



Highlights of [GAO-03-981](#), a report to the Ranking Minority Member, Committee on the Judiciary, U.S. Senate

FREEDOM OF INFORMATION ACT

Agency Views on Changes Resulting from New Administration Policy

Why GAO Did This Study

The Freedom of Information Act (FOIA) is based on principles of openness and accountability in government. FOIA establishes that federal agencies must provide the public with access to government information, unless the information falls into one of nine specifically exempted categories (for example, certain information compiled for law enforcement purposes). However, agencies can use their discretion to disclose information even if it falls into one of the nine exempted categories; this is known as a “discretionary disclosure.”

At the beginning of a new administration, the Attorney General traditionally issues a policy memorandum regarding FOIA, including policy on discretionary disclosure. Attorney General Ashcroft issued such a memorandum on October 12, 2001, replacing Attorney General Reno’s 1993 FOIA memorandum.

GAO was asked to determine (1) to what extent, if any, Department of Justice guidance for agencies on FOIA implementation has changed as a result of the new policy; (2) the views of FOIA officers at 25 agencies regarding the new policy and its effects, if any; and (3) the views of FOIA officers at 25 agencies regarding available FOIA guidance.

www.gao.gov/cgi-bin/getrpt?GAO-03-981.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Linda Koontz at (202) 512-6240 or koontzl@gao.gov.

What GAO Found

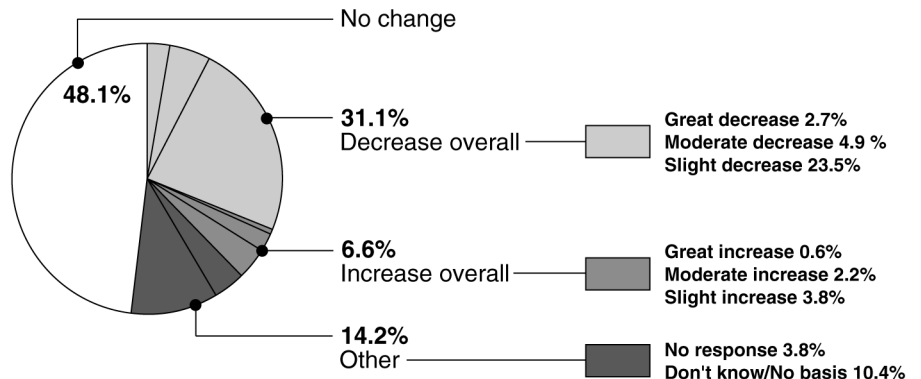
Following the issuance of the Ashcroft memorandum, Justice changed its guidance for agencies on FOIA implementation to refer to and reflect the two primary policy changes in the memorandum. First, under the Ashcroft memorandum, agencies making decisions on discretionary disclosure are directed to carefully consider such fundamental values as national security, effective law enforcement, and personal privacy; the Reno memorandum had established an overall “presumption of disclosure” and promoted discretionary disclosures to achieve “maximum responsible disclosure.” Second, according to the Ashcroft memorandum, Justice will defend an agency’s withholding information if the agency has a “sound legal basis” for such withholding under FOIA; under the Reno policy, Justice would defend an agency’s withholding information only when the agency reasonably foresaw that disclosure would harm an interest protected by an exemption.

Regarding effects of the new policy, FOIA officers most frequently reported that they did not notice changes in their agencies’ responses to FOIA requests compared to previous years. For example, as shown in the figure, of the FOIA officers surveyed, 48 percent reported that they did not notice a change with regard to the likelihood of their agencies’ making discretionary disclosures. About one third of the FOIA officers reported a decreased likelihood; of these FOIA officers, 75 percent cited the new policy as a top factor influencing the change.

When FOIA officers were asked to consider all the existing FOIA guidance and reference material according to various topic areas, the largest proportion (ranging from 50 percent to 75 percent, depending on the type of guidance) reported that guidance was adequate to a great or very great extent (that is, at 4 or 5 on a 5-point scale, where 1 was “to no extent”).

In commenting on a draft of this report, Justice officials generally agreed with its contents.

Effect of Ashcroft Policy on Likelihood of Agencies’ Making Discretionary Disclosures



Source: GAO.