

Freedom of Information Act: More

By Nicholas Lemann
Washington Post Staff Writer

Keith Golden, an affable, barking GS11 who runs the freedom of information office of the Federal Trade Commission, spent this spring sharing his space with 29 cardboard boxes.

The boxes stood next to the door, and together they made up a wall about the size of the front of a Little Tavern hamburger stand. They were there in response to a single Freedom of Information Act request from a lawyer on a fishing expedition, a symbol of a law that hasn't worked out exactly as planned.

When Congress amended the Freedom of Information Act in 1978, it intended "to lay a general philosophy of full agency disclosure . . . by which citizens and the press may obtain information profitably withheld."

In a sense, the amendments have been a big success. In 1978, 51,345 Freedom of Information requests were filed at the Department of Health, Education and Welfare, 56,466 at the Department of Defense (costing \$6 million to process), and 1,732 at Keith Golden's office at the FTC.

But the people using the act are individual citizens and the press only to a minor extent. For the most part, it has turned out to

be a tool for lawyers, who file Freedom of Information Act requests by the thousands in pursuit of a variety of business strategies for their clients, including fighting government investigations, spying on the competition, and finding out how strictly federal regulations are really enforced.

The 29 boxes in Keith Golden's office, for instance, were props for a minor subplot in a lawsuit between William Lohmeier, proprietor of Sentiment Shops of Tucson, Ariz., and Hallmark Cards.

Two years ago, Lohmeier sued Hallmark, charging it with violating the antitrust laws by trying, among other things, to "eliminate competition in the sale of social expression products in Arizona and Illinois." To put it more directly, Lohmeier says Hallmark refused to sell him its cards for six shops he opened in the Chicago suburbs.

Somewhere along the line, Lohmeier's lawyers, a small antitrust firm in San Francisco, heard that the FTC had once investigated Hallmark.

The investigation, which took several lawyers from the FTC's bureau of competition three years to conduct, ended without producing any legal action. But one of the San Francisco lawyers filed a request last October under the Freedom of Information Act for all materials relating to the FTC investigation.

"There may be something we'll be able to use," he says.

Keith Golden dutifully notified Hallmark's Washington lawyer (a former FTC commissioner himself, who of course did not look kindly on the request and sent some of his



subordinates over to look through the 29 boxes.

Then Golden's office told the Washington lawyers how much of the 29 boxes of material it proposed to release. The Washington lawyers protested on some minor point. A compromise was reached. In late April the FTC told the San Francisco lawyers they'd be getting about six of the 29 boxes—8,000 pages worth of material, the contents of which remain a mystery.

Helpful to Lawyers

The boxes have yet to be delivered to San Francisco, but as these things go, it has been an expeditious process. Hallmark might, for instance, have filed a "reverse freedom of information" suit against the FTC to block the boxes from being released, and the request would have dragged on for years. There are 150 such reverse suits now pending in the federal courts.

All that legal activity has created a small industry in Washington around the Freedom of Information Act.

A company called Plus Publications publishes a biweekly 10-page newsletter on freedom of information and privacy matters, for which more than 700 subscribers pay \$169 a year. Dozens of lawyers around town have made freedom of information requests a specialty. A Bethesda company called FOI Services Inc. employs 10 people to make freedom of information requests and compile lists of other people's requests, mostly to the Food and Drug Administration.

"Everybody's over there at the FDA fishing for new information on pharmaceuticals," says one freedom of information specialist with a big law firm. "Or you might go to the FTC looking for confidential information about a competitor that's in their files."

But for lawyers, what's best about the

Freedom of Information Act is that it is a substitute for the traditional process for obtaining documents in a lawsuit, a legal mechanism called "discovery."

In discovery, lawyers must prove that the documents they want released would be "relevant evidence."

"You can imagine the arguments lawyers get into over that," says one lawyer. "It can take months. With freedom of information, it's just a case of I as a citizen demand. Also, the lawyer for A can make his freedom of information request, and the lawyer for B will never know. And that may be to your advantage. If I use discovery, B knows I'm going after 'em."

All of this came as a surprise to Keith Golden when he joined the FTC. He had been a graduate music student at the University of Oklahoma, decided he didn't want to be a music teacher, took the civil service exam, did well, and went to the FTC three years ago.

Does he like processing freedom of information requests? "Oh, yes and no. It's interesting because we see all kinds of documents. It's frustrating in that we never seem to get anywhere. You don't have much sense of accomplishment. You complete one and there's another."