



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The letter of the Attorney General of May 5, 1977 regarding the Freedom of Information Act is superseded by this memorandum.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.



Department of Justice

FOR IMMEDIATE RELEASE
Monday, May 4, 1981

AG
202/633-2007

Attorney General William French Smith today announced new guidelines for federal executive agencies in the administration of the Freedom of Information Act, and the commencement of a comprehensive review of the Act to assess the need for legislative reform.

"The Department of Justice supports the goal of the original Act to inform the public regarding the operation of its government without frustrating the performance of vital government functions," the Attorney General said. "The principal purpose of the new guidelines is to permit government agencies, consistent with the legal requirements of the Act, to fashion their own release policies."

A thorough review of the Act is needed because years of experience have made clear that many persons are employing it in ways Congress did not intend, the Attorney General said.

"As a consequence," he said, "informants are more reluctant to share information with enforcement agencies, foreign intelligence services are more reluctant to share information with U.S. intelligence agencies, companies are reluctant to provide reliable information to the government, and other impediments to effective government are created."

Under the new guidelines the Department will defend agency denials of Freedom of Information Act requests in court, except where:

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

The new guidelines omit a previous requirement that, even if covered by one of the Act's exemptions, material should be released unless the agency could show that demonstrable harm could result from release. This policy has increased the complexities of administering the Act and may have increased costs as well, the Attorney General said.

The former guidelines were set out in a memorandum to all federal agencies dated May 5, 1977. Attorney General Smith's memorandum superseding those rules went to the agencies on May 4.

The new guidelines, Smith said, will not alter the fundamental Department of Justice policy to defend only those agency FOIA denials which are fully consistent with the legal requirements of the statute. The new policy will, however, entrust to each agency the discretion to develop, within the law, its own release policy according to its own requirements.

Attorney General Smith's memorandum emphasized that the foremost goal in administering the Act is disclosure of agency records, and advised agencies to be cognizant of both the costs of FOIA litigation and the fact that nondisclosure may at times serve to conceal fraud, waste or wrongdoing within federal agencies.

Proposed amendments to the Act are under development, Smith said. They will be based, he said, on the experience of several administrations in implementing the Act and will remain faithful to the goal of providing information necessary for an informed public.

The Attorney General cited the costs of administering the Act and the volume of litigation it spawns as additional reasons for the review.

During the evolution of the Act and its subsequent amendments, he said, congressional proponents estimated it would cost the government, at most, a few hundred thousand dollars a year to administer. Instead, he said, it is estimated that annual costs are currently running above \$45 million.

The FBI alone employs approximately 300 employees on FOIA matters at a cost of some \$10 million, he said.

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