

# Justice Drafts Changes in FOI Act That Could Mean Delays

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The Justice Department has drafted 14 amendments to the Freedom of Information Act that could sharply increase fees for handling some requests and would allow agencies to delay their responses for many reasons.

The confidential document containing the proposals says they include features that may be viewed as "unnecessarily controversial, otherwise undesirable or in need of redrafting."

But it insists that the legislative package as a whole offers a balanced, useful solution to the problems of which numerous government agencies have complained.

The Washington Star yesterday obtained a copy of the secret proposals, prepared for Associate Attorney General Michael J. Egan by Robert L. Saloschin, director of the Justice Department's Office of Information Law and Policy.

**SALOSCHIN HAS** worked on the FOI law for 10 years and is probably the government's leading expert in the field. He declined to discuss the proposals, which he described as a "first tentative draft."

Saloschin's memorandum said that each amendment was designed to serve at least one of three general purposes: openness (a better informed public), clarification, or correction (reducing "waste, abuses or damage to protectable public and private interests").

Most of the controversial proposals are described as "corrective." The proposals are not nearly so sweeping or extreme as amendments formally suggested last week by FBI Director William H. Webster, who wants investigative records in four top-priority areas to be exempt from mandatory disclosure.

Although the FBI is part of the Justice Department, Webster and Saloschin developed their proposals separately.

Attorney General Griffin B. Bell directed Saloschin to begin a comprehensive review of the information law last December. Saloschin immediately asked for suggestions from all federal agencies and is still reviewing the comments.

Saloschin's proposals include an amendment that would, in effect, en-

courage federal agencies to charge profit-making business corporations, their law firms and other private interests higher fees than the general public is charged for information.

**THE AMENDMENT** would encourage a waiver of fees for news media, scientists, historians, scholars and others conducting research.

Saloschin, in his report, says it is virtually impossible to determine the precise cost of administering the Freedom of Information Act, but he says a "reasonable minimum estimate" would be \$100 million. "A full

study including indirect costs might well indicate several times such a figure," he added.

Fees paid under the current law recover only "a microscopic proportion, probably far less than 2 percent," of the actual cost of administering the law, Saloschin said.

"At a time of growing public and taxpayer concern with government expenditures, waste and budget-balancing," he said, it is desirable to recover more of the cost through fees charged to private firms.

Many costly requests are made for corporate or other private purposes which sometimes also impede or impair the performance of public functions such as investigations and prosecutions," Saloschin said.

To solve this problem, one proposed amendment would specifically exempt records if disclosure would interfere with an open investigation by diverting government personnel to help process the request. The government could withhold records sought by a "prospective defendant" until the investigation was closed.

In several celebrated cases, individuals and companies under investigation by the Internal Revenue Service have tied up the agency by demanding their own records. Merely to compile and index all the documents, as courts often require, may be a stupendous task.

Under Saloschin's proposals, the Justice Department could issue model fee regulations and enlist administrative law judges to help settle fee disputes outside court.

**ANOTHER PROPOSED** amendment would give federal agencies the right to delay disclosure of records in a variety of "exceptional circumstances," specifically including:

- A "major increase" in the number of requests, creating a backlog.
- "The death, resignation, illness or emergency absence of personnel" needed to process a request.
- A request requiring more than 100 hours of work or the review of more than 500 pages of records.
- A likelihood that processing the request on time would impair the "urgent performance" of statutory agency duties in aid of the "public health, safety or welfare, the national economy, law enforcement or the national defense or foreign relations."

**CURRENT DEADLINES** are so hard to meet, Saloschin said, that they encourage "disrespect for government (and) government disrespect for law."

Another amendment would permit the attorney general to limit use of the Freedom of Information Act by nonresident aliens and convicted felons serving time in prison.

The attorney general could impose restrictions as appropriate in the interests of law enforcement, foreign relations, national defense, foreign intelligence or "efficient administration" of the FOI law.

Still another Justice Department amendment would explicitly exempt "instructions to investigators, inspectors, auditors or negotiators" if disclosure would jeopardize law enforcement or successful negotiations.

Most of the Justice Department proposals give federal agencies new flexibility in observing the law's "rigid" requirements.