

BY THE U.S. GENERAL ACCOUNTING OFFICE

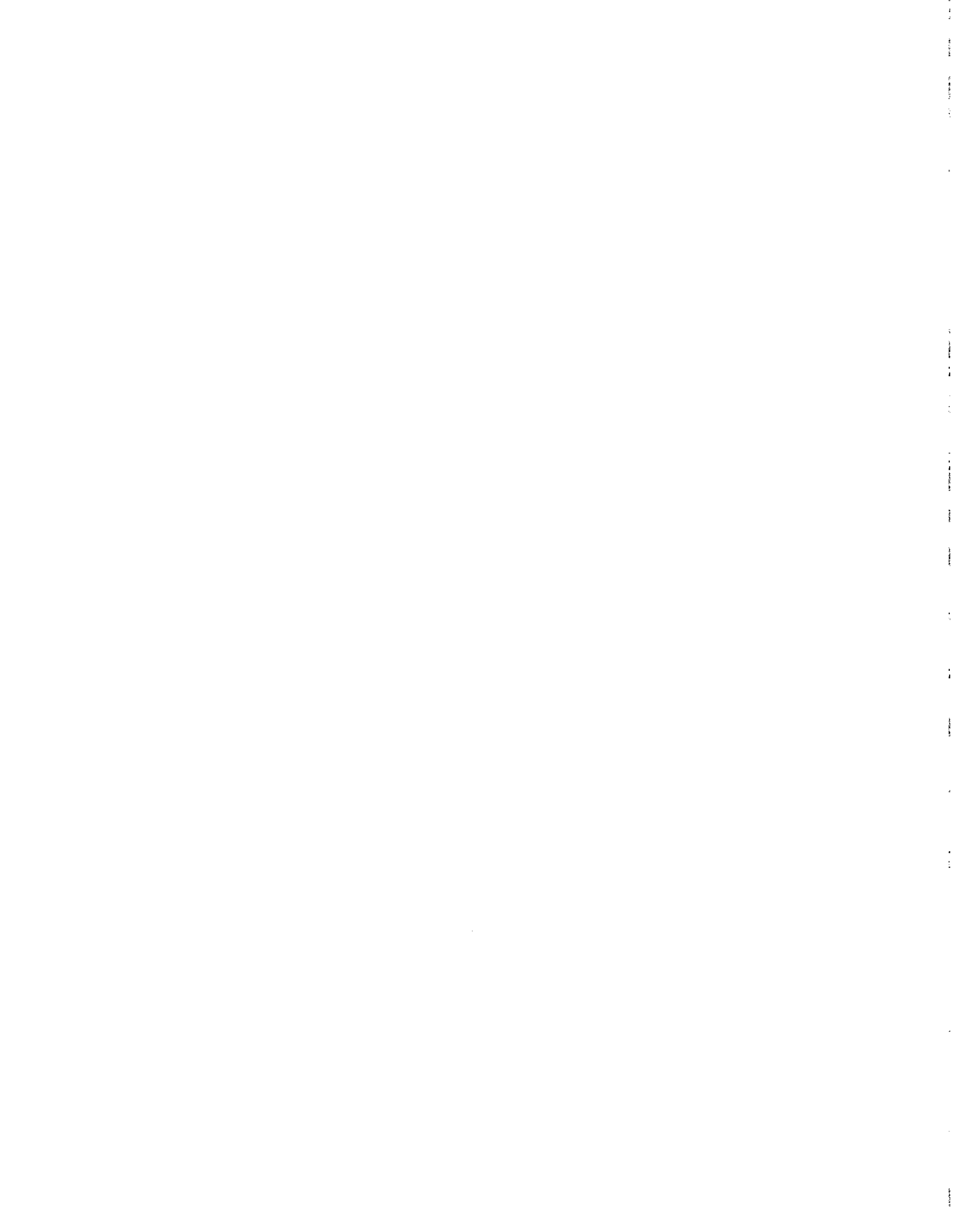
**Report To The Chairman, Subcommittee On The Constitution, Senate Committee On The Judiciary
United States Senate**

Guidance Needed If Better Freedom Of Information Act Cost Reports Are Desired

A precise determination of direct and indirect costs of implementing the Freedom of Information Act is not possible because agencies generally lack detailed supporting records. Costs of over \$61 million were identified mainly from agencies' 1981 annual reports. The reports vary widely in the ways costs are categorized and measured but provide an indicator of total cost. Inquiries at four agencies that have over 50 percent of the reported costs show they are attempting to capture most personnel costs, the largest category of costs incurred.

Because available cost information is both incomplete and inconsistent, it has limited usefulness for decisionmakers. Previous studies by GAO, the Congressional Research Service, and the Department of Justice identified weaknesses in the reported costs and cited the lack of Government-wide reporting guidance as a contributing factor. The Office of Management and Budget is considering requiring agencies to report the costs of administering the act and providing them with detailed reporting guidance. If the proposal is implemented, the quality and value of future cost reports could improve.







UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

GENERAL GOVERNMENT
DIVISION

B-173761

The Honorable Orrin G. Hatch
Chairman, Subcommittee on the
Constitution
Committee on the Judiciary
United States Senate

Dear Mr. Chairman:

In your October 23, 1982, letter you asked us to determine the full cost of the Freedom of Information Act (FOIA), 5 U.S.C. 552. You asked that we particularly strive to identify indirect costs, such as the costs of litigation, document review, policy-making, training, and other properly allocable costs. As requested in your letter we provided your office with the preliminary results of our study in a February 7, 1983, briefing. Appendix I contains the detailed results of our study.

Although we identified over \$61 million in annual FOIA costs, our study showed that FOIA costs cannot currently be measured with precision. This is due to a general absence of supporting records on FOIA costs. The act does not require that agencies keep track of their FOIA costs. In addition, FOIA activities pervade agency operating programs, complicating any attempts to collect costs.

Our findings are not new. GAO and others have reported or testified before the Congress on the weaknesses of available FOIA cost data. The Office of Management and Budget (OMB) is currently considering cost reporting requirements that provide Federal agency guidance to obtain more precise reporting of FOIA costs. In our February 7 briefing we suggested that it would be beneficial for the Subcommittee to work with OMB if more precise FOIA cost data are desired. Practical concerns, such as the cost of obtaining more precise data and how it would be used, should be considered before establishing the requirements. Our work at four agencies which reported over 50 percent of FOIA costs for 1981 shows that costs are incomplete, but the annual reports are an indicator of FOIA costs.

In accordance with your request and subsequent discussions with us, our work was limited to analyzing available agency cost data on administering the act, identifying the kinds of costs

agencies incur, and determining the general state of agencies' FOIA cost records. We tried to determine what FOIA costs are incurred and agencies' methods for cost collection through interviews with agency officials and reviews of cost reports. We did not verify the accuracy of reported costs or agency cost collection systems, due generally to either an absence of detailed records or the extensive audit effort which would be required to contact all collectors of FOIA cost data. Our work was otherwise performed in accordance with generally accepted Government auditing standards.

We summarized cost data from agencies' 1981 annual FOIA reports on file with the Senate Committee on the Judiciary. Since the reports are submitted on a calendar year basis, 1982 reports were not available when we conducted our review. We also reviewed prior FOIA cost-related studies by GAO, the Department of Justice, and the Congressional Research Service.

We selected four agencies to determine how they measure their reported costs--the Departments of Defense, Health and Human Services, and Justice and the Federal Trade Commission (FTC). The departments were selected because they had the highest reported costs. We selected the FTC because of its relatively high FOIA costs in relation to its size. These agencies accounted for over 50 percent of reported costs. We contacted officials at the Congressional Research Service and OMB to discuss related FOIA studies. We also contacted officials at the Department of Housing and Urban Development (HUD) and the Administrative Office of the U.S. Courts to inquire about their FOIA costs.

The FOIA (5 U.S.C. 552(d)) requires agencies to report annually to the Congress on their activities under the act. However, the law does not require agencies to report costs. In 1975, the Chairman of the Subcommittee on Administrative Practice and Procedure, Senate Committee on the Judiciary, and the Chairwoman of the Subcommittee on Government Information and Individual Rights, House Committee on Government Operations, provided agencies with guidance on the format for their FOIA reports. This guidance came after the 1974 amendments to the act and provided for including in the report the "incremental costs" incurred as a result of the amendments. A definition of incremental costs was not included.

Individual agencies vary greatly in the cost categories they include in their reports. Wide variations also exist within agencies in cost categories reported by various bureaus and offices. As a result, meaningful comparisons of reported costs

or estimates of specific cost categories are not possible. However, at the agencies we visited, personnel costs of both the FOIA office and the agency program offices which actually retrieve and review documents in response to FOIA requests are included in the annual reports. Therefore, depending upon the extent to which agencies capture these personnel costs, the largest category of FOIA costs is reported.

Of the agencies we visited, the Department of Defense (DOD) has the most comprehensive FOIA cost collection system. It appears to include all costs but litigation. The Department of Health and Human Services (HHS) reports most direct costs but excludes indirect items, including employee benefits and office space. Although certain organizations in the Department of Justice do not capture and report all their FOIA personnel costs, the Federal Bureau of Investigation (FBI), which accounts for over 70 percent of reported Justice costs, has a good cost collection system. The FTC reported only personnel costs. Its personnel benefits and other unreported costs were about 15 percent of the reported costs.

During our study, we identified over \$61 million in FOIA costs. Of this, \$54.7 million, or 89 percent, was identified from 1981 annual FOIA reports submitted to the Senate Committee on the Judiciary. For agencies which either did not have an annual report on file with the Judiciary Committee or did not include costs in their annual report, another \$4.3 million, or 7 percent, was derived from a 1981 Department of Justice study. We also identified unreported litigation costs of \$1 million (2 percent) at Justice and various unreported costs of \$1.3 million (2 percent) at the agencies we visited.

An OMB FOIA cost reporting and fee collection proposal was circulated for agency comment. OMB is currently reviewing the comments. If OMB were to provide specific cost measurement and reporting guidance, the FOIA costs included in agencies' future annual reports could be improved. This would make the annual reports a more meaningful tool for management analyses or congressional oversight.

In accordance with discussions with your office, we did not take the additional time to obtain agency comments on the matters discussed in this report. We did, however, discuss our findings with an OMB official responsible for the initiative concerning FOIA cost reporting requirements. The official believed that our findings were consistent with OMB's concerns.

As arranged with your office, unless you announce its contents earlier, we plan no further distribution of this report

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until 30 days from the date of the report. At that time, we plan to send copies to the Attorney General; Director, OMB; and other interested parties. We will also make copies available to others upon request.

Sincerely yours,

W. J. Anderson

William J. Anderson
Director

GUIDANCE NEEDED IF BETTER FREEDOM OF
INFORMATION ACT COST REPORTS ARE DESIRED

On October 23, 1982, the Chairman, Subcommittee on the Constitution, Senate Committee on the Judiciary, asked that we undertake a study to determine the full costs of the FOIA. He was particularly interested in having us identify indirect costs, such as the costs of litigation, document review, policy-making, training, and other properly allocable costs.

BACKGROUND

The FOIA (5 U.S.C. 552), enacted on July 4, 1966, and amended on several occasions, provides the basic authority and procedures for the public to obtain documents and records from the executive branch of the Federal Government. The act was intended to facilitate public access to Government information and to create standards for records which should be open to public inspection.

The FOIA was originally enacted in 1966, but obstacles in the way of public access to Government information prompted amendments enacted on November 21, 1974. The amendments established response deadlines, reduced fees agencies could charge, streamlined the legal recourse afforded requesters, and strengthened release requirements. When the 1974 amendments to the act were passed, implementation costs were underestimated. The Senate Judiciary Committee estimated in its report ^{1/} on the amendments that they would cost an additional \$40,000 per year (primarily in attorneys' fees assessed against the Government). The House Government Operations Committee estimated in its report ^{2/} that the amendments would cost an additional \$50,000 in fiscal year 1974 and \$100,000 for each of the succeeding 5 fiscal years. Although the amendments required that agencies submit an annual report to the Congress on their activities under the act, cost was not a required reporting item.

Following the 1974 amendments, congressional and executive branch interest in FOIA costs grew steadily. Shortly after the 1974 amendments were passed, the Chairman of the Subcommittee on Administrative Practice and Procedure, Senate Committee on the Judiciary, and the Chairwoman of the Subcommittee on Government

^{1/}U.S. Cong., Senate, Committee on the Judiciary, Amending the Freedom of Information Act, 93d Cong., 2d sess., S. Rept. 854 (Washington, D.C.: GPO, 1974), p. 41.

^{2/}U.S. Cong., House, Committee on Government Operations, Amending Section 552 of Title 5, United States Code, Known as the Freedom of Information Act, 93d Cong., 2d sess., H. Rept. 876 (Washington, D.C.: GPO, 1974), p. 10.

Information and Individual Rights, House Committee on Government Operations, sent a guidance letter to all agencies asking them to include the "incremental costs" of the amendments in their annual reports. This term was not defined, however.

Cost interest continued as agencies began submitting annual reports and studies were conducted indicating that FOIA costs were underestimated when the amendments were passed. In 1978 we reported on law enforcement agencies' costs ^{3/} in response to a request from the Chairman, Senate Committee on the Judiciary. Thirteen agencies either estimated or identified costs of both the FOIA and the Privacy Act (5 U.S.C. 552a) ^{4/} to be about \$36 million for a 3-year period. A 1979 Department of Justice study estimated 1978 Government-wide FOIA costs of \$47.8 million, but Justice indicated this substantially underestimated the true costs because of "qualitative" information provided by agencies.

In 1981, the Congressional Research Service reported that many departments and agencies complained they had to make large expenditures because of the amendments. Moreover, they viewed their FOIA responsibilities as an extra expense since they did not regard them as being an integral part of their missions.

Also, in 1981, Justice developed a \$57 million Government-wide FOIA cost estimate for 1980. This estimate was presented in 1981 hearings on proposed FOIA amendments held by the Senate Subcommittee on the Constitution. Again Justice qualified its estimate with the belief that the costs are substantially understated because they do not quantify lost "opportunity costs" or the costs of disruption of agency business caused by the FOIA.

Other testimony during the Senate hearings also addressed the cost issue. Several organizations specifically suggested that GAO study FOIA costs. A few examples follow.

^{3/}"Data on Privacy Act and Freedom of Information Act Provided by Federal Law Enforcement Agencies" (LCD-78-119, June 16, 1978).

^{4/}Privacy Act costs were included in our earlier study in response to the committee request. The Privacy Act extends the Freedom of Information Act's underlying principle--that Government, in its role as custodian of information, is accountable to those it serves. Both acts provide access to Government records. The Privacy Act gives the individual two principal sets of rights concerning certain records that contain information about himself or herself--rights of access and rights to exclude others from access without his or her consent.

- The Director of the Reporters Committee for Freedom of the Press said he believed reported costs are overstated; he added, however, that even if reported costs are accurate, they are low for the benefit derived. The Director suggested that a GAO audit could provide a detailed breakdown of FOIA costs.
- The Executive Secretary of the Organization of American Historians testified that the Senate Committee would perform an invaluable public service if it would recommend a "GAO study of the real, as opposed to hostilely inflated, costs of FOIA operations..."
- An American Newspaper Publishers Association representative suggested requiring that GAO conduct a careful study of FOIA processing and develop meaningful criteria on what constitutes reasonable review costs.
- The Legislative Director and other representatives of the American Civil Liberties Union asserted that some Government officials accept the highest available FOIA cost estimates and state that they are unreasonable even though there are no uniform criteria to assess agencies' costs nor any standard to gauge the reasonableness of cost estimates. The representatives recommended that, before the FOIA is amended, GAO conduct a study to develop a realistic cost figure. They also suggested that, within 2 years after the effective date of the amendments, GAO study ways to streamline FOIA request processing and make FOIA administration more cost effective.

Prompted by these concerns, the Chairman of the Constitution Subcommittee asked that we perform our current cost study.

FOIA COSTS CANNOT BE PRECISELY
DETERMINED GIVEN CURRENT MEASURE-
MENT AND REPORTING PRACTICES

We attempted to identify available cost data from annual reports and previous studies and, at four agencies accounting for over 50 percent of reported costs, determine what costs are or are not reported. Many agencies, lacking any requirement to do so, do not measure and report their costs. Further, in the absence of reporting standards, agencies which do report costs vary considerably regarding the categories of costs they include. Finally, cost measurement techniques vary among agencies, affecting the precision of reported costs. These are not new problems; GAO and others have previously reported them.

What costs are involved in the FOIA?

To determine the costs agencies incur in their FOIA activities, we first analyzed what steps Government agencies must

take to process FOIA requests. Although FOIA processing procedures vary because of unique agency structures, certain steps appear to be common to the agencies we reviewed.

Requests are received and routed by an agency mail room to an FOIA office. An agency may have a central FOIA office, separate offices for each operating component and field office, or some combination of both structures. The FOIA office records the request and analyzes it to determine the location of the requested records. The request is then forwarded to the appropriate program office responsible for the data for retrieval of the records.

Once requested records are identified, the agency determines if fees should be assessed and, if so, the requester may be billed in advance if the fee is substantial. Once the records are retrieved, they are reviewed to determine whether they can be released and whether certain exempt material should be extracted. Screening for exempt material may be done by the FOIA office or by the program office with concurrence of the FOIA office. Denial of all or portions of the requested records must usually be authorized by a designated senior-level official or FOIA officials within the agency.

Once requested records are approved for release, a response to the requester is prepared either by the FOIA office or by the program office. Copies of the records are mailed to the requester and a copy of the requested records is also kept in the agency file. If fees are charged and an advance bill was not sent to the requester, the bill is sent along with the records.

Other FOIA activities also result in costs to an agency. For example, the agencies establish FOIA policies and appropriate regulations. They publish indexes of certain records in accordance with FOIA provisions. Agency personnel are trained in FOIA procedures. Agencies process fees collected and maintain files of requests. Some agencies also have automated systems for tracking FOIA requests.

In addition to routine request handling activities, agencies incur costs for processing appeals of FOIA denials (such as refusal to release a record in whole or in part). Appeal processing usually involves senior-level officials and agency legal staff, as well as those involved in processing the initial request.

Another less routine agency FOIA activity is involvement in litigation. Although the Department of Justice usually defends such suits, courts may request the agencies sued to prepare affidavits or indexes to withheld documents. Agency legal staff as well as program office staff may provide this litigation

support, which can be a time consuming and costly process. The roles of the Department of Justice and the U.S. Courts in litigation are discussed on pages 12 to 15.

The following chart depicts the types of agency offices which can incur FOIA costs, the functions they perform, and the kinds of costs they incur.

AGENCY OFFICES, FUNCTIONS, AND COSTS
INVOLVED IN ADMINISTERING THE FOIA

<u>Office</u> (Headquarters and/or field)	<u>Function</u>	<u>Cost categories</u>
Central FOIA office	Distribution	Personnel
Operating program office	Request processing	Personnel benefits
General Counsel or similar legal office	Appeal processing	Overhead
Financial office	Litigation	(rents, communications, and utilities)
Mail room	Policy formulation	Copying
	Fee collection	Printing
	Training	Equipment
		Supplies and materials
		Reporting
		Mailing
		Filing
		Travel

What do reported costs show?

From a total of 73 agencies' 1981 annual reports filed with the Senate Judiciary Committee, we identified \$54.7 million in FOIA costs reported by 42 agencies, including \$366,000 in awards of attorneys' fees and court costs from the Department of Justice's annual report. (See app. II.) However, 27 agencies did not include costs in their annual reports and 4 agencies reported that no costs were incurred. For 16 of the 27 agencies not reporting costs, we identified \$4,296,488 from the 1981 Justice study of 1980 costs. In addition, five agencies reported \$36,929 in response to the 1981 Justice study but did not have 1981 annual reports on file with the Senate Judiciary Committee. Thus, reported costs we identified total over \$59 million. We also identified unreported costs of \$2.3 million for a total of over \$61 million. These unreported costs are discussed later.

Not all agencies include costs in their annual reports since cost is not a reportable category required by the FOIA. Further, we did not contact the agencies which did not have reports on file with the Senate Judiciary Committee to determine whether or not any had been prepared. However, all departments

and most large agencies reported their costs, with the exceptions of the HUD and the Postal Service. We obtained HUD costs from the 1981 Justice study. A HUD official told us the only cost information on file was a 3-page response to a 1979 Justice study.

As shown in appendix II, cost categories reported vary widely. Also, many agencies use different categories for reporting similar costs. For example, three agencies reported "printing/duplication" costs, and three others reported "duplication/mailing" costs. Finally, some agencies report "incremental costs," some report "total costs," and others do not characterize their costs either way.

Because of the wide variations in agencies' cost reports, we do not believe they presently provide the Congress with a meaningful basis for analysis or decisionmaking.

Four agencies measure major,
but not all, costs

We visited the Departments of Defense, Health and Human Services, and Justice and the FTC to determine how they measure their reported costs. These agencies accounted for over 50 percent of reported costs. We found that both techniques and categories of measurement vary widely. Variations occur even within agencies and bureaus of agencies. Regardless of these problems, the agencies generally attempt to capture most personnel costs and this is the largest category of cost incurred. They also attempt to capture costs from other offices involved with the FOIA in addition to the central FOIA office.

Department of Defense

DOD's FOIA program provides detailed cost accounting and reporting. Components fill out a uniform cost information sheet for each request processed and report this information in summary form three times a year to the component responsible for preparing the annual report. Cost information is reported for both clerical and professional personnel who work on the FOIA. Costs are then computed by multiplying the total hours worked by a specified hourly rate for the level of personnel (clerical, professional, executive) involved. Other reported costs include computer, reproduction, and printing costs and also the cost incurred in preparing the annual report. DOD increases all personnel-related costs to account for overhead. DOD's annual report identifies the costs reported as "total" rather than "incremental" costs, and the reported data covers both initial request and appeal processing costs. Litigation costs do not appear to be reported. The incidence of litigation amounts to less than one-tenth of a percent of the total number of requests processed.

DOD's FOIA program is administered by 12 separate components. The components include the Office of the Secretary of Defense/Organization of the Joint Chiefs of Staff; the Departments of the Army, the Navy, and the Air Force; and the other DOD agencies such as the Defense Logistics Agency and the Defense Communications Agency. The Directorate for Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs), not only processes requests for the Office of the Secretary of Defense/Organization of the Joint Chiefs of Staff records, but also coordinates requests involving more than one component and compiles information submitted by all the components for the annual report.

Program uniformity is promoted by DOD Regulation 5400.7-R, December 1980, "DOD Freedom of Information Act Program," which provides applicable policies and procedures and takes precedence over all related component regulations. The regulation mandates that each component use DD Form 2086, "Record of Freedom of Information Processing Cost," to record the cost of each FOIA request. The individual cost form indicates whether it pertains to an initial request or to an appeal and records the processing time and costs expended by clerical and professional personnel within activity categories. These include search; review/excising; correspondence and forms preparation (clerical only); coordination/approval/denial (professional only); and "other activities," such as duplicating documents, or hand carrying documents to other locations. Activity by executive-level personnel is recorded separately in the categories of review/excising and coordination/approval/denial. Hours expended by the various types of personnel are recorded to the nearest 15 minutes and then multiplied by the applicable hourly rate to compute the costs involved. Non-personnel-related costs are recorded for computer search, copy and microfiche reproduction, and printed records. These are computed on the basis of fixed rates with the exception of computer search, which is based on direct cost of the actual computer configuration used.

Under DOD 5400.7-R, components must report triannually the information captured on DD Forms 2086 to the Office of the Assistant Secretary of Defense (Public Affairs). The triannual reports are then used by this office to prepare the cost section of the annual report. Although based on the individual cost sheets, the triannual reports have certain format and content differences. For example, costs of personnel who devote a substantial percentage of their time to FOIA duties are reported based upon total estimated staff years by grade; only costs for personnel more peripherally involved in processing are broken out by hours expended and by activity. All personnel costs are then increased to account for overhead at rates established by the individual components or at a standard rate of 25 percent. In addition, the triannual reports include a section for components to report the costs attributable to preparing the annual

report and any other readily identifiable costs that may not be covered by the standard reporting requirements. The annual report costs are included only in the last triannual report of each year.

Neither DOD officials nor DOD's cost reporting instructions indicated that FOIA litigation costs are reported. The Department of Justice reported that it received 22 cases filed against DOD in 1981, and DOD's annual report for that year stated that two court opinions were issued relative to DOD's administration of the act.

Another activity that falls outside day-to-day processing and therefore is not explicitly cited in the cost reporting requirements is FOIA education and training. However, DOD 5400.7-R requires that each component establish a training program and an FOIA staff specialist assured us that the associated costs are reported.

DOD's 1981 annual report showed total costs of \$7,603,707--the second highest total among the 42 agencies reporting costs. It provided a breakdown of costs for each FOIA program component and for each triannual report activity category. The Department of the Army incurred the highest costs within DOD, followed by the Department of the Air Force and the Department of the Navy.

Of the four agencies we reviewed, DOD had the most complete cost reporting system. It provided for regular recording and reporting of a comprehensive array of personnel costs, as well as other FOIA costs. The system was also highly consistent, with each component following a detailed agencywide regulation and capturing identical cost information on both an individual request and a periodic basis.

Department of Health and Human Services

For its 1981 annual report, HHS asked its constituent agencies to provide FOIA-related costs, including staff hours, training, policy and regulation development, printing, mailing, and preparing the annual report. Prior to June 1982 FOIA activities within HHS were decentralized and over 100 offices were required to prepare a 7-page form containing information used to prepare the annual report. According to the agency FOIA official, staff hours reported were only rough estimates.

HHS has since developed a cost tracking form for FOIA requests. The agency FOIA official believes the form will provide better personnel cost estimates. HHS' new procedures call for a 3-page annual report form to be prepared by 14 FOIA offices within the agency. The quality of the information provided

should improve due to the increased control by individuals who are more knowledgeable about the FOIA and the cost to produce the annual report should decline.

The 1981 HHS annual report showed total costs of about \$5.2 million, with separate totals shown for each HHS agency. The HHS report identifies the total costs of selected items, such as personnel, policy development, training, printing, and preparing the annual report. With the exception of the Food and Drug Administration (FDA), discussed later, we did not make further inquiries about cost collection techniques within HHS. However, our review of the agency's collection forms and an interview with the FOIA officer identified certain cost collection categories.

HHS primarily collects information on costs of request and appeal processing. These categories include costs of FOIA staff, operating program staff, legal staff, and others. Also included are copying costs, computer costs, mailing costs, and staff costs for policy development and the preparation of regulations and guidelines. Finally, HHS asks its offices to report the cost of producing their segments of the annual report. We did not find specific procedures for measuring litigation costs.

We reviewed the cost collection methods of FDA, which incurs higher costs and processes more FOIA requests than any other HHS component. During calendar year 1981, FDA received 33,179 FOIA requests, or 54 percent of the HHS total. FDA's costs of about \$3.3 million were 63 percent of HHS' 1981 costs.

FDA's FOIA program has been centralized since 1975. The central FOIA office annually requests all FDA components to provide information on personnel time devoted to FOIA activities and the average grade of those working on the FOIA. Both professional and clerical time is reported. The source of staff time information varies among FDA components. Some derive time reported from either manual or automated time and attendance systems. Others obtain estimates of time from staff who worked part-time on FOIA requests. Staff costs are developed by multiplying reported time by the average salary of FOIA workers in the reporting component. An FDA FOIA official told us he believes that reported FOIA staff costs are within about 10 percent over or under the actual costs.

In addition to staff costs, FDA estimates and reports overhead costs for employee benefits, space, and equipment on the basis of a standard formula. HHS did not include overhead costs, however, in its 1981 annual report to the Congress. The additional unreported costs for FDA were over \$1.2 million in 1981.

An FDA FOIA official said the agency does not plan to use the HHS tracking form. He believes the form would result in

overstating FOIA staff hours. HHS' guidance on the tracking form does not mandate its use by HHS components provided they have effective FOIA cost reporting procedures.

Department of Justice

The Department of Justice occupies a central role in implementing the FOIA. It is responsible for handling FOIA litigation for most agencies and for providing Government-wide guidance on legal aspects of FOIA administration. In addition, it incurs the highest FOIA cost of any agency; for calendar year 1981 it reported costs of over \$17 million. Nevertheless, Justice does not have a uniform system for estimating FOIA costs. It also does not capture all categories of costs. For example, although Justice reported that in 1981 decisions were rendered in 467 FOIA cases, it did not estimate or report any litigation costs. (See pp. 12 to 15.)

As input for the annual FOIA report to the Congress, Justice requires each of its 31 components to provide cost data in a standard form once a year. Costs are reported in two basic groupings. These are "services," which includes cost categories of salaries, benefits, and overhead for full-time and part-time personnel, and "other costs," which includes equipment, copying, training, and purchases of related books and subscriptions. In addition, Justice requires that components separately identify costs attributable to requests received under the FOIA and costs attributable to requests received under the Privacy Act. Justice defines individuals' requests for records relating to themselves as Privacy Act requests; requests for all other types of agency documents are defined as FOIA requests. To ensure the fullest possible public disclosure, however, Justice requires that Privacy Act requests be processed under the FOIA if they are exempt from disclosure under the Privacy Act. According to its 1981 annual report, all requests received under the Privacy Act that year were processed under the FOIA. Thus Justice included the costs of processing both Privacy Act and FOIA requests in the report.

Justice components submit the requested cost data to the Administrative Counsel staff of the Justice Management Division, which is responsible for preparing the annual report. The report shows total costs for the Department and for each component for both FOIA and Privacy Act requests. Although it identifies the cost categories which make up the totals, it does not show how much cost is attributable to each category.

Although the standard form specifies the categories of costs to be reported, the components vary widely in the costs they include in their reports. These variances became apparent when we reviewed the cost collection methods used by several

components. For example, the Justice Management Division required that cost forms be prepared for each request it processed. These recorded the time and associated salary costs of professional, paraprofessional, and clerical staff who worked on the request as well as any copying costs involved. The Administrative Counsel indicated that the costs captured on the forms consisted mainly of costs chargeable to the requester under the statute. Since the Division is responsible for receiving, acknowledging, and routing all centrally addressed requests to the appropriate component for processing, it includes these costs in its totals. The Division estimates the costs of its coordination functions on the basis of the salaries of two full-time employees and about 15 percent of the salary of its Administrative Counsel.

In contrast to the Justice Management Division, the Executive Office for U.S. Attorneys does not use forms to track its FOIA costs. Although both headquarters and U.S. Attorneys Office personnel process requests, only costs of headquarters personnel are reported. The Assistant Director told us the Executive Office cost data for the annual report was based on an annual estimate of the salary costs of several headquarters staff members who worked on the FOIA. According to her, significant FOIA costs can be incurred by U.S. Attorneys Office staff but these are "lost" from the Executive Office report. Thus, she described the Executive Office reported costs as "very inaccurate."

In calendar year 1981, the FBI accounted for about \$12.3 million, or well over half, of Justice's total reported costs. Reported headquarters staff costs consisted primarily of the salaries of professional and clerical personnel assigned full-time to the Freedom of Information/Privacy Act Branch. Branch costs for supplies, equipment, and space were obtained from the FBI's accounting system, according to FBI officials. Additional headquarters costs were obtained from quarterly counts of legal counsel staff who provided litigation support and of records management staff who assisted in file searches. Field office professionals' costs incurred in FOIA activities were derived from the Time Utilization Recordkeeping Report, a timecharge system for field office investigations. Field office clerical staff costs were estimated quarterly. Of the Justice offices we reviewed, the FBI appeared to have the most comprehensive system for estimating FOIA costs.

Federal Trade Commission

The FTC attempted to capture all personnel costs associated with FOIA activities, not only those of the central office dedicated to FOIA activities. FOIA requests are received by the central FOIA office which then determines the organization that should respond to the FOIA request. FTC has an automated time

and attendance reporting system which enables it to track personnel costs for professionals who work only part-time on FOIA activities. In addition, litigation costs incurred by the Office of the General Counsel are also reported by FTC.

FTC reported 1981 FOIA costs of \$985,400. We estimate that this cost was understated by at least 15 percent, since we identified an additional \$145,727 in unreported costs. The following costs were not reported in the annual report:

- \$88,686 for personnel overhead,
- \$41,293 for photocopying,
- \$ 9,945 for microfilm,
- \$ 3,660 for internal and external training,
- \$ 1,943 for mailing, and
- \$ 200 for FOIA fee processing.

We identified other categories of unreported costs but were not able to develop estimates for them due to a lack of available records. These categories included:

- Personnel costs for some nonprofessional staff in field offices and headquarters who devote part of their time to FOIA requests.
- Copying and mailing costs incurred by the Office of General Counsel for FOIA-related activities.

FTC reports the major portion of its FOIA costs--professional staff costs--however, it does not report all FOIA costs.

A lack of records prevents precise litigation cost measurement

The "indirect" costs associated with FOIA litigation were one of the primary areas of Subcommittee interest; however, we were unable to develop a precise determination of these costs. Few agencies which report FOIA costs separate litigation from other FOIA personnel costs. Moreover, litigating units in the Department of Justice, with one exception, and the U.S. Courts do not keep track of their costs associated with FOIA cases. Few cases arise relative to the total number of FOIA requests processed and only a very small percentage of cases proceed to trial. On the basis of rough estimates, we identified about \$1.3 million for annual Justice FOIA litigation costs. A more precise determination could be developed if the Department of Justice, which defends most Government FOIA lawsuits, improved its recordkeeping. A lack of records precluded a similar estimate for the U.S. Courts.

Although the Department of Justice is responsible for defending most agencies in FOIA litigation, the agencies are responsible for providing litigation support. Such support can be extensive and, according to several officials we contacted, is often the most time-consuming part of the litigation process. Agencies may prepare affidavits for the courts explaining why they are withholding requested records as well as itemized indexes describing the records withheld. In some cases agencies also prepare the legal briefs to be filed by Justice attorneys.

Of the agencies which included FOIA costs in their 1981 annual reports, only the National Labor Relations Board itemized litigation costs separately. It reported litigation staff salary costs of not less than \$12,000 and costs to prepare court-ordered indexes of over \$152,000. The Central Intelligence Agency and the Departments of Energy, Labor, and State mentioned litigation as a cost item but did not provide a separate estimate. These four agencies were the defendants in about 12 percent of the FOIA cases received by Justice in calendar year 1981. Of the agencies we reviewed, FTC and FDA indicated that they included litigation in their FOIA personnel costs. Although nearly 40 percent of FOIA cases filed in 1981 were brought against Justice, it did not ask its components to report litigation costs.

Notwithstanding its central role in litigating FOIA cases for most Government agencies, Justice does not routinely collect and report the costs it incurs in conducting the litigation. Its calendar year 1980 and 1981 annual reports have noted that, "Not included at all...are significant costs to the Department incurred in litigating FOIA issues for the United States Government." Justice does, however, report attorneys' fees and court costs assessed against the Government, as this information is statutorily required (5 U.S.C. 552(d)). Thus, for calendar year 1981 Justice reported that decisions were rendered in 467 cases, and attorneys' fees and court costs of \$366,190 were awarded.

Although Justice does not systematically maintain such information for annual report purposes, it has provided litigation cost estimates for certain FOIA studies. A 1978 GAO report ^{5/} stated that, according to Justice officials, costs totaled about \$906,000 for FOIA and Privacy Act litigation expenses for fiscal years 1976 and 1977. It acknowledged, however, that this estimate did not include litigation costs incurred by U.S. Attorneys. In its Government-wide study of the direct and indirect costs of administering the FOIA during calendar year 1978, Justice reported litigation costs for personnel of \$792,733.

^{5/}"Data on Privacy Act and Freedom of Information Act Provided by Federal Law Enforcement Agencies" (LCD-78-119, June 16, 1978).

The Civil Division has primary responsibility for oversight and monitoring of FOIA cases. The Division directly handles some of the cases but the majority are delegated to U.S. Attorneys. The Division monitors the delegated cases, however, and checks all affidavits and other documents involved. According to Civil Division statistics, 113 FOIA cases, or about one-third of the total, were handled by Division attorneys in fiscal year 1982 while 218 cases were handled by U.S. Attorneys.

Several other components also have some responsibility for FOIA litigation but, according to Justice officials, they handle relatively few cases. The Office of the Solicitor General handles all cases brought before the Supreme Court. The Deputy Solicitor General informed us that about 15 to 20 FOIA cases were brought before the Supreme Court in the past 2 years and, of these, the Court agreed to hear 3 or 4 cases. He also said Civil Division attorneys assist the Office of the Solicitor General in these cases and usually prepare the case briefs. The Office of Information and Privacy handles some cases delegated to it by the U.S. Attorney's Office in Washington, D.C. Finally, the Tax Division handles cases involving the Internal Revenue Service.

As GAO reported in 1979 ^{6/} and again in 1983, ^{7/} Justice does not have a management information system which can be effectively used to track, measure, and evaluate litigation activities agencywide. Only one Justice component we contacted, the Civil Division, had an attorney timekeeping and case tracking system which could provide selected cost information. On the basis of data from this system and the average Division attorney salary, the Division's budget officer reported to us that Division attorneys incurred costs of about \$798,000 in personally handling and supervising FOIA cases.

In contrast to the Civil Division, the Executive Office for U.S. Attorneys does not have a detailed case management information system. The current Executive Office system does not keep track of attorney time spent per case nor does it include a separate classification code for FOIA cases. The Executive Office did, however, conduct a case time study several years ago which yielded an estimate of the average time spent by U.S. Attorneys on different types of cases. On the basis of the study results and average U.S. Attorney and clerical personnel salary costs, the Executive Office budget officer estimated the average cost

^{6/}"Department of Justice Making Efforts to Improve Litigative Management Information Systems" (GGD-79-80, Sept. 4, 1979).

^{7/}"Department of Justice Case Management Information System Does Not Meet Departmental or Congressional Information Needs" (GAO/GGD-83-50, March 25, 1983).

of an FOIA case to be \$556. Using this figure and the Civil Division information that U.S. Attorneys handled 218 FOIA cases in calendar year 1982, we estimate Executive Office costs for that year of \$121,208. This estimate of costs is only a fraction of the estimate derived for Civil Division attorney costs, although the U.S. Attorneys handled nearly twice as many cases. This discrepancy may be at least partly attributable to the fact that according to two Justice officials the Civil Division handles the most complex cases.

In addition to agencies' work in preparing affidavits, indexes, and briefs and Justice's work in defending cases, another segment of litigation costs is incurred by the U.S. Courts. Few FOIA cases result in a trial but Federal judges may be required to conduct extensive reviews of case-related documents. An official of the Administrative Office of the U.S. Courts said that 381 FOIA cases were filed in 1982, representing only about one-tenth of one percent of all cases filed with the Courts that year. However, the Courts do not have a tracking system which can identify FOIA costs.

The following chart summarizes the litigation costs we identified.

FOIA LITIGATION COSTS
IDENTIFIED

Awards of attorneys' fees and court costs	\$ 366,190
Department of Justice	
Civil Division	798,000
U.S. Attorneys	121,208
U.S. Courts	<u>Unknown</u>
Total	<u><u>\$1,285,398</u></u>

As discussed earlier, this estimate does not include litigation costs for several Justice offices, nor does it include costs incurred by agencies in preparing case-related affidavits, indexes, or briefs. However, of the four agencies we reviewed, HHS and FTC included litigation costs in their annual reports, but they did not separately identify them.

The total costs of FOIA litigation cannot be determined due to a lack of detailed records. However, with about 40 percent of all FOIA lawsuits being filed against the Department of Justice and Justice defending these lawsuits as well as those filed against most other agencies, improvements in Justice records could make a much more accurate estimate available.

GUIDANCE IS NEEDED IF
BETTER COST DATA
ARE DESIRED

Due to the variations among agency cost measurement techniques and categories, reported costs are not as meaningful as they could be. In addition, many agencies do not report any costs since the FOIA does not require cost reporting. These problems and the need for guidance to obtain better cost information have been previously reported by GAO; the Subcommittee on Administrative Practice and Procedure, Senate Committee on the Judiciary; and others.

A recent initiative by OMB, if formalized and properly implemented, could produce more meaningful cost reporting. OMB has drafted a proposal to provide for uniform fees which agencies may charge for processing FOIA requests and to require agencies to track and report their processing costs. OMB is now considering informal agency comments on its draft. We discussed our findings on FOIA costs with OMB and made informal suggestions for making FOIA cost reporting a more meaningful management tool.

Previous studies have found
weaknesses in FOIA cost reporting

Executive and legislative branch reports have repeatedly pointed out inconsistencies and inaccuracies in agencies' FOIA cost data which prevent effective use of the data. They have shown how the lack of Government-wide guidance on computing and reporting costs has contributed to these problems. Several reports have recommended that agencies be provided with such guidance to make meaningful information available to managers and decisionmakers. In addition, the reports have recommended that the guidance responsibility be assigned to either Justice or OMB.

The Congressional Research Service analyzed and summarized the cost data provided by agencies in their annual FOIA reports for calendar years 1975 to 1977. It reported on the 1976 and 1977 data that agencies were interpreting the concept of "incremental costs" differently and thus were using different standards for computing them. It pointed out that, since the legislative history of the act provided no clear definition of this concept, "a common and valid" means of measuring such costs had to be established to make the agencies' data subject to meaningful interpretation.

Subsequent reports by GAO, congressional parties, and the Department of Justice concurred in the Congressional Research Service's analysis of the weaknesses in agencies' reported

costs. In a 1978 report on Government field offices' implementation of the FOIA, ^{8/} GAO questioned the value of reported costs because of the inconsistencies in computation procedures among agencies and even among offices of the same agency. Moreover, it noted that no matter what procedures agencies used, they typically produced nothing more precise than a best estimate. The report concluded that, to aid decisionmakers in monitoring FOIA implementation, agency cost data would have to become more accurate.

Another GAO report issued in 1978, ^{9/} dealing with Privacy Act and FOIA data provided by law enforcement agencies, also found that reported cost estimates were inconsistently derived. It stated that, since few agencies maintained detailed cost records, they reported "some combination of facts, estimates, and projections." The report attributed these problems to the fact that neither the Department of Justice nor OMB had published any guidance to clarify the basis, form, or content of requested cost data. A 1980 update report on previous findings, observations, and recommendations concerning the FOIA ^{10/} referred again to the lack of cost guidance and concluded that this responsibility should be assigned to OMB.

In soliciting agency responses for its Government-wide study of calendar year 1978 FOIA costs, the Department of Justice referred to the inadequate cost guidance provided agencies for preparing the annual report. It cautioned agencies that, as a result, their annual report information would not meet the accuracy requirements of the study. To ensure that it obtained more consistent and more comprehensive estimates, Justice provided alternative cost computing and reporting instructions.

Justice specifically outlined the types of FOIA costs agencies should report, the activities which should be included in these costs, and the methods and data agencies could use in constructing their estimates. Among the activities it asked agencies to include in personnel costs were all steps involved in processing initial requests and appeals, preparing and publishing FOIA indexes, preparing the annual report, defending litigation, and performing associated training, supervision, and other

^{8/}"Government Field Offices Should Better Implement the Freedom of Information Act" (LCD-78-120, July 25, 1978).

^{9/}"Data on Privacy Act and Freedom of Information Act Provided by Federal Law Enforcement Agencies" (LCD-78-119, June 16, 1978).

^{10/}"Update on Previous GAO Findings, Observations, and Recommendations Concerning the Freedom of Information Act" (LCD-80-103, Aug. 13, 1980).

administrative work. It stated that other FOIA costs could include fees and travel to attend training, purchases of books and subscriptions, and obtaining and operating additional copying machines. Justice emphasized that, in contrast to the confusion surrounding "incremental costs," it was asking for estimates of "actual costs." It described these as encompassing both direct and indirect costs and the costs of personnel who worked part-time on the FOIA as well as those assigned fulltime to FOIA offices. Thus the study instructions did much to assist agencies in identifying the costs which FOIA administration entailed and, although they allowed the agencies to select their own estimation techniques, they also provided helpful guidance on costing methodology.

Notwithstanding these positive features, Justice's guidance did not produce the desired results. A Justice official who analyzed the study data reported that the agencies' cost calculations varied considerably in quality and that the accuracy of the study's total cost estimate of \$47.8 million was therefore questionable. Nonetheless, the Justice guidance provided a structured approach to cost development, clarified the costs involved, and provided a useful reference source for future studies.

In addition to acknowledging the inconsistency and unreliability of available data, congressional parties made specific recommendations for change. In a March 1980 report on oversight hearings on agency implementation of the 1974 amendments, the Subcommittee on Administrative Practice and Procedure, Senate Committee on the Judiciary, recommended that Justice or OMB establish guidelines clarifying the content and basis of costs to be reported. The Subcommittee also recommended that agencies develop improved reporting and accounting systems for determining costs. Guidelines were also recommended by Senator Sasser in a personal report based on 1980 oversight hearings of the Senate Subcommittee on Intergovernmental Relations, Committee on Governmental Affairs, which he chaired. He added that annual reports should indicate total costs for administration, fee waivers, and court awards.

In summary, the need for improving available FOIA cost data by clarifying cost development procedures has been thoroughly documented. Government studies have reported that providing decisionmakers with more consistent and more reliable data would allow them to better evaluate administration of the act and identify needed changes. Some concluded that, to achieve this goal, OMB and/or Justice should provide agencies with specific guidance. Justice developed a set of costing instruments and instructions for its 1978 FOIA cost study which could be useful in developing such guidance.

OMB is considering
FOIA cost guidance

Under its traditional budget authority and its responsibility under the Paperwork Reduction Act of 1980 (P.L. 96-511) to develop and implement uniform and consistent information resource management policy, OMB is taking steps to provide agencies with guidance concerning FOIA administration. It is developing fee collection guidelines and a cost reporting requirement to bring greater uniformity to agency practices. Along similar lines, S.774, a bill recently introduced by the Chairman of the Senate Subcommittee on the Constitution and others, and entitled "The Freedom of Information Reform Act," would require OMB to promulgate a uniform schedule of fees and processing procedures for all agencies.

OMB initially envisioned the cost reporting requirement as a tool to determine if agencies were assessing and collecting appropriate fees. However, if appropriately structured, this requirement could also have broader applicability by providing OMB and congressional decisionmakers with more accurate, detailed information on the cost of implementing the act.

OMB's draft guidance was circulated to cabinet officials for comment in late 1982. It consisted of three major elements:

- Uniform fee guidelines and accounting procedures, encouraging agencies to charge fully for recoverable costs.
- A model processing form to record actual costs and fees involved in processing individual requests.
- A cost reporting format to collect annual aggregate data on the cost of compliance with the act.

The cost information to be reported by agencies was subdivided into numerous categories and included both costs which were recoverable under the statute and costs which were not. The proposal also expanded the potential for oversight of agency FOIA activities, including costs incurred, by recommending that agencies submit their annual FOIA reports to the Department of Justice for review and also submit a cost report to OMB.

OMB is now revising its guidance on the basis of agency responses, informal GAO staff comments, and research into additional categories of data to request in order to provide the most useful and comprehensive information. An Associate General Counsel told us that in response to agency complaints of excessive compliance costs, OMB was considering eliminating the draft requirement for agencies to use the model processing form to record costs of individual FOIA requests. Also, although OMB

planned to prescribe the cost items agencies should report annually, it would allow them to use their discretion in determining how to compile this information.

In staff discussions with OMB, we suggested that it consider the value and cost of obtaining more detailed cost information for management purposes. We also suggested that OMB expand its required reporting categories to include, for example, indirect costs such as litigation for which comprehensive data has previously been unavailable. The Associate General Counsel agreed that such data would be helpful to OMB and indicated OMB would consider revising its reporting requirements to obtain it.

We believe that OMB's administrative guidance to agencies, if revised and formalized, can do much to improve the quality and usefulness of FOIA cost reporting. To ensure that these benefits are achieved, OMB will have to couple its guidance with periodic monitoring of agency compliance. In addition to reviewing submitted agency cost reports, OMB can obtain oversight information from the FOIA cost reports it plans to receive. Also, the recommendation for agencies to submit their annual reports to the Department of Justice for review can, if implemented, provide an additional oversight mechanism to improve administration of the act.

COSTS OF ADMINISTERING THE FREEDOM OF INFORMATION ACT
AS STATED IN 1981 ANNUAL REPORTS (note a)

	Total costs reported	Cost Categories Reported (note b)												
		Personnel	Fringe benefits/overhead	Developing policy/regulations	Training/travel/subscriptions	Printing/duplication	Duplication/ mailing	Computer/equipment	Materials	Producing annual report	Other-training, mail, reporting costs	Litigation	Training	Other associated costs
<u>16 agencies itemized costs</u>														
Arms Control & Disarmament Agency c/	\$ 1,690	\$ 1,690	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Central Intelligence Agency d/	1,890,950	1,719,045	171,905	-	-	-	-	-	-	-	-	-	-	-
Commission on Civil Rights e/	1,000	1,000	-	-	-	-	-	-	-	-	-	-	-	-
Dept. of Defense d/	7,603,708	5,414,745	1,374,704	-	-	236,750	-	349,152	-	-	228,357	-	-	-
Dept. of Education d/	446,134	366,963	-	58,104	2,196	295	8,576	-	-	10,000	-	-	-	-
Dept. of Health & Human Services d/	5,151,106	4,517,907	-	185,141	127,922	2,239	293,419	-	-	24,478	-	-	-	-
Federal Reserve System c/	467,207	467,207	-	-	-	-	-	-	-	-	-	-	-	-
General Services Administration e/	74,048	46,020	-	-	-	27,707	-	321	-	-	-	-	-	-
Interstate Commerce Comm. d/	3,718	3,718	-	-	-	-	-	-	-	-	-	-	-	-
Merit Systems Protection Board d/	39,609	38,639	-	-	-	-	970	-	-	-	-	-	-	-
National Capital Planning Comm. e/	8,643	7,600	-	-	-	1,043	-	-	-	-	-	-	-	-
National Labor Relations Board e/	288,000	124,000	-	-	-	-	-	-	-	-	164,000	-	-	-
National Mediation Board e/	26,618	25,838	-	-	-	-	-	780	-	-	-	-	-	-
National Security Council c/	102,400	102,400	-	-	-	-	-	-	-	-	-	-	-	-
Panama Canal Commission d/	75,500	74,000	-	-	1,500	-	-	-	-	-	-	-	-	-
Pension Benefit Guaranty Corp. e/	73,523	73,523	-	-	-	-	-	-	-	-	-	-	-	-
Total	\$16,253,854	\$12,984,295	\$1,546,609	\$243,245	\$131,618	\$268,034	\$302,965	\$349,473	\$780	\$34,478	\$228,357	\$164,000	-	-

<u>17 agencies reported only</u> <u>total costs</u>		<u>Total</u> <u>costs</u> <u>reported</u>
Dept. of Agriculture	c/	\$ 833,593
Dept. of Interior	e/	490,347
Dept. of Transportation	e/	995,430
Dept. of Treasury	e/	5,654,181
Environmental Protection Agency	d/	1,100,000
Export-Import Bank of the U.S.	e/	6,500
Federal Deposit Insurance Corp.	e/	47,767
Federal Emergency Management Agency	e/	97,265
Federal Mediation & Conciliation Service	d/	5,000
Federal Trade Commission	e/	985,400
National Aeronautics & Space Administration	d/	145,961
Office of Management & Budget	c/	202,200
Office of Personnel Management	e/	106,268
Railroad Retirement Board	e/	10,000
Securities & Exchange Commission	e/	617,704
Tennessee Valley Authority	c/	100,000
Veterans Administration	c/	1,552,896
Total		<u>\$12,950,512</u>
Total costs reported by 42 agencies		<u>\$54,304,031</u>

27 agencies did not report
any cost data (note h)

Administrative Conference of the U.S.
Agency for International Development
American Battle Monuments Commission
AMTRAK
Committee for Purchase from Blind & Other Severely Handicapped
Commodity Futures Trading Commission
Consumer Product Safety Commission i/
Council on Environmental Quality
Dept. of Housing & Urban Development
Equal Employment Opportunity Commission
Executive Office of the President
Federal Communications Commission
Federal Election Commission
Federal Labor Relations Authority
Federal Mine Safety & Health Review Commission
International Boundary & Water Commission
International Trade Commission
Marine Mammal Commission
National Endowment for the Arts

National Endowment for the Humanities
National Transportation Safety Board
Nuclear Regulatory Commission
Occupational Safety & Health Review Commission
Office of Inspector-Alaska National Gas Transportation
Postal Service
Selective Service System
Small Business Administration

4 agencies reported no
costs incurred

Federal Home Loan Bank Board
Federal Maritime Commission
Inter-American Foundation
International Communication Agency

- a/ This table is presented only to show the wide variation in agencies' reporting of FOIA costs. As reported on page 3 the reported costs are questionable because of the wide variances in agencies' accounting practices for FOIA costs.
- b/ Cost categories are not defined and may overlap due to variances in agency presentation. Some agencies did not specifically identify cost categories such as policy development or litigation; however, our work at agencies indicates that some of these costs may be included in other categories such as personnel costs. (See p. 5.)
- c/ Not identified as total or incremental costs by 10 agencies.
- d/ Reported as total costs by 13 agencies.
- e/ Reported as incremental costs by 19 agencies.
- f/ The Justice annual report also includes \$366,190 in awards of court costs and attorneys' fees.
- g/ Includes \$45,000 reported as personnel costs.
- h/ Sixteen of these agencies reported FOIA costs of \$4,296,488 in a prior Department of Justice study. This study also identified five other agencies with FOIA costs of \$36,929 that did not have annual reports in the Senate files.
- i/ The Commission identified \$600 in indexing costs in its annual report. It reported that other costs were incurred but did not identify them. The Commission reported \$981,000 to the Department of Justice. (See note h.)

Source: 1981 Agency Annual FOIA Reports

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