



Office of the Attorney General

Washington, D. C. 20530

May 4, 1981

MEMORANDUM FOR: HEADS OF ALL FEDERAL DEPARTMENTS
AND AGENCIES

FROM : William French Smith
Attorney General

SUBJECT : Freedom of Information Act

The letter of the Attorney General of May 5, 1977 regarding the Freedom of Information Act is superseded by this memorandum. The Department's current policy is to defend all suits challenging an agency's decision to deny a request submitted under the FOIA unless it is determined that:

- (a) The agency's denial lacks a substantial legal basis; or
- (b) Defense of the agency's denial presents an unwarranted risk of adverse impact on other agencies' ability to protect important records.

As always, agencies must be guided by the principle that, subject to the specific exemptions provided by Congress, disclosure of agency records is the foremost goal in administering the Act. Accordingly, in responding to individual FOIA requests, agencies are urged to consider the public interests which favor disclosure, to weigh the potential costs of FOIA litigation, and to ensure that nondisclosure will not serve to conceal or otherwise facilitate fraud, waste or other wrongdoing by government employees.

Agencies should consult with the Department of Justice, Office of Legal Policy and Freedom of Information Committee, before final denial of an FOIA request which appears to present significant legal or policy issues. Agencies are further invited to solicit the advice of the Department of Justice on any other appropriate occasion.

The policies and procedures announced in this letter are intended to establish a cooperative relationship between the Department of Justice and other agencies in administering the FOIA.

Since experience in administering the Act has demonstrated various problems, I will be soliciting legislative proposals from your agency in the near future in a collaborative endeavor to reform the FOIA.