which multiple agencies have to be consulted in order to determine the disclosure status of a record, that should be accomplished most efficiently through a simultaneous (not sequential) consultation process. Accord President Clinton's FOIA Memorandum of Oct. 4, 1993, reprinted in FOIA Update, Summer/Fall 1993, at 3 (admonishing against unnecessary hurdles in processes of FOIA administration).

National Performance Review FOIA Activities at the Justice Department

The following is an excerpt from a Justice Department memorandum that describes its ongoing National Performance Review activities pertaining to the FOIA:

"In April, the Attorney General announced that she had selected a Freedom of Information and Privacy Acts project as one of the Department's laboratories under the Vice President's National Performance Review (NPR). The laboratory group has been tasked to focus on both near and long-term measures to improve our FOI/PA responses. Its goal is to provide better service to the public by elevating all Department employees' awareness of the Freedom of Information and Privacy Acts, by improving the FOI/PA processing, and by facilitating the sharing of information, technology, and systems.

"The laboratory is made up of both FOI/PA access professionals and technical support specialists from the Bureau of Prisons, Civil Division, Criminal Division, [DEA, EOUSA, FBI, INS], and the United States Marshals Service. The Justice Management Division's Systems Policy and Management and Planning Staffs, the Justice Performance Review Team, the Office of Public Affairs, and the Office of Information and Privacy are providing special assistance.

"One of the lab efforts included, in accordance with the President's Executive Order 12862 (Setting Customer Service Standards), a survey of over 5,000 FOI/PA requesters. . . . The laboratory will use the results of this survey to identify means by which we can improve the Department's performance. In addition, as a result of several focus groups held this summer, draft FOI/PA customer service standards were developed . . . . The laboratory is also analyzing current processing procedures in order to streamline the FOI/PA process and create a more efficient and timely response to the requester community. . . . Another major feature of this initiative was the creation of a Department test site at FBI Headquarters which will provide all [Justice Department] components with the opportunity to experiment with the application of technology to the FOI/PA process."

Anyone wanting to learn more about this Justice Department NPR activity can contact either Steve McPeak of Justice's NPR staff or OIP Deputy Director Peggy Irving.

DESCRIPTION OF DEPARTMENT OF JUSTICE

EFFORTS TO ENCOURAGE AGENCY

COMPLIANCE WITH THE ACT

During 1995, the Department of Justice, primarily through its Office of Information and Privacy (OIP), engaged in numerous activities in discharging the Department's responsibility to encourage agency compliance with the Freedom of Information Act (FOIA), consistent with the openness-in-government policies of President Clinton and Attorney General Janet Reno. A summary description of these activities, which is required by 5 U.S.C. § 552(e) (1994), is set forth below.

(a) Counseling and Consultations

One of the primary means by which the Justice Department encouraged agency compliance with the FOIA during 1995 was through OIP's counseling activities, which were conducted largely over the telephone by experienced OIP attorneys known to FOIA personnel throughout the executive branch as "FOIA Counselors." Through this FOIA Counselor service, OIP provided information, advice, and policy guidance to FOIA personnel at all federal agencies, as well as to other persons with questions regarding the proper interpretation or implementation of the Act. OIP has established a special telephone line to facilitate its FOIA Counselor service--(202) 514-3642 (514-FOIA)--which it publicizes widely. (OIP also receives telefaxed FOIA Counselor inquiries, at (202) 514-1009, and it maintains a Telecommunications Device for the Deaf (TDD) telephone line--(202) 616-5498--which gives it the capability of receiving TDD calls from speech- or hearing-impaired persons.) While most of this counseling was conducted by telephone, other options were made available as well. The counseling services provided by OIP during 1995 consisted of the following:

(1) OIP continued to provide basic FOIA Counselor guidance over the telephone on a broad range of FOIA-related topics, including matters pertaining to overall policies of government openness. Most of the FOIA Counselor calls received by OIP involve issues raised in connection with proposed agency responses to initial FOIA requests or administrative appeals, but many are more general anticipatory inquiries regarding agency responsibilities and administrative practices under the Act. (The Justice Department specifies that all agencies intending to deny FOIA requests raising novel issues should consult with OIP to the extent practicable--see 28 C.F.R. § 0.23a(b) (1995)--and it has been found that such consultations are very valuable in encourag-

ing agency compliance with, and greater information disclosure under, the Act.) More than 3,000 requests for assistance were received by OIP and handled in this way during 1995, a continued increase over the numbers of such inquiries received in previous years.

(2) Frequently, a FOIA Counselor inquiry is of such complexity or arises at such a level that it warrants the direct involvement of OIP's supervisory personnel, often one or both of its co-directors or its deputy director. Approximately 300 inquiries of this nature were handled in 1995.

(3) Sometimes a determination is made that a FOIA Counselor inquiry requires more extensive discussion and analysis by OIP attorneys, including supervisory attorneys, on the basis of the information provided by the agency. Such a consultation ordinarily involves a meeting between agency representatives and OIP attorneys at which all factual, legal, and policy issues related to the matter are thoroughly discussed and resolved. There were 51 such formal consultations in 1995, including 16 with the general counsel or deputy general counsel of the agency involved. In addition, OIP provided consultation assistance to three Offices of Independent Counsel during the year.

(4) An additional counseling service provided by OIP involves FOIA matters in litigation, where advice and guidance are provided at the request of, and in close coordination with, the Justice Department's litigating divisions. This service involves OIP reviewing issues and proposed litigation positions in a case from both legal and policy standpoints, and then recommending positions that promote both uniform agency compliance with the Act and the principles of government openness under it. In some such instances, OIP is asked to consult on litigation strategy and in the drafting of briefs or petitions to be filed in district court or a court of appeals. OIP is consulted in all instances in which the Justice Department must decide whether to pursue a FOIA issue on appeal. It also is regularly consulted in all FOIA matters that are handled by the Office of the Solicitor General before the United States Supreme Court. Most often, these litigation consultations are provided by one or both of OIP's co-directors. There were approximately 150 such litigation consultations in 1995, including 26 involving recommendations as to the advisability of initial or further appellate court review and three involving the question of whether to seek or oppose certiorari in the Supreme Court.

(b) FOIA Update

OIP published its quarterly FOIA policy publication, FOIA Update, in 1995. This publication provides FOIA-related information and policy guidance to all federal employees governmentwide whose duties include responsibility for legal and/or administrative work related to the Act. It also serves as a vehicle for

the dissemination of FOIA-related information within the executive branch and for the comparison of agency practices in FOIA administration. More than 4,300 copies of FOIA Update are distributed to agency FOIA personnel throughout the federal government, without charge. Additionally, guidance items published in FOIA Update are used in all Justice Department FOIA-training sessions and were made available for such programs offered by the Graduate School of the Department of Agriculture and the Office of Personnel Management nationwide. FOIA Update also is sold through the Government Printing Office to nongovernmental subscribers, at a nominal cost of $5 per year. It had a paid circulation of 1,318 in 1995.

In 1995, FOIA Update focused attention on the issuance of a new presidential executive order on national security classification--Executive Order 12,958, which was issued by President Clinton on April 17, 1995, and became effective on October 14--with a special double issue that featured several related items. The Spring/Summer issue of FOIA Update contained the text of the new executive order (in all respects applicable to the administration of the FOIA), accompanied by a detailed discussion of its development and its major provisions. To facilitate ready comparison of those provisions with those of the predecessor executive order, OIP prepared and published a comparison chart that contrasted the two orders. It also compiled a history of all Exemption 1 FOIA cases decided under predecessor executive orders in which courts had found agency noncompliance with their provisions, which OIP published to encourage proper agency compliance with the provisions of new Executive Order 12,958, and it addressed questions of executive order transition and applicability as well. OIP coordinated the preparation of this special FOIA Update issue with the federal office responsible for overseeing the implementation of the executive order--the Information Security Oversight Office, now part of the National Archives and Records Administration--the functions of which were described in a "FOIA Focus" feature.

Also published in FOIA Update during 1995 were 12 "Significant New Decision" discussions--which informed agencies of major FOIA case law developments at the district court and appellate court levels--as well as an expanded discussion of an unprecedented court of appeals decision pertaining to classified information and confidential law enforcement sources. Another novel FOIA decision, pertaining to the possible protection under Exemption 2 of the Act of information that if disclosed would permit the location of and potential harm to an endangered species, likewise was the subject of an expanded case discussion.

In 1995, OIP compiled an updated list of the principal FOIA administrative and legal contacts at all federal agencies for the use and reference of FOIA personnel governmentwide, which was published in the Winter 1995 FOIA Update issue. OIP also used FOIA Update as a vehicle for disseminating the Justice Department's new FOIA-related work performance standards, which were made

available by the Department as a model to all other agencies, and for describing the changed FOIA status of the National Security Council in connection with pending litigation. Additionally, through FOIA Update, OIP provided announcements of FOIA and Privacy Act training opportunities scheduled nationwide throughout the year.

(c) Policy Memoranda

In 1995, OIP issued several policy memoranda and advisory discussions for the guidance of federal agencies, all of which were published and disseminated through FOIA Update. The major policy guidance issued during the year concerned the procedures that should be followed by all federal agencies in determining the scope of a FOIA request. OIP issued guidance that reiterated the Attorney General's policy goal of "maximum responsible disclosure" and emphasized the importance of including all records or record portions that are responsive to a FOIA request. First, this guidance instructed agencies to carefully read FOIA requests in full context of their surrounding circumstances and to interpret them liberally for the benefit of FOIA requesters. Second, it addressed the longstanding and difficult policy issue of the "scoping" of records found responsive to FOIA requests--i.e., determining that part of a multiple-subject record is outside the scope of a request's subject matter and should be treated separately. This guidance identified and discussed several considerations that must be borne in mind whenever an agency considers "scoping" a record, including the fact that a FOIA requester ordinarily is entirely in the dark about the nature of an agency's files and the format of its responsive records. The key consideration, the guidance emphasized, is the importance of agency communication with requesters in addressing any scope question. Accordingly, OIP instructed all agencies never to "scope" a record without giving the requester a fully informed opportunity to disagree with that action as part of the agency's administrative process and it advised that no part of a record should be "scoped" in any instance in which the requester prefers otherwise.

A second policy area addressed in 1995 was the subject of "affirmative disclosure" of agency records and information for purposes of supplementing, and potentially reducing the volume of, agency FOIA activity. OIP reminded all federal agencies of their legal and practical obligations to anticipate public demand for their records, particularly nonsensitive records, and to provide access to them as efficiently as possible. It stressed that the anticipatory satisfaction of demands for information disclosure can avoid unnecessary encumbrance of the processes of FOIA administration and enable agencies to apply their limited FOIA resources where they are most needed. OIP pointed to the use of agency "reading rooms" under subsection (a)(2) of the Act as a model for such efficient affirmative disclosure, while at the same time reminding agencies that they cannot lawfully shield any

record from standard FOIA access simply through the expedient of according it "reading room" treatment. Likewise, it discussed the affirmative disclosure practices of the Justice Department's Office of Public Affairs as a model for the efficient handling of information requests that need not necessarily encumber FOIA processes. Lastly, OIP addressed the increasingly strong potential for meeting public demands for information through electronic information availability, by the placement of information on agency Internet/World Wide Web sites. In conjunction with this, it described the development of the Justice Department's own Internet/World Wide Web site and the availability of FOIA-related information there.

Another OIP guidance memorandum issued in 1995 addressed the subject of executive order applicability at the time of the succession of executive orders on national security classification, which can vary according to the exact status of a matter as of that time. To guide agencies in the transition from Executive Order 12,356 to Executive Order 12,958, OIP reviewed the history of previous such transitions in light of case law discussions of executive order applicability. From this case law, OIP distilled several basic rules of executive order transition for all agencies to follow during 1995 and in subsequent years. OIP's guidance covered classification decisionmaking for matters in litigation as well as at the administrative level--and it emphasized that agencies have the discretion to reevaluate any classification determination, regardless of when it was made, under the disclosure standards of the new executive order.

Additionally, in 1995 OIP published brief "FOIA Counselor Q&A" guidance discussions on two subjects: (1) the applicability of the deliberative process privilege after the making of the underlying agency decision, and (2) an agency's obligation to provide requesters with the best available copy of any record that is disclosed in response to a FOIA request. On the former subject, OIP reminded agencies to consider making discretionary disclosures of exempt information, in accordance with the Attorney General's FOIA Memorandum of October 4, 1993; on the latter subject, it reminded agencies of their "customer service" obligations to FOIA requesters, in accordance with the President's FOIA Memorandum of October 4, 1993.

(d) Research and Reference Publications

In 1995, OIP published its primary FOIA reference volume, the Freedom of Information Act Guide & Privacy Act Overview, which contains the "Justice Department Guide to the Freedom of Information Act," an extensive discussion of the Act's exemptions and its procedural aspects. This reference volume also contains an overview discussion of the provisions of the Privacy Act of 1974, which is prepared by OIP in coordination with the Office of Management and Budget, as well as the texts of both access statutes.

OIP both expanded and updated its "Justice Department Guide to the FOIA" in 1995. Most significantly, it revised the Exemption 1 section of the "FOIA Guide" to incorporate the provisions of the new executive order on national security classification, Executive Order 12,958, which was issued during the year. This new executive order became effective shortly before the "FOIA Guide's" publication and distribution, so a new subsection of its Exemption 1 section was prepared to cover matters of executive order applicability in the transition from one executive order to the next. Comparable revisions were made to the "Litigation Considerations" section as well. The "FOIA Guide" reached 500 pages in length in 1995.

OIP distributed courtesy copies of the 1995 Freedom of Information Act Guide & Privacy Act Overview to each federal agency, to various congressional offices, and to other interested parties. It also facilitated its wide distribution within the executive branch at a low per-copy cost and made it available without cost through the Justice Department's FOIA-training programs. Additional copies of the Guide & Overview were made available to agencies and to the public through the Government Printing Office at a cost of $25 per copy. OIP also placed the major component parts of this publication on the Justice Department's Internet/World Wide Web site to afford electronic access to them as well.

Also placed on the Justice Department's Internet/World Wide Web site in 1995 was "Your Right to Federal Records," the federal government's basic public information brochure on access to agency information. This joint publication of the Justice Department and the General Services Administration (GSA), which is made available to the general public in brochure form through GSA's Consumer Information Center, is designed to answer the basic questions of any person who is interested in exercising his or her statutory rights under the FOIA and/or the Privacy Act. Over the years, it consistently has been one of the Consumer Information Center's most heavily requested brochures and now it is made available to the public by the Justice Department in electronic form through "on-line" access as well. See FOIA Update, Winter 1995, at 2.

In 1995, OIP completed a conversion process for its research and reference publications that it initiated four years earlier. In 1991, OIP had converted the format of its "Justice Department Guide to the Freedom of Information Act" (published at that time as part of its Freedom of Information Case List publication) to a more readable, footnote-based format; it subsequently detached the reformatted "FOIA Guide" from the Freedom of Information Case List, combined it with its newly developed "Overview of the Privacy Act of 1974," and began publishing two separate annual reference volumes. See FOIA Update, Spring 1992, at 2. In 1995, in furtherance of the Justice Department's "reinvention of government" efforts through the National Performance Review, OIP established a new publication cycle for its Freedom of Information

Case List volume. As of 1995, OIP now publishes the Case List on a biennial cycle and continues to publish its Guide & Overview publication, which has become the primary FOIA reference volume, annually. OIP advised all federal agencies of this change in publication schedule in 1995 and noted that it would continue to compile decisions for its Case List publication throughout its new two-year cycle. See FOIA Update, Spring/Summer 1995, at 2.

Additionally, OIP provided assistance to the Committee on Government Reform and Oversight of the House of Representatives in connection with the issuance of its biennial publication, A Citizen's Guide on Using the Freedom of Information Act and the Privacy Act of 1974 to Request Government Records, H.R. Rep. No. 156, 104th Cong., 1st Sess. (1995).

(e) Training

During 1995, OIP furnished speakers and workshop instructors for a variety of seminars, conferences, individual agency training sessions, and similar programs designed to improve the understanding and administration of the FOIA. Fourteen attorney and paralegal staff members of OIP gave a total of 169 training presentations during the year, including several training sessions that were designed by OIP to meet the specific FOIA-training needs of individual federal agencies. Such individualized training sessions were conducted for NASA, the CIA, the Navy, the Office of Personnel Management, the Federal Aviation Administration, the Nuclear Regulatory Commission, the Small Business Administration, and the Environmental Protection Agency; for the Departments of Defense, Energy, Agriculture, and the Interior; and for several individual components of the Department of Justice. Additionally, the co-directors of OIP gave a total of 47 presentations at various FOIA-training programs, including those held by the American Society of Access Professionals and the Army Judge Advocate General's School, and they provided technical assistance on FOIA-related issues to the Interagency Working Group on Guatemala Human Rights Issues under the auspices of the National Security Council.

In addition to its regular range of FOIA-training programs offered in conjunction with the Justice Department's Office of Legal Education, OIP also conducted its annual training seminar in 1995, which is designed for the access professional or agency official who needs only a periodic update on current FOIA case law and policy developments. Entitled the "Annual Update Seminar on the Freedom of Information Act," it is conducted by OIP during the first week of October each year, immediately upon completion of the annual "Justice Department Guide to the FOIA," a special prepublication copy of which is provided to all participants. This annual session has succeeded in efficiently meeting the consistently high demand for FOIA training; in 1995, more than 500 access professionals, representing nearly all federal agencies, attended.

OIP also conducted two sessions in 1995 of its newest FOIA-training program, the "Freedom of Information Act Administrative Forum," which is devoted almost entirely to administrative matters arising under the Act--such matters as record-retrieval practices, queue usage, backlog management, affirmative disclosure, and automated record processing. Designed to serve also as a regular forum for the governmentwide exchange of ideas and information on matters of FOIA administration, this training program brings veteran FOIA processors from throughout the government together and encourages them to share their experience in administering the Act on a day-to-day basis. Also regularly conducted twice each year is OIP's "Advanced Freedom of Information Act Seminar," which includes a presentation by the Executive Director of the Reporters Committee for Freedom of the Press on the administration of the Act from the FOIA requester's perspective and in 1995 also included presentations on the FOIA customer-service activities that have been undertaken by individual components of the Justice Department under the auspices of the National Performance Review.

(f) Briefings

OIP conducted a number of general or specific FOIA briefings during 1995 for persons interested in the operation of the Act, most particularly representatives of foreign governments concerned with the implementation or potential adoption of their own government information access statutes. Visitors were received from the Nations of Japan, Great Britain, Australia, New Zealand, South Africa, Brazil, Ecuador, and Burundi, and included a Member of the Australian Parliament.

(g) Congressional and Public Inquiries

In 1995, OIP responded to 36 congressional inquiries pertaining to FOIA-related matters and, in its "FOIA Ombudsman" capacity (see FOIA Update, Summer/Fall 1993, at 8), it responded to 21 complaints received directly from members of the public who were concerned that an agency had failed to comply with the requirements of the Act. In all such instances involving a concern of agency noncompliance, the matter was discussed with the agency and, wherever appropriate, a recommendation was made regarding the steps needed to be taken by the agency in order to bring it into proper compliance.

Additionally, OIP responded to 435 written inquiries from members of the public seeking information regarding the basic operation of the Act or related matters, as well as to innumerable such inquiries received by telephone. OIP's telephone service to the public continued without interruption during the government shutdown.

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Search and Retrieve

Privacy Act Notices

For All Federal Agencies

via

GPO Access

http://www.access.gpo.gov/su_docs/aces/PrivacyAct.shtml

Through the Sponsorship of

The National Archives and Records Administration

For More Information Contact
The GPO Access User Support Team

E-Mail: gpoaccess@gpo.gov

Phone: (202) 512-1530

FAX: (202) 512-1262

National Archives and Records Administration

Privacy Act Issuances, 1993 Compilation Online via *GPO Access*

The *Privacy Act Issuances, 1993 Compilation* Online Database contains descriptions of Federal agency systems of records maintained on individuals and rules agencies follow to assist individuals who request information about their records.

The two sources of Privacy Act Notices are: the *Privacy Act Issuances, 1993 Compilation* and the *Federal Register* which has updates to the 1993 Compilation.

Enter the search terms in the space below. Phrases must be in quotation marks (" "). The operators ADJ (adjacent), AND, OR and NOT can be used but must be in capital letters. For example: "National Archives and Records Administration" AND researchers. Word roots can be searched using an asterisk (*) following the word stem. For example, archiv* will retrieve archive, archives, archivists, etc.

Note: After the initial Privacy Act search you will have the option to automatically search the *Federal Register* database for updates.

The Helpful Hints provide instructions for searching this database.

Maximum Records Returned: [40] Default is 40. Maximum is 200.
FIELDS:

Full text of the *Privacy Act Notices*

[ ]

◉ AND ○ OR
Agency

[ ]

◉ AND ○ OR
System Number

[ ]

◉ AND ○ OR
System Name

SUBMIT CLEAR

Page #PrivacyAct March 4, 1996

43-928 412

HELPFUL HINTS FOR SEARCHING PRIVACY ACT ISSUANCES

PRIVACY ACT ISSUANCES, 1993 COMPILATION

Identification Code
Maximum Responses
Sample Searches

Subject
Agency
System Name
System Number

Searching for Privacy Act Updates in the Federal Register
Updates
System Descriptions
System Number

Addtional Instructions for Searching Databases

The *Privacy Act* database contains the *Privacy Act Issuances, 1993 Compilation.* The Privacy Act Issuances 1993 Compilation Online Database contains descriptions of Federal agency systems of records maintained on individuals and procedures Federal agencies follow to assist individuals who request information about their records. The three main categories of documents in this database are; individual Privacy Act system descriptions; multiple descriptions of Privacy Act systems; and agency record keeping policies and practices. The database is not updated. Documents are avialable as ASCII text files. There are two sources of Privacy Act Notices: the *Privacy Act Issuances, 1993 Compilation* and the *Federal Register* which has updates to the 1993 Compilation.

[TOP] [SEARCH]

FIELDS: The fields in the *Privacy Act Issuances, 1993 Compilation* database are:

```
agency:    Searches for a specific Agency Name
name:      Searches for a specific System Name
system:    Searches for a specific System Number
```

When searching via SWAIS (dial-in or telnet session) or a WAIS client, a field can be searched by typing the field name, followed by an equals sign (=), followed by the term or terms that are sought. Similarly, when searching via the World Wide Web, you may type in the field name, followed by an equals sign (=), followed by the term(s) sought or link to the ADVANCED searching pages which contain established fields. All queries that do not specify a field search the entire database.

[TOP] [SEARCH] **IDENTIFICATION CODE: Each document in the *Privacy Act database will be displayed in the results list with an identification code followed by the initial words of the title. The identification code for the Privacy Act database lists the database name (Privacy Act) the system number (if any) and the truncated words in the title. For example:***

```
Privacy Act [OJP-005] Financial Management or Privacy Act: Under the
  Privacy Act of 1974
```

[TOP] [SEARCH] **MAXIMUM RESPONSES: The default settings for SWAIS and for the WinWAIS/MacWAIS client software is to return a maximum of 40 responses to a query. To locate a larger number of documents, you will need to change the setting. In SWAIS, type a lower case o at the SOURCE SELECTION menu to change your options. In WinWAIS, select Edit and then Preferences from the pull-down menu. In MacWAIS, select File and then Preferences from the pull down menu.**

[TOP] [SEARCH]

The sample searches on the following pages demonstrate the most common searches and searching techniques used to find Privacy Act information online via *GPO Access*.

Good sample searches {1}for the *Privacy Act* database are:

```
Subject       (TAX.ASK) {2}
QUERY:          "payroll records"
ALTERNATIVE:    payroll ADJ records
RESULT:         Privacy Act: [PADC -- 5] Payroll records -- PADC
                Privacy Act: [Table of Contents]
```

This search demonstrates how to search by subject matter. It also demonstrates the functioning of the ADJ operator (or use of a phrase in quotation marks). This particular search retrieves all documents which mention the phrase "payroll records".

[TOP] [SEARCH]

```
Agency        (ARCHIVES.ASK)
QUERY:         "national archives and records administration" AND
                 "researcher*"
ALTERNATIVE:   agency="national archives records administration"
                 AND  "researcher*"
RESULT:        Privacy Act: [NARA1] Researcher Application Files
               Privacy Act: [NARA2] Reference Request Files
```

This search retrieves documents based on agency. This search was modified and made more specific with the addition of the word "researcher". This modification makes the search much more specific than if you searched for simply the phrase "national archives and Records administration". As an alternative, you can use the agency field in conjunction with the subject. The * will pick up the word researchers (plural) as well as researcher.

[TOP] [SEARCH]

```
System Name   (NAME.ASK)
QUERY:      name="Security Records System"
RESULT:     Privacy Act: [Sec. 1212.50] Record Systems determined to
            Privacy Act: [NASA 10SECR] Security Records System - NASA
```

This search demonstrates how to search by system name using the field "name". This query will only retrieve documents that have the phrase "Security Records System" as the system name.

[TOP] [SEARCH]

```
System Number  (NUMBER.ASK)
QUERY:         system="MMC--3"
ALTERNATIVE:   system=MMC--3
RESULT:        Privacy Act: [MMC--3] Research Proposals Contracts
               Privacy Act: [MMC--4] General Financial Records
```

This search demonstrates how to search by system number using the field name "systemnumber". This search will retrieve documents that are only in the system number field. The numbering scheme varies by agency and as a result, system numbers can look very different. The following are some examples of system numbers; MMC--3; G-174; justice/atr-003; USPS 050.005, *etc.*
(*Note:* It is best to place quotes around the system number but it is not required. If you do not to use the quotes the document may be given a lower relevance ranking.)

[TOP] [SEARCH] SEARCHING FOR PRIVACY ACTS IN THE FEDERAL REGISTER DATABASE

The *Federal Register* databases contain updates to the *Privacy Act Issuances, 1993 Compilation.* If you are searching the databases via the World Wide Web, you will have the option to automatically search the *Federal Register* databases for updates. The following searches demonstrate how to search in the *Federal Register* database online via *GPO Access* for Privacy Act information.

[TOP] [SEARCH]

```
Updates        (UPDATE.ASK)
QUERY:            "privacy act" AND "postal service"
ALTERNATIVE:       privacy ADJ act AND postal ADJ Service
RESULT:            fr18ap94 Amendment to Bylaws of the Board of
                   fr15fe95P Demands for Testimony or Records in
```

This search demonstrates how to search the *Federal Register* database for updates to the *Privacy Act Issuances, 1993 Compilation* as well as new systems or rules. This phrasing will result in all three types of Privacy Act documents in the *Federal Register* databases, including, individual Privacy Act system descriptions; multiple descriptions of Privacy

Act systems; and agency recordkeeping policies and practices. If you want to search for those documents in the *Federal Register* that deal with specific system descriptions or system number perform the following searches.

[TOP] [SEARCH]

```
System Descriptions          (DESC.ASK)
QUERY:    "privacy Act Systems of Records" AND "postal service"
RESULT:    fr22de94 Privacy Act of 1974; System of Records
           fr25jy95N Privacy Act of 1974; System of Records

System Number in the Federal Register     (USPS.ASK)
QUERY:     "USPS 050.005"
            fr22de94 Privacy Act of 1974; System of Records
            fr07de95N Privacy Act of 1974; System of Records
```

FOOTNOTES

{1} The results of these sample searches are described as they will appear using SWAIS or the WinWAIS and MacWAIS client software customized for use with *GPO Access*. The searches can be performed with other WAIS client software, but the display of the results may vary.

{2} When a file name, such as TAX.ASK, appears in brackets at the beginning of a sample search, there is a saved search with that file name distributed with the *GPO Access* WinWAIS and MacWAIS client software. The saved searches are also available on *The Federal Bulletin Board* FTP site at *fedbbs.access.gpo.gov*.

Questions, or comments regarding this service? Contact the GPO Access User Support Team
by Internet e-mail at *gpoaccess@gpo.gov*; by telephone at 202-512-1530; or by fax at 202-512-1262

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GPO Provides Web Access to U.S. Federal GILS Records and Privacy Act Notices

Do you need help in finding the U.S. Government information for yourself or others? The U.S. Government Printing Office's (GPO) Superintendent of Documents has created a Government Information Locator Service (GILS) Web site as part of its award-winning GPO Access service. The GPO Access GILS site can help you identify sources of Federal information, learn more about the information available from these sources, and provide assistance in obtaining the information. It allows you to search and retrieve GILS records for 25 Federal agencies. It also contains records that point to other GILS sites, records designed to serve as pathways to sources of information in all cabinet-level and major independent Federal agencies, and **Privacy Act Notices for all Federal agencies**.

Each GILS record presents a thorough description of the information resource, including:

- What information is available and why it was created.

- How the information is made available for use.

- Who to contact for further information.

- In some cases, a direct electronic link to the information itself is provided.

The GPO Access GILS site was designed to allow for searches of all records on the site or individually by agency. Browse options are also available for the Pathway and Pointer records. Using the default selection to search all GILS records on the GPO Access GILS site allows you to locate information resources even if you do not know which agency may produce the information you need.

All individual GILS records and Pointer records on the GPO Access GILS site were created by the agencies themselves and will be updated by those agencies. The Pathway records were created by the Superintendent of Documents' Library Programs Service and will be maintained by that organization.

To use the GPO Access GILS site, point your browser to:

http://www.access.gpo.gov/su_docs/gils/gils.html

If you do not have World Wide Web access, this site can also be reached through:

- WAIS client software directed to Host: wais.access.gpo.gov Port: 210 Database: GILS

- Telneting to swais.access.gpo.gov (login as guest)

- Dialing in to (202) 512-1661 (login as guest)

This GILS site is one of many information retrieval applications available through GPO Access. To find out more about what is available:

- Try the Superintendent of Documents Home Page at http://www.access.gpo.gov/su_docs

- Contact the GPO Access User Support team via e-mail: gpoaccess@gpo.gov telephone: (202) 512-1530 FAX: (202) 512-1262

United States General Accounting Office

GAO

Report to the Chairman, Committee on Governmental Affairs, U.S. Senate

October 1988

FEDERAL ADVISORY COMMITTEE ACT

General Services Administration's Management of Advisory Committee Activities

GAO/GGD-89-10

GAO

United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-231312

October 5, 1988

The Honorable John Glenn
Chairman, Committee on
Governmental Affairs
United States Senate

Dear Mr. Chairman:

This report responds to the Committee's request that we review the manner in which the General Services Administration (GSA) is administering the Federal Advisory Committee Act (FACA). We have made a series of reviews in the past year of matters related to the act. We testified before your Committee on December 3, 1987, on the President's Commission on AIDS[1] and on April 19, 1988, on the Department of Defense's compliance with the act.[2]

Results in Brief

GSA has focused its attention on preparing the President's annual reports to Congress and issuing guidance to departments and agencies. GSA has not carried out its other responsibilities under FACA. It has not ensured that advisory committees were properly established, that each committee was reviewed annually, and that reports on Presidential advisory committees' recommendations were prepared for Congress. GSA officials attributed the shortcomings to limited staff capability and management inattention, and they said they were developing the capacity to carry out these FACA functions.

Approach

The objective of our review was to evaluate the extent to which GSA has carried out its responsibilities under FACA. While the President, the various agencies using advisory committees, Congress, and GSA all have responsibilities under the act, the scope of our review was limited to GSA. We reviewed FACA's provisions, the act's legislative history, and GSA's regulations on advisory committees and compared the act's requirements to actions GSA has taken.

In determining what GSA has done to fulfill its responsibilities, we reviewed GSA's actions on 114 proposed charters and justification letters

[1] The President's Commission on AIDS (GAO/T-GGD-88-6, Dec. 3, 1987).

[2] DOD Compliance With the Federal Advisory Committee Act (GAO/T-GGD-88-31, Apr. 19, 1988.)

submitted by agency heads to GSA during fiscal year 1987 and early fiscal year 1988. Agency heads submit proposed charters and justification letters to GSA when they want to establish, reestablish, or renew an advisory committee. We reviewed annual reports submitted to GSA by agencies on advisory committee operations and analyzed the data contained in the reports. We also analyzed the information contained in annual reports submitted to Congress by GSA.

We interviewed Department of the Interior and Health and Human Services officials to obtain an understanding of the information agencies include in their reports to GSA. In addition, we interviewed GSA officials responsible for oversight of advisory committees to determine how they perceive their roles and responsibilities. Our work was done between May and September 1988 in accordance with generally accepted government auditing standards.

Background

Congress passed FACA in 1972, acting on a concern that federal advisory committees were proliferating without adequate review, oversight, o accountability. The legislative history of FACA indicates that Congress intended that the number of advisory committees be kept to the minimum necessary and that they operate under uniform standards and procedures in the full view of Congress and the public.

While Congress recognized the value of advisory committees to public policymaking, it included in FACA measures intended to ensure that (1) valid needs exist for establishing and continuing advisory committees, (2) the committees are properly managed and their proceedings are as open as possible to the public, and (3) Congress is kept informed of their activities. The act directed the President, the Director of the Office of Management and Budget (OMB), and agency heads to control the number, operations, and costs of advisory committees.

To help accomplish these objectives, FACA established a Committee Management Secretariat in OMB and made it responsible for all matters relating to advisory committee administration. In 1977, the President transferred advisory committee functions from OMB to GSA. The President also delegated to GSA all the functions vested in the President by FACA, except that the annual report to Congress required by section 6(c) of the act was to be prepared by GSA for the President's consideration and transmittal to Congress. The Secretariat is under GSA's Associate

Administrator for Administration. As of September 1988, the Secretariat had five full-time staff, and its budget was $220,000 for fiscal year 1988.

The act requires that each agency head designate an Advisory Committee Management Officer to help manage the committees and that a designated federal official chair or attend each committee meeting.

GSA reported that 992 advisory committees, consisting of 19,837 members, were subject to FACA during fiscal year 1987. Of the 992 committees, 603 were directed or authorized to be created by statute; 22 were created by the President; and 367 were created by agency heads. According to GSA, the government's cost to establish and maintain the advisory committees was about $79 million in fiscal year 1987. The number of advisory committees has varied from approximately 1,400 in 1972, when FACA was enacted, to a high of 1,519 in 1975 and a low of 947 in 1982. The number has since remained relatively constant, as shown in figure 1.

Eighteen departments and agencies, which each established, used, or supported 10 or more advisory committees during fiscal year 1987, together accounted for over 90 percent of the 992 committees in existence that year. These departments and agencies are shown in the appendix.

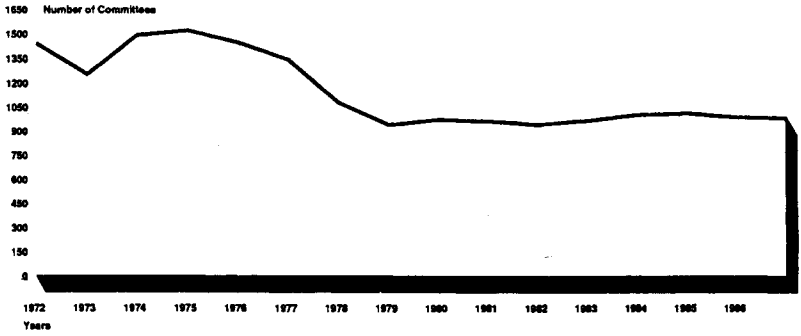
The proposed Federal Advisory Committee Act Amendments of 1988 (S. 2721), introduced August 10, 1988, would amend various FACA provisions but would continue GSA's responsibilities.

GSA Consultation on Proposed Advisory Committees

Federal advisory committees may be created under FACA by statute, the President, or an agency head. FACA requires that agency heads consult with GSA before they establish advisory committees.[3] GSA believes that this consultation process is the Committee Management Secretariat's most highly visible role, and therefore it should be a meaningful, rather than a pro forma, activity. However, GSA does not have the authority under FACA to stop the formation of an advisory committee. As provided in GSA's regulations, its consultation role is limited to reviewing agencies' proposals to establish advisory committees and determining whether

[3]The Committee Management Secretariat reviews all charters prior to filing for advisory committees established by agencies. In accordance with section 9(c) of the act and GSA's regulations, GSA receives copies of all charters at the time of filing.

Figure 1: Total Number of Federal Advisory Committees, 1972-1987



Note: Includes advisory committees created by statute, Presidential order, and agency directive. Data reported to GSA by departments and agencies and unverified by GAO.

FACA requirements are met. GSA provides its views to agencies, but notwithstanding GSA's views, an agency can establish a committee by filing a charter with the committees of the Senate and the House of Representatives having legislative jurisdiction over the agency, the Library of Congress, and the Secretariat.

GSA requires agencies to submit a proposed charter and justification letter before they establish a committee. The charter and justification letter must contain specific information, such as the committee's objectives and scope, as prescribed in FACA and in GSA's regulations. The regulations say that if possible, GSA will review each such proposal and notify the agency of its views within 15 days.

We reviewed 114 proposed charters and justification letters submitted to GSA by agency heads between October 1, 1986, and May 16, 1988, the date we began our work at GSA. We found that GSA had completed its reviews within 15 or 16 days for 104 of the 114 proposals; the other

required 17 to 33 days. GSA concurred in the agencies' proposals to establish all 114 committees.

Of the 114 charters and justification letters we reviewed, 52 were missing 71 items that FACA or GSA regulations required and that GSA said it needs to determine FACA compliance and for other consultation purposes. The most frequently missing item of information in the charters was the identification of the agency responsible for providing the necessary support for a proposed committee. This was missing from 30 charters. Other FACA-required information was missing from 12 charters as follows:

- Seven did not show the estimated annual operating costs in dollars and staff years.
- Three did not show the estimated number and frequency of committee meetings.
- One did not contain a description of the committee's duties.
- One did not show the agency or official to whom the committee would report.

In addition to the deficient charters, in 29 instances information required by GSA's regulations was missing from justification letters as follows:

- Fifteen did not include a description of the agency's plan to attain balanced membership in terms of points of view represented and the functions performed.
- Nine did not explain why the committee's functions could not be done by the agency, another existing advisory committee of the agency, or other means such as a public hearing.
- Five did not explain why the committee was essential to agency business and in the public interest.

The Secretariat Director agreed that charters and justification letters were sometimes missing required information. He said that he plans to prescribe standard documentation for use in proposing and reviewing the establishment of advisory committees to help ensure that all required information is furnished.

Annual Comprehensive Reviews

FACA requires GSA to make an annual comprehensive review of each advisory committee to determine if it is carrying out its purpose, whether its responsibilities should be revised, and whether it should be abolished or merged with another committee. After completing the reviews, GSA is required to recommend to the President, and to either the agency head or Congress, any actions GSA deems should be taken.

GSA requires agencies to review at least annually the need to continue each existing advisory committee. Among other information, agencies are to report to GSA:

- how the committee accomplishes its objectives, and the effect of committee advice on the sponsoring agency's operations;
- how the agency has achieved balanced membership on the committee;
- how frequently the committee met during the previous fiscal year;
- why the functions of the committee cannot be achieved through other measures available to the sponsoring organization; and
- why committee meetings were closed, if applicable.

GSA told us that it does not verify the data it receives from agencies and that it accepts the agencies' data as is, including their recommendations as to whether a committee should be continued, merged, or terminated. GSA, in turn, submits the agencies' reports directly to Congress as appendices to the President's annual report required by FACA and does not indicate that the data used in the report were not verified.

We reviewed the reports that agencies submitted to GSA on each advisory committee in operation during fiscal year 1987. We noted that a number of committees had held no meetings during the previous 1 or 2 years. Some of these committees incurred costs even though they had not met. Most of the costs were for federal staff doing such tasks as answering correspondence and contacting committee members.

Of the 992 advisory committees in existence during fiscal year 1987, 86 committees held no meetings; yet they incurred costs totaling about $535,000, about 78 percent of which was for federal staff compensation. Furthermore, 32 of these 86 committees did not hold any meetings during fiscal year 1986. These 32 committees incurred costs totaling about $83,000 that fiscal year.

The agencies recommended that all 86 of the advisory committees be continued in fiscal year 1988. GSA did not question the need for any of the 86 committees, and all were continued. Agencies provided GSA wi...

explanations of why 60 of the 86 committees did not meet during fiscal year 1987. They reported that 28 of the 60 committees had not met because they were newly established. The reasons given by the agencies that the other 32 committees had not met were that

- 16 had no agenda items to consider,
- 5 had delays in appointing members,
- 4 were in the process of reorganization,
- 3 had no funding,
- 2 had difficulties scheduling meetings, and
- 2 had no chairpersons.

The agencies did not provide explanations why the remaining 26 committees did not meet. GSA did not request additional information to determine the reasons for no meetings during fiscal year 1987 or why the agencies believed the committees should be continued. Yet, GSA agreed with the agencies' recommendations to continue these committees.

While the agencies involved may have had valid explanations why the advisory committees had not met for up to 2 years, GSA did not determine why they were inactive or recommend that they should be abolished in accordance with FACA requirements.

GSA's Associate Administrator for Administration and the Secretariat Director cited various reasons for not having made the required comprehensive reviews. They said GSA did not have adequate information on advisory committee activities and that FACA responsibilities also suffered from several organizational changes over the years and from a lack of sustained management attention.

The officials said that limited staff capabilities caused GSA to selectively implement its FACA responsibilities. They believe that the Secretariat now has sufficient staff to carry out the comprehensive reviews and that as a first step, it is developing the information necessary to do so.

Reports to Congress

Under FACA, the President is required to report annually to Congress on the activities, status, and changes in the composition of advisory committees. The President or his delegate must also report to Congress the actions, or reasons for inaction, on recommendations of Presidential advisory committees within 1 year after the committees submit their reports. GSA is responsible for preparing both reports for the President. The annual reports have not been submitted by the due date.

December 31, in recent years, and the follow-up reports have not been submitted since the early 1980s.

GSA submitted the fiscal year 1985 and 1986 reports to the President almost 10 months and 6 months, respectively, after they were due to Congress. The fiscal year 1987 report was submitted about 2 months after the due date. Moreover, the more recent reports have included less analysis of advisory committees' costs, meetings, and other activities than some earlier reports.

For example, the reports submitted for 1982, 1983, and 1984 identified committees with the highest total costs, member compensation costs, federal staff costs, travel costs, and consultant costs. The 1985 report had less cost analysis, and the 1986 and 1987 reports did not contain any of this information.

Similarly, earlier reports included analyses of advisory committee meetings. They identified agencies with committees holding no meetings, t' costs associated with committees holding no meetings, and included a narrative of the reasons for no meetings. In the 1985, 1986, and 1987 reports, no mention was made of advisory committees that held no meetings.

According to GSA, follow-up reports have not been submitted since the early 1980s. Until that time, GSA had requested agencies that housed and/or provided staff support for Presidential committees to prepare the follow-up reports. GSA then sent the reports to OMB for review and submission to the Congress on behalf of the President.

The Secretariat Director told us that GSA does not have the expertise to determine the adequacy of proposals for action or reasons for inaction on recommendations made by Presidential advisory committees. He said that in his opinion, GSA should be responsible for making sure that such reports are prepared but that each agency must actually prepare the reports.

The Secretariat Director agreed that GSA has been remiss in seeing that agencies prepare the follow-up reports. He said that he plans to establish procedures whereby each committee's charter would identify the organization responsible for the reports.

Conclusions and Recommendations

GSA has not accomplished its advisory committee responsibilities required by FACA. A number of factors have contributed to this circumstance, including insufficient management attention by GSA. GSA officials believe that they now have the staff resources necessary to carry out the FACA requirements.

To ensure that the Secretariat receives the management attention and support necessary, we recommend that the GSA Administrator develop a written plan for implementing the FACA responsibilities and specify the target dates for completing tasks and the resources to be applied. The plan should provide for reviewing advisory committees that have not met for extended periods and determining whether GSA should recommend, in line with FACA requirements, that the committees be abolished.

As requested by the Committee, we did not obtain official agency comments on this report. We did discuss the results of our review with the Associate Administrator for Administration and the Secretariat Director, and they agreed with our findings and conclusions.

As arranged with the Committee, we are sending copies of this report to other interested parties and will make copies available to others upon request.

Sincerely yours,

Richard L. Fogel
Assistant Comptroller General

Appendix

Departments and Agencies With 10 or More Advisory Committees in Fiscal Year 1987

Agency	Number
Health and Human Services	268
Interior	157
National Science Foundation[a]	72
Commerce	68
Defense	59
Commission on Civil Rights	51
Agriculture	48
Veterans Administration	34
Transportation	26
State	19
Labor	18
National Endowment for the Arts	15
Small Business Administration	15
Education	15
Energy	12
Environmental Protection Agency	12
United States Information Agency	11
National Aeronautics and Space Administration	11

[a]One committee, the Nuclear Science Advisory Committee, was transferred from the Department of Energy to NSF during FY 1987 and is counted only for the NSF total.

U.S. Department of Justice
Office of Information and Privacy

Telephone: (202) 514-3642 *Washington, D.C. 20530*

August 7, 1996

AGENCY RESPONSES TO DEPARTMENT OF JUSTICE REQUEST FOR FOIA BACKLOG DATA

Agencies Reporting No Backlog

AMTRAK
Comptroller of the Currency
Defense Mapping Agency
Defense Nuclear Facilities Safety Board
Department of Energy
Equal Employment Opportunity Commission
Farm Credit Administration
Merit Systems Protection Board
Mine Safety and Health Review
National Credit Union Administration
National Endowment for the Humanities
National Science Foundation
National Transportation Safety Board
Office of Government Ethics
Office of Personnel Management
Office of Science & Technology Policy
Panama Canal Commission
Peace Corps
Railroad Retirement Board
Selective Service System

Subtotal: 20 agencies

Agencies Reporting Relatively Small Backlogs

United States Arms Control and Disarmament Agency
Commodity Futures Trading Commission
Consumer Product Safety Commission
Federal Communications Commission
Federal Election Commission
Federal Reserve Board
General Services Administration
United States Information Agency
Department of the Interior
Department of Labor (most offices)
Nuclear Regulatory Commission
Office of Management and Budget
United States Postal Service

Securities and Exchange Commission
Department of the Treasury (many offices)
Department of Veterans Affairs (most offices)

Subtotal: 16 agencies

Agencies Reporting Larger Backlogs

United States Agency for International Development (decrease since 1993)
Department of Commerce (increase since 1993)
Department of Education (decrease since 1993)
Environmental Protection Agency
Federal Deposit Insurance Corporation (increase largely due to absorption of staff and workload of the Resolution Trust Corporation, which had a FOIA backlog of more than 200 requests)
Federal Energy Regulatory Commission (increase since 1993)
Department of Housing and Urban Development
NASA (decrease since 1993)
Office of Special Counsel (increase since 1993)
Tennessee Valley Authority (decrease since 1993)
Department of Transportation (most departments)

Subtotal: 11 agencies

Agencies Unable to Provide Complete Backlog Data

Small Business Administration (decentralized)
Department of Defense (decentralized)

Subtotal: 2 agencies

Total: 49 agencies

U.S. Department of Justice

Office of Information and Privacy

Telephone: (202) 514-3642

Washington, D.C. 20530

August 7, 1996

AGENCY RESPONSES TO DEPARTMENT OF JUSTICE REQUEST FOR FOIA BACKLOG DATA

United States Agency for International Development -- reporting decrease in backlogged FOIA cases since 1993

AMTRAK -- no backlog reported

United States Arms Control and Disarmament Agency -- slight backlog reported

Department of Commerce -- reporting increase in backlog since 1993

Commodity Futures Trading Commission -- reporting slight backlog

Comptroller of the Currency -- no backlog reported

Consumer Product Safety Commission -- reporting slight backlog

Department of Defense -- decentralized system disallows the capture of complete and accurate backlog data

Defense Mapping Agency -- no backlog reported

Defense Nuclear Facilities Safety Board -- no backlog reported

Department of Education -- reporting decrease in backlogged FOIA cases since 1993

Department of Energy -- no backlog reported, with only few exceptions

Environmental Protection Agency -- responses require more than 30 days

Equal Employment Opportunity Commission -- no backlog reported

Farm Credit Administration -- no backlog reported

Federal Communications Commission -- reporting slight backlog

Federal Deposit Insurance Corporation -- responses require more than 30 days

Federal Election Commission -- reporting slight backlog

Federal Energy Regulatory Commission -- reporting slight increase in backlogs since 1993

Federal Reserve Board -- slight backlog reported; most responses made within 10 days

General Services Administration -- reporting slight backlog

Department of Housing and Urban Development -- reporting increased backlog since 1993

United States Information Agency -- reporting only a slight backlog; decrease since 1993

Department of the Interior -- reporting slight backlog

Department of Labor -- slight or no backlog reported, with only one exception in the Solicitor's Office

Merit Systems Protection Board -- no backlog reported

Mine Safety and Health Review -- no backlog reported

NASA -- reporting decrease in backlogged requests since 1993

National Credit Union Administration -- no backlog reported

National Endowment for the Humanities -- no backlog reported

National Science Foundation -- no backlog reported, except in instances of extremely voluminous documents

National Transportation Safety Board -- no backlog reported

Nuclear Regulatory Commission -- reporting slight backlog

Office of Government Ethics -- no backlog reported

Office of Management and Budget -- reporting only slight backlog

Office of Personnel Management -- no backlog reported

Office of Science and Technology Policy -- no backlog reported

Office of Special Counsel -- reporting slight increase in backlogged FOIA requests in 1995

Panama Canal Commission -- no backlog reported

Peace Corps -- no backlog reported

United States Postal Service -- reporting slight backlog

Railroad Retirement Board -- no backlog reported

Securities and Exchange Commission -- reporting minimal backlog

Selective Service System -- no backlog reported

Small Business Administration -- decentralized office structure precludes compilation of complete backlog data

Tennessee Valley Authority -- reporting decreased backlog since 1993

Department of Transportation -- reporting backlog in most departments

Department of the Treasury -- reporting slight or no backlogs in most departments, except in the Departmental Offices and the Customs Service

Department of Veterans Affairs -- reporting no backlog in most departments; slight backlog in the Office of the Inspector General

Total: 49 agencies

UNITED STATES OF AMERICA
Federal Mediation and Conciliation Service
Office of the General Counsel
2100 K Street, NW, Suite 603
Washington, D.C. 20427

Phone: (202) 606-5444 Fax: (202) 606-5345

November 21, 1996

Richard Huff and Daniel Metcalfe
Co-Directors
Office of Information & Privacy
U.S. Department of Justice
Suite 570, Flag Building
Washington, DC 20530

Gentlemen:

SUBJECT: The Freedom of Information Act (FOIA)

This is the information you requested in your letter dated May 16, 1996:

1. The application of the "forseeable harm" standard has helped the Agency consider whether the ramifications of releasing certain records could possibly cause damage to the Agency's decision-making process regarding particular issues. No records have been subject to "discretionary disclosures."

2. There were no FOIA backlogs for 12/31/93, 12/31/94, and 12/31/95. The plans to reduce our current backlog and to prevent future backlogs involve actively achieving the goal of processing FOIA requests within 10 business days, making a log to track the status of FOIA requests so that the 10-business-day deadline can be met, and date stamping all FOIA requests with the date they are received.

3. The Agency institutes measures to implement the President's commitment to FOIA by clarifying vague requests and by informing the requestors of agency records currently available for release to the public.

4. The goals of the Agency to improve its administration of the FOIA of 1996 are: to satisfy the public's request for information under the Act (when permissible), to make requestors feel like they are valued customers of the Agency, and to efficiently and effectively process all requests.

If you have any questions regarding this information, please contact the Office Manager Tammi Strozier at (202) 606-5444. I hope this information is helpful in your evaluation of the progress of the implementation of the government's initiative under the FOIA.

Sincerely,

Eileen B. Hoffman

Eileen B. Hoffman
General Counsel

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United States Department of State

Washington, D.C. 20520

August 19, 1996

RECEIVED
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1996 AUG 20 1 A 10 58
EXECUTIVE
SECRETARIAT

UNCLASSIFIED

MEMORANDUM FOR ANNA-MARIE GATONS
DEPARTMENT OF JUSTICE

SUBJECT: The Freedom of Information Act

The Department of State is pleased to respond to Attorney General Reno's request of May 16, 1996 regarding Freedom of Information Act (FOIA) initiatives implemented by the Department in response to the October 1993 memorandum which set forth the Administration's commitment to greater openness in the dissemination of government information.

The Department's pivotal role in the conduct of United States foreign policy requires the maintenance of a great number of diverse subject records, both extremely sensitive and administratively routine. These records may be in the Department or in its many overseas posts.

As you know, the Department is committed to openness in government. We also have the responsibility to ensure protection of national security information as well as foreign government information. In addition, the protection of the personal privacy rights of U.S. citizens is a major concern.

Information pertaining to the questions the Attorney General posed in her May 16 memorandum is given below.

1. Foreseeable Harm

Instructions based on the President's and Ms. Reno's memoranda of October 1993 have been included in the Department's centralized Contemporary Documents Review Division's operational guidance manual. Our reviewers strictly adhere to this guidance in reaching their release/withhold decisions.

The Department has authorized the release of thousands of documents on human rights in Guatemala under the rubric of

"discretionary disclosure". These documents have been made available to the public in the Department's FOIA Reading Room. While this special project has absorbed substantial resources that otherwise would have been devoted to processing regular FOIA cases, this disclosure has satisfied an immediate interest of a larger audience and is in keeping with the President's directive that each agency distribute information on its own initiative.

2. Backlog Reduction

Our statistics show the following pending cases:

1993	2,856
1994	3,182
1995	3,420

The Department's FOIA "backlog" consists of valid open requests pending as of December 31 of the years listed above. This includes requests received at any time in the calendar year which have not been completed and closed. For example, a December 30, 1995 request is included in the "backlog" of cases for 1995 even though the ten days allotted for an agency response have not elapsed. Some "backlog" requests may have been answered by supplying up to 99% of all responsive documents, but the requests will not be closed until all search and review actions have been completed. As documents are retrieved and reviewed, all releasable material is forwarded to a requester in incremental tranches. A more accurate description of the Department's open, pending FOIA backlog of requests would be "workload."

Although the 1995 total above shows an increase from prior years in pending cases in the FOIA backog (attributable to the Department receiving more cases than it can close), during 1995 the Department completed thirteen per cent more FOIA requests than in the preceding year. This was accomplished despite resources diverted to the processing of voluminous special projects, budget reductions and furloughs of staff members.

A major accomplishment has been reducing the number of pending appeal cases. Since December 1993, the appeals backlog has been halved (see attached graph). In addition, the average time to process an appeal has been reduced by more than 50 percent and continues to drop. We have drawn on a unique resource, the Foreign Affairs Reserve Corps (FARC) of retired professionals with current Top Secret clearances available for special assignments. From the FARC the Department has created a pool of former ambassadors or Deputy Assistant Secretary equivalents who are called on to constitute Appeals Review Panels as needed. This is cost effective for the Department, and appeals are processed in a timely manner.

3. Department's Initiatives

In response to the President's 1993 announcement, we have undertaken a number of significant long-term efforts to improve the implementation of the FOIA. Included among these are delegating short-tour personnel (Foreign Service Officers assigned to Washington for tours shorter than two years) to assist with the processing of FOIA requests and converting fourteen temporary part-time case officers in the Office of Freedom of Information, Privacy and Classification Review to full-time status.

The Department has also made the FOIA Reading Room more user-friendly through a major project which eliminated outdated and non-FOIA materials. We recently installed a personal computer for the public's use to access INFO EXPRESS, a CD ROM program which contains the Department's Foreign Affairs Manuals and Handbooks. In addition, about 10,000 pages of FOIA material are released each year to publishers of guides on international agreements. Reading Room facilities have been used for public review of many large document collections. Among these were: 30,000 pages on El Salvador human right cases; 40,000 pages in connection with an executive order on POW/MIAs, and, more recently, about 20,000 pages of material on Guatemalan human rights cases.

4. Goals of the FOIA Program

Experts in business process re-engineering have assisted us in streamlining procedures to reduce the present time-consuming, labor-intensive tasks involved in retrieving and preparing documents for release to the public. Substantial progress has already been made. Over the next five years the Department plans to move into a totally electronic environment for our functional business processes. This will encompass receipt of information access requests, retrieval of and review of documents, recording of all actions in a case tracking system, and finally, release of information to the public in a much more timely manner than is now possible.

Please do not hesitate to call me at 647-5301 if you would like to discuss any aspect of the Department's processing of FOIA requests.

William J. Burns
Executive Secretary

Attachment:
As stated.

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Federal Mediation and Conciliation Service
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2100 K Street, NW, Suite 603
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November 21, 1996

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Co-Directors
Office of Information & Privacy
U.S. Department of Justice
Suite 570, Flag Building
Washington, DC 20530

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General Counsel

16878

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United States Department of State

Washington, D.C. 20520

August 19, 1996

UNCLASSIFIED

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Please do not hesitate to call me at 647-5301 if you would like to discuss any aspect of the Department's processing of FOIA requests.

William J. Burns
Executive Secretary

Attachment:
As stated.

COPIES TO:
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cah

Office of the Attorney General
Washington, D. C. 20530

9608672

May 16, 1996

MEMORANDUM FOR HEADS OF DEPARTMENTS AND AGENCIES
FROM: THE ATTORNEY GENERAL

SUBJECT: THE FREEDOM OF INFORMATION ACT

As you know, in October 1993 President Clinton called upon federal agencies and departments to renew their commitment to the Freedom of Information Act by, among other measures, establishing new litigation guidance for the release of information, encouraging "discretionary disclosure" of information, and reducing backlogs of Freedom of Information requests. The President asked the Department of Justice to coordinate agency implementation of this initiative. Since October 1993, our Office of Information and Privacy has worked with many of your agencies in this cooperative effort.

In furtherance of our continuing efforts and to fulfill the President's request, I would like now to enlist your assistance in compiling data on our progress in implementing our initiatives under the Freedom of Information Act. To that end, I would appreciate the following information:

1. What has been your agency's experience in applying the "foreseeable harm" standard in analyzing whether to withhold information? What types of records have been the subject of "discretionary disclosures" that would have been withheld under the 1981 guidelines?

2. What progress has been made in reducing FOIA backlogs (include backlog status for 12/31/93, 12/31/94 and 12/31/95) and what plans are in place to improve backlog reduction?

3. What other measures has your agency instituted to implement the President's commitment to the Freedom of Information Act?

4. What goals has your agency established for further improvements in its administration of the Freedom of Information Act in 1996?

Please provide your response to the Department's Office of Information and Privacy, Suite 570, Flag Building, Washington, D.C. 20530, by June 4, 1996.

I thank you for your continuing efforts to implement the Administration's commitment to reenergize FOIA. If you have any questions, your staff should feel free to contact Richard Huff or Daniel Metcalfe, co-directors of the Department's Office of Information and Privacy.

Department of Justice
EXECUTIVE SECRETARIAT
CONTROL SHEET

1. FOLDER No: 127403
2. TRACKING ID No: X96-128151
3. RESERVED
4. DATE OF DOCUMENT: 05/16/96
5. DATE RECEIVED: 06/06/96
6. DUE DATE: No Due Date

7. FROM: Janet Reno
Attorney General
Office of the Attorney General
Washington, DC 20530

8. TO: Heads of Departments and Agencies

9. CATEGORY: MEM-ACTION

10. SUBJECT:

Memo requesting assistance to compile data on the progress of agencies to implement Administration initiatives under the Freedom of Information Act. (dda)

11. ACTION/INFORMATION:

Referred To:	Date Assigned:	Information:
ESFILES	06/07/96	Controlled for search purposes only. Received with memo to the AG from ODAG (Waxman). For complete package see Folder 127409.

12. RESERVED FOR EXECUTIVE SECRETARIAT USE

AG FILE: AG Memoranda/General
Freedom of Information Act

13. EXECUTIVE SECRETARIAT CONTACT: Dorrence Andrews, 616-0074

U.S. Department of Labor

Office of the Solicitor
Washington, D.C. 20210

JUL 25 1996

Richard Huff, Esq.
Office of Information and Privacy
U.S. Department of Justice
Suite 570
Flag Building
Washington, D.C. 20530

Dear Mr. Huff:

This is in response to the Attorney General's memorandum dated May 16, 1996 in which she raised a number of questions regarding the President's 1993 directive pertaining to the implementation of the Freedom of Information Act.

First, she asked us to relate this Department's experience under the "foreseeable harm" standard and what types of records have been subject to discretionary disclosures. By virtue of the "foreseeable harm" standard, this Department has made a number of disclosures of otherwise exempt information. For instance, pursuant to instructions from your office, we no longer protect Exemption Low-2 materials. Further, there have been many instances where intra-agency memoranda which are technically protectable under Exemption 5 have been released as there was no foreseeable harm to the operations of the agency. Most recently, this was done in the context of an OSHA investigation where certain materials subject to the attorney workproduct privilege were nevertheless released under the standard enunciated by the Attorney General. Further, it is now our practice to give out older records as well as drafts unless there is a bona fide reason for not releasing them.

There are many other undocumented instances where disclosures have been made in conformity with the foreseeable harm standard. The Solicitor's Office provides counseling to agency components on the Attorney General's position. In virtually every instance, the components will follow the Solicitor's advice with regard to the foreseeable harm standard.

Next, the Attorney General asked what progress had been made in reducing FOIA backlogs for the period December 1993 through December 1995. Components of the Department were surveyed on this question and they have reported back that for the period in question there were only minimal backlogs at the agency level

within the Department. Only the Solicitor's Office which processes the administrative appeals had a substantial backlog. Despite attempts to streamline the process through the use of a two track system to identify easy appeals, the backlog has remained about the same. The continued size of the backlog is due, in part, we believe to additional appeals being filed that ask the Solicitor's Office to overturn or make discretionary disclosures, pursuant to the President's directive, of law enforcement records.

The Attorney General also asked what other measures had been instituted to implement the President's commitment to FOIA. A number of measures have been taken by the Department of Labor to implement the President's commitment. First, all personnel within the Department who have responsibilities for FOIA were thoroughly briefed on the President's message shortly after it was delivered. Extensive training sessions were conducted by the Solicitor's Office. In addition, this Department has had a FOIA/PA Coordinators Committee for several years. It was organized by the Solicitor's Office to enhance compliance with FOIA's requirements. A coordinator is designated for each component of the Department (approximately 25). Under the supervision of the Solicitor's Office, these coordinators perform a number of functions. They meet at least monthly, and oftentimes more frequently, to discuss the most recent developments under FOIA. They also exchange their respective experiences in administering the program so they can learn from each others' experience. These individuals oversee the handling of requests by their respective components to insure that requests are processed properly and in a timely fashion. With advice and counsel from the Solicitor's Office, the coordinators' role is to promote timely and consistent responses.

The coordinators also meet to study issues of importance which are currently facing the Department. This has been done on a regular basis and has proved to be highly beneficial. For example, with the assistance of the Solicitor's Office they devised a two-track system which is used by several components of the Department for organizing responses to requests. Under this method, requests which can be processed expeditiously are placed on one track while requests requiring more time and resources are placed on a separate track. Finally, with the assistance of the Solicitor's Office, the coordinators established clearance procedures for releasing information.

Under the encouragement of the Solicitor's Office, most of the coordinators regularly attend the Justice Department's annual briefing on FOIA. The Solicitor's Office also publishes biannually an FOIA Newsletter. The newsletter contains summaries of the more significant recent decisions as well as a question and answer section which highlights some of the more frequently posed questions pertaining to FOIA. A copy of a newsletter is attached.

The Labor Department conducted a "FOIA Forum" with the non-public sector where a broad cross-section of persons were briefed on the President's 1993 message and how this Department intended to implement it. Members of the media, public interest groups and other private sector individuals and organizations were among those who attended the Forum. The Forum itself received considerable media coverage. The Bureau of National Affairs, for example, published significant portions of the Solicitor of Labor's opening remarks in the Daily Labor Reporter.

The public, we believe, benefitted substantially from the Forum. Several components of the Department reported a higher level of cooperation from members of the public following the forum. The Forum also served to increase the visibility of FOIA throughout the entire Department.

The Department of Labor also formed a special working group to conduct a FOIA form review. Members of the group were directed to randomly select responses to initial FOIA requests to insure that they were, among other things, customer-friendly, clearly and concisely written, correctly cited and responsive to the requester. Discussions with individuals responsible for preparing FOIA responses followed. Some problems were encountered, however, involving the citing of old regulations and the timeliness of acknowledgements. The coordinators were apprised of these problems and encouraged to remedy them.

Last, the Attorney General asked us to delineate what goals this Department has established for further improvements of FOIA in 1996. This Department, we believe, administers the FOIA in a very effective manner. This is evidenced by the paucity of suits brought against it and the success the Department has enjoyed when it has been sued. To maintain this level of success, we plan to continually improve our management capabilities. Of particular interest to us at this time are electronic records. An attorney has been assigned to monitor developments in the area of electronic records and, at the earliest practicable

opportunity, incorporate such matters into the administration of our program. Meetings and training will be conducted to apprise relevant Labor Department personnel of these improvements in our program.

I hope the foregoing sufficiently responds to the Attorney General's request. Should you have any additional questions, please feel free to contact me.

Sincerely,

Robert A. Shapiro/bac

Robert A. Shapiro
Associate Solicitor of Labor
for Legislation and Legal Counsel

FOIA NEWS

Sixth Edition **June, 1992**

The Senate Sub-committee on Technology and Law held a hearing April 30, 1992 on S.1940, Senator Patrick Leahy's proposal to amend FOIA in a fashion which would address the maintenance of records in electronic data bases. The Justice Department presented testimony first, followed by a panel composed of, among others, the press and the ABA. The Justice Department indicated it could not support the legislation in its present form. More specifically, it said there were still unresolved issues concerning: (1) the concept of programming and whether or not it constituted creation of a new record; (2) choice of format, and (3) whether software should be considered an agency record.

The editor of U.S.A. Today emphasized the importance of accessibility to electronically - maintained records noting that his paper as well as other journalists have written several stories from electronically maintained records made available to them under FOIA.

Are criteria used for targeting suspected violators of law exempt from disclosure?

Yes, in Brecker v. Internal Revenue Service, No. 91-C-1203 (N.D. Ill. 1992), the district court held that the technique the IRS uses to track down people who cheat on their tax returns certainly satisfies Exemption 7(E), i.e. material the disclosure of which could reasonably be expected to enable circumvention of the law. If individuals were given access to these criteria, they would find better ways to avoid detection.

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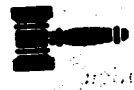
When a request is made pursuant to both FOIA and the Privacy Act, must one find an exemption under each statute in order to properly withhold information?

Yes. It is well established that FOIA and the Privacy Act provide separate routes for obtaining information, and an exemption

from each act must apply in order to properly withhold information. In Doe v. U.S. Department of Justice, No. 91-2006 (D.D.C. 1992), a case involving a background investigation by the F.B.I. to determine an individual's suitability for prospective enforcement, the court found that the identity of a confidential source interviewed in the course of that investigation was exempt from disclosure pursuant to Exemption (k)(2) of the Privacy Act and Exemption 7(D) of FOIA.

Are the names and duty stations of persons receiving outstanding performance appraisal disclosable?

No. The Privacy Act prevents the government from releasing information of this nature except as required to be disclosed by FOIA. Employees who receive outstanding ratings have a substantial interest in maintaining the privacy of their evaluations. The fact that the information is favorable does not diminish this interest. Disclosure of even favorable information may well embarrass an individual or incite jealousy in his or her co-workers. Further, a list of persons who received outstanding ratings also reveals by omission the identities of those employees who did not receive high ratings, creating an invasion of their privacy. See F.L.R.A. v. Department of Commerce, No. 91-1178 (D.C. Cir. 1992).



Are employees' names, addresses, and social security numbers, as contained in Davis-Bacon payrolls, exempt from disclosure?

Yes. Certified payrolls contain detailed information regarding each employee working on a particular project, including the employee's name, address, social security number, job classification, hourly rate of pay, number of hours worked during reporting period, wages and fringe benefits paid and deductions made. In Hopkins v. HUD, 929 F.2d 8 (2nd Cir. 1991), the court held that Congress intended Exemption 6 to encompass a wide range of interests, i.e. to afford broad protection against the release of information about individuals. Measured by this standard, it found without doubt that private employees have a significant privacy interest in avoiding disclosure of their names, addresses and so on, particularly where such information would be coupled with personal finance information.

What is an agency's responsibility in terms of ensuing accuracy of Privacy Act records?

As long as the information contained in the agency's file is capable of being verified, the agency must take reasonable steps to assure fairness to the individual. Where an agency however, cannot determine whether the disputed information in one of its reports is accurate the agency may satisfy its burden by including a statement with the report from the requester. See Sellers v. Bureau of Prisons No. 90-5197 (D.C. Cir. 1992).

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May an agency assert, for purposes of Exemption 4, that it will be unable to acquire information in the future, when the agency has regulatory authority over the submitter of the information?

Usually not. There are few instances where the government's ability to obtain information can be impaired where the agency regulates the party. That is, the agency doesn't have to rely upon voluntary efforts by the regulated party to acquire the information. See Wiley, Rein & Fielding v. Department of Commerce, No. 91-890 (D.D.C. 1992).

Robert A. Shapiro,
Associate Solicitor
Legislation and Legal Counsel

Bruce A. Cohen,
Deputy Associate Solicitor

Miriam Miller, Co-Counsel
for Administative Law

523-8188

Peter Galvin, Director
FOIA Appeal Unit

523-8065

Vivian Butler, Publisher
FOIA News

Eileen Cullen, Secretary
FOIA Unit

Marshall Deutsch, Attorney/
Federal Register Advisor

Joyce Freeman, Paralegal
FOIA Unit

Dick Galgay, Attorney
FOIA Unit

Larry Gottesman, Attorney
FOIA Unit

Michelle Joy, Paralegal
FOIA Unit

Joseph Plick, Attorney
FOIA Unit

FOIA, PA Training will be held in New York City, on August 20 & 21. The training will be conducted by Miriam Miller. Please contact your agencies in New York and let them know.

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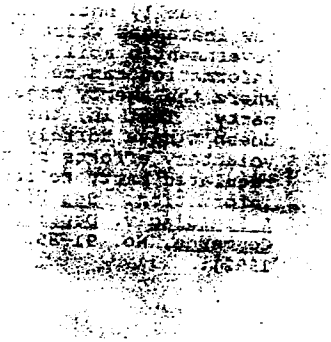
FREEDOM OF INFORMATION ACT/PRIVACY ACT COORDINATORS

In National Department of Labor

May 13, 1992

Miriam Miller	LLC	N-2428	523-8188
Cindy Aaron	OASAM	S-5520	523-9335
Richard Baker (P.A.)	MSHA	BT#3 Suite 727	235-1470
Tom Brown (FOIA)	MSHA	BT#3 Room 600	235-1452
Jessie Curry	WB	S-3305	523-6606
Dottie Chester	ESA	S-3013C	523-8447
Patricia Clark	ILAB	S-5303	523-6136
Deborah Crawford	OSHA	N-3647	523-8151
Diane Davis	OFCCP	N-3422	523-9410
Pam Davis	ONG	S-5506	523-6747
Mary Grace Dorsey	ALJ	Tech World Room 400	653-5052
Patsy Files	ETA	N-4671	535-0695
Jim Foster	OSHA	N-3647	523-8148
Debra Green	MSHA	BT#3 Room 404	235-1910
Annie Greig	BLS	GAO/2100	523-1971
Carlon Johnson	VETS	S-1316	523-8421
Larry Kuss	OASAM	S-5220	523-9355
Tena Lumpkins	OASAM	N-1301	523-5095
Tony Massey	LM Regt.	N-5402	523-6231
Mary Ellen McKenna	ECAB	RB 300	472-3066*
June Patron	PWBA	N-5670	523-6999
Sharon Ratliff	BRB	Tech World Suite 500	633-7503
Pamela Rhodes	PWBA	N-5711	523-6471
Jim Santelli	OLMS	N-5613	523-7373
Harold Simmons	Civil Rights	N-4123	523-7003
Lucy Skinner	PCEPD	Vanguard Suite 636	633-5844
Linda Smith	ASP	S-2109	523-6081
Robert (Bob) Smashall	MSHA	BT#3 Room 406	235-1161
Elizabeth Newton	SOL	N-2414	523-5276
Marion Winters	ETA	N-4644	535-0543

* **REPORTERS BUILDING**
300 7th Street, S.W.
Washington, D.C.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

JUL 22 1996

Dear Messrs. Huff and Metcalfe:

The enclosed report responds to the questions raised in Attorney General Janet Reno's May 16, 1996, memorandum to heads of departments and agencies pertaining to the Freedom of Information Act. The responses to the four questions raised by Ms. Reno reflect FOIA administration by the 12 separate bureaus of the Treasury Department since October of 1993.

Should you have any questions about the enclosed report, please contact Alana Johnson, Departmental Disclosure Officer, on 622-0876.

Sincerely,

Alex Rodriguez
Deputy Assistant Secretary
(Administration)

Mr. Richard Huff
Mr. Daniel Metcalfe
Co-Directors
Office of Information and
Privacy
Department of Justice
Washington, DC 20530

Enclosure

Department of the Treasury
Report on the Administration of the FOIA
July 1996

1. What has been your agency's experience in applying the "foreseeable harm" standard in analyzing whether to withhold information? What types of records have been the subject of "discretionary disclosures" that would have been withheld under the 1981 guidelines?

The foreseeable harm standard contained in the Attorney General's October 1993 memorandum provided affirmation to Treasury's existing disclosure policy. Treasury Directive 25-05, "Implementation of the Freedom of Information Act," dated August 1990, (revised January 1996) has always contained the following policy statement: "It is the policy of the Department of the Treasury to implement the FOIA uniformly and consistently and to provide maximum allowable disclosure of agency records upon request by any individual. Records shall be disclosed unless they are appropriate for withholding and are protected by one or more of the FOIA exemptions or exclusions."

In December of 1993, Secretary of the Treasury Lloyd Bentsen transmitted President Clinton's October 4, 1993 memo, and Attorney General Reno's memo to all Treasury component and bureau heads. Secretary Bentsen asked that Mr. Clinton's and Ms. Reno's memoranda be widely distributed throughout Treasury, and particularly endorsed the "foreseeable harm" standard. A copy of Mr. Bentsen's memo is attached.

In FOIA training conducted by the Departmental Disclosure Office, the "foreseeable harm" standard is explained and attendees are encouraged to apply the standard to disclosure processing. In individual contacts with Treasury employees regarding disclosure decisions, the Departmental Disclosure Office staff reminds employees of the appropriateness of discretionary disclosures.

The Procurement Services Division and the Office of Foreign Assets Control reviews records more closely and requires submitters of business information to provide additional justification for withholding material.

The Office of the Comptroller of the Currency has traditionally taken a pro-disclosure stance in responding to FOIA requests. In 1995, out of 12,681 requests received, 137 requests were either denied in full or in part. Over 9,000 of these requests were handled by a fax-on-demand system. Internal memoranda, enforcement actions, legal interpretations, e-mail transmissions and information from OCC internal databases have been released

that would have been withheld under the 1981 standard. As a result, requester feedback received by the OCC has been extremely positive.

At the **Customs Service,** prior to October 1993, dissenting theories and opinions were usually withheld pursuant to exemption 5. Since that time, the foreseeable harm standard has been applied and much more information has been released. However, Customs attorneys cannot recall any litigation, either before or after October 1993, where exemption 5 denials were an issue.

At the **Federal Law Enforcement Training Center** the foreseeable harm standard has little impact on disclosure operations. Most disclosures have been for records that would not fall under an exemption in the first place.

All records that may have been routinely withheld under the foreseeable harm standard at the **Bureau of Engraving and Printing** are now reviewed extensively. Through this process portions are often now released.

The implementation of the foreseeable harm standard in December 1994 was a reiteration of policy already existing at the **Internal Revenue Service.** IRS had adopted essentially the same standard years ago in former Policy Statement P-1-192 which was subsequently incorporated in the Internal Document Management Handbook.

Under the 1981 guidelines, the **Bureau of the Mint** would have routinely withheld certain agency information under exemption 2 of the Act. Applying the foreseeable harm standard has led to the release of this previously withheld data.

When the **Bureau of the Public Debt** receives a request where they might be able to apply a FOIA exemption, typically a low (b)(2) for routine administrative matters or a (b)(5) for predecisional records, and if no harm would come to the government or to the Bureau's customers (investors in Treasury securities), then BPD will most likely disclose the information.

At the **Office of Thrift Supervision,** the foreseeable harm standard has been applied to requests for applications and holding company report requests and pre-FIRREA (Financial Institutions Reform, Recovery and Enforcement Act) resolutions. Specifically, in the past, unmarked sections of applications as well as the "public" sections of applications would have been reviewed, and sections redacted. This is no longer done. Similarly, pre-FIRREA resolutions were not routinely released.

Currently they are withheld only if they relate to enforcement issues, or are clearly designated as not public.

The **Secret Service** has discovered that applying the foreseeable harm standard in analyzing whether to withhold information is more time consuming. However, they have attempted to release material in all instances where there is no indication that release would cause harm to the operation and administration of the Secret Service's protective and investigative missions. Types of information subject to discretionary releases are: internal markings; portions of administrative manuals; drafts of administrative and investigative reports; attorney work-product material prepared in anticipation of litigation; portions of protective intelligence worksheets and case review forms; and portions of polygraph exam reports.

2. What progress has been made in reducing FOIA backlogs (include backlog status for 12/31/93, 12/31/94 and 12/31/95) and what plans are in place to improve backlog reduction?

End of year backlogs in **Departmental Offices**: 1993 - 243; 1994 - 271; 1995 - 349. In Departmental Offices, FOIA request processing is done by the individual program offices that maintain records being requested. These offices use existing staff resources, and requests compete with other program and mission requirements. Only a few offices have staff devoted solely to FOIA request processing. Many requests are for background policy papers reflecting the decision-making process pertaining to national and international issues. These requests require considerable time and effort in search and review of records to determine appropriate disclosures.

Following the President's October 1993 memo, the Executive Secretariat provided necessary resources to processing requests and completely eliminated an existing backlog of 41 by the end of 1994. They also began to record and track requests by computer rather than manually, which served to quicken the process.

The **Office of the Comptroller of the Currency** does not have a backlog of requests and rarely exceeds the statutory deadline. In 1993 and 1994 the average processing time was 13 calendar days. During 1995 the average processing time was 9 calendar days. So far this year the average has improved to 8 calendar days.

Because of the recent reorganization of the **Customs Service**, statistics reflecting the backlog of initial FOIA requests in the various field offices are not available. The disbursement of the processing of initial FOIA requests from 7 offices to more than 70 offices has greatly expedited responses to requests. As this has only been in effect for 8 months, there are no statistics reflecting backlogs or case processing time. However, it is apparent that the turn-around time of requests made after

October 1, 1995, has been far more timely and very little backlog has accrued.

No backlogs exist at the **Bureau of Alcohol, Tobacco, and Firearms, Federal Law Enforcement Training Center, Bureau of Engraving and Printing, Bureau of the Mint,** or the **Bureau of the Public Debt.**

The **Internal Revenue Service** does not maintain statistics on the FOIA backlog for 1993, 1994, 1995. As of March 31, 1996, IRS reported 3,119 FOIA requests in process, of which approximately 69% were overage (i.e., in process for more than 10 days).

At the **Office of Thrift Supervision,** progress has been made in significantly reducing backlogs. End of year statistics: 1993 - 89; 1994 - 153; 1995 - 63. OTS plans to have better automation for tracking requests and generating acknowledgment letters; closer team work with chief counsel on complex requests; and awareness training for staff on changing guidance.

The **Secret Service** has seen a reduction in the backlog since 1993. End of year statistics: 1993 - 184; 1994 - 138; 1995 - 148. A decreased backlog is anticipated next year due to the reorganization of the Freedom of Information and Privacy Acts Branch.

3. **What other measures has your agency instituted to implement the President's commitment to the Freedom of Information Act?**

The **Departmental Offices** has implemented an automated tracking and database management system to speed up assignment of requests and meet reporting requirements more efficiently. The Office of Foreign Assets Control has created a climate of openness with the public through user-friendly brochures, a fax-on-demand service, and connections with various computer bulletin boards including an OFAC Home Page on the World Wide Web.

In 1994, a fax-on-demand service was established by the **Office of the Comptroller of the Currency** that provides access to public documents 24 hours a day, seven days a week. By identifying documents for which there is likely to be a significant demand and loading them on the fax-on-demand service, OCC has been able to respond more quickly to requests for these documents. During 1994, OCC averaged 300 calls per month; in 1995, 800 calls; and so far this year, 3,000 calls per month. In 1995, OCC established a site on the World Wide Web. New items are added almost weekly. Through this site, the public can access information about banks, new regulations, news releases, speeches and testimonies, legal staff interpretations, historical information about the OCC, biographies of key personnel, a directory of offices nationwide, an information directory,

databases of Community Reinvestment Act ratings and electronic versions of the evaluations themselves. FOIA requests can be made electronically through the site.

The Disclosure Law Branch at the **Customs Service** has undergone a concerted effort to reduce its backlog of FOIA appeals by assigning one or two old backlog cases each to approximately 50 attorneys in the Office of Regulations and Rulings. Prior to June 1995, there were more than 300 pending appeals with an average response time of more than 250 days. As of June 1996, the approximate number of appeals is 100 and the response time has been decreased to less than 50 days.

The **Federal Law Enforcement Training Center** believes that it is, and has been, in full compliance with the FOIA as well as the President's commitment to the FOIA. Rarely is an exemption used. Information is released any time it is possible to do so. A method is being developed that will place routinely requested information on the Internet to ensure wider public access.

The **Bureau of Engraving and Printing** has improved the system for collection of the documents to be released.

The **Internal Revenue Service** has taken the following steps:

- The Disclosure of Information Handbook was revised to reflect the new guidelines for discretionary disclosures.
- All pending administrative appeals of FOIA requests were reviewed to determine whether previously withheld documents could be released under the new standard.
- All pending FOIA litigation was reviewed to determine whether additional documents or portions thereof should be released.
- The subject of discretionary disclosures was routinely discussed at Continuing Professional Education sessions.

In October 1995, the IRS Office of Disclosure initiated measures to establish a baseline for cycle time of FOIA cases. This will provide a basis to determine how much progress the IRS is making toward reducing the FOIA cycle time. Each regional office will be reporting their data quarterly to the Headquarters Office.

The **Bureau of the Public Debt** allows Federal Reserve Banks, which serve as BPD's fiscal agents, to answer some FOIA requests. When a Federal Reserve Bank receives a request from a Treasury securities investor, and the Bank has the information and does not have to withhold it, then the Bank answers the request. In 1995, BPD began a program of disseminating information to the

public online through America Online and the Internet. Treasury auction information is posted on the Commerce Economic Bulletin Board. Comments on proposed regulations can now be received online, providing another medium for the public to access comments, in addition to the public reading room. Having information online eliminates having to use the FOIA to request public information.

Plans are progressing at the **Office of Thrift Supervision** to have the FOIA log available on the public viewing station established in the public reading room. Items anticipated to be of broad public interest (i.e., approved applications for new services or changes in past business-as-usual practices) are made available in the public reading room; other high-interest documents are made available on the fax-on-demand service.

Changes in the use of personnel resources at **Secret Service** will increase FOIA processing time by 40 to 50 percent.

4. What goals has your agency established for further improvements in its administration of the Freedom of Information Act in 1996?

Treasury is making maximum use of the Government Information Locator Service (GILS) to improve access to Department of the Treasury information by the public. It is anticipated that this will lessen the public's need to use the FOIA to obtain information.

In **Departmental Offices,** further improvements in administering the FOIA include more emphasis on disclosure of information through increased use of electronic systems.

The Executive Secretariat plans to eliminate their current backlog of 10 requests within the next three weeks.

This year the **Office of the Comptroller of the Currency** is in the process of establishing a fully staffed public reference room which will provide immediate access to the public information collections. A stand-alone Local Area Network will be housed there which will allow the public to have access to OCC's Internet web site as well as versions of more popular databases. Employees have been hired to staff this facility and the room itself is under construction. Target opening date is July 1, 1996. Senior management is committed to providing good customer service and improving public access to OCC's public documents and information bases.

It is anticipated that with the reorganization of the **Customs Service's** FOIA program at both the initial and appeal level, FOIA

requests will be responded to in most instances within the statutory time period.

The **Federal Law Enforcement Training Center's** one goal is to provide requested information to any requester within the 10-day period and to use exemptions only when absolutely necessary. A long-term objective is to improve the records management program, particularly awareness by middle and basic level managers, to allow for an even more efficient method of retrieving the information . This includes electronic record-keeping and e-mail policy and procedure changes.

The goal of the **Bureau of Engraving and Printing** is to provide all requesters with the information that is releasable within the statutory time limit.

The **Internal Revenue Service's** goal is to (1) reduce the backlog of overage cases; and (2) reduce the time it takes to process a request. In addition, IRS plans to initiate a peer review program that will uncover inherent weaknesses in the program, and propose improvement in the manner in which requests are processed.

Annual briefings to **U.S. Mint** management are planned. Additionally, an enhanced FOIA/Privacy Act tracking system is currently being implemented.

The **Bureau of the Public Debt** will continue its policy of disclosing information wherever it believes there would be no harm in doing so. In addition, the Bureau will strengthen its online presence on America Online and the Internet.

The **Office of Thrift Supervision** has developed and published FOIA customer service goals. All efforts of the FOIA team, with management support, are geared toward meeting these standards for timely response.

At the **Secret Service,** once all new FOIA staff have been fully trained, it is anticipated that the current backlog can be reduced. It is the Secret Service's goal to complete on-the-job training of new personnel by the end of 1996 in order to make an initial reduction in the backlog in 1996, with a greater anticipated reduction in 1997.

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

SECRETARY OF THE TREASURY

December 1, 1993

MEMORANDUM FOR DEPUTY SECRETARY
UNDER SECRETARIES
ASSISTANT SECRETARIES
GENERAL COUNSEL
TREASURER OF THE UNITED STATES
INSPECTOR GENERAL
COMPTROLLER OF THE CURRENCY
COMMISSIONER OF INTERNAL REVENUE
DIRECTOR, OFFICE OF THRIFT SUPERVISION

FROM: Lloyd Bentsen

SUBJECT: President Clinton's Memorandum Regarding the Freedom of Information Act

President Clinton is asking Treasury to renew its commitment to sound administration of the Freedom of Information Act (FOIA) and its underlying principle of openness in government. In his memo to heads of departments and agencies of October 4, 1993, the President asks agencies to take a fresh look at their administration of the Act, to reduce backlogs of FOIA requests, and to conform agency practice to the new litigation guidance issued by Attorney General Reno. Copies of both the President's and the Attorney General's memoranda are attached.

The Attorney General advises that where an item of information might technically or arguably fall within an exemption, it ought not to be withheld from a FOIA requester unless it can reasonably be expected that disclosure would be harmful to an interest protected by that exemption.

Please ensure that the attached memoranda are distributed widely within your areas of responsibility. Together, they establish a strong spirit of openness in government and require the immediate attention of everyone involved in the administration of the Act throughout Treasury.

The Departmental Disclosure Office is available to answer questions and provide policy, procedural, and technical guidance in processing FOIA requests. Copies of the FOIA Handbook are widely distributed throughout the Department; however, should you or your staff need additional copies, please call 202/622-0930.

Attachments

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

July 16, 1996

Mr. Richard L. Huff
Mr. Daniel J. Metcalfe
Co-Directors
Office of Information and Privacy
U.S. Department of Justice
Suite 570, Flag Building
Washington, D.C. 20530

Dear Sirs:

This provides the response of the Office of Management and Budget (OMB) to the Attorney General's memorandum dated May 16, 1996, regarding agencies' progress in implementing the President's and Attorney General's FOIA memoranda of October 1993.

In accordance with the October 1993 memoranda, a review is conducted during the course of preparing responses to initial requests and appeals, to determine whether the release of "exempt" documents would cause "foreseeable harm". A review of OMB's annual FOIA reports covering 1992, 1993, 1994, and 1995 illustrates that OMB has denied fewer FOIA requests based on discretionary exemptions since October 1993 (this does not include the "mandatory" (b)(1) and (b)(3) exemptions, which OMB rarely invokes). Due to the nature of the documents in OMB's files and the FOIA requests we receive, most of our discretionary denials are based on the (b)(5) exemption for predecisional, deliberative documents. From 1992 to 1995, the number of (b)(5) denials decreased by 55% -- from 49 in 1992 to 22 in 1995. During that same period, OMB eliminated altogether denials based on another of the discretionary exemptions -- the "low" (b)(2) exemption. That exemption was the basis of 8 denials in 1992-1993; there were no (b)(2) denials in 1994 and 1995. In all, the number of denials based on exemptions invoked (as opposed to "no records found") has declined by 57% from 1992 to 1995 -- from 58 to 25. Of the 25 denials in 1995, 22 of them were based on (b)(5), 2 on (b)(6), and 1 on (b)(4).

Turning to the status of OMB's backlog, the OMB tracking system does not allow for reconstruction of the exact "backlog" figures as of 12/31/93, 12/31/94 or 12/31/95. Nevertheless, we can say that the number of "backlog" requests has remained relatively constant during this period, and that our backlog has not become a significant problem. While the complexity of some of the FOIA requests that we receive makes it unlikely that we will be able to eliminate our backlog altogether, OMB is dedicated to reducing the backlog to the extent possible. For example, OMB is currently in the process of providing staff with automated "standard response"

formats. This will decrease the time that staff must devote to drafting individual response letters, and thereby reduce the time required to prepare each response.

In conclusion, OMB will continue to review "exempt" documents to ensure that only those satisfying the "foreseeable harm" standard are withheld. In addition, we will continue to take steps that will allow us to decrease the time required for responding to FOIA requests.

If you have any questions concerning this matter, or would like to discuss it further, please call Darrell Johnson, OMB's FOIA Officer, at 395-5715.

Sincerely,

John B. Arthur
Associate Director
for Administration

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 16, 1996

OFFICE OF
THE ADMINISTRATOR

Daniel J. Metcalf, Co-Director
Office of Information and Privacy
U. S. Department of Justice
Flag Building, Suite 570
Washington, D. C. 20530

Dear Mr. Metcalf:

This is in response to Attorney General Janet Reno's May 16, 1996 request for information on the Environmental Protection Agency's (EPA's) progress in implementing the initiatives under the Freedom of Information Act (FOIA). The information provided below addresses the questions posed in the Attorney General's memorandum.

1. What has been your agency's experience in applying the "foreseeable harm" standard in analyzing whether to withhold information? What types of records have been the subject of "discretionary disclosures" that would have been withheld under the 1981 guidelines?

ANSWER: Since the "foreseeable harm" standard was implemented, the EPA has increased the amount of disclosures for privileged inter-agency or intra-agency information (exemption 5) and records compiled for law enforcement purposes (exemption 7).

In 1994, the Agency issued 186 denials pursuant to exemption (b)(5); 123 denials pursuant to exemption (b)(7); and 106 denials pursuant to exemptions (b)(5)(7) combined.

In 1995, EPA issued 147 denials pursuant to exemption (b)(5); 44 denials pursuant to exemption (b)(7); and 93 denials pursuant to exemptions (b)(5)(7) combined.

2. What progress has been made in reducing FOIA backlogs (include backlog status for 12/31/93, 12/31/94, and 12/31/95) and what plans are in place to improve backlog reductions?

ANSWER: In 1993, EPA received 41,102 requests and 5,761 assignments are still pending. In 1994, EPA received 37,372 requests and 7,829 assignments are still pending. In 1995, EPA received 29,306 requests and 5,403 assignments are still pending. **(NOTE: Due to the nature of many EPA FOIA requests, it is often necessary to assign a single request to several Program offices for separate responses to the requester. Therefore, the number of pending assignments exceeds the number of pending requests. We are unable to provide the exact number of pending requests for each year, due to a system design problem in our FOIA Computer System.)**

EPA has improved the handling of its FOIA requests and reduced the backlog through analyses of FOIA workloads and implementation of public access initiatives. Several Program Offices have reduced and/or eliminated backlogs for routinely requested computer data through computer online access and other public dissemination methods. Other Program Offices have reduced their backlogs by implementing a first-in/first out policy for the more complex requests, while responding to the simple requests upon receipt. These actions and ongoing efforts to identify other ways to reduce the backlog, have improved the efficiency and timeliness in responding to FOIA requests.

3. What other measures has your agency instituted to implement the President's commitment to the Freedom of Information Act?

ANSWER: In 1994-95, a Task Group, established by Administrator Browner, conducted a Study of the FOIA Program in Headquarters, each of the ten Regions, and several Field Offices. The purpose of the Study was to (1) develop uniform methods of disseminating information; (2) review withholding policies to ensure compliance with the letter and spirit of the Attorney General's 1993 memorandum; and (3) to streamline the process to address workload and backlog problems. The Task Group also visited FOI Offices at the Department of Defense, Department of Justice, and Department of Health & Human Services (the top three Agencies receiving the largest volumes of FOIA requests) to see how they handle their FOIA workload. The Report of Findings and Recommendations is expected to be sent to Administrator Carol Browner by the end of this summer.

For several months in 1994, EPA conducted FOIA Customer Service Surveys in three regional offices. From the surveys, we learned that EPA is perceived by customers as responsive and cooperative. One high volume Regional Program Office holds

annual conferences for frequent FOIA requesters to hear requesters' complaints and suggestions, and brief requesters on procedures which could facilitate faster and more helpful responses.

EPA has implemented computer online accessibility for some routinely requested records; put other frequently requested computer databases on the internet, and placed other records at the National Technical Information Service for dissemination. The Agency also prepares more summaries of technical documents which often eliminate the need to copy voluminous documents. Many EPA Program Offices have established individual Home Pages on the internet, providing the public with information about their programs.

We believe these efforts are primary reasons why the volume of incoming requests sharply declined from 41,102 in 1993 to 29,306 in 1995. We are continuing to identify ways to improve the Agency's FOIA Program and dissemination of information to the public. Thank you for the opportunity to discuss EPA's FOIA activities. Please call me at 202/260-4048 if you have any questions.

Sincerely,

Jeralene B. Green

Jeralene B. Green
Agency Freedom of Information
Officer (1105)

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

JUL 11 1996

Mr. Richard L. Huff
Mr. Daniel J. Metcalfe
Co-Directors
Office of Information and Privacy
Department of Justice
Flag Building, Suite 570
Washington, D.C. 20530

Dear Gentlemen:

I have been asked to respond to Attorney General Janet Reno's May 16, 1996, memorandum regarding agency compliance with the President's and Attorney General's Freedom of Information Act (FOIA) policy memoranda which were issued on October 4, 1993. We regret the delay in responding to the Attorney General's request.

The Department's responses to the questions from the Department of Justice (DOJ) are as follows:

1. **What has been your agency's experience in applying the "foreseeable harm" standard in analyzing whether to withhold information? What types of records have been the subject of "discretionary disclosures" that would have been withheld under the 1981 guidelines?**

For many years, it has been the Department of the Interior's (DOI's) policy to make records available to the greatest extent possible and to withhold information falling within an exemption only if "sound grounds" exist to support the withholding or if the disclosure is prohibited by statute or Executive order (43 CFR 2.13(d)). Therefore, some of our bureaus and offices indicated that there has not been a dramatic increase in the release of information in response to FOIA requests since the establishment of the "foreseeable harm" standard.

The "foreseeable harm" standard is consistent with the Department's previous FOIA policy. By applying the "foreseeable harm" standard in analyzing whether to withhold information, we have taken an even closer look at the information to be withheld--DOI has applied the "sound grounds" test even more rigorously. Our policy of requiring "statements of harm" in response to the 1993 policy memoranda (see the response to

questions 3 and 4, below) has encouraged even more rigorous analysis of the harm that would be caused by disclosure of such documents.*

After the issuance of the new FOIA policy, bureau and office FOIA Officers made special efforts to encourage managers and program specialists to consider more carefully what harm would be caused when processing FOIA requests, and provided internal guidance as needed. FOIA training that was conducted included an explanation of the new FOIA policy and criteria for analyzing the "foreseeable harm". DOI believes that the increased attention to and communication of the standard has resulted in greater release of material which might have been withheld under exemptions 2 and 5. Additionally, emphasis on the standard has helped to reduce the tendency for boilerplate denials of information.

The bureaus and offices advised that they are now making more discretionary disclosures of the following types of records which normally would have been withheld under the 1981 guidelines:

1) Predecisional deliberative documents, e.g., draft documents and draft databases, and aircraft accident reports containing opinions and recommendations;

2) Portions of some law enforcement manuals, internal law enforcement guidelines, and related memoranda; and

3) Documents covered by exemption "low 2".

2. **What progress has been made in reducing FOIA backlogs (include backlog status for 12/31/93, 12/31/94 and 12/31/95) and what plans are in place to improve backlog reduction?**

Bureaus and offices were asked to review their logs to determine the number of FOIA requests that are past due as of the end of each calendar year and the reasons for any existing backlogs. The following information is provided for the Department based on their input:

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* A review of the Department's FOIA statistics indicates that while the number of denials in Calendar Year (CY) 1995 was 9% lower than in 1993, the number of requests denied under exemption 5 actually increased by 6%. While we cannot be certain, we assume this anomaly has arisen because more of the requests involved documents covered by exemption 5.

Status of Pending FOIA Requests

Total FOIA requests received	Backlog as of	Ratio of overdue requests to requests received
CY 1993 - 7,758	12/31/93 - 68	1%
CY 1994 - 7,902	12/31/94 - 115	1%
CY 1995 - 6,620	12/31/95 - 253	4%

The Department's FOIA backlog has increased by 3% from CY 1993 through CY 1995.

As we stated in our November 29, 1993, letter to the DOJ concerning the status of the DOI FOIA backlog, at the end of CY 1993, the U.S. Fish and Wildlife Service (FWS) was the only bureau that reported a significant backlog.

At the end of CY 94, only the FWS and Office of the Secretary (OS) reported significant backlogs. This trend continued as reflected by year-end figures in CY 95. At the end of 1995 the Department's backlog rose to 253 requests, an increase of 3%. Seven bureaus and offices, in addition to the FWS and OS, reported backlogs consisting of 1 to 20 requests. Delays in processing FOIA requests were attributed to several reasons, primarily:

- RIFs, downsizing efforts, and the buyouts Departmentwide have resulted in personnel shortages. While the Department's FOIA workload has increased, staff has not increased proportionately to the workload. The FOIA Offices in both the Office of Surface Mining (OSM) and Bureau of Indian Affairs (BIA) were severely impacted by the personnel shortages. Further, loss of employees with institutional memory has resulted in search delays.

- The closure of the Bureau of Mines produced delays in processing requests for its records as program managers have been separated, have retired, or have been transferred to other bureaus or agencies and records have been transferred to the Federal Records Center or other bureaus and agencies. This problem is likely to continue.

- The two Federal furloughs severely impacted our ability to keep pace in responding to FOIA requests.

- The number of litigation-sensitive FOIAs requiring extensive consultation and coordination with our Solicitor's Office, various components within the DOI and other agencies, including DOJ, has increased rapidly from CY 1993 through 1995.

- The process of preparing "statements of harm" for determining whether "foreseeable harm" exists has caused some delay in processing requests.

- DOI, by nature of its mission, is becoming involved in an increasing number of complex environmental issues and controversies which result in an increase in FOIA activity.

Plans in place to improve backlog reduction include:

1) Implementation of initiatives generated by the DOI FOIA Reinvention Team (see the response to questions 3 and 4, below, and copy of the report which is enclosed) should improve the backlog situation throughout DOI. The increased use of technology should continue to improve the timeliness of responses to FOIA requesters.

2) FWS has revised its FOIA policy to allow field offices to respond to FOIA requests involving denials.

3) Recently, two FTEs have been assigned to work with the OS FOIA Coordinator in reducing the FOIA backlog in OS.

4) Training is being emphasized for new as well as existing FOIA practitioners to enhance knowledge and understanding of the FOIA; cross training is being emphasized to make maximum use of existing staff and to promote employee development.

5) The Office of Inspector General (OIG) has implemented new procedures to determine the status of its investigations more quickly and whether investigatory materials may be released, and to improve the tracking of FOIA requests; also it now prepares a single consolidated response to multiple requests from the same requester for copies of different audit reports (in the past, separate letters were prepared).

3. What other measures has your agency instituted to implement the President's commitment to the FOIA?

4. What goals has your agency established for further improvements in its administration of the FOIA in 1996?

In response to the Administration's initiatives, DOI issued two FOIA policy directives to ensure that the bureaus and offices within the Department were in compliance with the 1993 policy memoranda (see Administrative Services Letter No. 62, FOIA Policy - Update (dated November 29, 1993) and Administrative Services Letter No. 64, FOIA Procedures for Responding to FOIA Requests and for Administering FOIA Appeals (dated February 3, 1994), copies enclosed). Under Administrative Services Letter No. 64, when a bureau or office intends to withhold any information pursuant to exemptions 2 (low), 5 (all privileges), 6 and 7(C) (to the extent that they are not covered by the Privacy Act), 7(D) (to the extent that the information consists of non-identifying information provided by a source), 7(E), 8, and 9, it must, in consultation with its Designated FOIA Attorney, prepare documentation ("statement of harm") setting forth how release of the requested information is likely to harm its programs or the privacy interests of the individuals involved. This documentation serves as the justification for the determination of the existence of "sound grounds" in the event an appeal or lawsuit is filed by the requester.

In response to a Presidential memo urging more customer-friendly service, in September of 1994, the Department assembled a National Performance Review (NPR) laboratory to examine the agency's FOIA process. Consisting of representatives from several bureaus, headquarters, and field offices, the NPR FOIA Reinvention Team included a cross-section of professionals with expertise in information handling and customer service. All members of the team were experienced FOIA practitioners, familiar with increasing demands, existing delays, and inconsistencies of application in the FOIA program throughout the Department. The objective of the team was to examine current practices, explore possibilities, and use reengineering principles to recommend more efficient and effective processes for improving customer service and public access to agency information. In September of 1995, the Team produced its final report, a copy of which is enclosed. While the recommendations have been approved in concept, the specifics about how to implement them have not been agreed upon as yet.

Consistent with the results of the NPR team's report, the Department plans to maximize the use of technology throughout the FOIA process to 1) reduce existing backlogs, 2) improve internal and external communications, 3) improve the efficiency of the program, and 4) increase our responsiveness to the public. Examples are--

- DOI hopes to procure an automated tracking system which can be used by bureaus and offices Departmentwide to disseminate, monitor and track FOIA requests and appeals, provide greater

accountability, prepare the Department's annual report to Congress, and improve the overall efficiency of the program--long-term goal (see NPR Lab Report, enclosed).

- DOI also plans to develop a brochure and establish a toll-free number to educate the public on how to access agency information (see NPR Lab Report, enclosed).

- Several bureaus have or are in the process of developing a Home Page on the Internet. The Bureau of Land Management (BLM) has developed an FOIA Fact Sheet for the members of the public who access BLM's Home Page on the Internet. This provides information on what is available without an FOIA request and where to obtain it. It also provides information on the FOIA and how to file FOIA requests with the Bureau. The Government Information Locator System (GILS) also is being used for this purpose.

- Several bureaus are receiving FOIA requests via Internet. BLM has developed guidelines on receiving FOIAs via the Internet, which allow the public to file requests using an electronic mailbox. This will make it easier for the public to file requests. Bureau State Offices that have the capability to receive FOIAs electronically will post their addresses on the Bureau's Home Page. Currently there are four BLM offices that receive FOIAs via E-mail.

- The Department plans to make more information available electronically either via Internet or another medium to reduce the need for requesters to file FOIA requests of a routine nature. In addition, in the future, DOI plans to make policy and procedural guidance, including the Office of the Solicitor's FOIA appeal database, electronically available to appropriate bureau and office employees.

- Use of facsimile and other electronic media and standardized responses whenever feasible have enhanced the timeliness of responses to FOIA requesters.

FOIA training conducted by the Department during the past few years has focused on the President's "openness" policy--making more information available to the public, encouraging discretionary disclosures whenever possible, segregating releasable portions of otherwise exempt documents and releasing them, providing timely responses to requests and on ways to improve overall service to the FOIA community. The Department plans to enhance its efforts in this regard (especially since it has lost so many experienced employees due to the "buyouts" and RIFs), and to foster a collaborative training effort throughout DOI. Alternatives to travelling for training will be explored, e.g., the possibility of using videoconferencing, videotaping, E-mail correspondence courses, and computer-based training and

satellite training centers. BLM's Phoenix Training Center is looking into these options already.

DOI expects to begin revising its FOIA regulations (43 CFR Part 2, Subparts A and B) by the end of CY 1996.

Some bureaus already have redelegated the signature authority for FOIA responses, in particular denials, to a lower organizational level, thus reducing the number of levels of review which allows for a more timely response.

The Department continues to foster communications between Bureau/Office FOIA Officers and the Solicitor's Office to promote the exchange of ideas and experiences in processing FOIA requests and appeals, resolve Departmentwide issues and improve program efficiency. Several meetings/workshops of FOIA Officers are held each year.

The Department also provides timely information to Bureau FOIA Officers and other officials on DOI's FOIA program, changes in the statute and recent court decisions, training opportunities and a comprehensive listing of bureau/office FOIA officials in DOI nationwide to promote this effort. The growing use of technology has improved communications among the different bureaus and the Department and among offices within the same bureau, and between bureau headquarters and its regional and field offices. For example, FOIA coordinators in BLM participate in monthly conference calls organized by its Records Administrator to discuss FOIA matters and resolve bureauwide policy issues. Currently, much information is communicated electronically by using E-mail.

Finally, in an effort to be more responsive to FOIA requesters, bureaus and offices have been encouraged to prepare response letters using customer friendly language and to provide more detailed explanations regarding searches conducted, nonexistence of records, records being denied, etc.

The Department appreciates the assistance and support of your office in implementing the President's FOIA policy initiatives and looks forward to working with you in the future as we continue our efforts in this regard. If you have any additional questions regarding the Department's FOIA Program, please contact Alexandra Mallus, the Departmental FOIA Officer, at (202) 208-5342.

Sincerely,

Claudia P. Schechter
Director of Operations

Enclosures

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

NOV 29 1993

Administrative Services Letter No. 62

To: Solicitor
Assistant Secretaries
Inspector General
Heads of Bureaus and Offices
Bureau Assistant Directors for Administration
Bureau and Office FOIA Officers
Designated FOIA Attorneys

From: Bonnie R. Cohen
Assistant Secretary - Policy, Management and Budget

Subject: Freedom of Information Act (FOIA) Policy - Update

Background. On October 4, 1993, President Clinton and Attorney General Janet Reno issued important FOIA policy memoranda (attached), in which agencies are called upon to renew their commitment to the FOIA--to its underlying principle of Government openness and to its sound administration. The directives establish an "openness in Government" policy with regard to making information available to the public under the FOIA. The Attorney General makes it clear that in determining whether or not to defend a nondisclosure decision, the Department of Justice (DOJ) will apply a presumption of disclosure. This means that DOJ will defend the assertion of an FOIA exemption only in those cases where the agency reasonably foresees that disclosure would harm an interest protected by that exemption.

Purpose. This issuance updates the policy for administering the FOIA in the Department of the Interior (DOI). It incorporates the provisions set forth in the directives discussed above.

Responsibility. The Office of Administrative Services (PMO) is responsible for administering the FOIA Departmentwide which includes establishing Departmental policy and procedures; providing program oversight; and processing and deciding FOIA appeals. Accordingly, PMO will be monitoring DOI's compliance with the openness policy and issuing additional policy guidance as necessary.

Policy. Bureaus and offices are expected to comply fully with the President's new FOIA policy as follows:

1. Records will be made available to the public to the greatest extent possible in keeping with the spirit and intent of the FOIA. The Department will ensure that the principle of openness in Government is applied in each and every disclosure and nondisclosure decision required under the FOIA.

2. Documents are presumed to be releasable. The Department will disclose all information unless disclosure would cause harm to an interest protected by one of the FOIA exemptions, i.e., an individual, a submitter of commercial or financial information, or the Government. The FOIA exemptions are designed to guard against the harm that could result if certain information were released to the public. Therefore, a document may be withheld only where the responsible FOIA official, in consultation with the designated FOIA attorney, has reasonably concluded, in each particular case, that its release is likely to cause demonstrable harm. This is consistent with the Department's current policy that a document covered by an FOIA exemption may not be withheld unless "sound grounds" support the withholding or if the disclosure is prohibited by statute or Executive order (43 CFR 2.13(d)). Under the President's and Attorney General's new policy, DOI must apply the "sound grounds" test even more rigorously. Complying with the directives is extremely important because DOJ has advised that in the future it will defend DOI's position in asserting an FOIA exemption only in those cases where disclosure would be harmful to governmental and private interests.

3. The Attorney General strongly encourages agencies to make discretionary disclosures of information covered by exemption "low" (2) (routine, mundane items of a trivial nature) and the deliberative process and attorney work-product privileges of exemption (5). This has been DOI's policy for many years by virtue of the Department's "sound grounds" requirement discussed above. Discretionary release of information under these exemptions is discussed in the DOJ Guide to the FOIA which is attached for your information and use. Discretionary releases will be made only after consultation with the bureau's designated FOIA attorney (see Chapter 5.2 of the DOI FOIA Handbook (383 DM 15)).

4. The Attorney General's directive does not, however, change the policy that agencies are constrained from releasing information protected by exemptions (1), (3), (4), (6), and (7)(C). In these instances release is prohibited by statute or an Executive order, and insofar as exemptions (6) and (7)(C) are concerned, sound grounds can be presumed to exist.

5. Requesters will be notified of the Department's decision as to whether or not it will comply with a request within 10 workdays (or 20 workdays if an extension is taken), whenever possible. In the event the Department is unable to comply within this time, the requester should be notified in writing of the status of the request and when he/she may expect a final response. Responses should be correct, complete, consistent with statutory and regulatory requirements, and written in clear and simple language.

6. This letter supplements the policies and procedures prescribed in the Department's FOIA regulations (43 CFR Part 2, Subpart B) and in the FOIA Handbook (383 DM 15). These directives will be revised to incorporate the policy guidance contained in the memoranda from the White House and DOJ, accordingly.

In further compliance with the Attorney General's directive, PMO will be working together with the bureaus and offices to reduce existing backlogs and to improve its service to the FOIA community during the coming year. As soon as DOJ issues further guidance on this subject, we will make it available to you.

Questions pertaining to this letter may be addressed by contacting the Departmental FOIA Officer, PMO, MS 5412-MIB, 1849 C Street, NW., Washington, D.C. 20240, on (202) 208-5342 (Fax - (202) 208-7971).

Please ensure that this letter and the attachments are distributed promptly to appropriate personnel within your respective bureau/office.

Attachments

THE WHITE HOUSE

WASHINGTON

October 4, 1993

MEMORANDUM FOR HEADS OF DEPARTMENTS AND AGENCIES

SUBJECT: The Freedom of Information Act

I am writing to call your attention to a subject that is of great importance to the American public and to all Federal departments and agencies -- the administration of the Freedom of Information Act, as amended (the "Act"). The Act is a vital part of the participatory system of government. I am committed to enhancing its effectiveness in my Administration.

For more than a quarter century now, the Freedom of Information Act has played a unique role in strengthening our democratic form of government. The statute was enacted based upon the fundamental principle that an informed citizenry is essential to the democratic process and that the more the American people know about their government the better they will be governed. Openness in government is essential to accountability and the Act has become an integral part of that process.

The Freedom of Information Act, moreover, has been one of the primary means by which members of the public inform themselves about their government. As Vice President Gore made clear in the National Performance Review, the American people are the Federal Government's customers. Federal departments and agencies should handle requests for information in a customer-friendly manner. The use of the Act by ordinary citizens is not complicated, nor should it be. The existence of unnecessary bureaucratic hurdles has no place in its implementation.

I therefore call upon all Federal departments and agencies to renew their commitment to the Freedom of Information Act, to its underlying principles of government openness, and to its sound administration. This is an appropriate time for all agencies to take a fresh look at their administration of the Act, to reduce backlogs of Freedom of Information Act requests, and to conform agency practice to the new litigation guidance issued by the Attorney General, which is attached.

Further, I remind agencies that our commitment to openness requires more than merely responding to requests from the public. Each agency has a responsibility to distribute information on its own initiative, and to enhance public access through the use of electronic information systems. Taking these steps will ensure compliance with both the letter and spirit of the Act.

William J. Clinton

Office of the Attorney General
Washington, D. C. 20530

October 4, 1993

MEMORANDUM FOR HEADS OF DEPARTMENTS AND AGENCIES

SUBJECT: The Freedom of Information Act

President Clinton has asked each Federal department and agency to take steps to ensure it is in compliance with both the letter and the spirit of the Freedom of Information Act (FOIA), 5 U.S.C. § 552. The Department of Justice is fully committed to this directive and stands ready to assist all agencies as we implement this new policy.

First and foremost, we must ensure that the principle of openness in government is applied in each and every disclosure and nondisclosure decision that is required under the Act. Therefore, I hereby rescind the Department of Justice's 1981 guidelines for the defense of agency action in Freedom of Information Act litigation. The Department will no longer defend an agency's withholding of information merely because there is a "substantial legal basis" for doing so. Rather, in determining whether or not to defend a nondisclosure decision, we will apply a presumption of disclosure.

To be sure, the Act accommodates, through its exemption structure, the countervailing interests that can exist in both disclosure and nondisclosure of government information. Yet while the Act's exemptions are designed to guard against harm to governmental and private interests, I firmly believe that these exemptions are best applied with specific reference to such harm, and only after consideration of the reasonably expected consequences of disclosure in each particular case.

In short, it shall be the policy of the Department of Justice to defend the assertion of a FOIA exemption only in those cases where the agency reasonably foresees that disclosure would be harmful to an interest protected by that exemption. Where an item of information might technically or arguably fall within an exemption, it ought not to be withheld from a FOIA requester unless it need be.

It is my belief that this change in policy serves the public interest by achieving the Act's primary objective -- maximum responsible disclosure of government information -- while preserving essential confidentiality. Accordingly, I strongly encourage your FOIA officers to make "discretionary disclosures"

whenever possible under the Act. Such disclosures are possible under a number of FOIA exemptions, especially when only a governmental interest would be affected. The exemptions and opportunities for "discretionary disclosures" are discussed in the Discretionary Disclosure and Waiver section of the "Justice Department Guide to the Freedom of Information Act." As that discussion points out, agencies can make discretionary FOIA disclosures as a matter of good public policy without concern for future "waiver consequences" for similar information. Such disclosures can also readily satisfy an agency's "reasonable segregation" obligation under the Act in connection with marginally exempt information, see 5 U.S.C. § 552(b), and can lessen an agency's administrative burden at all levels of the administrative process and in litigation. I note that this policy is not intended to create any substantive or procedural rights enforceable at law.

In connection with the repeal of the 1981 guidelines, I am requesting that the Assistant Attorneys General for the Department's Civil and Tax Divisions, as well as the United States Attorneys, undertake a review of the merits of all pending FOIA cases handled by them, according to the standards set forth above. The Department's litigating attorneys will strive to work closely with your general counsels and their litigation staffs to implement this new policy on a case-by-case basis. The Department's Office of Information and Privacy can also be called upon for assistance in this process, as well as for policy guidance to agency FOIA officers.

In addition, at the Department of Justice we are undertaking a complete review and revision of our regulations implementing the FOIA, all related regulations pertaining to the Privacy Act of 1974, 5 U.S.C. § 552a, as well as the Department's disclosure policies generally. We are also planning to conduct a Department-wide "FOIA Form Review." Envisioned is a comprehensive review of all standard FOIA forms and correspondence utilized by the Justice Department's various components. These items will be reviewed for their correctness, completeness, consistency, and particularly for their use of clear language. As we conduct this review, we will be especially mindful that FOIA requesters are users of a government service, participants in an administrative process, and constituents of our democratic society. I encourage you to do likewise at your departments and agencies.

Finally, I would like to take this opportunity to raise with you the longstanding problem of administrative backlogs under the Freedom of Information Act. Many Federal departments and agencies are often unable to meet the Act's ten-day time limit for processing FOIA requests, and some agencies -- especially

those dealing with high-volume demands for particularly sensitive records -- maintain large FOIA backlogs greatly exceeding the mandated time period. The reasons for this may vary, but principally it appears to be a problem of too few resources in the face of too heavy a workload. This is a serious problem -- one of growing concern and frustration to both FOIA requesters and Congress, and to agency FOIA officers as well.

It is my hope that we can work constructively together, with Congress and the FOIA-requester community, to reduce backlogs during the coming year. To ensure that we have a clear and current understanding of the situation, I am requesting that each of you send to the Department's Office of Information and Privacy a copy of your agency's Annual FOIA Report to Congress for 1992. Please include with this report a letter describing the extent of any present FOIA backlog, FOIA staffing difficulties and any other observations in this regard that you believe would be helpful.

In closing, I want to reemphasize the importance of our cooperative efforts in this area. The American public's understanding of the workings of its government is a cornerstone of our democracy. The Department of Justice stands prepared to assist all Federal agencies as we make government throughout the executive branch more open, more responsive, and more accountable.

DISCRETIONARY DISCLOSURE AND WAIVER

The Freedom of Information Act is an information disclosure statute which, through its exemption structure, strikes an overall balance between information disclosure and nondisclosure,[1] with an emphasis on the "fullest responsible disclosure."[2] Inasmuch as the FOIA's exemptions are discretionary, not mandatory,[3] agencies are free to make "discretionary disclosures" of exempt information, as a matter of good public policy and government accountability, wherever they are not otherwise prohibited from doing so.[4] Where they do so, agencies should not be held to have "waived" their ability to invoke applicable FOIA exemptions for similar or related information in the future. In other situations, however, various types of agency conduct and circumstances can reasonably be held to result in exemption waiver.

Discretionary Disclosure

Because the Freedom of Information Act does not itself prohibit the disclosure of any information,[5] an agency's ability to make a discretionary disclosure of information covered by a FOIA exemption necessarily hinges on whether any separate legal barrier to disclosure applies to the information in question. Some of the FOIA's exemptions--such as Exemption 2[6] and Exemp-

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[51](...continued)
Apr. 12, 1993) ("'In response to the plaintiff's claim of the (c)(1) exclusion being utilized in this action, . . . [w]ithout confirming or denying that any such exclusion was actually invoked by the defendant, the Court finds and concludes [after review of an in camera declaration] that if an exclusion was in fact employed, it was, and remains, amply justified.'" (adopting agency's proposed conclusion of law)).

[1] See John Doe Agency v. John Doe Corp., 493 U.S. 146, 153 (1989).

[2] S. Rep. No. 813, 89th Cong., 1st Sess. 3 (1965); see also Attorney General's Memorandum on the 1986 Amendments to the Freedom of Information Act 30 (Dec. 1987); FOIA Update, Summer 1988, at 14.

[3] See Chrysler Corp. v. Brown, 441 U.S. 281, 293 (1979).

[4] See CNA Fin. Corp. v. Donovan, 830 F.2d 1132, 1334 n.1 (D.C. Cir. 1987) (An agency's FOIA disclosure decision can "be grounded either in its view that none of the FOIA exemptions applies, and thus that disclosure is mandatory, or in its belief that release is justified in the exercise of its discretion, even though the data fall within one or more of the statutory exemptions."), cert. denied, 485 U.S. 977 (1988); see also FOIA Update, Summer 1985, at 3 ("It is well known that agencies generally have discretion under the Freedom of Information Act to decide whether to invoke applicable FOIA exemptions.").

[5] See 5 U.S.C. § 552(d) (1988).

[6] 5 U.S.C. § 552(b)(2).

tion 5,[7] for example--protect a type of information that is not subject to any such disclosure prohibition. Other FOIA exemptions--most notably Exemption 3[8]--directly correspond to, and serve to accommodate, distinct prohibitions on information disclosure that operate entirely independently of the FOIA. An agency is constrained from making a discretionary FOIA disclosure of the types of information covered by the following FOIA exemptions:

Exemption 1 of the FOIA protects from disclosure national security information concerning the national defense or foreign policy, provided that it has been properly classified in accordance with both the substantive and procedural requirements of an executive order.[9] As a general rule, an agency official holding classification authority determines whether any particular information requires classification and then that determination is implemented under the FOIA through the invocation of Exemption 1.[10] Thus, if information is in fact properly classified, and therefore is exempt from disclosure under Exemption 1, it is not appropriate for discretionary FOIA disclosure. (See discussion of Exemption 1, above.)

Exemption 3 of the FOIA explicitly accommodates the nondisclosure provisions that are contained in a variety of other federal statutes. Some of these statutory nondisclosure provisions, such as those pertaining to grand jury information[11] and census data,[12] categorically prevent disclosure harm and establish absolute prohibitions on agency disclosure; others leave agencies with some discretion as to whether to disclose certain information, but such administrative discretion generally is exercised independently of the FOIA.[13] (See discussion of Exemption 3, above.) Therefore, agencies ordinarily do not make discretionary disclosure under the FOIA of information that falls within the scope of Exemption 3.[14]

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[7] 5 U.S.C. § 552(b)(5).

[8] 5 U.S.C. § 552(b)(3).

[9] See 5 U.S.C. § 552(b)(1) (implementing current Executive Order 12,356, 3 C.F.R. 166 (1983), reprinted in 50 U.S.C. § 401 note (1988)).

[10] See generally FOIA Update, Winter 1985, at 1-2.

[11] See Fed. R. Crim. P. 6(e) (enacted as statute in 1977).

[12] See 13 U.S.C. §§ 8(b), 9(a) (1988).

[13] See, e.g., Aronson v. IRS, 973 F.2d 962, 966 (1st Cir. 1992).

[14] See, e.g., Association of Retired R.R. Workers v. Railroad Retirement Bd., 830 F.2d 331, 335 (D.C. Cir. 1987) (FOIA jurisdiction does not extend to exercise of agency disclosure discretion within Exemption 3 statute). But see Palmer v. Derwinski, No. 91-197, slip op. at 3-4 (E.D. Ky. June 10, 1992) (exceptional FOIA case in which court ordered Veterans Administration to disclose existence of certain medical records pursuant to discretionary terms of 38 U.S.C. § 7332(b)).

DISCRETIONARY DISCLOSURE AND WAIVER

Exemption 4 of the FOIA protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential."[15] For the most part, Exemption 4 protects information implicating private commercial interests that would not ordinarily be the subject of discretionary FOIA disclosure. (See discussions of Exemption 4, above, and "Reverse" FOIA, below.) Even more significantly, a specific criminal statute, the Trade Secrets Act,[16] prohibits the unauthorized disclosure of most (if not all) of the information falling within Exemption 4; its practical effect is to constrain an agency's ability to make a discretionary disclosure of Exemption 4 information,[17] absent an agency regulation (based upon a federal statute) that expressly authorizes disclosure.[18]

Exemptions 6 and 7(C) of the FOIA protect personal privacy interests, in non-law enforcement records[19] and law enforcement records,[20] respectively. As with private commercial information covered by Exemption 4, the personal information protected by Exemptions 6 and 7(C) is not the type of information ordinarily considered appropriate for discretionary FOIA disclosure; with these exemptions, a balancing of public interest considerations is built into the determination of whether the information is exempt in the first place. (See discussions of Exemption 6 and Exemption 7(C), above.) Moreover, the personal information covered by Exemptions 6 and 7(C) in many cases falls within the protective coverage of the Privacy Act of 1974,[21] which mandates that any such information concerning U.S. citizens and permanent-resident aliens that is maintained in a "system of records"[22] not be disclosed unless that disclosure is permitted under one of the specific exceptions to the Privacy Act's general disclosure prohibition.[23] Inasmuch as the FOIA-disclosure exception in the Privacy Act permits only those disclosures that are "required" under the FOIA,[24] the making of discretionary FOIA disclosures of personal information is fundamentally incompatible with the Privacy Act and, in many instances, is pro-

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[15] 5 U.S.C. § 552(b)(4).

[16] 18 U.S.C. § 1905 (1988).

[17] See CNA Fin. Corp. v. Donovan, 830 F.2d at 1144; see also FOIA Update, Summer 1985, at 3 ("OIP Guidance: Discretionary Disclosure and Exemption 4").

[18] See Chrysler v. Brown, 441 U.S. at 295-96; see, e.g., St. Mary's Hosp., Inc. v. Harris, 604 F.2d 407, 409-10 (5th Cir. 1979). (See discussion of this point under "Reverse" FOIA, below.)

[19] 5 U.S.C. § 552(b)(6).

[20] 5 U.S.C. § 552(b)(7)(C).

[21] 5 U.S.C. § 552a (1988 & Supp. IV 1992).

[22] 5 U.S.C. § 552a(a)(5).

[23] 5 U.S.C. § 552a(b).

[24] 5 U.S.C. § 552a(b)(2).

hibited by it.[25]

With the exception of information that is subject to the disclosure prohibitions accommodated by the above FOIA exemptions, agencies may make discretionary disclosures of any exempt information under the FOIA and agency FOIA officers should be encouraged to do so. Such disclosures are most appropriate where the interest protected by the exemption in question is primarily an institutional interest of the agency (rather than a private interest of an individual or commercial entity), one that the agency might choose to forego in a particular case--or in particular types of cases--as a matter of sound administrative discretion and overall public interest.[26]

One example is the type of administrative information that can fall within the "low 2" aspect of Exemption 2, which uniquely shields agencies from sheer administrative burden rather than from any reasonably foreseeable disclosure harm. (See discussion of Exemption 2, above.) In many instances, especially where the information in question is a portion of a document page not otherwise exempt in its entirety, such information would more efficiently be released than withheld.[27] As a practical matter, information should not be withheld unless it need be.

More common examples of the types of information appropriate for discretionary FOIA disclosure can be found under Exemption 5, which incorporates discovery privileges that nearly always protect only the institutional interests of the agency possessing the information. (See discussion of Exemption 5, above.) Information that might otherwise be withheld under the deliberative process privilege for the purpose of protecting the deliberative process in general can be disclosed where to do so would cause no foreseeable harm to any particular process of agency deliberation.[28] Similarly, many litigation-related

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[25] See DOD v. FLRA, 964 F.2d 26, 30-31 n.6 (D.C. Cir. 1992) (discussing Privacy Act's limitations on discretionary FOIA disclosure); see also FOIA Update, Summer 1984, at 2 (discussing interplay between FOIA and Privacy Act).

[26] See, e.g., Gregory v. FDIC, 631 F.2d 896, 899 & n.4 (D.C. Cir. 1980) (discretionary disclosure of information falling within Exemption 8); Superior Oil Co. v. Federal Energy Regulatory Comm'n, 563 F.2d 191, 203-05 (5th Cir. 1977) (discretionary disclosure of information falling within Exemption 9); Nationwide Bldg. Maintenance, Inc. v. Sampson, 559 F.2d 704, 707 n.11, 712 n.34 (D.C. Cir. 1977) (discretionary disclosure of "deliberative process" information falling within Exemption 5).

[27] See FOIA Update, Winter 1984, at 11-12 ("FOIA Counselor: The Unique Protection of Exemption 2") (advising agencies to invoke exemption only where doing so truly avoids burden).

[28] See, e.g., Nationwide Bldg. Maintenance, Inc. v. Sampson, 559 F.2d at 707 n.11, 712 n.34; accord Army Times Publishing Co. v. Department of the Air Force, 998 F.2d 1067, 1072 (D.C. Cir. 1993) (suggesting harm standard

(continued...)

records that otherwise might routinely be withheld under the attorney work-product privilege long after the conclusion of litigation can be considered for disclosure on the same basis.[29] Any such information, though technically or arguably falling within a FOIA exemption, need not be withheld if its disclosure would not foreseeably harm any governmental or other interest intended to be protected by that exemption.[30]

In this regard, it should be remembered that the FOIA requires agencies to disclose all "reasonably segregable" nonexempt portions of requested records.[31] The satisfaction of this important statutory requirement can involve an onerous delineation process, one that readily lends itself to the making of discretionary disclosures, particularly at the margins of FOIA exemption applicability.[32]

Furthermore, as a general rule, making a discretionary disclosure under the FOIA can significantly lessen an agency's burden at all levels of the administrative process, and it also eliminates the possibility that the information in question will become the subject of protracted litigation--thus serving an additional public interest in the conservation of increasingly scarce agency resources.

Where an agency considers making a discretionary disclosure of exempt information under the FOIA, it should be able to do so free of any concern that in exercising its administrative discretion with respect to particular information it is impairing its ability to invoke applicable FOIA exemptions for any arguably similar information. In the leading judicial precedent on this point, Mobil

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[28](...continued)
for factual information under deliberative process privilege); Petroleum Info. Corp. v. United States Dep't of the Interior, 976 F.2d 1429, 1436 n.8 (D.C. Cir. 1992) (same for relatively "mundane," nonpolicy-oriented information).

[29] See, e.g., FOIA Update, Summer 1985, at 5 (encouraging consideration of discretionary disclosure of attorney work-product information where possible to do so without causing harm to litigation process).

[30] Accord, e.g., Nationwide Bldg. Maintenance, Inc. v. Sampson, 559 F.2d at 712 n.34 (observing that agencies should be willing to "disclos[e] information which while arguably exempt need not be withheld").

[31] 5 U.S.C. § 552(b) (final sentence); see also, e.g., PHE, Inc. v. Department of Justice, 983 F.2d 248, 252 (D.C. Cir. 1993) (both agency and court must determine whether any withheld information can be segregated from exempt information and released).

[32] See, e.g., Army Times Publishing Co. v. Department of the Air Force, 998 F.2d 1067, 1071 (D.C. Cir. 1993) (emphasizing significance of segregation requirement in connection with deliberative process privilege under Exemption 5); Wightman v. Bureau of Alcohol, Tobacco & Firearms, 755 F.2d 979, 983 (1st Cir. 1985) ("detailed process of segregation" held not unreasonable for request involving 36 document pages).

Oil Corp. v. EPA,[33] a FOIA requester argued that by making a discretionary release of certain records that could have been withheld under Exemption 5, the agency had waived its right to invoke that exemption for a group of "related" records.[34] In rejecting such a waiver argument, the Court of Appeals for the Ninth Circuit surveyed the law of waiver under the FOIA and found "no case . . . in which the release of certain documents waived the exemption as to other documents. On the contrary, [courts] generally have found that the release of certain documents waives FOIA exemptions only for those documents released."[35]

Such a general rule of nonwaiver through discretionary disclosure is supported by sound policy considerations, as the Ninth Circuit in Mobil Oil discussed at some length:

> Implying such a waiver could tend to inhibit agencies from making any disclosures other than those explicitly required by law because voluntary release of documents exempt from disclosure requirements would expose other documents [of a related nature] to risk of disclosure. An agency would have an incentive to refuse to release all exempt documents if it wished to retain an exemption for any documents. . . . [R]eadily finding waiver of confidentiality for exempt documents would tend to thwart the [FOIA's] underlying statutory purpose, which is to implement a policy of broad disclosure of government records.[36]

This rule was presaged by the Court of Appeals for the D.C. Circuit many

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[33] 879 F.2d 698 (9th Cir. 1989).

[34] Id. at 700.

[35] Id. at 701; see Salisbury v. United States, 690 F.2d 966, 971 (D.C. Cir. 1982) ("[D]isclosure of a similar type of information in a different case does not mean that the agency must make its disclosure in every case."); Stein v. Department of Justice, 662 F.2d 1245, 1259 (7th Cir. 1981) (exercise of discretion should waive no right to withhold records of "similar nature"); Schiller v. NLRB, No. 87-1176, slip op. at 7 (D.D.C. July 10, 1990) ("Discretionary release of a document pertains to that document alone, regardless of whether similar documents exist."), rev'd on other grounds, 964 F.2d 1205 (D.C. Cir. 1992); see also, e.g., United States Student Ass'n v. CIA, 620 F. Supp. 565, 571 (D.D.C. 1985) (no waiver through prior disclosure except as to "duplicate" information); Dow, Lohnes & Albertson v. Presidential Comm'n on Broadcasting to Cuba, 624 F. Supp. 572, 578 (D.D.C. 1984) (same); cf. Silber v. United States Dep't of Justice, No. 91-876, transcript at 18 (D.D.C. Aug. 13, 1992) (bench order) (no waiver would be found even if it were to be established that other comparable documents had been disclosed).

[36] 879 F.2d at 701; see also Army Times Publishing Co. v. Department of the Air Force, 998 F.2d at 1068 (articulating general principle of no waiver of exemption simply because agency released "information similar to that requested" in past).

years ago, when it observed:

> Surely this is an important consideration. The FOIA should not be construed so as to put the federal bureaucracy in a defensive or hostile position with respect to the Act's spirit of open government and liberal disclosure of information.[37]

As another court more recently phrased it: "A contrary rule would create an incentive against voluntary disclosure of information."[38] Agencies should be mindful, though, that this nonwaiver rule applies to true discretionary disclosures made under the FOIA--which should be made available to anyone--as distinguished from any "selective" disclosure made more narrowly outside the context of the FOIA.[39] Such non-FOIA disclosures can lead to more difficult waiver questions.

Waiver

Sometimes, when a FOIA exemption is being invoked, a further inquiry must be undertaken: a determination of whether, through some prior disclosure or an express authorization, the applicability of the exemption has been waived. Resolution of this inquiry requires a careful analysis of the specific nature of and circumstances surrounding the prior disclosure involved.[40] First and foremost, if the prior disclosure does not "match" the exempt information in question, the difference between the two might itself be a significant basis for reach-

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[37] Nationwide Bldg. Maintenance, Inc. v. Sampson, 559 F.2d at 712 n.34.

[38] Mehl v. EPA, 797 F. Supp. 43, 47 (D.D.C. 1992); see also Public Law Educ. Inst. v. United States Dep't of Justice, 744 F.2d 181, 183-84 (D.C. Cir. 1984) (no FOIA attorneys fees liability where agency disclosed requested record as matter of administrative discretion); Military Audit Project v. Casey, 656 F.2d 724, 754 (D.C. Cir. 1981) (agency should not be penalized for declassifying and releasing documents during litigation; otherwise, there would be "a disincentive for an agency to reappraise its position and, when appropriate, release documents previously withheld").

[39] See, e.g., North Dakota ex rel. Olson v. Andrus, 581 F.2d 177, 182 (8th Cir. 1978) (finding waiver where agency made "selective" disclosure to one interested party only); Committee to Bridge the Gap v. Department of Energy, No. 90-3568, transcript at 5 (C.D. Cal. Oct. 11, 1991) (bench order) (waiver found where agency gave preferential treatment to interested party; such action is "offensive" to FOIA and "fosters precisely the distrust of government the FOIA was intended to obviate").

[40] See FOIA Update, Spring 1983, at 6; see also Mobil Oil Corp. v. EPA, 879 F.2d 698, 700 (9th Cir. 1989) ("The inquiry into whether a specific disclosure constitutes a waiver is fact specific."); Carson v. United States Dep't of Justice, 631 F.2d 1008, 1016 n.30 (D.C. Cir. 1980) ("[T]he extent to which prior agency disclosure may constitute a waiver of the FOIA exemptions must depend both on the circumstances of prior disclosure and on the particular exemptions claimed.").

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

FEB 03 1994

Administrative Services Letter No. 64

To: Assistant Secretaries
Heads of Bureaus and Offices
Bureau and Office FOIA Officers and Coordinators

From: Albert C. Camacho
Director of Administrative Services

Subject: Freedom of Information Act (FOIA) Procedures for Responding to FOIA Requests and for Administering FOIA Appeals

Background. On October 4, 1993, President Clinton and Attorney General Janet Reno issued important FOIA policy memoranda. The Attorney General makes it clear that in determining whether to defend a non-disclosure decision, the Department of Justice (DOJ) will apply a presumption of disclosure. This means that DOJ will defend the assertion of a FOIA exemption only in those cases where the agency reasonably foresees that disclosure would harm an interest protected by the exemption. On November 29, 1993, the Assistant Secretary - Policy, Management and Budget, incorporated the provisions set forth in these directives into the FOIA policy of the Department of the Interior (DOI) (Administrative Services Letter (ASL) No. 62).

Purpose. This issuance transmits revised procedures to be followed in responding to FOIA requests and administering FOIA appeals. They contain an important change in the way that DOI has been documenting the existence of sound grounds for withholding. As stated above, DOJ will defend FOIA suits only where the agency reasonably foresees that the release of the documents will be harmful to the interest protected by the exemption. It is through the "sound grounds" determination that DOI decides whether release is likely to harm its programs. In order to assure that an accurate "sound grounds" determination has been made, DOI needs to have appropriate documentation. Accordingly, when responding to FOIA requests, when a bureau or office intends to withhold any information pursuant to exemptions (2) (Low), (5) (all privileges), (6) and (7)(C) (to the extent that the documents are not covered by the Privacy Act), (7)(D) (to the extent the information consists of non-identifying information provided by a source), (7)(E), (8) and (9), it must, in consultation with its FOIA attorney, prepare documentation setting forth how the release of the requested information is

likely to harm its programs. This documentation will serve as the justification for the determination of the existence of sound grounds in the event an appeal is filed by the requester. Note: This documentation is not required where the withholdings are made pursuant to exemptions (1), (2) (High), (3), (4), (7)(A), (7)(B), and (7)(F), and also (6) and (7)(C) (to the extent that the documents are covered by the Privacy Act), and (7)(D) (for all information other than information that consists of non-identifying information provided by a source).

Responsibility. The Office of Administrative Services (PMO) is responsible for administering the FOIA Program Departmentwide; it establishes Departmental FOIA policy and procedures and decides FOIA appeals. Bureau and office FOIA Officers and Coordinators are responsible for providing guidance to personnel responsible for the requested material in the preparation of documents supporting action on initial requests and appeals of decisions on initial requests (383 DM 15 Chapter 2.5A(1)(b)). Bureau and office FOIA officials are responsible for documenting decisions based on input from responsible officials to release or deny documents requested in initial requests.

Based on the Attorney General's policy memorandum, the Department is instituting the following new procedures for processing FOIA appeals.

1. Upon receipt of an appeal from the withholding of documents, the FOIA Appeals Officer records it and sends a copy of it:

   a) To the bureau/office FOIA Officer:

      i) To alert the FOIA Officer as to the need to notify the official responsible for the initial denial decision that his/her decision has been appealed.

      ii) Where documents were withheld pursuant to exemptions (2) (Low), (5) (all privileges), (6) and (7)(C) (to the extent the documents are not covered by the Privacy Act), (7)(D) (to the extent information consists of non-identifying information provided by a source), (7)(E), (8) and (9), to alert the FOIA Officer or Coordinator that he/she should review, with the denying official, the previously prepared documentation supporting withholding to determine whether there continue to be sound grounds to withhold the withheld material. This review must be conducted in coordination with the FOIA attorney. If after this review the bureau or office decides that the initial sound grounds for the withholding are still valid, the denying official should begin to assemble the withheld documents for review by the Office of the Solicitor (SOL) in its preparation of its legal opinion

on the appeal. If the bureau or office decides there are no longer sound grounds for withholding, it will notify PMO that it is releasing the documents. In this case, PMO will notify SOL of the release.

iii) Note: To initiate these new procedures, PMO will advise all bureau and office FOIA Officers of all outstanding FOIA appeals involving the exemptions discussed in item ii, in so far as the bureau or office may not have prepared the required documentation of the existence of sounds grounds at the time of the withholding. For these particular outstanding appeals, the bureau or office FOIA Officer (or, if appropriate, the denying official) will consult with the cognizant FOIA attorney to determine whether there are currently sound grounds for the withholding and, if so, to prepare documentation explaining the harm to the bureau or office programs (or to any other program of the Department that is likely to occur) if the withheld material is released. This documentation of the existence of sounds grounds must then be reviewed by the FOIA attorney. The bureau or office will provide the documentation to SOL at such time as SOL requests the documents for review in its preparation of the legal opinion for the appeal.

b) To SOL for legal review.

2. When requested, the bureau or office provides SOL with copies of the documents the requester is seeking.

3. SOL conducts a legal review of the initial denial decision and determines whether the withheld documents, or portions of the withheld documents, are covered by the appropriate exemption. The SOL also reviews the sound grounds determination (as set forth in the documentation previously prepared by the bureau or office) in light of the Attorney General's guidance, and provides to PMO its recommendation as to the determination of sounds grounds for the withholding of the documents.

4. PMO conducts an administrative review of the initial denial decision and SOL's recommendations regarding the applicability of an exemption, and as applicable, SOL's recommendations regarding the existence of sound grounds as discussed in 3., above. PMO then decides the appeal.

DEPARTMENT OF HEALTH & HUMAN SERVICES — Office of the Secretary

Washington, D.C. 20201

TO : Deputy Director
Office of Freedom of Information and Privacy
Department of Justice

FROM : Director
Freedom of Information and Privacy Acts Division
Office of the Assistant Secretary for Public Affairs

Subject: HHS Response to the Attorney General's Letter of May 16, 1996

Enclosed is the HHS response to the Attorney General's letter of May 16, 1996, concerning the Freedom of Information Act.

The Department of Health and Human Services is composed of several operating program units, e.g., The Food and Drug Administration, The Health Care Financing Administration, The National Institutes of Health, The Centers for Disease Control and Prevention, etc., which are responsible for conducting the Department's various programs. These units are called Operating Divisions (OPDIVs). Each of them has its own Freedom of Information Officer, who is responsible for initial decisions to release or deny records requested under the Freedom of Information Act (FOIA).

Because the size and complexity of the FOIA activities in the OPDIVs varies greatly, from the Substance Abuse and Mental Health Administration, which answered 197 FOIA requests in 1995, to the Food and Drug Administration, which answered 50,606 requests in that year, the responses to the Attorney General's questions vary greatly. Rather than attempt to artificially create an overall HHS response, the attached attempts to reflect the significant experiences of each of the OPDIVs as it administers the Freedom of Information Act.

Some overall comments do apply, however.

1) Despite the advances made in automated tracking systems (and, in some agencies, "on-screen" review and redacting), processing FOIA requests remains an extremely labor intensive operation.

2) While the Attorney General's "discretionary release" policy may have increased the public's access to some kinds of Federal records, it has also increased the processing time for requests seeking those kinds of records. No longer can agencies automatically deny categories of records, e.g. drafts; every document must now be reviewed to determine the harm that might result from its release.

3) Last winter's furloughs and inclement weather stopped agency FOIA processing in its tracks; even those HHS components which did not experience a significant increase in backlogs, lost valuable time in their backlog reduction programs (actually, only one component has made any significant progress in backlog reduction

and it has done so through the time-honored method of adding more staff to the FOIA office).

4) Finally, "down-sizing" has had a significant impact on FOIA processing. Not only have most FOIA staffs been reduced (in one case, by 60 percent) but the program offices have fewer people to accomplish their program responsibilities, let alone search for documents to respond to an FOIA request.

All of the above having been said, I must now also say that FOIA offices continue to take great pride in their work and in making the largest quantity of responsive material available in the shortest possible time. Top management support for the concept of public access to agency records is unfailing.

Thank you for extending the deadline so that we might provide a more complete and accurate response. Questions regarding our response may be addressed to me at (202) 690-7453.

Rosario Cirrincione

Answers to Questions Posed in the Attorney General's Letter of May 16, 1996

Question 1. What has been your Agency's experience in applying the "foreseeable harm" standard in analyzing whether to withhold information? What types of records have been the subject of "discretionary disclosures" that would have been withheld under the 1981 guidelines?

Answer 1. Several operating divisions (OPDIVS), notably FDA and the Indian Health Service (IHS), report that they have essentially always followed a "foreseeable harm" policy, so there has been little change for them. Other OPDIVS, such as the Health Care Financing Administration (HCFA), CDC, and the Office of the Secretary, are releasing approximately 10% more records than they were previously, mostly drafts and predecisional analyses. The Health Resources and Services Administration (HRSA), is releasing "dramatically" more material, especially internally prepared grantee performance evaluations as long as they also do no commercial harm.

Question 2. What progress has been made in reducing FOIA backlogs (include backlog statistics for 12/31/93, 12/31/94, and 12/31/95) and what plans are in place to improve backlog reduction?

Answer 2. Smaller OPDIVS such as HRSA and the Agency for Health Care Policy and Research, report no backlogs at all. The CDC also reports no backlog with a much larger workload. The IHS had a relatively small backlog of 12 cases from 1994 and 61 cases from 1995. The Office of the Assistant Secretary for Health (formerly PHS) reports a 1995 backlog of 26 initial cases and 59 appeals. By increasing its FOIA staff by 60 %, HCFA reduced its backlog from 959 in 1993 to 601 in 1994 and 518 in 1995 (prior to the furloughs, HCFA's backlog was down to 385). The Office of the Secretary, HHS, has had a consistent backlog of approximately 250-300 cases for each of the past three years, with some growth resulting from "downsizing" and a bit more from the furlough. The NIH reports a current backlog of 1496 cases with some requests dating back to 1993. The component with the largest FOIA annual volume in the Government, FDA, reports a backlog at the end of 1993 of 2,316 of the 47,978 requests received; at the end of 1994, 5,731 of the 50,037 received; and at the end of 1995, 8,672 of the %0,606 received (most of FDA's requests are for highly technical commercial information).

Question 3. What other measures has your agency instituted to implement the President's commitment to the Freedom of Information Act?

Answer 3. The three major areas receiving greater attention as ways to implement the President's commitment to the Freedom of Information Act are: increased staff FOIA training at all levels of the organization; a vastly enlarged use of the Internet as a means of disseminating information, thereby reducing the need for the use of the FOIA as the mechanism to obtain information (FDA and HCFA efforts in this area are particularly noteworthy, and the Office of the Inspector General is planning to use the net to meet its responsibility to publish the names of sanctioned Medicare providers); and continual reexamination of FOIA policies and procedure to increase the authority of lower echelon units to release materials requested under the FOIA.

Question 4. What goals has your agency established for further improvements in its administration of the Freedom of Information Act in 1996?

Answer 4. Only the Health Care Financing Administration reports plans to add additional FOIA staff and further upgrade its processing equipment. All components, however, (including HCFA) plan to continue to rely on "more of the above," i.e. increased training, greater use of the Internet, and reexamination of release authorities to make them more efficient and better able to serve the public.

National Aeronautics and
Space Administration
Headquarters
Washington, DC 20546-0001

Reply to Attn of P

July 10, 1996

Mr. Richard L. Huff
Mr. Daniel J. Metcalfe
Co-Directors, Office of Information and Privacy
Suite 570, Flag Building
U.S. Department of Justice
Washington, DC 20530

Dear Messrs. Huff and Metcalfe:

In response to the Department of Justice memorandum of May 16, 1996, I am pleased to provide you with the enclosed report describing NASA's progress in implementing recent initiatives of the President and Attorney General to strengthen the Freedom of Information Act.

NASA senior management fully recognizes the importance of regularly undertaking customer-driven continuous improvement initiatives that accurately reflect their commitment to the Freedom of Information Act and openness in government. To that end, the enclosed report describes both those initiatives that been have successfully completed and those that are ongoing. The objective in all instances is to ensure that NASA remains responsive to the information needs of the American people.

Mr. Geoffrey H. Vincent, the Deputy Associate Administrator for Public Affairs, serves as my point of contact on all matters relating to the Freedom of Information Act. He may be reached at (202) 358-1400.

Respectfully,

Laurie Boeder
Associate Administrator for
Public Affairs

Enclosure

National Aeronautics and Space Administration
Headquarters Office of Public Affairs

Implementation of Initiatives of the President and Attorney General to Strengthen the Freedom of Information Act

Progress Report

The following numbered responses are keyed to the questions asked in the Department of Justice memorandum of May 16, 1996, concerning the Freedom of Information Act.

Response 1. NASA's experience in applying the "foreseeable harm" standard in analyzing whether to withhold information has been without difficulty. The types of records that have been the subject of "discretionary disclosures"and perhaps withheld under the 1981 guidelines (Exemption (b) (5)), were privileged inter/intra-agency memoranda.

Response 2. Progress in reducing FOIA backlogs continues. In November 1993, the FOIA request backlog in NASA was at 10 percent of total requests. By the end of May 1996, the Agency had reduced this backlog by half to approximately 5 percent of total requests.

This substantial reduction is attributable principally to additional personnel being assigned to FOIA offices at Headquarters and in the field, with assignments focused specifically on backlog reduction. In addition, NASA ensures that all FOIA personnel (permanent and temporary) receive proper training in order to optimally perform FOIA duties. In 1994, several new employees assigned to FOIA offices received the introductory FOIA class sponsored by the Department of Justice. Most of them went on to complete the advanced course in 1995.

Response 3. NASA has instituted other measures to implement the President's commitment to the Freedom of Information Act. For instance, in 1994 NASA Headquarters commissioned a quality improvement team to study the FOIA business process and identify improvements that would make it both more efficient and effective. A full cross-discipline team of professionals was involved in this effort, including a quality improvement specialist. This expert assisted the team in utilizing improvement and quality principles, concepts, and tools, as well as business process reeingineering techniques. As a result of the team's efforts, targeted improvements were identified and implementated. Additional process improvements are expected in the near future.

Another measure implemented was the upgrade of the computer system in the NASA Headquarters FOIA Office. For a quantum leap in computing power, old, slow machines running outmoded operating system and applications software were replaced by leading edge hardware and software. The upgrade of the FOIA computer system has substantially improved information sharing, both internally and externally. Prior to installation of the new computer system, only half of the FOIA request control process was automated. The balance of the work was paper intensive, involving a substantial volume of photocopying. Supported by the new computers, an automated tracking system was developed and installed in September 1995. Other improvements include the use of e-mail and the Internet. Internet activity involved establishment of a FOIA homepage on the World Wide Web. The page provides guidance on how to submit a FOIA request to NASA Headquarters and a pointer to the FOIA section of the Department of Justice Internet server.

In addition, for the past eleven years NASA has conducted an annual FOIA cconference. The annual conference is attended by NASA FOIA specialists and attorneys, and attorneys from the Office of Information and Privacy, Department of Justice. An overview briefing of FOIA cases from a government-wide perspective is provided by the DOJ representatives. They also participate with NASA personnel in the discussion of issues significant to the Agency. Since 1993, these conferences have been an important vehicle for emphasizing the President's commitment to the FOIA.

Response 4. Two major goals have been established for further improvements in the administration of the Freedom of Information Act during the coming year. The first involves continued streamlining of the NASA Headquarters FOIA business process. This requires reconvening the quality improvement team to conduct surveys to determine internal and external customer satisfaction. The information and data provided by the surveys will permit the development of metrics to measure improvements. When this effort succeeds at Headquarters, it will move on to the Agency's field centers.

The second goal is to expand the use of electronic information technology in the FOIA business process throughout NASA. The first step toward this goal will be to increase the number of FOIA offices at NASA field centers that have access to Internet e-mail and the World Wide Web. Ultimately, when current issues of security and electronic signature are resolved, it is expected that NASA will be able to rely mainly upon electronics in FOIA request processing, substantially reducing the need for paper documents.

(Prepared in the FOIA Office, Office of Public Affairs, NASA Headquarters, July 8, 1996.)

NATIONAL ENDOWMENT FOR THE HUMANITIES

WASHINGTON, D.C. 20506

Office of the General Counsel

June 27, 1996

Richard Huff
Director
Department of Information and Privacy
United States Department of Justice
Washington, DC 20530

RE: Freedom of Information Act

Dear Mr. Huff:

With apologies for the delay, I am enclosing herewith the response of the National Endowment for the Humanities to your request for information regarding the agency's implementation of President Clinton's initiative encouraging discretionary disclosure of information under the Freedom of Information Act.

If you have any questions concerning this matter, please contact me at (202) 606-8322.

Sincerely,

Michael S. Shapiro
General Counsel

Enclosure

FREEDOM OF INFORMATION ACT QUESTIONNAIRE

1. Applying the "Foreseeable Harm" Standard

As a small federal agency involved in grant-making activities, the National Endowment for the Humanities (NEH) receives requests under the Freedom of Information Act (FOIA) for the disclosure of a broad range of documents. Of these, the vast majority of requests result in the disclosure of the documents requested and do not involve the application of the "foreseeable harm" standard.

The NEH sometimes receives requests under the FOIA for documents related to the grant review process, in the usual case from a disappointed applicant. Under these circumstances, the NEH releases (in addition to a letter explaining the reasons for the rejection) the application, the names of panelists involved in the review of the application, and the comments of panelists (without attribution). Under Exemption Five of the FOIA, the "linkage" of the names of panelists and the opinions of outside expert consultants are not disclosed in order to facilitate the full and candid exchange of views in the peer review process, to facilitate the recruitment of highly qualified panelists, and to safeguard the deliberative process. The NEH has experienced few problems in administering its FOIA program under the foreseeable harm standard.

2. FOIA Backlogs

The NEH generally has not and currently does not have any backlogs in responding to FOIA requests. We respond to virtually all requests within the 10-day statutory time frame.

3. Agency Commitment to the Freedom of Information Act

The NEH periodically reviews its policies with a view toward to the fullest possible disclosure of information under the FOIA consistent with the agency's need to provide for a sound peer panel review process to assist the Endowment in discharging its statutory obligations.

4. Goals for Further Improvements

The NEH currently is experiencing few difficulties in administering its FOIA program in a timely manner despite staff reductions. The NEH hopes to be able to continue its successful administration of the program in 1996.

DEPARTMENT OF VETERANS AFFAIRS
Washington DC 20420

JUN 25 1996

Richard L. Huff, Director
Office of Information and Privacy
U.S. Department of Justice
Washington , DC 20530

Dear Mr. Huff:

As the Freedom of Information Act (FOIA) Officer for the Department of Veterans Affairs (VA), I am responding to the Attorney General's memorandum dated May 16, 1996, regarding four questions on VA's progress in implementing initiatives under the Freedom of Information Act. Listed below are the questions and our answers.

1. What has been your agency's experience in applying the "foreseeable harm" standard in analyzing whether to withhold information? What types of records have been the subject of "discretionary disclosures" that would have been withheld under the 1981 guidelines?

VA continues to disclose information to the fullest extend allowed by law. Our Office of the General Counsel "foreseeable harm" standard has not had a major impact on their decision-making as to withholding information because, at both the initial and appellate levels, they have applied this principle for many years. The Veterans Health Administration continues to withhold mainly Medical Inspector Reports, Site Visit Reports, criminal investigations and Administrative Investigation Boards.

2. What progress has been made in reducing FOIA backlogs (include backlog status for 12/31/93, 12/31/94 and 12/31/95) and what plans are in place to improve backlog reduction.

Our FOIA responsibilities are decentralized, and most of the administrations and staff offices within the VA did not have a backlog. However, our Office of Inspector General (OIG) has a backlog as indicated below:

FOIA backlog as of 12/31/94 - 41
FOIA backlog as of 12/31/94 - 54
FOIA backlog as of 21/31/95 - 42

While these backlog totals show 41 for the calendar year ending 12/31/93 and 42 for the year ending 12/31/95, the OIG has actually decreased the backlog

significantly as a percentage of total requests received. Since 1994, the number of FOIA requests has sharply increased and the calendar year 1995 results are therefore considered an improvement.

OIG's FOIA work plan requires FOIA cases to be worked on a first in, first out basis, with exceptions justified. Complex cases and cases that require review of voluminous data and several days/weeks to complete are worked simultaneously with quick turn around to prevent an increase in the backlog. This process has proven to be effective in reducing and preventing further backlogs.

3. What other measures has your agency instituted to implement the President's commitment to the Freedom of Information Act?

Across the board throughout the department, VA offices has either established or are improving their automated tracking systems. We are presently clarifying and simplifying our rules for submitting a FOIA request and are continuing to look for ways to train personnel handling FOIA requests. In one office, we are recruiting for an additional FOIA position and using existing staff on a part-time basis (a minimum of two hours daily) to address our backlog on an ongoing basis.

4. What goals has your agency established for further improvements in its administration of the Freedom of Information Act in 1996?

VA plans to continue to improve its tracking system so that all material are analyzed, researched, and handled within the required time frame for an agency response.

If you have any questions, or if further assistance is required, please call me at (202) 273-8135 or have a member of your staff contact Barbara Epps at (202) 273-8013.

Sincerely,

Donald L. Neilson, Director
Information Management Service

General Services Administration
Office of Management Services and Human Resources
Washington, DC 20405

Mr. Richard Huff
Co-Director
Office of Information and Privacy
U.S. Department of Justice
Washington, DC 20530

Dear Mr. Huff:

Attached are the General Services Administration (GSA) comments as required by the Attorney General's memorandum of May 16, 1996, in connection with implementing initiatives under the Freedom of Information Act (FOIA). GSA supports the President's initiative to establish new litigation guidance for the release of information, encouraging "discretionary disclosure" of information, and reducing backlogs of FOIA requests. Our specific comments in reference to this initiative are as follows:

1. GSA has traditionally applied a strict interpretation of the "foreseeable harm" standard so as to allow for the greatest possible access to agency information. Unless demonstrable harm can be proven discretionary disclosure has been routinely been invoked.

2. GSA has no serious backlog problems, therefore the agency tracking system does not capture such data. The only area of concern in this regard is the FTS2000 program that typically receives requests for information requiring the review of thousands of pages of documentation each. This has been addressed to some extent by contracting with the National Technical Information Service to make sanitized versions of the contract and modifications available to the public in electronic format. This allows access to the information without having to use the FOIA process.

3. Other measures GSA has instituted include the placement of many types of commonly requested information such as delegations of procurement authority and procurement schedules on bulletin boards so the public can access them easily by computer without having to submit FOIA requests.

4. GSA continues to work towards more efficient and effective FOIA information access and dissemination processes that will better serve the inquiring public. Further improvements in our administration of the FOIA during 1996 will include more use of bulletin boards and other easily accessible databases to allow the public to obtain desired information with a minimum of effort.

If we can be of further assistance, please contact Mr. John Hughes, the GSA FOIA Officer, on 202-501-2162.

Sincerely,

Gregory L. Knott
Director, Office of Management Services

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

OFFICE OF THE CHAIR

June 20, 1996

Mr. Richard L. Huff
Mr. Daniel J. Metcalfe
Co-Directors
Office of Information and Privacy
U.S. Department of Justice
Washington, D.C. 20530

Dear Messrs. Huff and Metcalfe:

Enclosed, please find the Commission's response to the Attorney General's memorandum of May 16, 1996, requesting data on progress implementing the Department's Freedom of Information Act initiatives.

I trust that this information will assist your efforts to achieve the President's goals under the Freedom of Information Act. Please do not hesitate to request any other information that may be needed.

Sincerely,

Elizabeth A. Moler

Elizabeth A. Moler
Chair

Enclosure

RESPONSE OF THE FEDERAL ENERGY REGULATORY COMMISSION TO THE DEPARTMENT OF JUSTICE'S INQUIRY ON FREEDOM OF INFORMATION ACT IMPLEMENTATION

The Attorney General has asked for information in four areas -- discretionary disclosure, FOIA backlogs, other measures, and goals for further improvements in administering the FOIA. We respond to each in turn.

DISCRETIONARY DISCLOSURE

We now have two and a half years of experience in applying the "foreseeable harm" standard when determining whether to release protectible materials on a discretionary basis. We have found that records protectible under the "low 2" exemption (administrative information) and the deliberative process privilege (predecisional) are those most likely to be the subject of a discretionary disclosure. In one instance, we released information subject to the attorney/client privilege (consisting of form memos and transmittal memos with brief policy discussions).

The types of deliberative material that have been disclosed since the new policy took effect that might previously have been withheld include older predecisional documents where no unresolved issues remain concerning the matter discussed, and drafts that do not differ significantly from the final products.

BACKLOG

The Commission has no significant backlog of FOIA matters pending months or years. However, if we include in backlog all requests pending for more than 10 days at the end of each year, there has been a slight increase in backlog percentage over the last three years.

Calendar year	1993	1994	1995
Backlog as of 12/31 (# past the 10-day limit)	13	20	21
Total processed in year	126	150	146
Percentage backlog	10.3%	13.3%	14.4%

These results reflect the fact that more requests were filed in December 1995 than in the same month of each prior year, as well as the increase in volume and complexity of many requests combined with a decrease in staff assigned to FOIA matters. Also, more time must now be devoted to individual FOIA requests because a more thorough review is now required under the Attorney General's policy to determine whether a discretionary disclosure is appropriate. Staff generally gathers more information from program offices than was previously necessary regarding the type

and extent of harm that might result from disclosure. For example, staff now routinely analyzes drafts and compares them to final products to determine whether the drafts are suitable for discretionary release.

During the past three years, the Commission has had very few FOIA appeals. Of these, none was pending past the 20-day limit at the end of any calendar year, nor issued late.

The offices that process FOIA requests have instituted some reforms to help improve backlog problems. The procedures for searching the Commission's central files have been modified so that responsive documents can be located and reviewed more efficiently. Responsibility for searching documents is now placed within the offices that created them. Further, the FOIA office has created an internal tracking worksheet to organize tasks for quicker response times.

BROADER FOIA ISSUES

A number of other measures have been effected to implement the Administration's efforts to increase openness and improve customer service in the federal government. Staff initiated a meeting with all of the agency's FOIA liaisons to each program office to review FOIA processes. The meeting emphasized proper search procedures, reminded all offices of the need to search electronic records as well as paper records for responsive documents, and underscored the importance of prompt turnaround times. Additionally, the FOIA office has revised its standard forms and memoranda to make procedures clearer for program office staff.

The FOIA office has a strong emphasis on customer service. Staff interact regularly with FOIA requesters, proactively providing information on the status of requests, informing requesters of agency procedures, and helping requesters to provide additional information or reframe requests when appropriate. In addition, the office provides other services to requesters, particularly those unfamiliar with the FOIA or from outside the Washington, D.C. area, such as supplying a copy of the docket sheet for specific proceedings to permit identification of all the records that are available through the Public Reference Room.

GOALS FOR IMPROVEMENT

Several goals are identifiable. First, the General and Administrative Law section of the Office of General Counsel, which handles the legal aspects of the FOIA process, is developing a case tracking database system. The system should enhance the section's ability to assign work quickly, follow responses through internal concurrences, delegate work in the

event of an employee's absence, and coordinate more easily with the FOIA office. The FOIA office also plans to enhance its tracking ability by adding the review and appeals processes into its existing tracking system. This will have the added benefit of making report preparation more efficient.

Second, FOIA officials are setting goals for training employees on how to recognize, maintain, and search for electronic records including word processing documents, incoming facsimile correspondence, and both intra-agency and internet electronic mail messages and attachments.

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

June 18, 1996

The Honorable Janet Reno
Attorney General
Washington, DC 20530

Dear Madam Attorney General:

This is in reference to your May 16, 1996, Memorandum to the Heads of Departments and Agencies, requesting data on the progress that the Department of Transportation (DOT) has made in implementing the Department of Justice (DOJ) 1993 Freedom of Information Act (FOIA) guidelines.

The DOT FOIA policy and oversight is the responsibility of the Office of the General Counsel, and the General Counsel's FOIA Division is responsible for processing FOIA requests seeking records maintained in the Office of the Secretary (OST). Each DOT administration is responsible for processing FOIA requests seeking records of that administration. Since our last report to DOJ on backlogs, the Inspector General (IG) and the Bureau of Transportation Statistics (BTS) have established FOIA Coordinators responsible for responding to requests for the records of those offices. Also, pursuant to the ICC Termination Act of 1995, the Surface Transportation Board was established as an independent agency within the Department. Under that authority, the Board is responsible for responding to FOIA requests for its records.

With regard to our application of the "foreseeable harm" standard, while the Department has always fostered a policy of openness, we renewed our efforts to ensure all records are reviewed with discretionary disclosure as a primary consideration. The offices and administrations have reported that their emphasis on discretionary disclosure has resulted in additional disclosures in many cases. The requirement that record holders specifically identify a harm has resulted in careful review for discretionary disclosure. Record holders are working closely with FOIA officials and agency attorneys in determining whether applicable exemptions apply before releasing information to the public.

2

With respect to backlogs, the Department reported the following backlogs for 1993 pursuant to DOJ's 1993 request: OST approximately 20; Federal Aviation Administration (FAA) 43; Federal Highway Administration (FHWA) 100; Federal Railroad Administration (FRA) 111; Research and Special Programs Administration (RSPA) 11; and United States Coast Guard (USCG) 260. Four Administrations, National Highway Transportation Administration (NHTSA), Federal Transit Administration (FTA), Saint Lawrence Seaway Development Corporation (SLSDC), and Maritime Administration (MARAD), reported no backlog for 1993.

The Department continues to emphasize backlog reduction, despite our current budgetary constraints. For 1994 and 1995 the following five administrations reported no backlog: NHTSA, MARAD, BTS, SLSDC, and FTA. The OST backlog increased in 1994 to 151 at the end of the calendar year, due to a FOIA Office vacancy, but was reduced to 20 by the end of 1995. RSPA reported 39 for 1994 and 5 for 1995; FHWA reported 81 for 1994 and 110 for 1995; and the IG first calculated a backlog of 93 requests in March of 1995 and reports 85 at the end of 1995. The FRA reports an approximate backlog of 100 for both 1994 and 1995. The FAA and the USCG have decentralized FOIA processing systems, therefore statistics are not readily available for those administrations. The FAA has decentralized their FOIA program since 1993 and reports that decentralization is facilitating immediate coordination of FOIA requests so that there is no backlog of unprocessed requests.

Based on the available comparison statistics, it appears that the Department is generally at or below 1993 backlog levels, while the number of requests received are increasing each year.

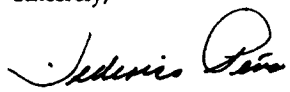
The following Department initiatives reflect our implementation of the President's commitment to the FOIA :

- development and acquisition of automated tracking systems
- use of imaging systems to automate responses
- development of standardized response language
- development of FOIA processing guidance
- use of FOIA newsletters to staff
- development and presentation of training and workshops
- removal of unnecessary steps in the appeals process
- creation of ongoing Department FOIA Focus groups:
    - °Best Business Practices-Handbook and Policy
    - °Training
    - °Affirmative Disclosure-Internet and Dockets
    - °National Performance Review (NPR) Issues
- development of a Department FOIA Brochure (draft)
- development of a Department FOIA Internet page (draft)
- development of Department NPR customer service standards (draft)

3

The Department goals for 1996 for further improvements are for continued emphasis on backlog reduction and high standards for FOIA processing through the use of technology, affirmative disclosure, training, and streamlining of the FOIA process. The Department will continue to address these issues through the Department FOIA focus groups mentioned above. The Department is committed to excellence in service to the public and FOIA processing is part of that commitment.

Sincerely,



Federico Peña

cc: Richard L. Huff
Daniel J. Metcalfe
Co-Directors, Office of Information and Privacy
U.S. Department of Justice

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

June 14, 1996

Mr. Richard Huff and
Mr. Daniel Metcalfe, Co-Directors
Office of Information and Privacy
U.S. Department of Justice
Flag Building, Suite 570
Washington, D.C. 20530

Dear Messrs. Huff and Metcalfe:

In response to Attorney General Janet Reno's questions asked in a May 16, 1996, memorandum to the heads of departments and agencies, please find the following answers on the Department of Education's progress in implementing Freedom of Information Act (FOIA) initiatives:

1. *What has been your agency's experience in applying the "foreseeable harm" standard in analyzing whether to withhold information? What type of records have been the subject of "discretionary disclosures" that would have been withheld under the 1981 guidelines?*

   The FOIA Office of the Department of Education has tried to implement the "foreseeable harm" standard established by the Attorney General's memorandum of October 4, 1993, with minimal success. For example, in April 1994, a letter from the law firm of Dow, Lohnes & Albertson requested copies of the Office of Postsecondary Education's (OPE's) Program Review Guide. This guide had been previously withheld under a "high 2" exemption, related to internal personnel rules and practices. It was not until October 1995 that the redacted copy was made available for release to the public. It is now a part of the "FOIA reading room" materials. The amount of staff effort required to complete this redaction, combined with a reduction in staff dedicated to the FOIA process, has limited the Department's progress in this area.

2. *What progress has been made in reducing FOIA backlogs (include backlog status for 12/31/93, 12/31/94 and 12/31/95) and what plans are in place to improve backlog reduction?*

   Some progress has been made over the past three years to reduce the FOIA request backlog. The backlog was 180 FOIA request cases in December 1993, 191 cases in December 1994, and 277 cases in December 1995. These backlog numbers represent 9% or less of the total number of FOIA requests received by the Department for each year. In calendar year 1993 and 1994, there were two (2) full-time equivalents (FTEs) assigned to the FOIA staff. In 1995 and today, there is one (1) FTE assigned.

There are several actions being taken or options under consideration to improve the processing of FOIA requests, including reducing the backlog. Examples include the following:

- A temporary college intern has been added to the FOIA staff to help during the three months this summer;
- Information Resources Group (IRG) management is reviewing and considering staff reassignments;
- Utilizing information technology to better facilitate the FOIA process is being evaluated;
- More frequent/better training of our Principal Office (PO) FOIA contacts, program officials, and managers;
- Consideration being given to possibly of utilizing contractors to assist in processing FOIA requests; and
- Consideration being given to including in appropriate Departmental staff's Performance Agreements, FOIA related performance element(s) and standard(s).

3. *What other measures has your agency instituted to implement the President's commitment to the Freedom of Information Act?*

Please refer to the Department's response to questions #2 and #4.

4. *What goals has your agency established for further improvements in its administration of the Freedom of Information Act in 1996?*

The Department is committed to the goal of ensuring compliance with the letter and full intent of the FOIA and related policies. This includes ensuring openness of the government, presumed disclosure of requested information, and timely response to FOIA requests. In addition to the items presented in response to question #2, the Information Management Team has established the following customer service goals/standards for FOIA:

- Acknowledgement postcard mailed to requesters as soon as possible, but no later than 2 workdays after receipt of FOIA request.
- Copies of request sent to appropriate POs as soon as possible, but no later than 2 workdays after receipt of FOIA request.
- Ensure full/partial denials are in full compliance with FOIA exemptions and the intent of the administration.
- Maintain a high level of quality in FOIA responses minimizing the number of appeals - maximum of 10% of the number of full/partial denials issued annually.
- Maintain a high level of quality in FOIA responses minimizing the number of appeals which are upheld - maximum of 20% of appeals filed are upheld.

- 25% reduction in the year end backlog - reduce year end backlog percentage of total FOIA requests received during the calendar year from 9% to approximately 7% or less.
- Ensure annual FOIA report is submitted to Congress on or before due date.

I wish to close by saying the Department is committed to ensuring compliance with the letter and full intent of the FOIA and the administration's policies. If you have any questions regarding the information presented, please contact Kent H. Hannaman, Information Management Team Leader, Information Resources Group, on 202-708-5207, or via Internet at kent_hannaman@ed.gov.

Sincerely,

Gloria Parker
Director
Information Resources Group

U.S. AGENCY FOR
INTERNATIONAL
DEVELOPMENT

JUN 14 1996

Mr. Richard Huff, Director
Office of Information & Privacy
Department of Justice
Flag Building, Suite 570
Washington, D.C. 20530

Dear Mr. Huff:

This is in reply to the Attorney General's Memorandum of May 16, 1996 for information on our efforts to fulfill the President's commitment to "discretionary disclosure" of information, and reducing backlogs of Freedom of Information requests.

Below are our replies to the questions concerning our progress in implementing our initiatives under the Freedom of Information Act (FOIA).

1. **What has been your agency's experience in applying the "foreseeable harm" standard in analyzing whether to withhold information? What types of records have been the subject of "discretionary disclosures" that would have been withheld under the 1981 guidelines?**

In the past two years, the number of instances in which our Agency has considered applying the (b)(5) Exemption has increased due to two factors: (a) an increase in requests dealing with policy and decision-making activities and (b) an increase in the use of electronic mail by our Agency's employees, especially overseas employees. The latter factor has had a tremendous impact because decision-making discussions that would have been held orally in the past now are often held via e-mail establishing a record of the communication.

The number of times that our Agency has actually invoked the (b)(5) Exemption has also increased. In 1993 it was invoked 10 times; in 1994 12 times; and in 1995 22 times. At the same time that this increase has been taking place, we have, using Attorney General Reno's guidelines, released an increasing amount of information that we would have withheld in the past under (b)(5). The following are prime examples. Deliberative-process documents containing embarrassing remarks about an individual or other organization would have been routinely withheld in the past under (b)(5). Today,

the possibility of embarrassment to the Agency is not a determining factor in our decision-making process concerning the use of (b)(5). In the past, draft documents would have received a "blanket" withholding under (b)(5); that is no longer the case. Mundane "attorney-client" documents which in the past would have been routinely withheld are now released.

2. **What progress has been made in reducing FOIA backlogs (include backlog status for 12/31/93, 12/31/94 and 12/31/95) and what plans are in place to improve backlog reduction?**

New procedures were put into place in November 1994 to streamline our processing procedures. We developed better tracking systems, form letters, customize training, and added personnel. All of the above has enabled us to close all of the 626 cases from 1993. Out of 544 cases in 1994, only 1 case remains open and from the 467 cases for 1995, 50 cases remain open.

3. **What other measures has your agency instituted to implement the President's commitment to the Freedom of Information Act?**

The Agency has purchased from the Department of State an automated FOIA processing system. This system will be a comprehensive information management system for automating the declassification process and speeding up the processing of FOIA cases. This will help in our complying with President Clinton's FOIA Memorandum directing all agencies to handle their FOIA requests "in a customer-friendly manner," and reduce existing backlogs.

4. **What goals has your agency established for further improvements in its administration of the Freedom of Information Act in 1996?**

The following are steps that the Agency is taking to further improve the administration of the FOIA:

- Reengineering internal FOIA processing system.
- Updating our FOIA/PA Regulations (prior regulations dated from May 30, 1975).
- Conducting training of FOIA/PA staff and key agency personnel on requirements of the FOIA/PA.
- Reducing case processing time.
- Continuing to work on reducing case backlog.

Thank you for extending our response time. If you have any questions, please contact Janet Allem or Willette Smith, in the Office of Customer Service and Oversight Staff on 703/516-1849.

Sincerely,

Larry E. Byrne
Assistant Administrator
Bureau for Management

PEACE CORPS

DIRECTOR

June 14, 1996

The Honorable Janet Reno
Attorney General of the United States
United States Department of Justice
Office of Information and Privacy
Suite 570, Flag Building
Washington, DC 20530

Dear Attorney General Reno:

This is in response to your memorandum dated May 16, 1996, requesting certain information related to the Freedom of Information Act. Please be advised that the Peace Corps has been able thus far to comply with the new guidance for the release of information. Indeed, at this time, the Peace Corps has no backlog of Freedom of Information requests.

1. The Peace Corps has not experienced any noteworthy problem when applying the "foreseeable harm" standard when the requests involved litigation in which the Agency was a party. Records that would have been withheld under the 1981 guidelines pursuant to the "discretionary disclosure" provision include applicant file information and contract information.

2. As previously indicated, no backlog of Freedom of Information requests exists at the Peace Corps. Over the past three years, the agency has responded to an average of 85 FOIA requests annually with a mean response time of 20 days. We have accomplished this task with a minimum of resources. In an effort to improve on our performance, we are developing a system to track FOIA requests that is expected to be operational by the end of FY '97.

3. Another measure that the Peace Corps has instituted to implement the President's commitment to the Freedom of Information Act is cross-training staff to make additional FOIA expertise available to the agency.

4. To further improve upon the administration of the Freedom of Information Act in 1996, the Peace Corps is upgrading its computer technology to enable agency offices to directly share information in order to respond in a more timely manner to FOIA requests.

I trust this information proves useful in your evaluation of the initiatives taken to improve responsiveness to requests submitted under the Freedom of Information Act. Please do not hesitate to contact me if you have any additional questions.

Sincerely,

Stanley D. Suyat

Stanley D. Suyat
Associate Director for Management

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 14, 1996

Richard Huff
Daniel Metcalf
Office of Information
and Privacy
U.S. Department of Justice
Suite 570
Flag Building
Washington, D.C. 20530

Dear Messrs. Huff and Metcalf:

This responds to the Attorney General's May 16, 1996, Memorandum seeking data concerning this Agency's implementation of the Freedom of Information Act.

As a full disclosure agency, it long has been our practice to make available to the public as much information as possible, consistent with personal and commercial privacy rights, statutory restrictions and investigative imperatives. In addition to those records made available pursuant to 5 U.S.C. §§552(a)(1) and (2), our own statute, 2 U.S.C. §431 et seq., and regulations, 11 C.F.R., require sua sponte disclosure of several categories of information. For example, we routinely disclose requests submitted by the public for the issuance of Advisory Opinions (2 U.S.C. §437f(d)); conciliation agreements reached in enforcement matters (2 U.S.C. §437g(a)(4)(B)(ii)); all reports and statements of financial activity filed with the Agency (2 U.S.C. §438(a)(4)); and investigative files in completed enforcement matters (11 C.F.R. §111.20(a)). Likewise, we place on the public record the results of audits conducted under 26 U.S.C. §§9007 and 9038. Additionally, we believe that this Agency was among the first to make broad categories of information available to the public via computer and other electronic means. For more detail on our disclosure activities, see the enclosed brochure.

Other than requests for campaign finance information on computer tape, or requests for access to the Commission's Direct Access Program (DAP), both of which we grant routinely, we receive a relatively small number of FOIA requests. Perhaps that is attributable to the fact that we already have made available the quantity of information noted above.[1] With respect to the non-computer, non-DAP FOIA requests, we had, in effect, practiced "discretionary disclosure" for a number of years, even before "foreseeable harm" became the standard. Thus, our experience after October, 1993, is unchanged from before. As one measure of our dedication to disclosure, one might look to the number of administrative appeals and court actions filed with respect to our determinations. Administrative appeals have averaged fewer than one per year for the past several years; we have not been a party to FOIA litigation since 1987.

Backlogs numbered 4 as of the close of 1993; 25 at the end of 1994; and 15 on 12/31/95. We believe the 1994 figure to be an aberration which resulted from an abrupt turnover in the FOIA staff during that year,[2] as evidenced by the decrease in the backlog as of the end of the following year. It is anticipated that, as this new staff develops more expertise in the processing of FOIA requests, the figure will decrease further by the conclusion of 1996.

Sincerely,

Ronald M. Harris
FOIA Officer

Enclosure

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1. Paper or microfilm copies of records, computerized indices and computerized printouts are available in the FEC's Public Records Reading Room. Computer tapes and access to our Direct Access Program are made available through FOIA requests.

2. Because of the small size of this Agency, the FEC's Press Officer serves concurrently as FOIA Officer.

Public Records on Commission Activity

A wide range of Commission documents can be readily reviewed or copied. These include the following:

- Sunshine notices, agendas, and agenda documents prior to the next meeting.
- Minutes, audio tapes, agendas, and agenda documents for past meetings.
- *Federal Register* notices, public comments on proposed rule making, public hearing documents and Explanation and Justification of Regulations.
- Advisory Opinion requests, public comments, and opinions issued.
- Files of completed compliance cases, litigation, and audit reports.
- Commission Memorandums, Bulletins, and Directives.
- FEC *Record* Newsletters and Annual Reports.

☑ Checklist To Research Commission Actions

- ❑ Computerized index of Completed Compliance Cases.
- ❑ Chronological listing of Completed Compliance Cases.
- ❑ Computerized index of Advisory Opinions.
- ❑ Computerized index of Open Meeting Agenda Documents.
- ❑ Card index of persons or groups who have received an advisory opinion, been audited, been a respondent in an FEC compliance case, or been involved with Commission litigation.
- ❑ Year End Supplement to the FEC *Record*, an index of the year's articles appearing in the monthly newsletter.
- ❑ Litigation Status Report indicating recent court activity.
- ❑ *Selected Court Case Abstracts*, a publication summarizing the important points of court cases involving the Commission. Also available on computer for searches of words, names, etc.
- ❑ *Annual Report*, a publication containing summaries of Commission actions, chronology of events, listing of *Federal Register* notices, outline of new or revised regulations, legislative recommendations, and statistics on Commission operations.
- ❑ Chronological file of selected news clips on the FEC and campaign finance. Other non-governmental reference works and studies on federal campaign financing are also available.
- ❑ Additional references and resources are available in the FEC Law Library, a federal depository library with an extensive collection of campaign finance related information.

How to Obtain Information

All documents in the Public Records office are open for public inspection and copying. Documents may be viewed and copied from microfilm or optical disk machines. Certain documents filed in the current election cycle are also available in paper copy. Computer indexes are used to locate the reports and cross reference information. Visitors to the office are not asked to sign in or otherwise identify themselves. The office is fully accessible to all.

Cost

The fee is $.05 per page for paper copies and $.15 per page for microfilm/optical disk copies. A listing of all fees is available. Payment may be made by cash, check or money order. And soon credit cards will be accepted. Payment is made after all copies are made which eliminates the need for rolls of nickels or dimes. Prepayment is required when ordering documents by mail. (Mail requests are sent by first class U.S. mail. Requesters who arrange for shipment by a private delivery service will have their package placed in the office's pick-up bin.)

Researchers may also deposit $25 or more into an account with the office to draw against for future copies of documents/indexes. Please contact the office for information on establishing an account.

A FAX service is available to receive the agenda of the Commission's upcoming open meeting. The office will also FAX documents (20 page limit). The fee is $2.00 per transmission, plus the copying fee. Prepayment is required.

State Offices

Researchers may also obtain campaign finance reports from the states' records offices. Contact the Public Records office for a list of these offices with their addresses and phone numbers. Many of these offices also participate in the State Access Program which provides a computer hook-up to the Commission's data base via a terminal located in the records office. Contact the Public Records office for a list of states with this capability.

Personal Computer

The Commission's Press Office and Data Division offer the Direct Access Program to researchers for on-line computer information. The program provides campaign finance information in formatted computer indexes and in raw data. The data is available for the current election cycle and the two previous election cycles. Contact the Press Office for more information.

8/95

Your Guide to Researching Public Records

What's available? How do I find it?

Office of Public Records
Federal Election Commission
999 E Street, N.W., Washington, DC 20463
202-219-4140 / 800-424-9530 / FAX 202-219-3880
Flashfax 202-501-3413

Hours: 9:00 AM – 5:00 PM, Monday – Friday
Extended hours during reporting periods

FEC Public Records Available to You on ...

Candidates

The Commission compiles nationwide statistics on federal campaigns to help researchers understand how particular candidates compare with national/state trends and rankings. For further research, indexes and computerized search systems are available.

Indexes Available To Research Candidates:

- Listing of names and addresses of Presidential, Senate and House candidates.
- Listing of names and address of candidates and their authorized committees.
- Listing of names and addresses of candidates running in the current election cycle.
- Listing of candidates with figures of their receipts, disbursements and cash on hand for the current election cycle.
- Listing of recent registrations of candidate committees.

☑ Checklist To Research A Specific Candidate:

- ❑ Listing of all documents filed by the campaign.
- ❑ Listing of all documents filed by the campaign and a cross reference to reports filed by other committees which disclose PAC or party contributions, independent expenditures (for or against) and communication costs.
- ❑ Summary financial figures on total receipts, disbursements, contributions (individuals, PAC, party), cash on hand, and debts owed to and by the campaign.
- ❑ Itemized list of individual contributions to the campaign.
- ❑ FEC compliance actions/litigation relating to the campaign.
- ❑ FEC audits of the campaign.
- ❑ FEC advisory opinions issued to the campaign.
- ❑ Campaign finance reports from 1972 to the present filed by the candidate and any authorized committees, itemizing receipts and disbursements.
- ❑ Personal Financial Reports filed by Presidential challengers, 1980 to present.
- ❑ Ask for a listing of the office in each state which should have a copy of a candidate's reports, or review our *Combined Federal/State Disclosure Directory* for other disclosures available in the states.

Pacs, Party and Other Committees

The Commission prepares summary financial figures on PACs, party committees and others, to provide a perspective on various groupings and rankings of the committees. Staff is also available to explain and assist in further researching a specific committee.

Indexes Available to Research Committees:

- Listing of all PACs and party committees, with addresses, treasurer names and ID numbers, arranged alphabetically or by state.
- Listing of PACs arranged alphabetically by sponsoring organization.
- Listing of PACRONYMS—the acronyms, abbreviations, initials and common names of PACs.
- Listing of PACs with figures of their receipts, disbursements and cash on hand for the current election cycle.
- Listing of PACs ranked by receipts.
- Listing of newly registered committees in the current election cycle.
- Listing of multicandidate committees with their date of qualification.
- Computer search capability for PAC names when only a key word in the title or treasurer's name is known.

☑ Checklist To Research A Specific Committee:

- ❑ Listing of all documents filed by the committee.
- ❑ Summary financial figures on total receipts, disbursements, contributions to federal committees, cash on hand and debts and obligations owed to and by the committee.
- ❑ Itemized list of individual contributions to the committee.
- ❑ Listing of contributions made to candidates by the committee, including independent expenditures for or against candidates.
- ❑ FEC compliance actions/litigation relating to the committee.
- ❑ FEC audits of the committee.
- ❑ FEC advisory opinions issued to the committee.
- ❑ Campaign finance reports from 1972 to the present filed by the committee, itemizing receipts and disbursements.
- ❑ Listing and computer search system of persons, corporations, labor organizations and others contributing to non-federal accounts of the political committees.

Individual Contributors

The Commission maintains a data base of individuals who have made contributions to political committees. For 1977 to 1988, contributions of $500 or more were entered. For 1989 to the present, contributions of $200 or more are being entered.

Individual Contributor Search Capability:

Data on individual contributors includes the following:

- Name
- Occupation or principal place of business
- City
- State
- Zip code
- Date of transaction
- Amount of contribution
- Name of committee disclosing the contribution

The following are examples of the various types of contributor searches that may be conducted:

- Search an individual contributor by their last and/or first name.
- Search an individual contributor by their principal place of business or occupation.
- Search an individual contributor by their city, and/or state and/or zip code.
- Searches may be performed by the date of the contribution or by the amount of the contribution.
- Search for a contribution by the committee receiving the contribution.
- Individual contributor searches may be performed one at a time or in multiple combinations to narrow the actual search. *Example:* All contributions to a particular committee on a specific date or all contributions to a candidate from contributors who list the same principal place of business.

Restrictions on the Use of FEC Disclosure Documents

Any information copied from such reports or statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

2 U.S.C. 438(a)(4).

JUN 13 1996

UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer
Assistant Secretary for Administration
Washington, D.C. 20230

Richard Huff, Esq
Office of Information and Privacy
Department of Justice
Washington, D.C. 20530

Dear Mr. Huff:

This is in response to your request for information pertaining to implementation of the Administration's October, 1993 initiative encouraging discretionary disclosure under the Freedom of Information Act (FOIA). We address each of your questions below, in the order they are set forth in the Attorney General's May 16, 1996 memorandum:

1. In response to the October, 1993 guidance on FOIA, the Department of Commerce instituted an administrative requirement of a written "foreseeable harm" analysis of all information withheld pursuant to a FOIA exemption. Preparation of the analysis requires a demonstration that any withheld material is properly exempt from disclosure and that there would be foreseeable harm in disclosure; the foreseeable harm must be set forth in the analysis. If no harm is articulated, or if the posited harm does not withstand further scrutiny by the responding Commerce agency, the information is released. As a result of this enhanced scrutiny, there has been an increase in disclosure of predecisional, deliberative documents exempt from disclosure pursuant to FOIA exemption (b)(5).

2. In an attempt to reduce FOIA backlogs, a new FOIA Officer position has been established in the immediate Office of the Secretary to handle the large number of requests addressed to that office. In addition, when an office receives an unmanageable number of requests, every attempt is made to detail employees from other offices to assist with the FOIA workload. As a result of these measures, the FOIA backlog was reduced slightly from December 1994 to December 1995. The FOIA backlog status for calendar years 1993, 1994, and 1995 are set forth below:

	CY93	CY94	CY95
Requests Received	1902	2166	2218
Requests Processed within 10 Days	1291	1428	1506
Extensions Granted	276	538	437
Requests Processed after Due Date	335	200	275

	12/31/93	12/31/94	12/31/95
Backlog Status	**611**	**738**	**712**

3. In addition to the undertakings discussed above, the Department of Commerce has instituted other measures to implement the President's commitment to FOIA. Shortly after the Administration's October, 1993 initiative was instituted, the Department's Office of the General Counsel (OGC) issued formal guidance on how to implement the Administration's discretionary disclosure policy. To assist in the implementation process, OGC conducts two-hour FOIA training sessions addressing both the Department's administrative FOIA procedures and legal issues, with an emphasis on discretionary disclosure and the application of a foreseeable harm standard. OGC has also established a FOIA officer of the day to answer questions about FOIA, including application of the foreseeable harm standard.

OGC has also organized a FOIA officers roundtable discussion group to facilitate communication among the Department FOIA officers. This provides a good forum for discussing FOIA issues and making sure that agencies are complying with FOIA law and policy and that they are working to meet response deadlines. The group has met once so far, and plans to meet again before the end of the year.

4. In the future, OGC plans to institute a program of advanced FOIA training, and the Department plans to continue monitoring offices for compliance with FOIA and also plans to continue exploring information technology and its implications for improving the FOIA process.

If you have any questions about the Department's FOIA program or this response, please contact me at (202) 482-0387.

Sincerely,

Brenda Dolan

Brenda Dolan
Freedom of Information Act
Officer

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

CHAIRMAN

June 12, 1996

The Honorable Janet Reno
Attorney General
Washington, D.C. 20530

Dear Madam Attorney General:

I am responding to your memorandum of May 16, 1996, regarding the Nuclear Regulatory Commission's experience in making discretionary disclosures of information and reducing backlogs of Freedom of Information Act (FOIA) requests. I have enclosed specific responses to each of the questions posed in your memorandum.

If you have any further questions on this matter, please contact me.

Sincerely,

Shirley Ann Jackson

cc: ✓Richard L. Huff, Co-Director
Daniel J. Metcalf, Co-Director
Office of Information and Privacy

Enclosure

1. What has been your agency's experience in applying the "foreseeable harm" standard in analyzing whether to withhold information? What types of records have been the subject of "discretionary disclosures" that would have been withheld under the 1981 guidelines?

   Application of the "foreseeable harm" standard has resulted in an estimated 30-40 percent increase in discretionary disclosures of records that would ordinarily have been withheld under FOIA Exemption 5. Records that were previously routinely withheld as predecisional, attorney work product, and attorney-client privileged are now scrutinized much more closely to determine their actual potential for creating a "harm" if disclosed.

2. What progress has been made in reducing FOIA backlogs (include backlog status for 12/31/93, 12/31/94, and 12/31/95) and what plans are in place to improve backlog reduction?

   As of the end of December 31, 1993, 1994, and 1995, the number of pending requests were 66, 88, and 65, respectively.

   A team from the NRC FOIA office conducted an internal control review from June to August 1995 to determine the adequacy of staff offices' management controls and procedures for processing FOIA requests. That review uncovered several areas that could be improved; foremost was the need for each office to identify alternates to the office FOIA Coordinator to act on FOIA requests during the absence of the primary FOIA Coordinator. Each office was asked to name an alternate FOIA Coordinator.

   Each office director has designated a Senior FOIA Management Official to represent the office director in resolving FOIA issues that cannot be resolved by the office FOIA Coordinator. In July 1995, the FOIA office began notifying management at various levels, from the Senior FOIA Management Official up to NRC's Deputy Executive Director for Operations, on a weekly basis of delays in office response to the FOIA office on requests sent to them for action. This procedure has significantly improved office response to FOIA actions. In addition, each office is sent a monthly list of all its pending FOIA actions and the number of days that have elapsed since the action was assigned. At least quarterly, two charts accompany the monthly list that show the average age of completed requests and the average age of pending requests for that office and for all comparable offices, as well as the NRC average.

   In May 1996, we instituted a review of the FOIA office's administrative processes to search for additional areas for improving efficiency in processing FOIA requests.

3. What other measures has your agency instituted to implement the President's commitment to the Freedom of Information Act?

On July 27, 1994, NRC launched a Public Responsiveness Initiative and required all office directors to develop "Public Responsiveness Improvement Plans." These plans were published in the Federal Register on March 31, 1995, for public comment, and the final plan was published in January 1996. In the plan, the NRC set forth the following policy on Public Access to Documents:

> "It is the intent of the NRC to automatically make documents publicly available that are anticipated to be of interest to the public without anyone needing to file a Freedom of Information Act request.
>
> "The agency will review the types of documents that are of public interest that are not now routinely placed in the NRC Public Document Room (PDR) and local public document rooms (LPDRs). To the extent that categories of documents can be identified that are likely to be of interest to the public, NRC will expand the scope of information routinely disclosed. To this end, the NRC will make information available to the PDR and LPDRs whenever it is known or anticipated that there is or will be public interest in such information, except when there is a legitimate need to safeguard the information.
>
> "On occasion a document that has a requirement for protection and also has known or potential interest to the public can be released, in whole or in part, as a result of declassification or disclosures under the Freedom of Information Act. In these cases, the NRC will make the document or a portion thereof available to the public by placing it in the PDR and LPDRs."

In March 1995, NRC held an FOIA Users Conference that was open to the public. The conference was announced in the Federal Register and invitations were sent to NRC's most frequent FOIA requesters. The Executive Director for Operations, the Co-Director from the Office of Information and Privacy (DOJ) and an FOIA representative from each of the major NRC staff offices made presentations about the FOIA process. The staff of the NRC Public Document Room gave a special presentation and demonstration on the availability and accessibility of NRC records from the PDR. A major outcome of the conference was the weekly publication of a list and description of the subject of all FOIA requests received by NRC each week for public access on-line through FedWorld.

From May through July 1995, NRC conducted an FOIA Users Survey to assess public satisfaction with the NRC FOIA process, and from February through April 1996 conducted a resurvey. The analysis of the survey indicated a fairly high level of satisfaction with the NRC FOIA process; however,

better communication with requesters could improve the process. The FOIA office now sends a brochure to each new FOIA requester with the letter acknowledging receipt of the FOIA request to explain the many avenues for obtaining records and information from NRC in addition to an FOIA request.

4. What goals has your agency established for further improvements in its administration of the Freedom of Information Act in 1996?

In conjunction with the "Public Responsiveness Improvement Plans," the NRC set a goal of reducing by 20 percent the average time to complete FOIA requests, from an average of 51 days in FY 1994 to an average of 41 calendar days by the end of FY 1996. (As of the end of April 1996, the average time to complete requests in FY 1996 was 43 days.)

NATIONAL SCIENCE FOUNDATION
4201 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22230

June 11, 1996

OFFICE OF THE
GENERAL COUNSEL

Richard Huff and Daniel Metcalfe
Office of Information and Privacy
Department of Justice
Flag Building, Suite 570
Washington, D.C. 20530

Dear Messrs. Huff and Metcalfe:

This responds to the Attorney General's recent request asking agencies to provide information on the implementation of the Freedom of Information Act (FOIA).

The National Science Foundation (NSF) has always encouraged openness in responding to all requests for information. Because of the nature of records held by the agency, the majority of requests for NSF records are made outside of the FOIA.[1] In accordance with the policy of openness, our FOIA regulations begin with the statement that the agency "...will make the fullest possible disclosure of information to any person who requests information, without unnecessary expenses or delay."

In November 1993 this office issued a Legal Advisory to NSF staff (copy enclosed) that discussed the new policy advice issued by President Clinton and Attorney General Reno as it applied to some commonly requested NSF information, particularly internal agency memoranda, e-mail, and draft documents. As noted in that advisory:

> "The Foundation has always encouraged openness whenever appropriate, has long sought to manage its FOIA requests in an informal, user-friendly way, and will continue to do so."

NSF can be open with most FOIA requesters because NSF, with one exception -- the U.S. Antarctic program -- has no regulatory function, and its "core" records on review of research proposals are open to proposal applicants under the Privacy Act, save only for reviewer identities. *See Henke v. Department of Commerce and NSF*, No. 95-5181, Slip Op. (May 17, 1996). Thus, NSF FOIA procedures already largely conformed to the current discretionary disclosure policy and it represented a minimal change for the agency.

[1] A large portion of formal FOIA requests cover records protected by the Privacy Act.

Telephone (703) 306-1060 FAX (703) 306-0149

For the most part, any redactions of information from records released by NSF are based upon the withholding of proprietary or personal information under (b)(4) or (6) of the FOIA. Only the NSF FOIA Officer (or other appropriate staff within the Office of the General Counsel) may authorize the use of (b)(5) or one of the other exemptions as the basis for withholding of information. This procedure provides a focal point for assuring consistent application of the discretionary disclosure policy.

NSF historically has had no backlog of requests. Any inability to answer requests within the statutory time limit is due to (1) the voluminous amount of material requested and need to review in detail (e.g., we are currently processing over 1,500 pages of electronic mail in response to a requester), (2) the need to retrieve older records from the Federal Records Center before processing, or (3) the need to provide notice to the submitter of potentially confidential commercial information as defined under 5 U.S.C. §552(b)(4), as required by Executive Order 12600.

The position of NSF FOIA Officer was recently moved to the Office of the General Counsel to improve the administration of the FOIA. The agency also has in place a network of FOIA Representatives in each major Office and Directorate that work directly with the FOIA Officer to provide coordination and oversight of FOIA implementation.

We are in the process of revising our existing training materials, and developing new ones, that will improve the quality of our training process. Part of this new effort is aimed at providing FOIA representatives with training materials that will enhance their FOIA responsibilities. For example, the Office and Directorate FOIA Representatives will receive in-depth training that will help them to provide more advice directly to the program staff. Our training will continue to emphasize the discretionary disclosure policy.

If you have any additional questions, you may contact D. Matthew Powell, Assistant General Counsel, at (703) 306-1060.

Sincerely,

Lawrence Rudolph

Lawrence Rudolph
General Counsel

Enclosure

NATIONAL SCIENCE FOUNDATION
4201 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22230

LEGAL ADVISORY

Freedom of Information Act Policy

President Clinton and Attorney General Reno recently issued new policy advice on the Freedom of Information Act (FOIA). The FOIA generally provides that agencies make information available to the public upon request unless it falls within one of nine exemptions. The Act accommodates through its exemptions the countervailing interests that often exist in evaluating whether or not to disclose government information.

The new advice affirms the Act's presumption of openness. It encourages agencies to make "discretionary disclosures whenever possible" as a matter of good public policy and to remain aware that "requesters are users of a government service, participants in an administrative process, and constituents of our democratic society." NSF's FOIA procedures already largely conform to the new advice. The Foundation has always encouraged openness whenever appropriate, has long sought to manage its FOIA requests in an informal, user-friendly way, and will continue to do so. This Legal Advisory will discuss how the new "discretionary disclosure" advice applies to some commonly requested NSF information.

General Principles

The new advice recognizes that the Act's exemptions guard against harm to both governmental and private interests that disclosure may cause. However, it asserts that these exemptions are best applied only after consideration of the reasonably expected consequences of disclosure in each particular case. Accordingly, the advice replaces the previous Department of Justice standard for defending an agency's withholding of information ("substantial legal basis") with a new one that looks, instead, to the harm that may result from disclosure. The DOJ will defend the assertion of a FOIA exemption only where the agency reasonably foresees that disclosure would be harmful to the interest protected by the exemption asserted for withholding. Information that technically or arguably falls within an exemption ought not be withheld unless it need be. It encourages agencies to make "discretionary disclosures" whenever possible under the Act.

Discretionary Disclosures

An agency's ability to make a discretionary disclosure of information covered by a FOIA exemption depends on whether a separate legal barrier to disclosure applies. At NSF, information typically withheld often involves exemption 5 (protecting primarily an agency's decision-making process as reflected in drafts and internal agency memoranda or e-mail messages). This exemption is subject to no other disclosure restriction, belongs to the government, and can be waived by NSF where appropriate.[1]

---

[1] NSF can make discretionary FOIA disclosures without waiving exemptions for similar information. *See, e.g., Army Times Publishing Co. v. Department of the Air Force*, 998 F.2d 1067, 1068 (D.C. Cir. 1993); *Mobil Oil Co. v. EPA*, 879 F.2d. 698, 701 (9th Cir. 1989) (discretionary disclosure waives FOIA exemptions only for the specific information released; opposite result would discourage any discretionary disclosures and thwart the FOIA's purpose of broad public disclosure). Thus, disclosure to one FOIA requester obligates disclosure of the same information to all requesters, but requires no disclosure of similar information.

Information withheld under most other FOIA exemptions is subject to restrictions on disclosure that generally prohibit agency "discretionary disclosure". In NSF's case, two exemptions cover most of this information -- exemption 4 (protecting confidential, proprietary or commercial information in, for example, research proposals and contract bids) and exemption 6 (protecting personal privacy such as peer reviews, reviewer identities, and many personnel records). These exemptions belong to the specific business or individual and, if they apply to information, cannot ordinarily be waived by NSF.[2]

Accordingly, the new policy most directly affects NSF's handling of requests for exemption 5 kinds of material -- pre-decisional, internal documents reflecting the agency's decision-making process. Information covered by other exemptions (proprietary business information or personal privacy) will remain largely unaffected by the change.

Application to Some Commonly Requested NSF Documents

- Discretionary disclosure (release) may be appropriate for part or all of these documents --

Internal agency memoranda and e-mail -- Likely candidates for release include documents that: (i) contain largely factual material; (ii) involve non-policy advice; (iii) discuss routine matters; or (iv) concern an issue on which the agency had made its final decision. Continued withholding is more likely appropriate where the documents: (i) involve extensive policy analysis; (ii) concern controversial subjects; (iii) contain exploratory, candid, or blunt advice or recommendations; or (iv) concern an issue on which the agency has made no final decision.

Drafts -- Working drafts produced by the writer frequently contain merely editing changes or corrected errors. If not already discarded when the final document gets placed in the file, these working copies likely could be released upon receipt of a FOIA request. Treat drafts that reflect substantive decision-making or were produced for consideration or approval of others like internal memoranda. (See above.)

- The new policy advice makes no change in our treatment of these documents --

Awarded proposals and related documents -- Requests for awarded proposals must be routed through CPO. CPO will continue to process these, deleting confidential, proprietary and personal information if appropriate. We continue to disclose to PIs their own reviews, but not reviewer identities. Public or "third-party" requesters receive neither in order to protect personal privacy.

Declined proposals and related records -- Release these documents only to named PIs with reviewer identities deleted. Public or "third-party" requesters receive no information about declined proposals to protect proprietary interests and personal privacy.

If you have questions about this Legal Advisory, you may contact Matthew Powell, Assistant General Counsel, at 202/357-9435 or after mid-December at 703/306-1060, or on e-mail at "mpowell". For further information on FOIA matters generally, contact NSF's FOIA Officer, Mary Ellen Schoolmaster, in OLPA, 202/357-9498 or after late January at 703/306-1072, or on e-mail at "mschoolm".

11/93

[2] Many NSF records covered by exemptions 4 and 6, including proposal jackets and personnel files, are also protected from disclosure by the Privacy Act. "Discretionary disclosure" remains incompatible with the Privacy Act, and in most instances is prohibited by it.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20410-0001

June 10, 1996

TO: Department of Justice, Office of Information and Privacy

FROM: The Department of Housing and Urban Development

SUBJECT: The Freedom of Information Act (FOIA)

Response to questions for compiling data on the progress in implementing the Freedom of Information Act:

1. What has been your agency's experience in applying the "foreseeable harm" standard in analyzing whether to withhold information? What types of records have been the subject of "discretionary disclosures" that would have been withheld under the 1981 guidelines?

   This agency uses the "foreseeable harm" standard in about 60% of its responses. It is generally used to protect the name of a staff person that may have had input in the decision-making process under Exemption 5. There has been very little change in the use of discretionary disclosures which is commonly used in connection with items that could be withheld under Exemption 5 only.

2. What progress has been made in reducing FOIA backlogs (include backlog status for 12/31/93, 12/31/94 and 12/31/95) and what plans are in place to improve backlog reduction?

   In 1993 the backlogs were much smaller than they were in 1994 and 1995 because the incoming workload was smaller. In 1994 and 1995 there has been increased workload using the same staff or less. Plans in place to improve backlog are 1) sharing job responsibilities 2) have different categories of FOIA responses distributed throughout the agency 3) identify FOIAs that can be handled by the HUD Library 4) declassify appropriate requests outside of FOIA.

3. What other measures has your agency instituted to implement the President's commitment to the Freedom of Information act?

   1) form agency FOIA working group

   2) use computerized systems to process FOIA documents

   3) use of interactive video to update and train field office staff.

4. What goals has your agency established for further improvements in its administration of the Freedom of Information Act in 1966?

   1) Development of a computerized report that consolidates all information required by the Annual Report to Congress.

   2) have weekly working sessions with the field offices using available technology.

   3) Use of form letters rather than full language for completing a response.

   4) design a reading room to be administered under an existing contract.

   5) Conduct a HUD FOIA Users conference.

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

June 7, 1996

Richard Huff, Esq.
Daniel Metcalfe, Esq.
Co-Directors
Office of Information and Privacy
Department of Justice
Suite 570
Flag Building
Washington, DC 20530

Dear Sirs:

This is in response to the Attorney General's letter dated May 16, 1996, requesting information concerning each agency's experience in administering the Freedom of Information Act (FOIA). The four specific questions that were posed are repeated below with answers for the Board of Governors of the Federal Reserve System (Board).

1. What has been your agency's experience in applying the "foreseeable harm" standard in analyzing whether to withhold information? What types of records have been the subject of "discretionary disclosures" that would have been withheld under the 1981 guidelines?

The Board has made few changes under the "foreseeable harm" standard in analyzing documents for release, because an effort had been made at the Board, before the Justice Department adopted that standard, to release information that was arguably exempt under b5 where such release did not appear likely to have a negative impact on the functions or operations of the Board. An example of such "discretionary disclosure" is the release of old internal memoranda discussing and analyzing international economic developments.

2. What progress has been made in reducing FOIA backlogs (include backlog status for 12/31/93, 12/31/94 and 12/31/95) and what plans are in place to improve backlog reduction?

The Board has had success in reducing its FOIA backlogs. As of December 31, 1993, the Board had 88 outstanding requests, out of a total of 4584 requests received in 1993. As of December 31, 1994, the number of outstanding requests was 74, out of a total of 5368 requests received in 1994. On

December 31, 1995, the number of outstanding requests was 42, out of a total of 5699 requests received in 1995. While the Board continues to work to improve its response time, it is our experience that events beyond the agency's control will cause a certain level of backlog to persist. Such events include departure of FOIA staff and the time it takes to replace and retrain such staff members, as well as controversial issues before the Board that generate large numbers of FOIA requests. The Board's FOI Office prepares an internal report at the end of each month to determine the number and status of outstanding late FOIAs. In spite of the best efforts of all staff involved over the past five years, we have been unable to reduce that number much below 40.

3. What other measures has your agency instituted to implement the President's commitment to the Freedom of Information Act?

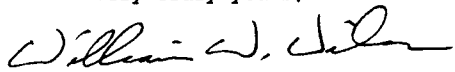
The Board's staff has instituted a policy of reviewing letters and memoranda issued by the Legal Division each month. These documents are reviewed and redacted for release, and then sent to the Board's FOI Office to be kept in a chronological file to respond to requests for information. This procedure has expedited the response to many requests, made on a regular basis, for all recent legal interpretations. As an adjunct to this procedure, copies of the cleared documents are placed in files of publicly-available information indexed by subject matter, so that these files are updated on a regular basis.

4. What goals has your agency established for further improvements in its administration of the Freedom of Information Act in 1996?

The Board is in the process of exploring methods of making information available on a more efficient and effective basis, such as through the Internet.

I hope this information is helpful. If you have any further questions, please contact Elaine Boutilier, Senior Counsel, at (202) 452-2418.

Very truly yours,



William W. Wiles
Secretary of the Board

DEFENSE MAPPING AGENCY

GC-960242QS 7 June 1996

MEMORANDUM FOR DIRECTOR, OFFICE OF INFORMATION AND PRIVACY
DEPARTMENT OF JUSTICE

SUBJECT: The Freedom of Information Act

1. This MEMO is in response to the Attorney General's memo dated May 18, 1996, requesting information regarding implementation of the Freedom of Information Act in the following areas::

a. application of the foreseeable harm standard,
b. backlog reduction,
c. agency initiatives to implement openness and
d. goals for administrative improvement.

2. Foreseeable Harm Standard. The Defense Mapping Agency (DMA) experience in application of the foreseeable harm standard has been limited. Each time the standard was applied, the presumption of disclosure was outweighed by an articulated harm to the protected interest, and exempt information was withheld, segregated or sanitized.

3. FOIA Backlog. From 1993 to 1995 the DMA FOIA backlog has decreased. (See attached briefing slides, FOIA Backlog and Performance Measures-Cycle Time.) Efforts to improve backlog reduction include (1) making more responses of commonly requested non-exempt information directly releasable from the records custodian, and (2) database queries for a list of pending FOIAs and follow up.

4. Agency Measures Enacted to Implement the President's Commitment to FOIA. The Office of General Counsel (office of primary responsibility for FOIA) formed a business process re-engineering (BPR) team in February 1996 to examine the content of FOIA requests for the past three years, to analyze the FOIA process and eliminate non-value added steps, to elicit from other government agencies, best practices in the administration of the FOIA, and to set goals for performance improvement. The BPR team effort resulted in findings about the administration of the FOIA and commonly requested types of information: contract, personnel and products.

HEADQUARTERS
☐ 8613 LEE HIGHWAY
FAIRFAX, VIRGINIA 22031-2137

REPLY TO THE FOLLOWING

☐ 4600 SANGAMORE ROAD
BETHESDA, MARYLAND 20816-5003

☐ 2509 S. SECOND STREET
ST. LOUIS, MISSOURI 63118-2389

☐ 12310 SUNRISE VALLEY DRIVE
RESTON, VIRGINIA 22091-3414

☐ 5801 TABOR AVENUE
PHILADELPHIA, PENNSYLVANIA 19120-5099

5. Content of Requests. Analysis of content resulted in an understanding that process needs to be responsive to the type of information being released. (For a breakdown of request types see the enclosed briefing slide, Findings: FOIA Requests.)

a. Contract. The Federal Acquisition and Streamlining Act (FASA) allows more contract information to be released by the contracting officer thus decreasing the need to make a formal FOIA request. Release of non-exempt contract information directly to the competing contractor is efficient because there are fewer handoffs within the agency. Entire documents which contain only non-exempt information should not be processed with documents containing both exempt and non-exempt information. If documents containing non-exempt information are released directly the requester, information is received sooner and less agency resources are expended in processing the request. This principle of direct release necessitates that the contracting officer have a clear understanding of the difference between exempt and non-exempt information. Point by point comparisons with other offerors, trade secrets and confidential financial information remain exempt from release after FASA, and processing of these documents requires review by the Initial Denial Authority.

b. Personnel. These requests, made by attorneys and employees under both FOIA and the Privacy Act, are made to acquire information used to challenge management decisions. These requests often occur in conjunction with litigation and always receive General Counsel review.

c. Products. Public awareness of DMA geospatial products generates demand. The publication on the internet of the availability of the Nellis Air Force Base Range Chart resulted in one request in 1994 ballooning into 131 requests in 1995. It has been requested that this item be made available for public sale. Because DoD Directive 5400.7, "DoD Freedom of Information Act Program" defines agency records to include maps, DMA regularly receives requests for maps and charts, which may not be available through other resources.

6. Processes to Service the Public/Capturing Cost. At DMA concurrent processes service public requests for products and information. A member of the public can choose the avenue for access to government information, therefore different agency processes may apply to an information request, depending on how it is received. The Office of General

Counsel keeps a database on FOIA requests which contains information on fees and trends (as well as the status and subject) of the request. Because data on providing information to the public is not aggregated throughout the agency, agency wide trends are difficult to ascertain and the full cost of providing information and products to the public is not captured. Information on the cost to service the public should be available to Congress when Congress is considering legislation to increase public access to information. Recent agency and government wide initiatives to be "customer oriented" mission priorities. Congressional initiatives to allow FOIA fees to return to the agency would assist in sharing the cost of this service with the beneficiaries.

7. Benchmarking. The BPR effort included a benchmarking of other government agencies for identifying best practices utilized in the FOIA process. Agencies have different approaches to the scope of communication with the FOIA requester, use of the internet (to take requests and offer home page), staffing, use of technology to redact, number and location of denial authorities (both IDA and FDA) and methods of raising agency awareness to FOIA responsibilities.

8. Goals for Further Improvement in the Administration of FOIA.
The BPR team identified the following process redesign goals:

a. Improve agency completion of fee sheets, so that all time spent by non-FOIA personnel can be accurately included in the cost to service the public;

b. Recommend a uniform process (with an agency-wide data base) for the public release of products;

c. Maintain open channels of communication with records custodians so that non-exempt information can be released directly to the requester;

d. Produce a training video to help make employees smart about providing information to the public;

e. Relocate the Initial Denial Authority and Final Denial Authority to management level of General Counsel to shorten processing time of denials and appeals; and,

f. Promote customer satisfaction as a means of litigation avoidance.

9. Questions regarding the DMA's FOIA initiatives should be directed to Laura Jennings, (301) 227-2268, Attorney-Advisor, General Counsel, Defense Mapping Agency, Mail Stop D-10, 4600 Sangamore Road, Bethesda, MD 20816.

3 Enclosures
FOIA slides

EDWARD J. OBLOY
General Counsel

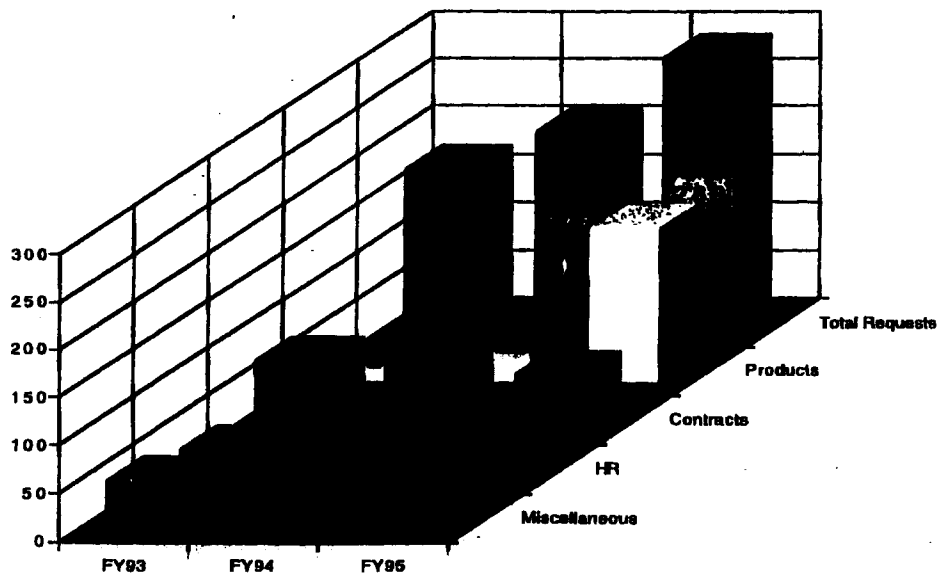
CF:
C.Y. Talbot

FOIA BACKLOG

	Requests Received	Requests Completed	Backlog
1993	171	144	27
1994	210	202	8
1995	289	301	0

PERFORMANCE MEASURES
1994 Requests
1995 Requests

FINDINGS: FOIA REQUESTS



Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902-1499

Craven Crowell
Chairman, Board of Directors

June 7, 1996

The Honorable Janet Reno
Attorney General
United States Department of Justice
Office of Information and Privacy
Flag Building, Suite 570
Washington, DC 20530

Dear Ms. Reno:

This is in response to your May 16, 1996, Memorandum for Heads of Departments and Agencies regarding the Freedom of Information Act (FOIA). Shown below is the information you requested regarding the Tennessee Valley Authority's progress in implementing the President's 1993 FOIA guidance:

1. What has been your agency's experience in applying the "foreseeable harm" standard in analyzing whether to withhold information? What types of records have been the subject of "discretionary disclosures" that would have been withheld under the 1981 guidelines?

   TVA has always made a strong effort to withhold information only to the extent it would be detrimental to the agency. However, since the 1993 guidance we have increased our effort to make discretionary releases. We have had the most success with making discretionary releases of certain records that we previously withheld under the deliberative process privilege incorporated within FOIA exemption 5. As evidence of our attempts to provide more information, our records show that we have reduced denials of records from a high of 92 instances in 1993 to 44 instances in 1995.

2. What progress has been made in reducing FOIA backlogs (include backlog status for 12/31/93, 12/31/94, 12/31/95) and what plans are in place to improve backlog reduction?

   TVA added one full-time employee in 1993 to assist with FOIA processing, and the reduction in our backlog reflects the benefits of this action.

1/1/93 Backlog	-	110
12/31/93 Backlog	-	64
12/31/94 Backlog	-	41
12/31/95 Backlog	-	65
5/31/96 Backlog	-	43

3. What other measures has your agency instituted to implement the President's commitment to the Freedom of Information Act?

   TVA has increased telephone communication with requesters to clarify requests, encouraged requesters to transmit their requests by facsimile to expedite receipt of requests, and increased the use of e-mail within the agency to expedite locating responsive records.

4. What goals has your agency established for further improvements in its administration of the Freedom of Information Act in 1996?

   Employees who process FOIA requests at TVA have performance goals related to the timeliness of FOIA responses; our computerized FOIA tracking system is being upgraded to provide faster entry, retrieval, and report generating capabilities; and we are installing an agency-wide electronic document management system (in increments) that will expedite the search for responsive records within the agency.

I hope the information we have provided is helpful. If we can be of further assistance, please let me know.

Sincerely,

Craven Crowell

PANAMA CANAL COMMISSION
OFFICE OF THE ADMINISTRATOR

BALBOA
REPUBLIC OF PANAMA

U.S. MAILING ADDRESS:
UNIT 2300
APO AA 34011-2300

JUN 6 1996

U.S. Department of Justice
Office of Information and Privacy
Suite 570
Flag Building
Washington, D.C. 20530

Attention: Mr. Richard L. Huff
Mr. Daniel J. Metcalfe

Dear Sirs:

This responds to the Attorney General's memorandum concerning the implementation of the Freedom of Information Act (FOIA) and measures taken by this agency to encourage discretionary disclosure of information and to reduce backlogs of FOIA requests.

In our response to your office dated November 22, 1993, it was reported that during calendar year 1993 the Canal agency had experienced a backlog of just one (1) request. Additionally, it was reported that the agency was experiencing no major difficulties in implementing the Act.

In response to the application of the "foreseeable harm" standard, this is to advise that recently this agency has been releasing certain deliberative information contained in employee promotion records which heretofore had been routinely withheld under FOIA exemption (b)(5).

Regarding the progress being made to reduce backlogs, I am pleased to report that we are not experiencing any major problems in this area.

With respect to measures instituted by the Panama Canal Commission to implement the President's commitment to the FOIA, as Administrator of the Panama Canal, I have disseminated an agency-wide directive advising Canal officials of their responsibilities in complying with the Act. Furthermore, members of the FOIA staff routinely conduct seminars for management, clerical and administrative personnel in order to keep those officials abreast of the latest developments and to remind them of their responsibilities in the implementation of the Act.

U.S. Department of Justice, JUN 6 1996

In addition, the Congress recently enacted a package of reforms to the Commission as part of the FY 1996 Defense Authorization Act (Title XXXV of Public Law 104-106). That legislation, which was based on the President's "Recommendations for changes to the Panama Canal Commission" transmitted to the Congress on April 12, 1994, converted the agency to a wholly-owned U.S. Government corporation, among other governance and organizational changes.

The objective of these and other pending legislative changes is twofold: 1) to allow the agency to function in a more business-like manner; and 2) to advance the efforts of the U.S. and Panama to effect a seamless transition of the Canal enterprise at the end of this century.

I trust the information above is responsive to your request. If you have further questions, we will be happy to respond.

Sincerely,

Gilberto Guardia F.
Administrator

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF SCIENCE AND TECHNOLOGY POLICY
WASHINGTON, D.C. 20506

June 5, 1996

MEMORANDUM FOR JANET RENO
THE ATTORNEY GENERAL

FROM: JOHN H. GIBBONS
DIRECTOR

SUBJECT: THE FREEDOM OF INFORMATION ACT

This memorandum is in response to your May 16 memorandum on the same subject. In your memorandum you asked four questions which I have answered below. As you review our response, please note that we are a small agency and receive relatively few FOIA requests.

1. **What has been your agency's experience in applying the "foreseeable harm" standard in analyzing whether to withhold information? What types of records have been the subject of "discretionary disclosures" that would have been withheld under the 1981 guidelines?**

   The Office of Science and Technology Policy (OSTP) has used the "foreseeable harm" standard sparingly in analyzing whether to withhold information. OSTP's policy has been to release information that is in the public interest. The types of records that have been the subject of "discretionary disclosures" have dealt with ongoing policy issues including the clean car initiative, encryption, and international science and technology agreements.

2. **What progress has been made in reducing the FOIA backlogs (include backlog status for 12/31/93, 12/31/94, and 12/31/95) and what plans are in place to improve backlog reduction?**

   OSTP did not have FOIA backlogs for the years 1993, 1994, and 1995.

3. **What other measures has your agency instituted to implement the President's commitment to the Freedom of Information Act?**

The measures undertaken by the OSTP include ensuring that all FOIAs are answered within the statutory time limit of ten-days for initial requests and twenty-days for administrative appeals. Since the implementation of Executive Order 12958, the agency has used E.O. 12958 as a guideline for declassification and/or discretionary disclosure of national security information. The agency also maintains a reading room for members of the public to review documents that may be requested under the Act.

4. **What goals has your agency established for further improvements in its administration of the Freedom of Information Act in 1996?**

None.

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

OFFICE OF
MANAGING DIRECTOR

June 5, 1996

Mr. Richard L. Huff
Mr. Daniel J. Metcalfe
Co-Directors
Office of the Attorney General
Office of Information and Privacy
Suite 570, Flag Building
Washington, DC 20530

Dear Messrs. Huff and Metcalfe:

This is in response to your memoranda of May 16, 1996, in which you requested information concerning the Federal Communications Commission's administration of the Freedom of Information Act (FOIA). Specifically, you asked agencies to respond to questions regarding "discretionary disclosure" of information and reduction of FOIA backlogs.

The following responses address the four questions posed in your memorandum.

1. *What has been your agency's experience in applying the "forseeable harm" standard in analyzing whether to withhold information? What types of records have been the subject of "discretionary disclosures" that would have been withheld under the 1981 guidelines?*

In applying the "foreseeable harm" standard, the Federal Communications Commission has not yet had occasion to release material that is within the scope of Exemption 5. Due to the nature and the type of materials requested, the agency has concluded that disclosure of such materials would result in actual harm to the decision making process. Consequently, the agency has no types of records that have been subject to release under that standard. We will continue, however, to review diligently all such requests to assure compliance with the discretionary disclosure initiative.

2. *What progress has been made in reducing FOIA backlogs (include backlog status for 12/31/93, 12/31/94 and 12/31/95) and what plans are in place to improve backlog reduction?*

Our agency has minimal FOIA backlogs. We make every attempt to process FOIA requests within the timeframes specified by the law. However, there may be instances where we require additional time to process FOIA requests because: 1) we need to confer with others within the agency; 2) material is archived; 3) requests for material are voluminous; 4) we need to contact the requestor for clarification to refine the scope of the

request; and 5) the requestor is not willing to pay for duplication or search costs beyond a specified amount.

As part of our internal measures to improve backlog reduction, the FOIA officer in the Office of Managing Director, monitors all FOIA requests from the date they are received in the agency. The responsible branch sends an e-mail message to bureaus and offices, on a periodic basis, to remind them of any outstanding FOIA requests that are approaching the 10-day initial response time requirement.

3. *What other measures has your agency instituted to implement the President's commitment to the Freedom of Information Act?*

Whenever possible representatives from our agency attend the Department of Justice's FOIA training courses to ensure that we are in compliance with the current state of the law. We also conduct internal "networking" programs with bureau FOIA contacts to improve agency coordination of FOIA requests, to clarify any questions that the bureaus may have relating to FOIA, and to reiterate the requirements under the law.

4. *What goals has your agency established for further improvements in its administration of the Freedom of Information Act in 1996?*

Our goal is to eliminate or minimize all FOIA backlogs. The Commission is extremely sensitive to the need to respond to individuals requesting material from the Federal Government. We will continue to monitor FOIA requests to ensure timely and expeditious disposition of all FOIA cases.

If you have any questions regarding this response, please contact Judy Boley, FOIA officer, by calling 202-418-0214 or by e-mail at JBoley.fcc.gov.

Sincerely,

Andrew S. Fishel
Managing Director

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P

National Transportation Safety Board
Washington, D.C. 20594

Office of the Chairman

JUN 5 1996

The Honorable Janet Reno
Attorney General
c/o Office of Information and Privacy
Department of Justice
Suite 570
Flag Building
Washington, DC 20530

Re: May 16, 1996 memorandum, *The Freedom of Information Act*

Dear Madame Attorney General:

The National Transportation Safety Board (NTSB) is happy to contribute to this review of the progress of Freedom of Information Act (FOIA) implementation, and especially the Clinton Administration's initiative encouraging discretionary disclosure of information.

As you know, the NTSB is a small, independent agency responsible for investigating domestic accidents involving all modes of transportation. The NTSB considers itself in the forefront of the movement towards openness in government. In each case we investigate, we create a public docket typically consisting of hundreds, if not thousands, of pages of reports and related and background documentation. Following each investigation, our staff produces factual reports delineating its factual discoveries relevant to the event. Next, the Board itself issues a report containing the salient facts, its analysis of why the accident occurred, and recommendations to prevent a recurrence. These reports, as well as supporting documentation, are made available to the public.

Reports issued by the Board itself are obtained both from the Board (whether FOIA is cited or not) and from the National Technical Information Service. Other material in the docket is routinely made available to all who request it as soon as it can be copied. Searches for other information are immediately undertaken.

It is my experience that the public, as well as the agency, is served well by this openness. The only materials typically withheld are those specifically protected in our enabling statute (*e.g.*, cockpit voice recorder tapes), voluntarily submitted trade secrets and confidential commercial information meeting the tests of Critical Mass Energy Project v. NRC, 975 F.2d 871 (D.C. Cir.

1992), cert. denied, 113 S.Ct. 1579 (1993), and preliminary staff work, often analytical, used by the Board in its formal determination of the cause(s) of an accident. In 1995, there were no administrative appeals of those few instances in which we denied requests for information. Fees are routinely waived when information is sought by non-commercial entities.

This year, in an effort to further improve the process (despite the lack of any complaints or concerns from the public), we have created new management tracking systems for FOIA requests. We have also conducted special training and information sessions for employees where we discuss FOIA policy and processing, including the conduct of searches, and emphasize the NTSB's resolve to guaranteeing the integrity and the timeliness of FOIA processing at the NTSB. Consistent with its belief in the public's right to know the activities of its government, and the relationship between public knowledge and safety in transportation, the NTSB will continue to identify and implement procedures and policies that ensure the maximum availability of information it has obtained.

Sincerely,

Jim Hall
Chairman

U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

The Special Counsel

June 4, 1996

The Honorable Janet Reno
Attorney General
U.S. Department of Justice
Washington, DC 20530

Dear Madam Attorney General:

I am writing in response to your memorandum to agency heads on May 16, 1996, requesting certain information about agency processing of Freedom of Information Act (FOIA) requests since 1993. Specifically, you requested information on agency implementation of guidance from the President and you on the foreseeable harm standard, and the reduction of FOIA backlogs. The following is a summary of the Office of Special Counsel's (OSC's) experience in both those areas since 1993.

Our experience with application of the foreseeable harm standard to increase discretionary releases of information has been very limited. This is due to the fact that we are an investigative and prosecutorial agency with records generally containing sensitive personal and other information from or about federal employee whistleblowers and others. Our records also include extensive documentation prepared in anticipation of possible litigation. In addition, where relevant, our decisions in FOIA matters must take into account statutory constraints at 5 U.S.C. § 1212(g) on the disclosure of information from our files. Therefore, broader discretionary releases of information from our files is constrained by significant privacy and enforcement interests.

On the subject of FOIA backlogs, we were current with FOIA requests at the end of 1993 and 1994. By December 31, 1995, however, OSC had 90 overdue matters pending. We have taken and are continuing to take measures to eliminate this accumulation of pending FOIA requests. Those measures include detailing additional professional and clerical personnel to process FOIA requests, and streamlining the process through the use of standardized forms and formats. Our goal is to eliminate the backlog by the end of FY 1996. In addition, OSC personnel will attend FOIA training by your agency during the next several months.

We are sensitive to our responsibilities under FOIA, and will continue to do everything we can in coming months to discharge them as effectively and efficiently as possible. Ms. Erin M. McDonnell, who is Associate Special Counsel for Planning and

Advice and the FOIA appeals officer, is available to discuss these issues with your staff. She can be contacted at (202) 653-8971 should there be any further questions about the information contained in this report.

Sincerely,

Kathleen D. Koch

Kathleen D. Koch
Special Counsel

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301-1400

PUBLIC AFFAIRS

04 JUN 1996

Ref: 96-CORR-058

MEMORANDUM FOR DEPARTMENT OF JUSTICE, OFFICE OF INFORMATION AND PRIVACY

SUBJECT: The Freedom of Information Act

This is in reply to the Attorney General's memorandum of May 16, 1996, which was received in this Directorate on May 28, 1996.

The nature of the questions posed by the memorandum requires input from many Freedom of Information Act (FOIA) offices under the military departments and separate defense agencies, nationally and world wide. Because this data is not maintained by a central Department of Defense (DoD) office, and because of the unusually short suspense time, this Directorate in its capacity of the FOIA policy oversight office for DoD, is responding on behalf of all of the aforementioned separate components.

Regarding item 1, before the receipt of the Attorney General's memorandum in October, 1993, this Directorate has always maintained that harm must be present before an exemption be applied. Even classified information is reviewed and if no harm can be discerned by disclosure, it is declassified and released. Nevertheless, after receipt of the President's and Attorney General's Memoranda, this standard was reemphasized in writing by the Secretary of Defense, and has been and will continue to be stressed in all DoD training sessions. The general types of records that have been subject to "discretionary disclosures" are records qualifying for exemption 2, exemption 5, and portions of exemption 7. Of these, most notable have been records containing priviledged information subject to the deliberative process, attorney work product privileges, occasionally attorney-client, as well as those meeting the low profile of exemption 2.

With respect to item 2, backlog data is not maintained in this office for the entire DoD, and because of the reasons outlined in paragraph two, above, we will be unable to provide it for all of our components. We are aware that at least one component has no backlog. This Directorate's backlog (the Directorate represents the Office of the Secretary of Defense and the Office of the Chairman of the Joint Chiefs of Staff and Joint Staff) of initial requests and appeals for 12/31/93 was 1,083, for 12/31/94 was 1,400, and for 12/31/95 was 1,577. To put these

numbers in perspective, this Directorate receives over 3,000 requests and over 90 appeals annually. The DoD as a whole received 118,651 requests and 1,399 appeals in 1993; 107,486 requests and 1,303 appeals in 1994; and 103,347 requests and 899 appeals in 1995. The DoD takes its FOIA responsibilities seriously, and makes every effort to comply with the statutory time limits. However, large volumes of requests and limited resources makes it difficult to process FOIA requests in a timely manner. Additionally, we have no control over the complexity, volume, or sensitivity of the records requested, or the number of requests submitted by increasingly sophisticated requesters. It must also be noted that the majority of records requested from the DoD contain classified, national security information, which requires a detailed review for declassification. As part of the continuing downsizing of DoD which places greater priority on maintaining our war fighting forces than on expanding noncombat related support staff, DoD FOIA offices may face strict budgetary constraints and employee cutbacks in the future. As an example, during the past three years, this Directorate alone has lost three personnel slots in grades 14, has downgraded one grade 15 to a 14, and faces the possibility of additional losses. While we realize that we must do more with less, I am not sure we can do more with less, quicker.

In response to items 3 and 4, this office is currently exploring the possibility of making a FOIA training film, which would institutionalize the FOIA, and hopefully improve the overall FOIA knowledge throughout DoD. However, this Directorate will continue to conduct personalized FOIA training nationally and world wide as resources permit. In addition, various DoD components are exploring technological products which may decrease processing time of FOIA requests, some have managed to increase their FOIA staffs modestly, and others have hired contractor personnel to work FOIA. At least one component has contracted a Business Process Reengineering Study to find ways to better its FOIA processing. As we learn what automated systems will aid in improved FOIA processing, efforts will be made accross the DoD to request funding for further automated support.

In closing, one must remember that no matter how technologically advanced we may become, nor how many personnel we hire, extreme care must always be used to insure that no information detrimental to our nation's security is disclosed, and this will always take careful, thoughtful review and time.

A. H. Passarella
Director
Freedom of Information
and Security Review

UNITED STATES OF AMERICA
RAILROAD RETIREMENT BOARD
844 NORTH RUSH STREET
CHICAGO, ILLINOIS 60611-2092

JUN 4 - 1996

Office of Information and Privacy
Department of Justice
Suite 570, Flag Building
Washington, D.C. 20530

Dear Sir or Madam:

This is in response to the Attorney General's memorandum dated May 16, 1996, requesting information from Federal agencies concerning the Freedom of Information Act initiatives of President Clinton.

The Railroad Retirement Board administers the Railroad Retirement and Railroad Unemployment Insurance Acts. Both of these Acts contain exemption 3 statutes which restrict disclosure of confidential personal information. Most of the records maintained by the Railroad Retirement Board fall within the protection of these confidentiality statutes. However, in applying the Freedom of Information Act to requests for records other than those protected by the exemption 3 statutes, the Board has always followed a policy of maximum disclosure and has steadfastly followed the President's commitment to openness in government.

The Board does not have a backlog of FOIA requests. All requests are handled within the time limits set forth in the Act and the regulations of the Board.

Sincerely,

Beatrice Ezerski

FOR THE BOARD
Beatrice Ezerski
Secretary to the Board

Selective Service System
National Headquarters / Arlington, Virginia 22209-2425

June 4, 1996

Mr. Richard Huff
Office of Information and Privacy
Suite 570, Flag Building
Washington, DC 20530

Dear Mr. Huff:

In response to The Attorney General's memorandum dated May 16, 1996, the following information is provided in response to the numbered paragraphs:

1. The kinds of records requested from the Selective Service System have not warranted consideration of application of the "foreseeable harm" standard. The majority of our requests are for Selective Service Registration Records and not for inter-agency or intra-agency memorandums or letters.

2. The Selective Service System's policy is to have all FOIA requests responded to within the 10 day suspense period. This Agency has never had a backlog of FOIA requests.

3. Our policy has always been to disclose all records entitled to be released.

4. We are a small independent agency and the number of FOIA requests average approximately 125 requests per year. Our program runs extremely well as it is currently operated, and no changes would appear to be necessary at this time.

Thank you for the opportunity to provide information regarding our implementation of the Freedom of Information Act.

Sincerely,

Paula D. Sweeney
Records Manager

U.S. COMMODITY FUTURES TRADING COMMISSION
Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5105
Facsimile: (202) 418-5543

June 4, 1996

Richard L. Huff
Daniel J. Metcalfe
Co-Directors
Office of Information and Privacy
U.S. Department of Justice
Washington, D.C. 20530

Dear Messrs. Huff and Metcalfe:

This letter is in response to the Attorney General's memorandum of May 16, 1996, requesting information concerning the implementation of the Attorney General's initiatives to improve the administration of the Freedom of Information Act. Our responses to the four questions you have asked are enclosed.

If you need additional information, please feel free to contact Edward Colbert at (202) 418-5101.

Sincerely,

Jean A. Webb
Secretary of the Commission

Enclosure

1. **What has been your agency's experience in applying the "foreseeable harm" standard in analyzing whether to withhold information?**

Due in part to the categories of records most frequently requested, our experience at the CFTC has been that while there may be instances where there might arguably be no "foreseeable harm" in releasing information, there are specific restrictions which either prohibit or greatly restrict our ability to exercise discretion. Section 8(a) of the Commodity Exchange Act prohibits release of "data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers," 7 U.S.C. Section 12(a). Similarly, Section 1.10(g) of the Commission's regulations, 17 C.F.R. 1.10(g), imposes clear restrictions on the release of certain financial filings. It's interesting to note that in calendar year 1995, exemptions (b)(3) and (b)(4), the exemptions used to withhold "position" and financial information, were invoked 76 and 87 times, respectively, while exemption (b)(5) was invoked only 27 times. The major effect of the "foreseeable harm" standard has been to reduce the amount of internal debate over borderline items. The areas ((b)(5) and (b)(7)) where "debate" is most common have probably shown only a slight increase in disclosure, since the de facto policy of this agency has (where not restricted by statute) been consistent with "foreseeable harm" since at least the mid-1980s. Processing time has, however, improved.

What types of records have been the subject of "discretionary disclosures" which would have been withheld under the 1981 guidelines?

One recent instance involved a decision on appeal to exercise discretion to release certain settlement records that would have otherwise been exempt from disclosure under the FOIA and the PA. (See FOIA Request No. 95-0356)

2. **What progress has been made in reducing FOIA backlogs (include backlog status for 12/31/93, 12/31/94, 12/31/94 and 12/31/95) and what plans are in place to improve backlog reduction?**

There are currently no pending requests for calendar years 1993, 1994, or 1995. Of the 209 Freedom of Information Act requests received during calendar year 1996, 49 requests had not received a final initial response from the CFTC as of May 28, 1996. Of the pending requests, only 16 are more than 20 business days old.

Our primary effort to reduce the FOIA backlog has involved improved distribution and management of request assignments. As a result of this effort, we believe there has been considerable improvement in response times. In 1993, we reported that 13.5% were answered within 10 calendar days. By comparison, our records indicate that over 24% of the requests responded to thus far during calendar year 1996 have been answered within 10 calendar days, and

over 33% have been answered within the 10 business day statutory time frame. Similarly, in 1993 we reported that 38.5% of the requests were answered within 20 calendar days. For calendar year 1996, that rate has improved to 43%, and 66% have been answered within 20 business days.

While it is a common practice for agencies to provide requesters with initial determination letters prior to the actual release of responsive records, due to a number of considerations we have not found it practical at this time to send determination letters until the actual processing of any accessible documents has also been completed. Therefore, our response completion rates include the time required to screen, redact and reproduce documents being made available to requesters.

3. **What other measures has your agency instituted to implement the President's commitment to Freedom of Information Act?**

We are currently conducting a comprehensive review of our Freedom of Information Act regulations. Revisions will include changes to key sections of our confidentiality regulations. The revisions will provide clarification to those filing Freedom of Information Act requests and streamline the confidential treatment submitter notification process. It is hoped that these improvements will result in a reduction in time required to process requests.

Similarly, a year ago the CFTC began publishing semi-annual tabulations of data from public financial reports filed by a major category of registrants. The purpose was to reduce the need for FOIA requests to obtain the same data and to reduce concomitantly the processing burden of such requests. Moreover, this publication permitted much wider dissemination of significant and comparative financial data about key intermediaries in the commodity markets.

4. **What goals has your agency established for further improvements in its administration of the Freedom of Information Act.**

We are currently exploring the possibility of using an electronic form to transmit Freedom of Information and Privacy Act search forms and responses throughout the agency. A significant amount of processing time is lost in delivering search forms to the appropriate office within the CFTC's headquarters and regional offices. The development of the capability of the various agency components to report their search results and recommendations electronically would greatly reduce the response time.

As part of an ongoing agency information sharing initiative, we are also considering the development of a comprehensive central database that would facilitate the search process by agency personnel to conduct searches electronically. This could have the effect of greatly reducing the number of offices now being routinely contacted in connection with requests requiring multiple office and Commission-wide searches.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW. 6TH FLOOR
WASHINGTON, D.C. 20006

OFFICE OF THE EXECUTIVE DIRECTOR

June 4, 1996

Mr. Richard Huff
Mr. Daniel Metcalfe
Co-directors, Office of Information and Privacy
Office of the Attorney General
Washington, D.C. 20530

Dear Sirs:

This is in response to the Attorney General's May 16, 1996 memorandum for heads of departments and agencies concerning the Freedom of Information Act.

The Federal Mine Safety and Health Review Commission is a small independent adjudicative agency that provide administrative trial and appellate review of legal disputes arising under the Federal Mine Safety and Health Act of 1997. FOIA's requests are not a significant issue or workload item for the Commission. During calendar year 1995, the Commission had 36 FOIA requests. The Commission's response to the four items in the memorandum are as follows:

1. The Commission fulfills the vast majority of its FOIA requests. During calendar year 1995 only one request was denied and another was denied in part. These requests were for predecisional intra-agency memoranda of a deliberative nature and, as such, are shielded from disclosure by Exemption 5. The litigation guidance encouraging "discretionary disclosure" of information was not a factor in the remaining FOIA responses.

2. The Commission has no FOIA backlog now or at the end of calendar years 1993, 1994, or 1995.

3. The Commission believes that it is in full compliance with the President's commitment to the Freedom of Information Act.

4. The Commission believes that its goal of timely fulfilling FOIA requests within the policies established by the President and the provisions of the FOIA Act continue to be appropriate.

Sincerely,

Richard L. Baker
Executive Director

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

June 4, 1996

Richard L. Huff, Esq.
and Daniel J. Metcalfe, Esq.
Office of Information and Privacy
United States Department of Justice
Flag Building, Suite 570
Washington, D.C. 20530

Dear Messrs. Huff and Metcalfe:

The Consumer Product Safety Commission (Commission) remains fully committed to the Freedom of Information openness policy issued by President Clinton and Attorney General Janet Reno in their October 4, 1993, memoranda. We are pleased to report the following in response to your request.

1. Discretionary Disclosures

With respect to Freedom of Information Act (FOIA) requests for records, the Commission's policy since its beginning in 1973 has been that disclosure is the rule and withholding is the exception. The Commission's FOIA regulations specifically provide that the Commission will make available, as a matter of discretion, records that are authorized to be withheld under the exemption provisions of the FOIA, unless disclosure is prohibited by law or the Commission determines that disclosure is contrary to the public interest. 16 C.F.R. § 1015.1(b). In the case of the Commission analyzing records to determine withholdings, applying the "foreseeable harm" standard overlapped with our "public interest" standard and affected our disclosures slightly.

Withholdings of records remain a small percentage of our total activity. During calendar year 1995, the Commission completed 16,424 FOIA requests and withheld records in only 568 of those requests or only 3.5 percent of the requests processed. In the 568 requests we applied the FOIA exemptions from disclosure a total 859 times, of which 552 were non-discretionary exemptions. We used the discretionary exemptions 5 and 7, only a total of 307 times or 39 percent of the total use of all exemptions. In applying the discretionary exemptions, we released records that contain staff legal and technical advice and opinions on specific enforcement or regulatory matters prior to agency action, portions of investigatory files on active enforcement matters involving product hazard investigations on specific firms, and investigative techniques, procedures and strategies in on-going enforcement matters.

2. Backlog Reduction

Presently the Commission receives an average of 1,300 new requests each month and processes 75 percent of those requests within the ten day requirement of the FOIA. The backlog of uncompleted requests at the end of 1993 was 1,397, at the end of 1994 was 777, and at the end of 1995 was 450. This reflects a total reduction of 68 percent.

The Commission continues to make efforts to improve backlog reduction by: (1) emphasizing customer service to improve communication with requesters, including the development of a priority request assignment system for easy requests and older requests that focuses on our constituency: consumers, complainants and injured persons; (2) improving and increasing the use of facsimile, E-Mail and other computer systems for file searching and consulting with the other Commission offices and technical directorates that provide responsive records and advice; (3) making a high priority the copying of materials responsive to FOIA requests in the Commission's copy center; and (4) constantly reviewing request processing to speed up responsiveness through more efficient procedures and practices.

3. Other Measures to Implement the President's Initiatives

Other measures the Commission has instituted to implement the President's commitment to the FOIA include: (1) maintaining the full staffing needs of the office primarily devoted to FOIA request processing, the FOI Division of the Office the Secretary; (2) purchasing of computer equipment and office machines and providing training necessary to carry out work more efficiently and effectively; and (3) generally increasing the support and conscientious efforts of other Commission offices that provide requested records and services needed to respond to FOIA requests.

4. Goals for Further Improvements in Administration of the FOIA

Our basic goals are to increase the number of requests to which we respond within the ten day deadline of the FOIA, to further reduce the backlog of uncompleted requests, and to maintain and strengthen the customer service approach in our operation. To reach these goals, we are placing increased emphasis on being proactive, whenever possible, e.g., anticipating requests for certain types of records, such as briefing materials for the Commissioners or staff reports about popular consumer products, and routinely reviewing the records to make them available for public disclosure. Also, we are expanding the use of computer technology to assist

us to locate and retrieve requested records more quickly by increasing access to the existing Commission record data bases and creating new data bases containing indices or the actual records. We are beginning the use of records imaging for Commission records to store, locate and process records more easily and at less cost to the Commission and the requester.

In spite of our efforts, we are limited somewhat because of the delays caused by the unique notification and review requirements of section 6(b) of the Consumer Product Safety Act, 15 U.S.C. § 2055(b), which severely restricts the disclosure of information regarding a consumer product from which the public can readily ascertain the identity of the manufacturer. Nonetheless, we continue to examine all aspects of these processing requirements for improved efficiencies and responsiveness wherever possible.

Thank you for the opportunity to detail the Commission's commitment to the FOIA. Should you have any questions, contact me by letter, facsimile (301) 504-0127 or telephone (301) 504-0785.

Sincerely,

Todd A. Stevenson
Deputy Secretary and
Freedom of Information Officer
Office of the Secretary

United States Information Agency

Washington, D.C. 20547

Office of the General Counsel

USIA

June 4, 1996

MEMORANDUM FOR: Richard Huff
Daniel Metcalfe
Co-Directors
Office of Information and Privacy
Flag Building, Suite 570
Washington, D.C. 20530

FROM: Les Jin
General Counsel

SUBJECT: Attorney General Memorandum of May 16 on the FOIA

The United States Information Agency is providing the following information in response to the Attorney General's Memorandum of May 16, 1996:

1. USIA's experience in applying the "foreseeable harm" standard in analyzing whether to withhold information has resulted in a much closer inspection of Exemption (b)(5) material. In particular, we have determined to release draft documents more extensively. Exemption (b)(5) documents we normally would have withheld, simply because they were withholdable, are now generally released as discretionary disclosures. We now ensure there is a "foreseeable harm" before we withhold documents under any exemption.

2. Although USIA's backlog has never been extraordinary, we have made progress since 1993 because the Agency determined at that time to increase its FOIA staff. Since 1994, USIA has had virtually no backlog of FOIA cases.

3. When the Attorney General's memorandum was received in October of 1993, USIA sent a memorandum to all its components requesting that additional diligence be made to ensure all documents responding to requests were provided to the FOIA Office within the prescribed time frames. USIA is proud that all components of the Agency have responded with timeliness and enthusiasm. In addition, the FOIA Office ensures that a more personal touch is now included in its letters to requesters by providing the name of the FOIA Specialist who is working on the case and the Specialist's telephone number. The FOIA Specialists never hesitate to contact requesters by telephone, when necessary, to ensure that requests are correctly interpreted.

4. USIA's main goal for further improving its administration of the FOIA is to try to obtain funding to better automate the FOIA staff's computer system. This new system will enable the staff to track FOIA cases in a more efficient manner and to establish an advanced way to determine those documents that have previously been requested and released.

If we may be of any further assistance, please call the FOIA Officer, Lola Secora, on (202) 619-5499.

FDIC
Federal Deposit Insurance Corporation
Washington, DC 20429

Office of the Executive Secretary

June 4, 1996

The Honorable Janet Reno
The Attorney General
Department of Justice
Office of Information and Privacy
Suite 570
Flag Building
Washington, D.C. 20530

Dear Madam Attorney General:

Thank you for your interest in the Federal Deposit Insurance Corporation's (FDIC) Freedom of Information Act program. You asked that we respond to four specific inquiries as set forth below.

1. **Foreseeable Harm Standard and Discretionary Disclosure.**

You asked the FDIC to comment on its experience in applying the foreseeable harm standard in analyzing whether to withhold information. Generally, we have found that the foreseeable harm standard results in the greater disclosure of information contained in internal memoranda which, under the 1981 guidelines, might have been considered exempt pursuant to subsection (b)(5). We also have found that the foreseeable harm standard has served to encourage the disclosure of information that is technically protected from disclosure under one or more of the exemptions to the FOIA but, due to the passage of time, the harm of disclosure has become more remote.

You also requested information regarding the types of records which have been the subject of discretionary disclosures. The FDIC's implementation of the Administration's initiatives has resulted in greater disclosure of information in several types of documents. We find that internal memoranda which, under the 1981 guidelines would have been considered deliberative and would have been withheld in full under subsection (b)(5) of the FOIA, are more commonly released now with only minor redaction. Also, memoranda between FDIC and other agencies concerning law enforcement matters, which had previously been withheld in full, are now very often released in redacted form, as are agency orders concerning pre-1990 administrative enforcement proceedings which were generally not open to the public.

Although the FDIC has made significant efforts to increase its disclosures overall, as an agency engaged in the regulation of financial institutions, the FDIC is committed to the careful and judicious application of subsection (b)(8) of the FOIA to protect the integrity of the bank examination process and to ensure the security of the financial institutions under its regulatory

jurisdiction. Further, the FDIC's efforts are limited by other statutes such as the Trade Secrets Act and the Privacy Act of 1974.

2. Backlog Reduction.

You asked what progress has been made in reducing the agency's FOIA backlog and what plans are in place to improve backlog reduction.

The FDIC continues to make advances in its efforts to reduce its backlog. The following statistics illustrate our progress through the end of 1995:

Date	Backlog[1]
12-31-93	584
12-31-94	536
12-31-95	510

It is important to note that at year-end 1995, as mandated by the Resolution Trust Corporation Completion Act, the FDIC was required to take over the remaining work of the Resolution Trust Corporation (RTC). As a result, the FDIC has absorbed the staff and workload of the RTC's FOIA unit, including a backlog (at year-end) of over 200 FOIA requests. The addition of these requests to the existing backlog presents a challenge to the FDIC's efforts to reduce the number of unanswered FOIA requests. Moreover, even though the RTC terminated at year-end 1995, the FDIC continues to receive a number of FOIA requests for documents transferred from the RTC to the FDIC upon the RTC's termination.

In 1996, the FDIC undertook a new, agency-wide initiative to enhance the FOIA program and address the aggregate FDIC/RTC backlog. In connection with this initiative, the Deputy to the Chairman and Chief Operating Officer issued a memorandum to all Division and Office Directors within the FDIC.

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[1]This number includes all pending FOIA requests. Thus, this number includes requests that are less than 10 days old, as well as requests that have been temporarily suspended while we obtain the requester's agreement to pay the requisite processing fees.

In this memorandum, the Deputy to the Chairman asked the Directors to (1) allocate appropriate staff to respond to unanswered FOIA requests and eliminate the backlog in their respective areas as soon as possible; (2) designate a senior staff member to monitor and coordinate the processing of FOIA requests, if they had not already done so; (3) instruct their staff to identify outstanding FOIA requests assigned to their divisions or offices; and (4) ensure that their staffs adhere to the FDIC's current directive on FOIA processing procedures which was issued shortly after the implementation of the Administration's October 1993 initiative. Following the issuance of the Deputy to the Chairman's memorandum, meetings were conducted at the staff level to confirm the status of the outstanding requests and establish time frames for their completion. In addition, two more attorneys were assigned on temporary detail to work on the backlogged requests. We believe that these efforts will enhance the FDIC's FOIA program and ensure that our backlog continues to decline.

3. **Measures Implementing the President's Commitment to the FOIA.**

You asked what other measures our agency has instituted to implement the President's commitment to the FOIA.

In addition to the measures described above, the FDIC has taken the following steps to implement the President's commitment to the FOIA. First, it has greatly expanded its Public Reading Room facility to accommodate the public. Second, it is encouraging divisions and offices to routinely make broader categories of documents available for dissemination to the public through the Public Reading Room, as well as through other media. Third, it is developing procedures to affirmatively disclose, through the Public Reading Room and other media, certain orders issued by the FDIC Board of Directors at meetings closed to public observation under the Government in the Sunshine Act and has recently transmitted a number of final orders to the Public Reading Room for this purpose. Finally, it has established a presence on the Internet where members of the public can access the FDIC site on the World Wide Web to obtain information about the FDIC and its recent activities.

It should also be noted that following the issuance of the October 1993 memorandum, the Bank Regulatory Agencies FOIA Working Group was established. It is comprised of public disclosure staff from the Office of Thrift Supervision, Office of the Comptroller of the Currency, The Board of Governors of the Federal Reserve, the National Credit Union Administration and the

FDIC. This group meets quarterly to discuss discretionary disclosure issues and to develop consistency among the agencies in the disclosure of regulatory records.

4. Goals for Improvements in 1996.

You asked what goals our agency has established for further improvements in its administration of the FOIA in 1996. As further described below, the FDIC has committed to improving its FOIA program as part of its Corporate Operating Plan.

On April 24, 1995, the FDIC adopted the FDIC Strategic Plan for 1995-1999. In order to achieve the goals of the Strategic Plan, the FDIC adopted an Operating Plan which focuses on a 12 to 18 month time-frame. One of the stated objectives for this important agency-wide effort is the improvement of the efficiency of the FDIC's FOIA program. A key means by which we intend to achieve this objective is the implementation of senior level staff training to increase the awareness and sensitivity of our senior mangers to the FOIA program. To that end, we will be conducting FOIA training sessions throughout the United States during the remainder of 1996. To date, over 200 employees have signed up for these training sessions.

In closing, thank you again for your interest in the FDIC's FOIA program and for the opportunity to describe our efforts to date.

Sincerely,

Jerry L. Langley
Executive Secretary

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR

JUN 4 1996

Honorable Janet Reno
The Attorney General
Washington, D.C. 20530

Dear Madam Attorney General:

This is in response to your memorandum dated May 16, 1996, requesting a progress report on President Clinton's "discretionary disclosure" initiative and our implementation of that policy.

The initial Freedom of Information Act (FOIA) processing is decentralized at the Small Business Administration (SBA or Agency). All initial FOIA requests, therefore, are responded to by either the program or field office in possession of the requested documents. The FOIA appellate review process and the implementation of the FOIA are delegated to the Freedom of Information/Privacy Acts (FOI/PA) Office.

The following information is provided in response to the specific questions in your memorandum:

1. Experience in Applying the "Foreseeable Harm" Standard

At the appellate review level, the foreseeable harm standard has become a fundamental determinant in this Agency's disclosure decisions. The FOI/PA Office is very progressive in implementing the Department of Justice's (DOJ) discretionary disclosure policy. The FOI/PA Office routinely considers the specific DOJ criteria for discretionary disclosure during FOIA processing. The FOI/PA Office has directed SBA offices to analyze disclosures individually in accordance with these DOJ criteria.

Our experience has been that the initial processing offices are reluctant to implement the discretionary disclosure policy, and are inclined to withhold using the traditional Exemption 5 tests. They believe that disclosure of certain types of information will cause irreparable harm to their programs.

The majority of the records being released pursuant to the policy are internal and include: correspondence; comments; attorney-client records; attorney work product; loan officer's reports; administrative actions; determinations as to participation and eligibility in various SBA loan and contracting programs; and OGC opinions. To ensure that the interests of concerned subjects are not jeopardized, the FOI/PA Office consults with the initial processing office prior to appellate disclosures.

However, counsel and several program officials have expressed the following concerns about the discretionary disclosure policy as it applies to internal communications:

•Disclosure of preliminary opinions and recommendations, i.e., those not incorporated into final decisions; and release of the names of officials making the recommendations generally will inhibit candor.

•Possible total waiver of attorney-client privilege in cases where partial disclosure is made of attorney opinions and recommendations under the foreseeable harm standard. Some feel that the discretionary disclosure policy's "case by case" review will not adequately protect information being released for the first time. There is fear that a novel disclosure will set a precedent, and may ultimately harm the candor of the decisionmaking process. There is particular concern that such individual disclosure could constitute a complete waiver of attorney client privilege in litigation of a particular case.

•Attorneys will not emphasize the specific strengths and weaknesses of an action and will render only general conclusions relating to legal sufficiency. The decision-making process may be reduced to oral communications. If such a decision is later challenged, the Agency may have to defend a decision that is not on the written administrative record, and/or must attempt to recreate oral communications which are oftentimes not credible as post hoc rationalizations.

•Recommendations generated in repetitive procedures can and should be treated differently from those relating to one-time decisions that are truly unique. The effect on the procedure as a whole, and not merely the documents relating to a particular application, should be considered.

•The Agency will never really know the full extent of the actual foreseeable harm resulting from the disclosure of pre-decisional opinions and recommendations. The potential harm to the decision-making process is significant.

The FOI/PA Office would appreciate an opportunity to discuss the above concerns with the DOJ's Office of Information and Privacy.

2. Backlogs

As noted above, SBA's initial processing of FOIA requests is decentralized. The SBA is made up of over 125 field and program offices. Initial requests are received directly by those offices or are referred to the proper office by the FOI/PA Office. Because the SBA does not have a central FOIA tracking system, we do not

have accurate statistics as to total numbers of requests and backlogs. The FOI/PA Office is currently trying to obtain such a system; this previously was not possible due to budget constraints.

The FOI/PA Office compiles our FOIA Annual Report to Congress manually from copies of initial FOIA responses, which under Agency policy the office responding at the initial level must send to the FOI/PA Office. The Agency receives approximately 1,000 requests annually.

The SBA did not have a continuous or substantial backlog in the years covered by your request. However, the final responses in individual cases have sometimes been delayed due to their voluminous nature or to program interest and intervention. Other delays are caused by the Predisclosure Notification requirement. During the Government-wide furlough, some delays were experienced.

The FOI/PA Office received 44 appeals in calendar year 1995. To date in 1996, the FOI/PA Office has received 23 appeals and currently has two appeals backlogged. For the past 3 years they have averaged two to three appeals backlogged at any given time.

The Agency has reduced processing delays at the initial level by establishing a FOIA contact in each program and field office. The quality and timeliness of FOIA processing has been enhanced by training and more frequent FOIA policy guidance. The FOI/PA Office has made available sample language and documents, which improved the review process.

The FOI/PA Office consistently emphasizes the timeliness requirements for processing FOIA requests. However, due to budget constraints, some offices have problems processing initial requests in a timely fashion because normal job duties are given precedence.

3. Other Implementation Measures

•The FOI/PA Office circulated several procedural notices directing all employees to conform to the DOJ policy and President Clinton's directive. Included were the Attorney General's Memorandum, President Clinton's directive and language from the DOJ Guide. The FOI/PA Office also issued a procedural notice to all SBA offices requiring the appointment of an employee to act as a contact regarding each offices' FOIA requests.

•FOIA training, which emphasizes the implementation of the Administration's FOIA policies, is provided: in all CLE training; at District Counsels' Meetings; in individualized training; and at in-house FOIA training. FOIA training also was conducted by a staff person from the Office of Information and Privacy/DOJ. The discretionary disclosure policy was stressed during those training sessions.

•The FOI/PA Office created and distributed a package of materials, containing sample form letters and frequently-requested agency forms, in redacted form, for use by initial processing offices.

•All SBA offices are encouraged to provide requesters with the name and telephone number of a contact person and to contact requesters to discuss and clarify requests.

•SBA revised and dramatically shortened its disclosure regulations, which also are written in plain English to assist requesters.

4. Goals for the Administration of the FOIA

The FOI/PA Office currently is rewriting the Agency's Disclosure of Information Standard Operating Procedures, which will include sample language to be used in responding to requests. Also, it will stress the importance of discretionary disclosure when processing FOIA requests.

Our goals are to thoroughly respond to initial requests; to process all requests in accordance with the time limits established by the Act; to offer regular FOIA training to all SBA offices; to initiate informal discussion with the requester community to clarify and expedite requests; and to provide current and accurate guidance to all SBA components.

Thank you for giving us the opportunity to share our experiences and concerns regarding our administration of the FOIA. We would be interested in learning what the experiences of other agencies have been in this area. The interest expressed by this Administration in the FOIA process is greatly appreciated by those who administer the FOIA.

Sincerely,

Philip Lader
Administrator

1665
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UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, D.C. 20415

OFFICE OF THE DIRECTOR

JUN - 4 1996

Honorable Janet Reno
Attorney General
Department of Justice
Washington, DC 20530

Dear Madam Attorney General:

This is in response to your memorandum of May 16, 1996, concerning the Office of Personnel Management's (OPM) progress in implementing President Clinton's initiative to renew agency commitment to the Freedom of Information Act (FOIA). You asked specifically for information in four areas to assist the Department of Justice in assessing your FOIA initiatives. We have briefly addressed each of these areas below.

1. OPM has had limited experience applying the "foreseeable harm" standard in analyzing whether to withhold information. While we strongly endorse this guideline, we are not aware of any OPM "discretionary disclosures" that have been made under this guideline that would have been withheld under the 1981 guidance.

2. OPM does not receive a high volume of FOIA requests, and in fact, the number of requests dropped significantly in 1995, most likely reflecting OPM's downsizing and the privatization of our training function. As a consequence, OPM has never carried a backlog of unanswered FOIA requests.

3. In 1993, OPM issued an update to its FOIA Handbook, which provides detailed guidance to OPM staff on the FOIA. This Handbook reflects OPM's commitment to ensuring that OPM staff have adequate guidance to respond promptly and properly to FOIA requests. A key feature of this Handbook is a series of model letters that cover most common FOIA response situations.

4. Because of OPM's relatively low volume of requests, we have been able to successfully use a decentralized model to administer FOIA in which requestors write directly to the OPM office maintaining the desired records and receive responses directly back from that office without being processed through a central FOIA office. This has resulted in prompt responses to FOIA requests and a low appeal rate. We will continue to monitor our progress in meeting the President's initiative during 1996 to assure that prior year performance is maintained.

We appreciate the opportunity to share with you information on OPM's support for the President's FOIA initiative and hope that this will be helpful in your analysis of Governmentwide progress. If your staff has additional questions concerning OPM's administration of the FOIA, please have them contact Jim Hicks, Office of the General Counsel, 202-606-1700 or Bob Huley, Office of Information Technology, 202-418-3210.

Sincerely,

James B. King
Director

United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

May 31, 1996

Richard L. Huff and Daniel J. Metcalfe
Co-Directors, Office of Information and Privacy
Department of Justice
Flag Building, Suite 570
Washington, DC 20530

Dear Messrs. Huff and Metcalfe:

This is the response of the U.S. Office of Government Ethics (OGE) to May 16, 1996 Freedom of Information Act (FOIA) initiatives memorandum from the Attorney General. The numbered paragraphs below track the items of information called for in the Attorney General's memorandum.

(1) OGE's experience in applying the "foreseeable harm" standard in analyzing whether to withhold information has been favorable. That standard has proved workable and has resulted in certain "discretionary disclosures" of otherwise exempt information whose release is not barred by law. The types of information affected have been certain nonharmful material falling under FOIA exemptions (b)(2) and (b)(5) (mostly the latter).

(2) OGE is a small executive branch agency which separated from the Office of Personnel Management in the fall of 1989. Over the years, the number of FOIA requests OGE receives annually has grown from less than a dozen to an average of some 35-45 per year. Due to its commitment of necessary staff resources and the relatively small volume of requests received, OGE has never had a FOIA backlog. As in prior years, OGE continues to process its 1996 requests on a timely basis.

(3) The OGE staff involved in FOIA request processing and the limited FOIA litigation involving OGE are familiar with and have consistently applied the FOIA disclosure initiatives of the President, the Attorney General and your Office. OGE's staff handling FOIA matters also consult on an ongoing basis with your Office's FOIA Counselor service and attend periodic FOIA training provided by your Office and other sources. Moreover, last year OGE issued final Freedom of Information Act rules. See 60 Federal Register 10006-10013 (Feb. 23, 1995), as now codified at 5 C.F.R. part 2604. Furthermore, OGE operates a separate public availability system under the Ethics in Government Act as to Standard Form 278 Public Financial Disclosure Reports filed by high-level executive branch officials subject to Presidential appointment and confirmation by the Senate and certain other records covered by the Ethics Act access provisions. In part as a

result of this Ethics Act responsibility, this Agency is particularly sensitive to Freedom of Information Act issues.

(4) For 1996, OGE continues to strive to process all of its FOIA requests and other matters on a timely basis with the maximum disclosure provided for under relevant law, regulations and FOIA guidelines. Further, from time to time, OGE will continue to build awareness of FOIA disclosure principles on the part of its staff throughout the Agency.

If you or your staff have any questions regarding this response letter, please feel free to contact me at 202-208-8022 or OGE's FOIA officer William E. Gressman at 202-208-8000, ext. 1110 (please note our new telephone numbers).

Sincerely,

Stephen D. Potts
Director

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

EXECUTIVE DIRECTOR

Mail Stop 11-1 June 3, 1996

Richard L. Huff, Director
Office of Information and Privacy
Suite 570, Flag Building
Washington, D.C. 20530

RE: Attorney General Reno's FOIA Memorandum of May 16, 1996

Dear Mr. Huff:

In response to Attorney General Janet Reno's memorandum of May 16, 1996, I am pleased to report that the Securities and Exchange Commission ("Commission") continues to be fully committed to implementing the administration's policy concerning government openness under the Freedom of Information Act ("FOIA").

1. The Commission's Experience in Applying the "Foreseeable Harm" Standard

In her FOIA Memorandum of October 4, 1993, Attorney General Reno stated that a FOIA exemption should only be asserted to protect agency documents "where the agency reasonably foresees that disclosure would be harmful to an interest protected by that exemption." To that end, it has been the Commission's normal practice, in each case, to determine whether releasing a particular record would result in any such harm. Where none can be identified, we make a discretionary release even though the records may technically be exempt from mandatory disclosure.

2. FOIA Backlogs

The Commission's FOIA backlog has been minimal. It is comprised only of those requests for voluminous records (between 6,000 and 9,000 pages for each FOIA request). As of December 31, 1993, 1994, and 1995, the backlog was so small that the FOIA Office disposed of it in two to three months. Our current backlog is projected to be resolved within the next two months.

We plan to improve our response record through the continuous training of our FOIA staff and the diligent pursuit of our goal to meet the 10-day statutory response time for all FOIA requests.

3. Measures to Implement the President's Commitment to the FOIA

We have published a detailed training manual for our FOIA staff and have given the staff in-house training in all aspects of their duties. We have also reviewed our FOIA rules with an eye towards their amendment in a manner consistent with the President's FOIA policy.

Moreover, we have produced an informational FOIA manual for distribution to all other Commission employees. We have also prepared a FOIA brochure for distribution to the public. In addition, we have scheduled a FOIA conference for Commission staff and members of the public, where we will highlight the President's commitment to enhance the effectiveness of the FOIA.

4. Goals for Further Improvements

The Commission will continue to maintain its high level of FOIA performance. We will also continue to share our expertise with other agencies. And, we will work towards enhancing public access to Commission records through the use of electronic information systems.

If you have any questions about this report, please call Hannah R. Hall, FOIA/ Privacy Act Officer, at (202) 942-4320.

Sincerely,

James M. McConnell

FINANCE

UNITED STATES POSTAL SERVICE

June 3, 1996

Office of Information and Privacy
U.S. Department of Justice
Suite 570 Flag Building
Washington, D.C. 20530-0001

Dear Sir or Madam:

This responds to the May 16th inquiry from the Office of the Attorney General concerning the progress of our agency in implementing Freedom of Information Act initiatives intended to renew commitment to the Act. The four questions posed and our response to each follow:

1. **What has been your agency's experience in applying the "foreseeable harm" standard in analyzing whether to withhold information? What types of records have been the subject of "discretionary disclosures" that would have been withheld under the 1981 guidelines?**

   FOIA processing at the Postal Service is decentralized and, therefore, may take place at any of 40,000 post offices. Consequently, except to the extent reflected by appeals, it is difficult to say what extent the foreseeable harm standard is being applied. However, this office, which has responsibility for providing guidance to post offices, urges discretionary disclosures when possible. Records promoted this approach in a recently developed training video which has been viewed by tens of thousands of field postal employees.

   For this office and the General Counsel's office, in handling requests at the initial and appeal level, respectively, the principal change is that records are no longer withheld on the basis of exemption 2 (low). This has not been a drastic change, because low 2 was seldom relied upon under the former guidelines. Generally, there has not been a significant change in appeal results since the adoption of that standard. In most cases where exemptions 5, 6 or 7 are applicable, harm either to personal or to agency interests is readily foreseeable. The Postal Service does not as a rule receive requests for records that are so old that these interests would have expired with age. Requesters of postal records tend to be interested in matters that are currently pending, rather than in historical records.

2. **What progress has been made in reducing FOIA backlogs (include backlog status for 12/31/93, 12/31/94 and 12/31/95) and what plans are in place to improve backlog reduction?**

   With the exception of the Inspection Service, Postal Service offices have historically not had a backlog, either at the initial or appeal level, that would warrant special measures. The Inspection Service, the Postal Service's investigative arm, has its own FOIA processing office that receives primarily requests for access to investigative files. Following is information concerning that office's backlog:

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-5243
202 268 2608
FAX: 202 268 2605

As of 12/20/93, the backlog was 50
As of 12/19/94, the backlog was 34
As of 12/18/95, the backlog was 32.

There has been a steady decrease in the FOIA backlog of that office due to the following actions. After the restructuring of the Postal Service in 1992, that office added an additional position to assume the responsibilities of handling FOIA and other access requests. To eliminate unproductive time spent standing in lines at shared photocopiers, a photocopier was purchased for the exclusive use of that office. Duplication of efforts has been reduced by the creation of a computerized database that quickly identifies records that have previously been processed.

3. **What other measures has your agency instituted to implement the President's commitment to the Freedom of Information Act?**

   This office has instituted several never-before-done initiatives to improve FOIA implementation. As stated above, it developed and recently distributed, for viewing by tens of thousands of postal employees, a video covering the Freedom of Information Act and the Privacy Act. The video stresses the importance of discretionary disclosure and the elements of a complete and appropriate response within the time constraints of the law. This office also trained coordinators in 95 district and area offices to provide general guidance to reporting post offices. Coordinators report that they are receiving many requests for guidance, particularly on releasing address information. We believe that the coordinator role has resulted in fewer improper denials of information because post offices have a local point of contact for guidance.

4. **What goals has your agency established for further improvements in its administration of the Freedom of Information Act in 1996?**

   Two goals of this office are (1) to provide further training to Records coordinators, specifically directed at release of address information, the information we believe is most often improperly withheld; and (2) to develop detailed guidance on tracking FOIA processing activities for inclusion in the annual agency FOIA report to Congress. The Inspection Service's FOIA unit reports that its goals are to improve skills through continued training; to utilize electronic records storage; and to test the use of an optical scanner reader for redacting.

Any questions concerning the above may be directed to Betty Sheriff, FOIA/PA Officer, at 202-268-2608.

Sincerely,

for Elizabeth L. Smith, Manager
Payroll Accounting/Records
Corporate Accounting

National Railroad Passenger Corporation. 60 Massachusetts Avenue. N.E., Washington. D.C. 20002 Telephone (202) 906-3000

Amtrak

May 31, 1996

Mr. Richard Huff
Co-Director
Department of Justice
Office of Information and Privacy
Flag Building, Suite 570
Tenth Street and Constitution Avenue, N.W.
Washington, D.C. 20530

Re: Attorney General's Memorandum of May 16, 1996

Dear Mr. Huff:

This letter is in response to Attorney General Janet Reno's memorandum of May 16, 1996 requesting information concerning the Freedom of Information Act (FOIA).

President Clinton's October 1993 memorandum on the Freedom of Information Act called upon heads of "all federal departments and agencies" to renew their commitment to the FOIA, remove unnecessary bureaucratic hurdles, reduce backlogs of requests, and conform to litigation guidance in FOIA matters issued by the Attorney General, which was attached.

Although Amtrak is subject to the FOIA, it is not an agency or department of the United States, and Amtrak believes that it is not subject to policies established by the Administration applicable to such entities. In particular, Amtrak may litigate under the FOIA without the consent of the Attorney General, and Amtrak therefore believes that it should meet its responsibilities under the Act without reference to the policies that the Department of Justice promulgates with respect to defending FOIA suits against government agencies. Amtrak applies existing case law in deciding when to withhold or disclose information. That case law does not incorporate the "foreseeable harm" standard in the Attorney General's litigation guidance. Nor does the case law require "discretionary disclosures" which the Attorney General's guidance encourages.

Amtrak therefore respectfully declines to respond to questions 1, 3 and 4 of this memorandum. It should be noted, however, that Amtrak does conform to the spirit and letter of the Act, including the time restrictions for responding to requests submitted under the FOIA, and that Amtrak has no FOIA backglog.

Yours truly,

Daniela Winkler /sw

Daniela Winkler
Vice President and General Counsel

cc: The Honorable Janet Reno
Thomas M. Downs
Thomas J. Gillespie, Jr.

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

625 Indiana Avenue, NW, Suite 700, Washington, D.C. 20004
(202) 208-6400

May 31, 1996

Mr. Richard Huff
Department of Justice
Office of Information and Privacy
Suite 570, Flag Building
Washington, D.C. 20530

Dear Mr. Huff:

This responds to the Attorney General's May 16, 1996 Memorandum regarding activities related to the Freedom of Information Act (FOIA) and addresses each of the questions raised.

In response to question one, the Defense Nuclear Facilities Safety Board (Board) has no experience to date applying the "foreseeable harm" standard while analyzing whether to withhold information. The Board has been able to comply with all FOIA inquiries it has received and provided the information or material requested.

In response to question two, due to the very small number of FOIA requests received by the Board, it does not presently have a backlog of work in this area. The Board has never experienced delays in responding to these requests and routinely provides the responses within the prescribed time frame.

Regarding the third question, as mentioned earlier, the number of FOIA requests received by the Board is minimal, approximately fifteen per year. Such requests are generally easy to comply with as the information sought is readily available within the Board and accessible to the public. The Board believes that this is a direct result of its continuing and proactive commitment to openness in all of its activities and major endeavors. Examples include:

1) Distribution of Board products to a wide range of interested government, private, and media establishments and individuals. Included are Board Recommendations to the Department of Energy (DOE), Trip Reports which summarize Board findings during reviews conducted at various DOE defense nuclear facilities, and Technical Reports which address a variety of relevant health and safety issues identified by the Board;

2) Establishment of a Home Page on the INTERNET which provides full text access to the documents mentioned above as well as a log of recent unclassified Board correspondence, the enabling legislation, Board Members' biographies, and other related general information. Additionally, feedback from the public is solicited and encouraged; and

3) The Board's commitment to public participation in its activities is demonstrated by the numerous public meetings and hearings held throughout the country at locations close to defense nuclear facilities.

In response to the fourth question, while the Board believes the existing policies and procedures discussed above are adequate, efforts to improve are constantly being considered. For example, given the rapid advancement in information technology, improvements to the Board's Web Page on the INTERNET are ongoing. Specifically, the variety and volume of Board documents available on the INTERNET are increasing and a new effort is underway to promote and publicize the availability of this information. Additionally, the Board is committed to the prompt resolution of all non-FOIA information requests from various entities and has established a goal of a twenty-four-hour response time for 90% of all requests received.

In summary, the Board's operating plan encourages the placement of unclassified information covering all aspects of its public health and safety responsibilities in public files, allowing swift and precise electronic searches and responses to requests for information. Consequently, the need for a FOIA request to obtain information is essentially obviated by a combination of openness and customer service initiatives.

Should you have any questions regarding this matter or require additional information, please call me on (202) 208-6447.

Sincerely,

Kenneth M. Pusateri
General Manager

National Credit Union Administration

May 31, 1996

Office of Information and Privacy
Office of the Attorney General
Suite 570, Flag Building
Washington, D.C. 20530

Re: The Freedom of Information Act

Dear Sir/Madam:

I am responding to Attorney General Reno's May 16, 1996, memorandum regarding the Freedom of Information Act (FOIA). My office has primary responsibility for the FOIA program at the National Credit Union Administration (NCUA). Responses to your questions are found below.

1. The NCUA has had the opportunity to apply the "foreseeable harm" standard in recent FOIA requests. Since many of the FOIA requests that come to NCUA seek credit union examination and other financial data, it has been NCUA's practice to apply FOIA Exemption 8. However, we have found that releasing financial information regarding credit unions liquidated several or more years ago under the "foreseeable harm" standard should not cause damage to NCUA or its insurance fund and have released this information. The NCUA has also undertaken to release many internal memoranda with proper redactions which were previously withheld under FOIA Exemption 5. Recently, we released approximately 100 internal legal opinions regarding proposed credit union bylaw amendments. Additional releases of this nature are to follow this summer.

2. NCUA strives to complete all FOIA responses within the 10 day requirement. There are occasions where an extension is necessary. However, we are experiencing no backlog at the present time and had no recorded backlogs for end of years 1993, 1994, or 1995.

3. The NCUA has opened a site on the world wide web at "NCUA.gov." This web site provides users private opinion letters, agency forms and publications and vast amounts of credit union financial data previously available by FOIA request or by purchase from private sources. In its first eight weeks, the site has had over 6000 users.

4. In addition to adding more information to the NCUA web site, the agency personnel involved with FOIA are improving their skills by attending government and private programs. The central office FOIA officer meets on a regular basis with the FOIA officials of the other financial regulators to discuss topical issues, and exchange ideas on how to improve customer service.

Sincerely,

Robert M. Fenner
General Counsel

GC/RSS:bhs
SSIC 3212
96-0537

Farm Credit Administration

1501 Farm Credit Drive
McLean, Virginia 22102-5090
(703) 883-4000

May 30, 1996

The Honorable Janet Reno
Attorney General of the United States
U.S. Department of Justice
Office of Information and Privacy
Suite 570
Flag Building
Washington, DC 20530

Re: The Freedom of Information Act, 5 U.S.C. § 552

Dear Madam Attorney General:

Thank you for your memorandum dated May 16, 1996. As requested, we are providing you with information on the Farm Credit Administration's (FCA) implementation of the Freedom of Information Act (FOIA) and President Clinton's initiatives.

The FCA is in full compliance with the FOIA's statutory 10-day time limit to respond to FOIA requests and with President Clinton's initiatives under the FOIA, i.e., application of the "foreseeable harm" standard. In accordance with your request, we are providing the following information in the order requested in your memorandum:

1. The FCA's application of the "foreseeable harm" standard has resulted in a modest increase in the discretionary release of records in response to FOIA requests. Examples of records that have been released under the President's guidelines include: routing slips and other nonsubstantive administrative documentation and some deliberative process material. However, the FCA has not been able to waive an applicable exemption in many instances because the exempt information pertains to a protected privacy interest or to deliberative material concerning recent or ongoing decision and policy making.

2. The FCA does not now have an FOIA backlog, nor has it had one in the past. The Agency fully intends to maintain this status.

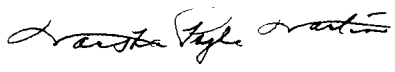
3. The FOIA Officer and her legal counsel have been directed to and fully apply the "foreseeable harm" standard in determining whether a discretionary waiver of an FOIA exemption is appropriate. Furthermore, both employees process all FOIA requests expeditiously and in a

customer-friendly manner in order to implement the President's commitment to the FOIA as fully and effectively as possible.

4. The Agency's present goals are to train a new FOIA Officer and to streamline the Agency's processing of FOIA requests. The FCA has recently begun a project to automate the process of responding to FOIA requests, which should be fully implemented within the next 2 months.

If you have any questions, please do not hesitate to call me or Jane M. Virga, Senior Attorney, at (703) 883-4071.

Sincerely,



Marsha Pyle Martin
Chairman and Chief Executive Officer

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

MAY 29 1996

U.S. Department of Justice
Office of Information and Privacy
Suite 570
Flag Building
Washington, DC 20530

Re: The Freedom of Information Act

On May 16, 1996, the Attorney General requested data from federal agencies in implementing the administration's objectives under the Freedom of Information Act. This constitutes the response of the U.S. Equal Employment Opportunity Commission (EEOC).

1. The great majority of FOIA requests the EEOC receives are for information regarding charges under Title VII of the Civil Rights Act of 1964, as amended, the Equal Pay Act, the Age Discrimination in Employment Act, the Rehabilitation Act of 1973, and Title I of the Americans with Disabilities Act. Confidentiality provisions of Title VII and the ADA and concern for individual privacy require the EEOC to use exemptions (b)(3), (6) and 7(C) frequently, but we are able to disclose much of the charge file to charging parties and respondents. We have used the "foreseeable harm" standard to disclose material that we had previously withheld under exemption (b)(5), and we feel that the "foreseeable harm" is helpful in analyzing whether to disclose information.

2. The EEOC takes pride in its timely processing of FOIA requests, and has not operated with a backlog.

3. Recently, the Legal Counsel delegated responsibility for FOIA Appeals from the field to the Assistant Legal Counsel for Advice and External Litigation, and this should result in greater efficiency. Further delegations in EEOC field offices are being considered. The Office of Legal Counsel also conducted comprehensive training for field personnel in fifty cities in 1995, in conjunction with annual ethics training. The Commission also has headquarters attorneys acting as liaison to field offices, which greatly assists administration of the FOIA.

4. Because the EEOC's administration of the FOIA works well, we do not have any specific plans for improvement. Consistent with the administration's National Performance Review, however, the agency is continuously engaged in a dialogue with field offices on how its administration of the FOIA can "work better and cost less."

If you have any other questions concerning the EEOC's administration of the Freedom of Information Act, please contact

Thomas J. Schlageter, Assistant Legal Counsel, at (202) 663-4668.

Sincerely,

Nicholas M. Inzeo
Deputy Legal Counsel

UNITED STATES ARMS CONTROL AND DISARMAMENT AGENCY
Washington, D.C. 20451

MEMORANDUM

MAY 29 1996

TO: Office of Information and Privacy
U.S. Department of Justice

FROM: Office of the General Counsel Mary Elizabeth Hoinkes
U.S. Arms Control and Disarmament Agency

SUBJECT: The Freedom of Information Act

REFERENCE: The Attorney General's Memorandum dated May 16, 1996

This agency's experience since the enunciation of the "foreseeable harm" standard in the Attorney General's October 4, 1993 memorandum has been little different from its prior experience because this agency generally applied such a standard in its information access decisions.

Until recently, some progress was made in reducing backlogs. (This agency does not have statistics on the number of cases pending at the end of 1993, 1994, 1995; on average, some 15 cases are normally pending at the end of each year.) However, currently some 30 cases are pending. This is larger than normal primarily because of the government shutdowns in late 1995 and this agency's furloughing of consultants in early 1996 because of the budgetary constraints under continuing resolutions. Work on meeting the document review requirements of the automatic declassification provisions of E.O. 12958 has also impeded prompt response to information access requests.

The agency is working to expand the number of employees knowledgeable in FOIA matters in order to respond more promptly to FOIA requests. However, having to review several million pages of classified documents over 25 years old under the provisions of E.O. 12958 is inevitably going to stretch even thinner the already limited resources available for responding to information access requests from the public.

U.S. MERIT SYSTEMS PROTECTION BOARD
Washington, D.C. 20419

Clerk of the Board

May 28, 1996

Richard Huff & Daniel Metcalf
Co-Directors
Office of Information and Privacy
U.S. Department of Justice
Suite 570, Flag Building
Washington, D.C. 20530

Dear Messers. Huff and Metcalf:

This is in response to the Memorandum for Heads of Departments and Agencies, on the Freedom of Information Act, dated May 16, 1996, from The Attorney General. I have been asked by Chairman Ben L. Erdreich to respond on behalf of the Board.

This response will be formatted to correspond to the numbered paragraphs in the Attorney General's memorandum:

1. Application of the "foreseeable harm" standard at the Board has resulted in the release of a greater number of agency records than was the case under the old "what exemption can be applied" standard. Rather than trying to fit a withholding of information into categories corresponding to the nine FOIA exemptions, we have attempted to determine how release of requested records could harm the Board's performance of its statutory missions. In most cases we find that the records requested can be released, and this results in more timely responses, fewer appeals, and a reduced FOIA recordkeeping burden.

The Board has enthusiastically undertaken a program of "discretionary disclosure" by making a wide range of agency records available electronically. Board final decisions, case summaries, press releases, Federal Register Notices, official forms, policy statements, and biographies of Board officials are available to the public in the MSPB Library on GPO's Federal Bulletin Board. MSPB case summaries are also available on OPM's electronic bulletin board "MAINSTREET". The Board is also exploring other electronic

means for making access, not only to records, but to the Board's processes, more readily available to its customers and to the general public.

2. The Board has never had a backlog of FOIA requests. While we are a small agency, in terms of staff numbers, we do receive a considerable number of requests (499 last calendar year) and we process these requests in a timely manner.

3. The Board is in the process of installing a Local Area Network (LAN) in its headquarters which will permit the sharing of agency records among offices. We believe that this technology will reduce search time and decrease response time to requesters. The Board's regional and field offices will be included in this process through the installation of a Wide Area Network (WAN) in the near future.

4. The Board is currently rewriting its FOIA regulations in an effort to streamline the process of providing access to agency records. The future application of electronic technology will, we believe, provide even greater opportunities for the Board's customers and the public at large to have access to agency records. Chairman Erdreich shares the President's and the Attorney General's goal of making government more open and accessible.

If you have any questions or require additional information, please contact Michael H. Hoxie on (202) 653-7200. Mike is the MSPB FOIA/Privacy Act Officer.

Sincerely,

Robert E. Taylor

123443
E

Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

May 28, 1996

The Honorable Janet Reno
Attorney General of the United States
Department of Justice
10th Street & Constitution Avenue, N.W.
Washington, D.C. 20530

Dear Madam Attorney General:

This is in response to your memorandum dated May 16, 1996. The Office of the Comptroller of the Currency (OCC) is pleased to provide you with information concerning our public disclosure activities.

You asked that we provide you with information concerning the OCC's experience in applying the "foreseeable harm" standard in analyzing whether to withhold information and what types of records have been subject to disclosure under the new guidelines issued in 1993. You also requested information pertaining to backlog reduction as of year-end 1993, 1994 and 1995 and plans to further reduce current backlogs. Additionally, you asked what other measures the OCC has taken to implement the President's commitment to the Freedom of Information Act and any goals we have established for further improvements during 1996.

The OCC has traditionally taken a pro-disclosure stance in responding to Freedom of Information Act (FOIA) requests. This is demonstrated by the following statistics:

- In 1993, the OCC received 3,341 FOIA requests. Of this number, 142 requests were either denied in full or in part.

- In 1994, the OCC received 3,455 FOIA requests. Of this number, 142 requests were either denied in full or in part.

- In 1995, the OCC received 12,681 FOIA requests. Of this number, 137 requests were either denied in full or in part. Over 9,000 of these requests were handled by our fax-on-demand system. (This was the first year we incorporated the fax-on-demand system requests into our totals. It was also that system's first full year of operation.)

The "foreseeable harm standard" has helped us to be more thoughtful as we apply the various exemptions to that information we do withhold. It has also served as an important tool in further expanding the scope of documents to be released. Although we have not kept records as to the actual number of cases where documents have been released at our discretion, I can assure you that we have released a variety of internal memoranda, enforcement actions, legal interpretations, E-mail transmissions and even information from our internal databases that would have been withheld under the 1981 standard. As a result, the feedback we have received from our requester community has been extremely positive.

Backlogs

The OCC does not have a backlog of requests and rarely exceeds the statutory deadline. Only in extraordinary cases do we ever have to notify requesters of delays. When we do, the delay is no more than five working days. In 1993 and 1994, our average processing time was 13 **calendar** days. During 1995 the average processing time was nine **calendar** days. So far this year the average has further improved to eight **calendar** days.

Disclosure-related Initiatives

When the President directed all the agencies to be more open and the "foreseeable harm standard" was introduced in 1993, the OCC was instrumental in establishing the Financial Regulatory Agency Interagency FOIA Working Group to decide how these agencies would apply that standard uniformly. As a result, the agencies have met approximately four times a year to promote dialog on disclosure-related matters and to adopt similar disclosure policies.

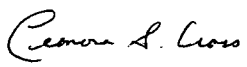
In 1994, the OCC established a fax-on-demand service that provides access to public OCC documents 24 hours a day and seven days a week. By identifying documents for which there is likely to be a significant demand and loading them on our fax-on-demand service, we have been able to respond more quickly to requests for these documents. As news of this service has spread, interest has grown immensely. During 1994, we averaged 300 calls per month. In 1995 we averaged 800 calls per month. So far this year we are averaging 3,000 calls per month.

In 1995, the OCC established its presence on the World Wide Web. The OCC web site is continuing to grow with new items being added almost weekly. Through this site, the public can access information about banks, new regulations, news releases, speeches and testimonies, legal staff interpretations, historical information about the OCC, biographies of key personnel, directory of our offices nationwide, an information directory, databases of Community Reinvestment Act ratings and electronic versions of the evaluations themselves. We also have links to the other financial agencies. FOIA requests can be made electronically through the site as well. We also plan shortly to provide access through our web site to our database on public enforcement actions taken against bankers and banks.

This year we are in the process of establishing a fully staffed public reference room which will provide the public with immediate access to the public information collections we have. A stand-alone Local Area Network will be housed there which will allow the public to have access to our Internet web site as well as stand-alone versions of our more popular databases. To date, we have hired the employees to staff this facility and the room itself is under construction. We plan to open officially July 1, 1996.

Senior management at the OCC is committed to providing good customer service and improving public access to OCC's public documents and information bases. We continue to look for new ways to live up to this commitment.

Sincerely,



Leonora S. Cross
Deputy Comptroller For Public Affairs

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Washington, D.C. 20201

TO : Deputy Director
Office of Freedom of Information and Privacy
Department of Justice

FROM : Director
Freedom of Information and Privacy Acts Division
Office of the Assistant Secretary for Public Affairs

Subject: HHS Response to the Attorney General's Letter of May 16, 1996

Enclosed is the HHS response to the Attorney General's letter of May 16, 1996, concerning the Freedom of Information Act.

The Department of Health and Human Services is composed of several operating program units, e.g., The Food and Drug Administration, The Health Care Financing Administration, The National Institutes of Health, The Centers for Disease Control and Prevention, etc., which are responsible for conducting the Department's various programs. These units are called Operating Divisions (OPDIVs). Each of them has its own Freedom of Information Officer, who is responsible for initial decisions to release or deny records requested under the Freedom of Information Act (FOIA).

Because the size and complexity of the FOIA activities in the OPDIVs varies greatly, from the Substance Abuse and Mental Health Administration, which answered 197 FOIA requests in 1995, to the Food and Drug Administration, which answered 50,606 requests in that year, the responses to the Attorney General's questions vary greatly. Rather than attempt to artificially create an overall HHS response, the attached attempts to reflect the significant experiences of each of the OPDIVs as it administers the Freedom of Information Act.

Some overall comments do apply, however.

1) Despite the advances made in automated tracking systems (and, in some agencies, "on-screen" review and redacting), processing FOIA requests remains an extremely labor intensive operation.

2) While the Attorney General's "discretionary release" policy may have increased the public's access to some kinds of Federal records, it has also increased the processing time for requests seeking those kinds of records. No longer can agencies automatically deny categories of records, e.g. drafts; every document must now be reviewed to determine the harm that might result from its release.

3) Last winter's furloughs and inclement weather stopped agency FOIA processing in its tracks; even those HHS components which did not experience a significant increase in backlogs, lost valuable time in their backlog reduction programs (actually, only one component has made any significant progress in backlog reduction

and it has done so through the time-honored method of adding more staff to the FOIA office).

4) Finally, "down-sizing" has had a significant impact on FOIA processing. Not only have most FOIA staffs been reduced (in one case, by 60 percent) but the program offices have fewer people to accomplish their program responsibilities, let alone search for documents to respond to an FOIA request.

All of the above having been said, I must now also say that FOIA offices continue to take great pride in their work and in making the largest quantity of responsive material available in the shortest possible time. Top management support for the concept of public access to agency records is unfailing.

Thank you for extending the deadline so that we might provide a more complete and accurate response. Questions regarding our response may be addressed to me at (202) 690-7453.

Rosario Cirrincione

Answers to Questions Posed in the Attorney General's Letter of May 16, 1996

Question 1. What has been your Agency's experience in applying the "foreseeable harm" standard in analyzing whether to withhold information? What types of records have been the subject of "discretionary disclosures" that would have been withheld under the 1981 guidelines?

Answer 1. Several operating divisions (OPDIVS), notably FDA and the Indian Health Service (IHS), report that they have essentially always followed a "foreseeable harm" policy, so there has been little change for them. Other OPDIVS, such as the Health Care Financing Administration (HCFA), CDC, and the Office of the Secretary, are releasing approximately 10% more records than they were previously, mostly drafts and predecisional analyses. The Health Resources and Services Administration (HRSA), is releasing "dramatically" more material, especially internally prepared grantee performance evaluations as long as they also do no commercial harm.

Question 2. What progress has been made in reducing FOIA backlogs (include backlog statistics for 12/31/93, 12/31/94, and 12/31/95) and what plans are in place to improve backlog reduction?

Answer 2. Smaller OPDIVS such as HRSA and the Agency for Health Care Policy and Research, report no backlogs at all. The CDC also reports no backlog with a much larger workload. The IHS had a relatively small backlog of 12 cases from 1994 and 61 cases from 1995. The Office of the Assistant Secretary for Health (formerly PHS) reports a 1995 backlog of 26 initial cases and 59 appeals. By increasing its FOIA staff by 60 %, HCFA reduced its backlog from 959 in 1993 to 601 in 1994 and 518 in 1995 (prior to the furloughs, HCFA's backlog was down to 385). The Office of the Secretary, HHS, has had a consistent backlog of approximately 250-300 cases for each of the past three years, with some growth resulting from "downsizing" and a bit more from the furlough. The NIH reports a current backlog of 1496 cases with some requests dating back to 1993. The component with the largest FOIA annual volume in the Government, FDA, reports a backlog at the end of 1993 of 2,316 of the 47,978 requests received; at the end of 1994, 5,731 of the 50,037 received; and at the end of 1995, 8,672 of the %0,606 received (most of FDA's requests are for highly technical commercial information).

Question 3. What other measures has your agency instituted to implement the President's commitment to the Freedom of Information Act?

Answer 3. The three major areas receiving greater attention as ways to implement the President's commitment to the Freedom of Information Act are: increased staff FOIA training at all levels of the organization; a vastly enlarged use of the Internet as a means of disseminating information, thereby reducing the need for the use of the FOIA as the mechanism to obtain information (FDA and HCFA efforts in this area are particularly noteworthy, and the Office of the Inspector General is planning to use the net to meet its responsibility to publish the names of sanctioned Medicare providers); and continual reexamination of FOIA policies and procedure to increase the authority of lower echelon units to release materials requested under the FOIA.

Question 4. What goals has your agency established for further improvements in its administration of the Freedom of Information Act in 1996?

Answer 4. Only the Health Care Financing Administration reports plans to add additional FOIA staff and further upgrade its processing equipment. All components, however, (including HCFA) plan to continue to rely on "more of the above," i.e. increased training, greater use of the Internet, and reexamination of release authorities to make them more efficient and better able to serve the public.

Department of Energy
Washington, DC 20585

June 13, 1996

Daniel J. Metcalfe
Co-Director
Office of Information and Privacy
Department of Justice
Flag Building Suite 570
Washington, DC 20530

Dear Mr. Metcalfe:

I am pleased to provide you the information requested by Attorney General Janet Reno concerning actions the Department of Energy has initiated since President Clinton asked Federal agencies and departments to renew their commitment to the Freedom of Information Act (FOIA). In accordance with the President's directive and guidance issued by the Attorney General, the Department has implemented various efforts to ensure openness in government and to reduce the agency's backlog of Freedom of Information Act requests. The information provided below addresses the questions posed in the Attorney General's memorandum of May 16, 1996.

1. What has been your agency's experience in applying the "foreseeable harm" standard in analyzing whether to withhold information? What types of records have been the subject of "discretionary disclosures" that would have been withheld under the 1981 guidelines?

The Department has made more information available to the public since the "foreseeable harm" standard was announced by the Department of Justice. In particular, more pre-decisional documents such as drafts and documents containing recommendations are being released once an agency decision has been made. Additionally, more information concerning routine administrative matters is being disclosed as a discretionary matter. Prior to the "foreseeable harm" standard these records would have been withheld from disclosure pursuant to Exemption 2 and Exemption 5 of the Freedom of Information Act, 5 U.S.C. 552(b)(2) and(b)(5).

Although the Department is making more information available by applying the standard, we continue to protect information related to individuals' privacy interests and information that may be a part of or related to an open law enforcement case.

2. What progress has been made in reducing Freedom of Information Act backlogs (include backlog status for 12/31/93, 12/31/94 and 12/31/95) and what plans are in place to improve backlog reduction?

Although backlog reduction efforts have been initiated department-wide, Freedom of Information Act activity in field offices, with a few exceptions, is current. However, in 1994, the Department conducted an audit of the Freedom of Information Act program at Headquarters and determined that it had a backlog of 814 requests, which included requests received from 1987 through 1994. To reduce the backlog the Department initiated an effort that first addressed all requests received prior to 1990. With the exception of 8 cases pending at other agencies, the Department has completed action on all requests received before 1990.

The next phase of our efforts to reduce the backlog have concentrated on requests received between 1990 and 1994, with special emphasis on the period 1990 through 1992. At present, there are 154 pending cases for this period. Approximately half of these requests involve documents with classified information that is subject to a declassification review or documents that have been transmitted to other agencies for review. We are working to eliminate the backlog of requests for this period by October 1, 1996.

The backlog of 154 requests includes 9 requests from 1990; 17 requests from 1991; 29 requests from 1992; 40 requests from 1993; and 59 requests from 1994. The Department has 214 requests from 1995 and 229 requests from 1996 pending at Headquarters.

The FOIA/Privacy Act Office has also installed a new automated tracking system and created Access Teams to help reduce the backlog. The new computerized tracking system which automatically assigns a number to each request and generates a worksheet, includes all requests received at Headquarters, and permits the agency to effectively monitor action on each request. The system ensures that the Department can determine the office to which the request has been assigned and the status of the processing of the request. The Access Teams are composed of Freedom of Information Act analysts who assist program offices in completing action on outstanding requests.

3. What other measures has your agency instituted to implement the President's commitment to the Freedom of Information Act?

In addition to the new tracking system and the Access Teams, the FOIA/Privacy Act Office has also implemented a pilot centralization program with 8 program offices at Headquarters. Prior to the pilot effort, the FOIA/Privacy Act office received incoming requests but referred them to the appropriate program office for review and disposition. Under the pilot program, the FOIA/Privacy Act staff will be responsible for request processing, including reviewing the documents requested, consulting with the appropriate offices on disclosure determinations, and preparing the final response to the requester. We believe this will lead to greater accountability of requests and more efficient and consistent processing of those requests. Since the pilot was implemented on April 1, 1996, nineteen centralized requests have been received. Eleven of these requests have been completed and the average processing time was 26 days. See Enclosure 1.

The FOIA/Privacy Act Office has also installed an optical imaging system to electronically store all requests received after January 1, 1996. Records in the system include the FOIA request, the responsive documents, and correspondence and tracking information generated processing the request. The imaging system will permit the Department to respond more quickly to any future requests for documents that have been requested and released after January 1, 1996.

To facilitate the interaction between the public and agency personnel on Freedom of Information Act matters, the Department has published a FOIA brochure to disseminate to the public that describes the FOIA program and how to request information from the agency; conducted a conference for requesters of information; and is revising its regulations that implement the Freedom of Information Act. The revised regulations will be published in the fall of this year and will be more user friendly. A Freedom of Information Act Users Conference was held in April, 1996, to explain the Department's Freedom of Information Act program to frequent requesters of agency records, to describe the Department's other programs, and to hear requesters' concerns and suggestions to improve the Department's Freedom of Information Act processes. We felt that a greater understanding by requesters of our activities and challenges would lead to clearer, more focused requests.

The Department believes that making more information available will also reduce the number of requests received because the public has access to the information it seeks. For this reason, the Department has taken other measures to implement the President's commitment to the Freedom of Information Act by making proactive disclosures of 355,000 documents through the Department's Public Reading Rooms in 1995, and making available electronically about 250,000 pages of human radiation documents to the public on the Internet, in public reading rooms and a central repository in Nevada. Moreover, the Department is aggressively reviewing for declassification its holdings of classified records. In Fiscal Year 1994 and Fiscal Year 1995, 285,000 pages and 337,000 pages respectively were declassified.

To make information easily accessible electronically, the Department has also established "Opennet" on its Home Page, which provides a "one-stop shop" on the information highway where the public can obtain instant information about the Department's programs. Opennet brings together information about 50 Department home pages for Headquarters, programs and field sites.

The Department's activities to improve its processing of Freedom of Information Act requests has made operations more efficient and more responsive to the public. The Department now acknowledges all requests within two days of receipt, and has also reduced the processing time of requests by 250% since 1992, increased the number of requests granted in full by 92% since 1992, and in 1995 closed more requests than it received (Closed 3,653 and Received 3,345). See Enclosures 2, 3 and 4.

4. What goals has your agency established for further improvements in its administration of the Freedom of Information Act in 1996?

To improve the processing of all requests received by the Department, we would like to expand the centralized pilot program to the remainder of the Headquarters program offices after the initial pilot has been evaluated. In addition, our current initiative targets the completion of all requests received prior to 1995 by October 1, 1996. This will eliminate most of the agency's backlog of cases, as we continue to improve the processing time for all requests received. In Fiscal Year 1997, we expect to complete all requests received in 1995 and 1996 so that the Department is current on all requests processing.

I am proud of the progress that the Department has made since President Clinton made his commitment to openness and challenged agencies to become more responsive to the public. Perhaps no single event better exemplifies the Department's commitment to openness than Secretary O'Leary's December 7, 1993 press conference, in which she unveiled a comprehensive plan to make the Department's facilities and information more open to the public. This comprehensive plan became known as the "Openness Initiative" and encompassed efforts to declassify records, reduce FOIA backlogs, improve information access procedures, and identify and make available information related to human radiation experimentation. Secretary O'Leary followed up her initial openness conference with two subsequent press conferences, one on June 27, 1994, and the other on February 6, 1996, where she announced significant declassification and major policy initiatives related to openness.

The Department of Energy will continue to identify ways to provide more information to the public in the most efficient and timely manner possible. Secretary O'Leary remains committed to opening government to the American people, and we appreciate the opportunity to share our accomplishments with you. Please contact GayLa Sessoms, Director of the Freedom of Information and Privacy Act Office, at 202-586-5995, if you have any additional questions.

Sincerely,

Archer L. Durham
Assistant Secretary for
Human Resources and Administration

Enclosures

The Life of A Centralized FOIA Request

Day 1 Request received, controlled and tracked

Day 2 Acknowledged and referred

Day 3 - 10 Search for responsive records

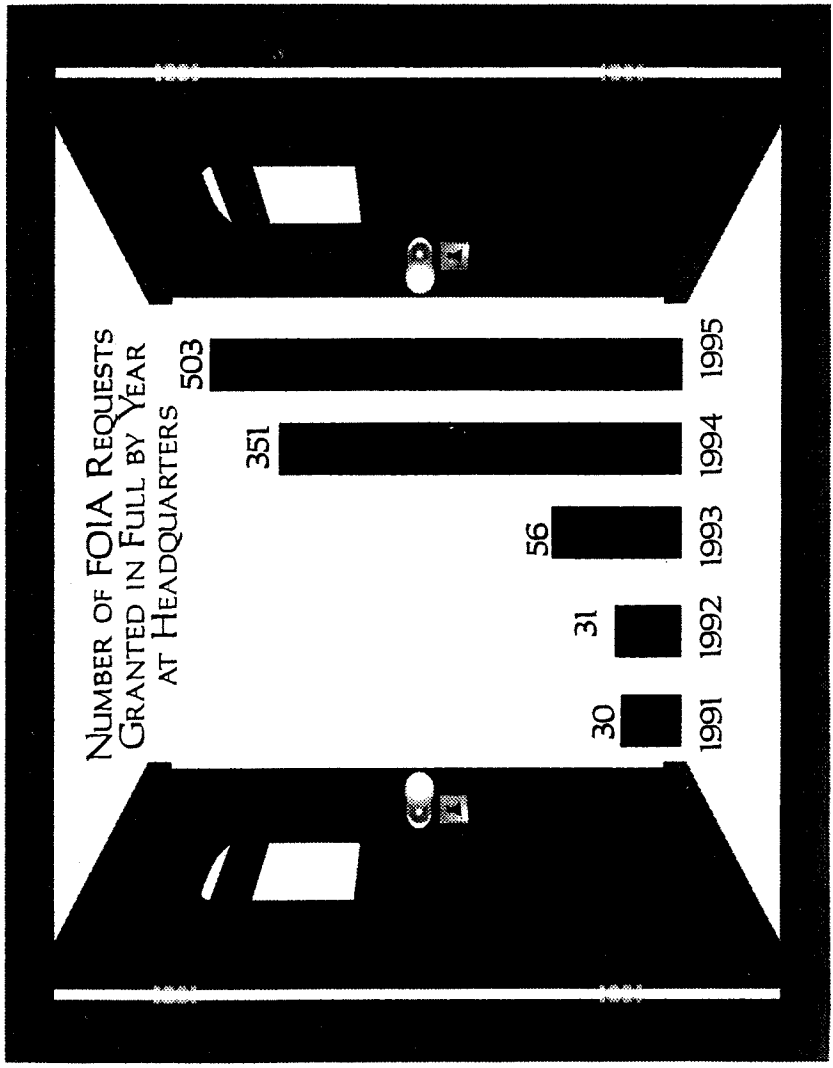
Day 10 - 15 Review of responsive records

Day 15 - 25 Final response preparation

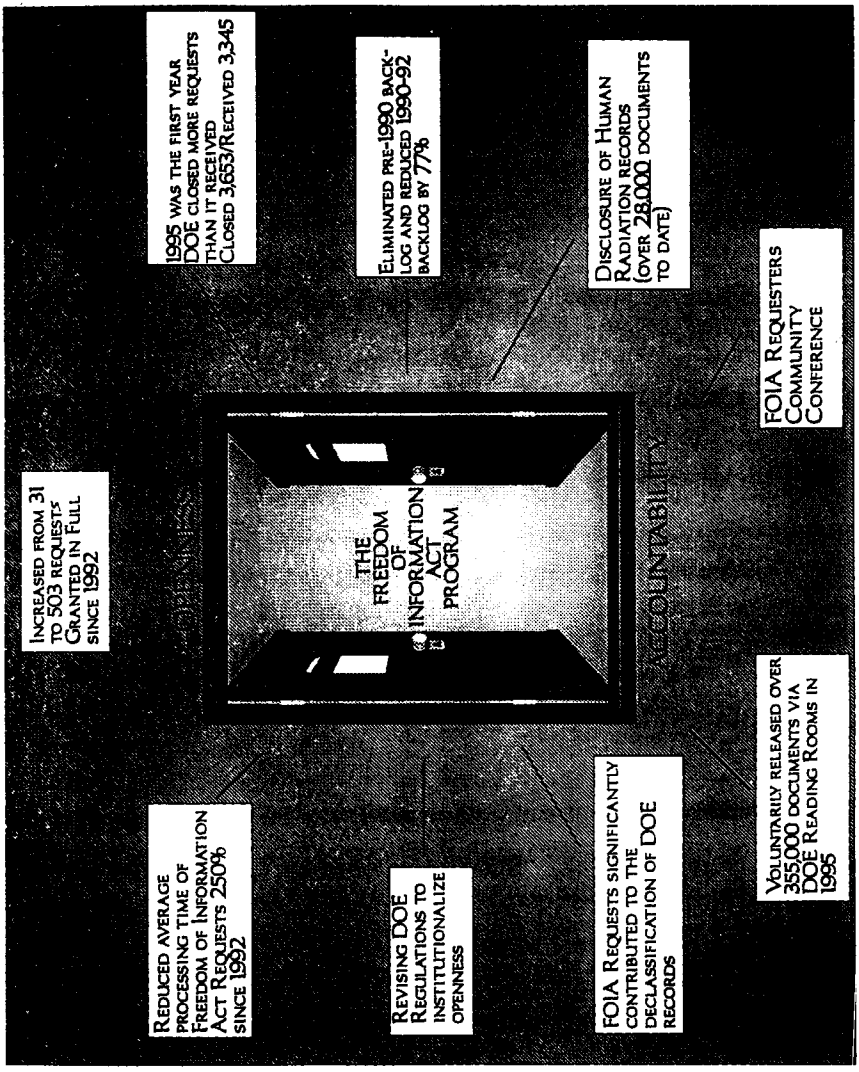
Day 25 - 30 Response to requester

PARTNERSHIP
DOE/
GOV
PUBLIC
AVERAGE AGE OF FOIA REQUESTS IN DAYS
1265
1196
699
603
472
1991
1992
1993
1994
1995

ENCLOSURE 2


OPENING OUR GOVERNMENT'S DOORS
NUMBER OF FOIA REQUESTS GRANTED IN FULL BY YEAR AT HEADQUARTERS
30
1991
31
1992
56
1993
351
1994
503
1995

ENCLOSURE 3


"HIGHLIGHTS OF DOE SUCCESSES"
INCREASED FROM 31 TO 503 REQUESTS GRANTED IN FULL SINCE 1992
1995 WAS THE FIRST YEAR DOE CLOSED MORE REQUESTS THAN IT RECEIVED CLOSED 3,653/RECEIVED 3,345
ELIMINATED PRE-1990 BACKLOG AND REDUCED 1990-92 BACKLOG BY 77%
DISCLOSURE OF HUMAN RADIATION RECORDS (OVER 28,000 DOCUMENTS TO DATE)
REDUCED AVERAGE PROCESSING TIME OF FREEDOM OF INFORMATION ACT REQUESTS 250% SINCE 1992
THE FREEDOM OF INFORMATION ACT PROGRAM
REVISING DOE REGULATIONS TO INSTITUTIONALIZE OPENNESS
FOIA REQUESTS SIGNIFICANTLY CONTRIBUTED TO THE DECLASSIFICATION OF DOE RECORDS
VOLUNTARILY RELEASED OVER 355,000 DOCUMENTS VIA DOE READING ROOMS IN 1995
FOIA REQUESTERS COMMUNITY CONFERENCE

ENCLOSURE 4

The DOE may determine to waive or reduce fees in cases where furnishing the information primarily benefits the general public by significantly assisting citizens in understanding how their government works. Requests for waiver or reduction of fees should be submitted with requests for records under the FOIA. Please include in any waiver request relevant facts or arguments which might support the request.

Actual production and/or copying of records should be arranged with the staff after it is determined that records are in fact accessible.

The current schedule of fees for search, review and copy services is set forth in 10 CFR 1004 and is available at the DOE's Public Reading Room and at its field offices. Estimates of fees to be charged will generally be provided upon request.

FIELD OFFICES

1. Alaska Power Administration
   2770 Sherwood Lane #2B
   Juneau, AK 99801
   (907) 586-7405
2. Albuquerque Operations Office
   P.O. Box 5400
   Albuquerque, NM 87185-5400
   (505) 845-4173
3. Bartlesville Project Office
   P.O. Box 1398
   Bartlesville, OK 74005
   (918) 337-4293
4. Bonneville Power Administration
   P.O. Box 3621-A
   Portland, OR 97208-3621
   (503) 230-5359
5. Chicago Operations Office
   9800 South Cass Avenue
   Argonne, IL 60439
   (708) 252-2041
6. Golden Field Office
   1617 Cole Boulevard
   Golden, CO 80401-3393
   (303) 231-5750
7. Idaho Operations Office
   785 DOE Place
   Idaho Falls, ID 83402
   (208) 526-0271
8. Morgantown Energy Technology Center
   P.O. Box 880
   Morgantown, WV 26507
   (304) 291-4672
9. Office of Naval Reactors
   U.S. Department of Energy
   NE-60
   1000 Independence Avenue, SW
   Washington, DC 20585
   (703) 603-5593
10. Nevada Operations Office
    P.O. Box 98518
    Las Vegas, NV 89193-8518
    (702) 295-1128
11. Oak Ridge Operations Office
    P.O. Box 2001
    Oak Ridge, TN 37831-8510
    (615) 576-1216
12. Oakland Operations Office
    1301 Clay Street
    Rm 700-N
    Oakland, CA 94612-5208
    (510) 637-1684
13. Ohio Field Office
    P.O. Box 3020
    1 Mound Road
    Miamisburg, OH 45343
    (513) 865-3977
14. Pittsburgh Energy Technology Center
    P.O. Box 10940
    Pittsburgh, PA 15236-0940
    (412) 892-6167
15. Richland Operations Office
    P.O. Box 550
    Richland, WA 99352
    (509) 376-6216
16. Rocky Flats Office
    P.O. Box 928
    Golden, CO 80402-0928
    (303) 966-6312
17. Savannah River Operations Office
    P.O. Box A
    Aiken, SC 29802
    (803) 725-2889
18. Southeastern Power Administration
    Samuel Elbert Building
    Elberton, GA 30635
    (706) 283-9911
19. Southwestern Power Administration
    ATTN: SWPA-120
    P.O. Box 1619
    Tulsa, OK 74101
    (918) 581-6804
20. Strategic Petroleum Reserve Project
    Management Office
    900 Commerce Road East
    New Orleans, LA 70123
    (504) 734-4382
21. Western Area Power Administration
    P.O. Box 3402
    Golden, CO 80401
    (303) 231-1574

United States Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

For	Call
General Information	Public Inquiries (202) 586-5755
Energy Information Administration (EIA) Statistical Data	EIA Reference Facility (202) 586-8800
Hearings and Appeals Decisions	Hearings and Appeals Reference Room (202) 586-8001
FOI/PA Requests	FOI/PA Division (202) 586-6025

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HOW to MAKE a FREEDOM of INFORMATION ACT REQUEST . . .

Freedom of Information Act

The Freedom of Information Act ("FOIA") allows you to obtain information from various agencies of the federal government, including the Department of Energy ("DOE"). The purpose of this brochure is to provide you with a brief description of your rights and the manner in which the DOE will respond to your requests under the FOIA.

The information contained in this brochure is not exhaustive or definitive. Specific requests will be governed by the provisions of the FOIA, set forth in 5 U.S.C. 552, and in the Department's regulations implementing the Act, set forth in 10 CFR 1004. Copies of these regulations are available for inspection at the Department's Public Reading Room in Washington, DC and at its field offices.

Questions should be directed to the Freedom Information/Privacy Acts Division, Office of the Executive Secretariat, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585; telephone (202) 586-6025.

INFORMATION YOU CAN OBTAIN

In general, you can inspect or obtain copies of publicly available material maintained by the DOE through public reading facilities in the Department's headquarters and field offices. You can request access to all agency records not available through the public reading facilities by filing a FOIA request. These materials must be made available to the public under the FOIA, except for records which are:

1. properly classified as secret in the interest of national defense or foreign policy;
2. related solely to internal personnel rules and practices;
3. specifically made confidential by other statutes;
4. trade secrets and commercial or financial information which is obtained from a person and is privileged or confidential;
5. inter-agency or intra-agency memoranda or letters, except under certain circumstances;
6. personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
7. investigatory records or information compiled for law enforcement purposes, the release of which (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, (E) would disclose investigative techniques, and/or (F) could reasonably be expected to endanger the life or physical safety of any individual;
8. information contained in or related to certain examination, operating, or condition reports concerning financial institutions;
9. certain information concerning gas or oil wells.

In addition, if the foregoing types of information may be reasonably segregated and deleted from any record, the DOE will make the remainder of that record available to you for inspection or copying, if it is not otherwise available.

Requests for classified records including requests for mandatory review pursuant to Executive Order 12356 (or any successor) will automatically be considered a Freedom of Information Act request. The Director of Declassification will be responsible for determining the releasability of any classified records and will refer the documents to the appropriate program office for further review under the provisions of the FOIA if necessary.

SUBMITTING YOUR REQUEST

Before making a request under the FOIA, make sure the information you seek is not already public. The DOE makes certain records available for your inspection at the Public Reading Room in Washington, DC, between the hours of 9:00 am and 4:00 pm. Public Reading Rooms are also available at the Department's field offices (listed under the FIELD OFFICES) heading. Copies of this public material can also be ordered by writing to the Freedom of Information/Privacy Acts Division.

If you are told that the information you seek is not already available to the public, submit your request in writing to the FOIA Officer, FOI/Privacy Acts Division, 1000 Independence Avenue, SW, Washington, DC 20585. Although not required, we recommend the following steps to expedite the processing of your request: (a) include the words "FOIA REQUEST" on the envelope; (b) try to be as specific as possible in identifying the records you want to review; and (c) include a brief description of why you need the records, since the DOE may use such information as a basis for a fee reduction or discretionary release of otherwise exempt material

Generally, you have a right to a decision within 10 working days of receipt of your inquiry and the Department makes every effort to meet this time frame. However, due to the complexity of certain requests and the need for classification and legal reviews, the Department may take a substantially longer time to fully respond to a request.

If your request is initially denied in whole or in part, in accordance with the exemptions provided by the FOIA, you will be advised of your right to appeal. Generally, you will have a right to a decision on the appeal within 20 working days of receipt.

All requests made under the FOIA are a matter of public record and may be placed in the Department's public files.

INSPECTION OF RECORDS

Records requested under the FOIA can be made available for inspection at the Department's headquarters office in Washington, DC or at the Department's field offices.

SEARCH, REVIEW AND COPY CHARGES

With certain specific exceptions authorized by the FOIA Reform Act of 1986, a fee will generally be charged when more than one-half staff hour of work is devoted to locating, reviewing and making available for inspection or copying records requested pursuant to the FOIA. These fees will recoup the full allowable direct costs incurred. Copying services are performed by the Department's personnel at per page rates established by the agency. Charges in excess of $15 will not be incurred without specific written authorization.