

OVERSEAS DEVELOPMENTS

UNITED STATES ANNUAL FOI ACT REPORTS: Requests, costs go up

The annual FOIA reports covering 1987, submitted to the Speaker of the House of Representatives, indicate that the numbers of requests are continuing to go up, while costs increase as well. However, possibly because of the changes wrought by the 1986 amendments, fees collected went down slightly from last year.

Totalling the available statistics, agencies received 378,145 requests in 1987, up from 342,530 in 1986. Again, the Department of Health and Human Services accounted for more than a third of the total, with 121,033; followed by the Defense Department with 97,669; Department of Justice with 36,996; EPA with 27,623; and Treasury with 26,363.

Accounting for costs ostensibly spent on FOIA, the total comes to \$56,885,098. But to compare this with previous years, the Justice Department's calculations for responding to *Privacy Act* requests, essentially first-person FOIA requests, a total of \$10,602,382, must be factored in, raising the overall total to \$67,487,480. Considering that the number of requests increased by 35,000, this increase, about \$4.5 million more than last year, is not particularly unexpected.

Agencies reported collecting a total of \$3,868,759 in fees for 1987. This contrasts with the previous year's collections of \$4,721,531, but is still above the 1985 collections of \$3.3 million. The extent to which the 1986 fee amendments are responsible for the drop is impossible to quantify, but in its annual report the CIA notes that:

because of the fee waiver provisions of the *Freedom of Information Reform Act*, passed in late 1986, the Agency collected only \$2,637 in fees during 1987 — about half the amount collected in 1986.

It is impossible to determine the cost per request for most agencies, but of those agencies where such costs could be calculated, the Export-Import Bank nudged out the Department of Health and Human Services with the

lowest cost per request. Export-Import had an average cost of \$50.70 while HHS came in at \$62. Next lowest was the Merit Systems Protection Board with \$88.20 per request. On the other extreme, the highest cost per request was \$662 at the CIA, followed by \$655.30 at the Panama Canal Commission, \$479.60 at the Federal Emergency Management Agency, \$461.50 at Energy, \$448.30 at the SEC, and \$448.20 at the Federal Trade Commission.

Agencies with the lowest percentage of denials included HHS, with 1.3%, 2.3% at the Commodity Futures Trading Commission, and 3.8% at Justice. The highest rate of denials came from the Special Counsel's Office at the Merit Systems Protection Board, with 81.7% and the Equal Employment Opportunity Commission, with 75.9%. A cluster of other agencies hovered in the 30-40% category.

In an example of some agencies' lack of commitment or inability to increase the staff and budget devoted to FOIA, the National Security Council explained that it had a 341 case backlog last year, an increase of 259% over 1986 'due primarily to the significant number of requests resulting from Iran/contra and increased visibility of the NSC overall'. Unfortunately for the NSC, even though its backlog increased dramatically it reported spending only \$114,652 in 1987, down from \$185,396 the previous year.

Because accounting methods vary so widely, the annual reports do not provide a particularly accurate statistical profile. However, when compared over the years they do create a portrait of agency processing where costs and requests continue to edge slightly upward, but remain generally stable. It should be remembered that the quantified statistics are wildly inaccurate because of the inconsistencies in reporting, but for trying to get a statistical snapshot of how the FOIA is being administered they are the best statistics available.

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LEGISLATIVE DEVELOPMENTS

AMENDMENTS TO COMMONWEALTH FOI ACT

The *Privacy Act* 1988, which was proclaimed on 1 January 1989, has made a number of significant amendments to the *FoI Act*. Schedule 1 of the *Privacy Act* contains the following amendments:

Section 19(4) of the *FoI Act* has been amended to allow an FOI officer an additional 15 days to make a decision in relation to a request where he or she is required to undertake reverse FOI consultation under s.27A.

A new s.27A has been inserted in the Act which requires an FOI officer to undertake reverse FOI consultation where a request has been received for a document containing information relating to the personal affairs of a person and that person might reasonably wish to contend the document is exempt under s.41. When, con-

trary to submissions received from the individual concerned, the FOI officer decides that the document is not exempt under s.41, the officer is required to notify the individual and applicant of the decision and defer access until the individual whose affairs are the subject of the request has had the opportunity to seek a review of the decision under s.59A

Section 38 is amended to add a provision to the effect that the section does not apply in respect of a request for access to information about the personal affairs of the applicant.

Section 48 has been amended to correct a formal drafting error in the section and will enable a person to apply for correction of any document to which he or she has been lawfully provided access whether it be under the *FoI Act* or otherwise.