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COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

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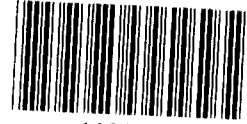
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B-199811

AUGUST 13, 1980

✓ The Honorable Jim Sasser
Chairman, Subcommittee on
Intergovernmental Relations
Committee on Governmental Affairs
United States Senate

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Dear Mr. Chairman:

Subject: [Update on Previous GAO Findings,
Observations, and Recommendations
Concerning the Freedom of Infor-
mation Act] (LCD-80-103)

Your July 3, 1980, letter requested that we update some of our previous findings, observations, and recommendations concerning the Freedom of Information Act.

In addition to the reports cited in your letter, we issued a report entitled "An Informed Public Assures that Federal Agencies Will Better Comply with Freedom of Information/Privacy Laws" (LCD-80-8, Oct. 24, 1979). In that report, we showed that these laws generally were effective tools for meeting congressional policy on openness in Government. We concluded that better oversight and executive direction could improve implementation.

To answer your questions, we met with the Director, Office of Information Law and Policy, Department of Justice, and with General Services Administration representatives who have public information responsibilities. We discussed the subject with Office of Management and Budget representatives who have Freedom of Information Act and/or Privacy Act implementation and guidance responsibilities. We also met with a Federal Bureau of Investigation official to

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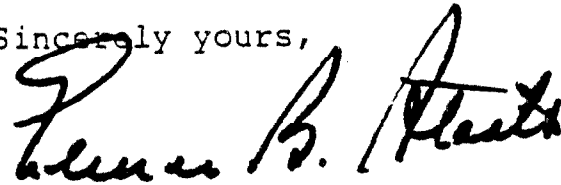
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discuss the actions that the Bureau has taken on some of our prior recommendations concerning implementation of the Freedom of Information Act.

Our responses to your questions are included in the enclosure.

Unless you agree or publicly announce its contents earlier, we will make no further distribution of this report until 30 days from the date of the report.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Thomas B. Stauch". The signature is written in a cursive style with a large initial 'T' and 'S'.

Comptroller General
of the United States

Enclosure

QUESTIONS AND RESPONSES UPDATING
SELECTED PREVIOUS GAO FINDINGS CONCERNING
THE FREEDOM OF INFORMATION ACT

CITIZEN AWARENESS OF THE FOIA

In our July 1978 report (LCD-78-120), we stated that the reasons citizens were not exercising their Freedom of Information Act (FOIA) rights as much as many had expected may have been due to disinterest or a lack of awareness of the act and how it can be used.

Questions

Is any information currently available which may indicate increased awareness of the act and are Federal agencies doing enough to inform the public of its FOIA rights? Would it be possible for some Federal agency to administer an informational campaign similar to GAO's highly visible "Fraud Hotline"?

Response

We have no knowledge of any current information that would indicate that the public has become more aware of its FOIA rights.

If agencies were required to report the total number of requests received each year, such information would provide some basis for measuring the public's awareness of the act. However, the act only requires agencies to report the number of requests denied. Neither the Department of Justice nor the Office of Management and Budget (OMB) has issued guidance for agencies to account for and report the number of requests. Unlike the Privacy Act which requires OMB to develop implementation guidelines and regulations and to provide continuing assistance and oversight, the FOIA does not require Justice or OMB to issue such guidance.

Justice began publishing a quarterly newsletter called "FOIA Update" in autumn 1979, which is aimed at informing the public, as well as the legal community, of FOIA matters. The publication is available through the Government Printing Office. A 1977 publication, "A Citizen's Guide On How To Use The Freedom of Information Act And The Privacy Act In Requesting Government Documents," prepared by the House

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Committee on Government Operations, is also available through the Government Printing Office. The guide contains addresses of selected agencies.

The General Services Administration and Justice are jointly working on a publication entitled "Questions and Answers on the Freedom of Information Act and Privacy Act." It is a compilation of the Federal Information Centers' answers to the most frequently asked questions by the public on the two acts. Staffmembers of General Services Consumer Information Center and Federal Information Center prepared the draft, and Justice's Office of Information Law and Policy performed a legal review of it. The draft publication is in the final review stages. The document will become available to the public free of charge through the Consumer Information Center in Pueblo, Colorado.

We are not aware of any other Federal agency actions to inform the public about its rights under FOIA.

We believe that your suggestion to establish an informational campaign similar to our "Fraud Hotline" has merit. A national campaign of public service announcements could briefly describe the FOIA and refer listeners to a telephone number where they could obtain additional information. We believe that General Services Federal Information Centers could be used for answering general questions on FOIA and for directing citizens to places where more specific information could be obtained. The centers and the public service announcements could also let the public know of the availability of the publications mentioned above.

AGENCY COURTESY TO REQUESTORS

Our July 1978 report stated that some agencies not complying with the FOIA response time provisions did not appear to be sufficiently concerned about courtesy to requestors, since often they were not notifying the requestors of the need for a time extension.

Question

Is GAO able to assess whether there has been any improvement since issuance of its report?

Response

We have not made any overall determination of whether agencies have become more concerned about courtesy to requestors and whether they have been notifying requestors of the reasons for a time extension.

We understand, however, that the Federal Bureau of Investigation (FBI) has improved in its dealing with requestors. In our April 1978 report (GGD-78-51), we stated that the FBI could be more responsive by providing to requestors such items as the number of pages in a file and the number denied, the exemption used to deny information on each particular page, and a statement that only headquarters' files were searched. We were told that the FBI now provides all such information.

AGENCY RECORDS OF REQUESTS AND COSTS

In our June 1978 report (LCD-78-119), we found that none of the agencies surveyed were required to maintain consistent, reliable, detailed records identifying and tabulating each FOIA and Privacy Act request, and none had accounting systems geared to developing and reporting the full costs of implementing the acts.

Question

Is GAO able to assess improvement?

Response

We have not done any further work which would enable us to update our earlier assessment.

The Director of Justice's Office of Information Law and Policy told us the Department of Defense has a system whereby each person, working on an FOIA request, records the time spent on the request. This enables the Department to estimate personnel costs.

GUIDANCE ON AGENCY FOIA
IMPLEMENTATION COSTS

We also reported in June 1978 that neither Justice nor OMB had published any guidance to clarify the basis, form, or content of cost data, and as a result, there was little or no consistency among agencies in estimating their costs.

Questions

Have Justice or OMB published any guidance? If none has been published, does GAO have a specific recommendation as to which agency should take the lead in this matter?

Response

Neither Justice nor OMB has yet issued guidance to agencies for use in accounting for and reporting annual FOIA implementation costs.

In 1979 Justice's Office of Information Law and Policy conducted a study to measure agencies' calendar year 1978 FOIA costs and benefits to the Government and to the public. The study used a questionnaire which contained instructions and a format for reporting. The survey results, as reported in the winter 1980 issue of Justice's "FOIA Update," showed estimated 1978 FOIA costs to be \$47.8 million.

We believe that OMB should be responsible for establishing guidelines for FOIA implementation cost accounting, as part of its proposed responsibility for Federal information management under House Bill 6410.

FBI RESPONSE TIME

In our April 1978 report, we recommended that the FBI be given 40 working days to respond to an initial FOIA request.

Questions

Does GAO still stand by its recommendation? Would GAO favor extending this recommendation to any other Federal agency?

Response

We based our 1978 recommendation on the past experiences and projected increases in the number of requests, and the inability of the FBI to keep up with the requests received without committing substantial additional resources. We do not have any current information that would indicate that the basis for our recommendation has changed.

Since we do not know the extent to which the conditions which led to our recommendation on the FBI exist elsewhere, we do not favor extending our recommendation to any other agencies.

STUDY OF AGENCY PROCEDURES TO PROCESS FOIA REQUESTS

A March 1980 report of the Subcommittee on Administrative Practice and Procedure, Senate Committee on the Judiciary, recommended that the Congressional Research Service (CRS) and we be asked to undertake a study comparing and contrasting the procedures used to process FOIA requests and appeals by the Department of Defense, the FBI, and possibly, other agencies.

Questions

Has GAO been asked by any member of Congress or body of Congress to perform a joint study with the CRS comparing FOIA request and appeal processing procedures of the FBI, the Department of Defense, and possibly other agencies? Would GAO be willing to perform such a study, and does GAO believe such a study is necessary?

Response

We have not been asked to perform such a study, either independently or jointly, with CRS.

We believe that a study of FOIA request and appeal processing would be useful, and if requested, we would perform such a study. However, under House Bill 6410, OMB would be responsible for establishing policy and providing oversight, including periodic evaluations of agencies' information management activities. Therefore, we suggest that OMB do the study instead.

GUIDELINES ON USE OF PERSONNEL AND ON FEES

The Judiciary Subcommittee report recommended that (1) Justice establish uniform guidelines for using professional and clerical employees to conduct records search and (2) OMB establish uniform guidelines on search and copying fees charged to requestors.

Questions

Is GAO aware of any such efforts and would GAO recommend designation of a lead agency to establish such guidelines?

Response

Neither Justice nor OMB has issued, nor are they working on, such guidelines.

The February 1975 "Attorney General's Memorandum on the 1974 Amendments to the Freedom of Information Act" provided guidance to the agencies on the charges to requestors for FOIA indexes. The Attorney General's memorandum referred to the legislative history which showed that

- photocopy reproduction of indexes would constitute adequate publication, if there was insufficient interest in an agency's indexes to justify printing and
- the cost, if any, of such photocopied indexes should reflect, not the actual cost of reproduction, but the equivalent per-item cost were the indexes printed in quantity.

In our April 1978 report, we recommended that the FBI use analysts rather than special agents to supervise FOIA/Privacy Act request processing so that special agents could return to their duties of performing investigations. A manager in the FBI's FOIA/Privacy Act branch told us that the branch plans to begin a pilot program 6 months from now to replace some special agents with nonagent supervisors.

We agree with the recommendations in the Subcommittee report that central agency guidelines are needed both on request processing by professional and clerical personnel and on search and copying fees.

We believe that guidelines on the use of personnel, however, should be sufficiently broad to allow individual agency management the flexibility to consider differences in sensitivity of information among and within agencies and to assign personnel accordingly. Such guidelines should establish a Federal Government policy of minimizing personnel costs in FOIA request processing, consistent with protecting agencies' future ability to perform their missions.

We believe that OMB should be responsible for establishing the guidelines for the use of personnel and for the setting of fees.

GUIDANCE ON WHAT CONSTITUTES A DENIAL

In our July 1978 report, we found that when requested records did not exist or were not in the agency's possession, some agencies processed the response as a denial while others did not. Consequently, we recommended that the Attorney General clarify what constitutes an adverse determination or denial under the FOIA.

Questions

Is GAO aware of Justice Department efforts in this direction? Would GAO be prepared to make a recommendation as to the need for broad, interagency criteria for denying FOIA requests?

Response

The Director of Justice's Office of Information Law and Policy told us his office frequently provides guidance over the telephone to agency personnel on what constitutes a denial under the Act. Coordination by telephone is a major facet of the office's effort to upgrade the quality of FOIA administration in Federal agencies. According to the Director, Justice has not published written guidance on what constitutes a denial.

We believe that OMB should issue broad interagency criteria for denying FOIA requests, within a context of guidance similar to its Circular A-108, "Privacy Act Implementation Guidelines and Responsibilities."

DESIGNATION OF A FOIA LEAD AGENCY

The Subcommittee on Administration Practice and Procedure, Senate Committee on the Judiciary, the CRS, we, and others have reported a lack of uniformity among agencies as they attempt to comply fully with the spirit and intent of the FOIA.

Question

Would GAO be prepared to recommend designation of a lead agency--possibly OMB or Justice--to develop broad, uniform rules and regulations for all Federal agencies in dealing with FOIA and Privacy Act requests?

Response

We believe that OMB should be given statutory responsibility for establishing policy. On February 7, 1980, during testimony on House Bill 6410, "The Paperwork Reduction Act of 1980," before the Subcommittee on Legislation and National Security, House Committee on Government Operations, we suggested that such responsibility be included in the bill.

The bill would create a central office in OMB responsible for setting Government-wide information policies and for providing oversight of agencies' information management activities. Such oversight would include periodic evaluations of agencies' information management activities.

The Privacy Act requires OMB to provide central direction and oversight of agencies' activities, but the FOIA does not require similar oversight. The Department of Justice has assumed this role to some degree by providing continuing legal guidance and consultation and handling litigation resulting from agencies' denials of requests for records.

We further believe that giving OMB specific policy-setting responsibility for the act would provide this much needed executive direction and oversight. In addition, because the FOIA and the Privacy Act were intended to compliment each other on matters of public access to records, their administration within OMB would benefit from close coordination.