

Reno Eases Guidelines For FOIA

Fostering Disclosure By Agencies Is Goal

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The Justice Department, rescinding rules imposed by the Reagan administration, announced yesterday that it will no longer defend in court government agencies that routinely deny Freedom of Information Act requests from the public.

The new ruling was outlined by Attorney General Janet Reno as part of a broad "open government" policy that Clinton administration officials said would encourage disclosure of more information from government files.

"We feel very strongly that a responsible government is one that lets people know what it is doing, and why it is doing it," Associate Attorney General Webster L. Hubbell said at a briefing for reporters. He described the government as "a ship that is now about to turn in a different direction."

As part of the new rules, Hubbell and other administration officials said, government agencies will be directed to reexamine their handling of Freedom of Information Act (FOIA) requests and reduce huge backlogs of delayed responses, some years old. But officials acknowledged that no new resources would be made available to agency FOIA offices—a problem some private lawyers said could undercut the administration's intentions.

Katherine Meyer, a lawyer who specializes in FOIA litigation, said that the backlogs at some agencies, such as the CIA and FBI, were "outrageous" and stand as a "total barrier to using the statute."

"There's no question they are going to need a major infusion of resources to do something about

'OPENNESS IN GOVERNMENT'

First and foremost, we must ensure that the principle of openness in government is applied in each and every disclosure and nondisclosure decision that is required under the Act The Department will no longer defend an agency's withholding of information merely because there is a 'substantial legal basis' for doing so. Rather, in determining whether or not to defend a nondisclosure decision, we will apply a presumption of disclosure

"In short, it shall be the policy of the Department of Justice to defend the assertion of a FOIA exemption only in those cases where the agency reasonably foresees that disclosure would be harmful to an interest protected by that exemption. Where an item of information might technically or arguably fall within an exemption, it ought not to be withheld from a FOIA requester unless it need be."



—Attorney General Janet Reno

in memorandum to heads of departments and agencies

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the backlog," said Meyer. Responding to FOIA requests has "never been a high priority by the agencies," she added.

The heart of the new policy was outlined in a memorandum Reno sent to all department heads. She said she was withdrawing 1981 Justice Department guidelines that permitted agencies to withhold information from the public so long as there was a "substantial legal basis" for doing so.

Instead, Reno said, she was setting a new "presumption of disclosure" standard in which the Justice Department would defend agencies in denying FOIA requests only when disclosure can be shown to cause "specific . . . harm" to a governmental interest or to invade an individual's privacy.

Reno also said she was urging agencies to make "discretionary disclosures" whenever possible. In addition, she said she was directing Justice Department lawyers to review all pending FOIA lawsuits against the government to ensure that the government's position conforms to the new guidelines.

This would affect about 500 lawsuits now on file against government agencies that have failed to comply with the act, a department lawyer said.

The Freedom of Information Act was passed by Congress in

1966 and substantially strengthened in 1974 as part of post-Watergate reforms. But for more than a decade, some critics say, federal agencies have grown so hostile to FOIA requests that the law has, in some instances, become virtually meaningless.

The act is aimed at permitting the public to seek information from government files. But it also allows broad exemptions that are open to interpretation. For example, information relating to criminal investigations or pending policy deliberations or that might violate an individual's privacy can be deemed exempt from disclosure.

"When many agencies get a FOIA request . . . they make every effort to withhold as much as they can," said Gary M. Stern, an American Civil Liberties Union lawyer. "Many people [in government] think FOIA is some evil thing they have to seek to undermine."

Stern said the new policy was a "step in the right direction" and that the Reno memorandum, and a more general memorandum encouraging disclosure signed yesterday by President Clinton, could help to change attitudes. "It is essential that government agencies understand that FOIA is part of their mandate," Stern said.