



United States Department of State

*Washington, D.C. 20520*

THE FREEDOM OF INFORMATION ACT

REMARKS OF

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FOR OPERATIONS

BEFORE THE

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY  
SUBCOMMITTEE ON TECHNOLOGY AND THE LAW

ON

AUGUST 2, 1988

(INTRODUCTION)

Good morning. My name is Richard Faulk and I have been the Deputy Assistant Secretary of State for Operations since January 1986. In addition, from October 1, 1987 to July 13, 1988 I served as the Acting Assistant Secretary for Administration. In both capacities, I have been the senior agency official responsible for the implementation of the Freedom of Information Act in the Department of State.

Briefly, I would like to give you an overview of the Department's FOIA program, as well as some insight into our problems and prospects for the future in the hope of paving the way for constructive interaction between requesters, government officials, and lawmakers in order to enable us to comply better with this important mandate.

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## (BACKGROUND)

Each year the Department receives over 5,000 requests from the public under the Freedom of Information Act, the Privacy Act and other applicable access provisions. In 1987, we completed processing over 4,000 requests which encompassed approximately one million pages of material. As the custodian of records relating to foreign relations and foreign policy, the State Department's records are of immense interest to the public at large. In light of the enormous volume of requests received, the Department developed appropriate institutionalized administrative procedures, as well as a professional staff to meet these demands. It was determined that it would be appropriate to develop a centralized information access program to receive, control, review and respond to the entire gamut of requests under the FOIA, the Privacy Act, Executive Order 12356, the Ethics in Government Act; Congressional oversight; investigations; GAO audits; court orders; and so forth.

The overall objectives of this centralization were to provide uniformity and consistency in decisionmaking, to minimize the threat of accidental or premature release of sensitive national security information, and to relieve the substantive offices of much of their administrative FOIA burden. We believe that we have had considerable success in achieving these objectives.

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(MANAGEMENT)

We have recognized the necessity of pursuing an aggressive long range strategy to enable the Department to better manage and to increase control over its workload through the dedication of considerable resources, the implementation of various management initiatives, and the integration of information management policies.

Despite exercising fiscal constraint in other areas, the Department has allocated nearly six million dollars during this fiscal year to the total information access program.

Highlights of our management initiatives include the following:

- a more streamlined approach to case processing through the utilization of a team approach;
- the availability (for research and sale) on microfiche in the Public Reading Room of over 1500 significant cases which are of recurring interest to the public;
- consideration of the feasibility of offering this microfiche collection of significant cases to libraries and universities which specialize in foreign affairs;

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- the utilization of the specialized services of the Department of Commerce's National Technical Information Service to respond to certain requests, for example to satisfy demands for computer tapes for munitions export licences; the diversion of such requests to NTIS has resulted in substantial savings to both the Department and the public;
- the reduction of redundant processing steps and the linkage of like tasks;
- the recent establishment of a pool of part-time and full-time employees to be held in reserve and to be available to meet fluctuating workload requirements; and
- the initiation of extensive educational and outreach programs throughout the Department.

Finally, it is important to note that State's information access program was purposely located in the organization which has the lead role in the management of the Department's information. We integrated information access as part of the Department's ongoing information management initiatives and have given full consideration to FOIA requirements in developing and upgrading our information systems.

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(REQUESTERS)

Throughout the course of the ongoing evolution of the management of the Department's FOIA program and the refinement of the provisions of the Freedom of Information Act itself, our clientele of requesters has continued to increase in experience and sophistication. While only approximately 25% of our requests are from individuals, the remaining 75% come from attorneys representing clients, the news media, historians, corporations, public interest groups, and other organizations who employ professional researchers. As the result of increased sophistication of these requesters, the complexity and volume of their requests, and proposed FOIA legislation which may limit our ability to protect national security information, last March Deputy Secretary Whitehead wrote letters to fifteen chairmen of Congressional committees and interested Members of Congress to advise them of the Department's concerns in this area.

At this point, I would like to highlight the issues raised in that letter.

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(VOLUMINOUS REQUESTS)

One area of grave concern to the Department is the increasing trend for Freedom of Information Act requests which demand the comprehensive production of entire collections of information. During the past year, the Department has received a number of requests using State Department filing designators, TAGS (Traffic Analysis by Geography and Subject), as the descriptions for the material requested. The Department does not believe that such requests are in keeping with the intent of FOIA and the requirement that requests reasonably describe particular documents by subject.

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Illustrative of this disturbing trend is a FOIA request submitted to the Department for cables transmitted between the U.S. Embassy in Managua and the Department during the time period of January 1978 through December 1986 bearing the country TAG for Nicaragua in combination with the six specified TAGS for National Security, Emergency Planning and Evacuation, Military Affairs in General, Intelligence, Military Capabilities, and Internal Governmental Affairs. For that nine year period, there are nearly ten thousand telegrams responsive to this description, telegrams which must therefore, be retrieved, reviewed, and processed under the Freedom of Information Act.

A sample of other voluminous requests received include the following:

- all documents produced in 1987 by the Bureau of Intelligence and Research concerning Nicaragua; and
- all documents produced, received, or maintained by the Office of Public Diplomacy on Latin America and the Caribbean.

Additionally, we have received requests for information regarding most Department principals including all of their "logs, records, time records, phone logs, appointment books, schedules, calendars, diaries, schedules and correspondence relating to daily meetings, phone calls, conferences, and activities...from...nomination to



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Clearly, some degree of reasonableness must be injected into the Freedom of Information process. Sweeping requests of this kind delay processing of less excessive requests, and can impose an extreme drain on the agency and diversion of its resources from its primary mandate. In addition, there are the potential hazards inherent in production of entire collections of sensitive foreign policy information. Breaches of national security become increasingly likely, either through inadvertent disclosures due to human error, which increases exponentially as tremendous volume of documents are produced, or through the "mosaic" effect by which data can be pieced together through providing requesters with an aggregate of information which reveals sensitive information not necessarily discernible from smaller segments of information. Disclosure by the latter means is increasingly likely given the fact that identical requests for information are often sent to several agencies simultaneously.

Furthermore, under current litigation procedures, agencies are required to prepare an itemized index correlating each withheld document, or portion, with a specific FOIA exemption, and the relevant part of the agency's nondisclosure justification. This indexing requirement itself may contribute to the "mosaic," depending upon the degree of specificity required by the court. Again, the comprehensive nature of the information requested accentuates the potential hazard for the "mosaic" disclosure of

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(NATIONAL SECURITY INFORMATION)

There has been an increasing tendency among some requesters to think of the FOIA solely in terms of administrative processes and procedures. Some suggest that many agencies deliberately resist responding to FOIA requests as a further example of bureaucratic foot dragging. It is not always clear whether they appreciate the consequences that inadvertent releases of classified information would have on national security.

We in the foreign affairs community have serious reservations concerning the increasing erosion of our ability to strike the delicate balance between rights of the American public to know the activities of its government and the need for confidentiality in many aspects of the diplomatic process.

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(CONCLUSION)

In conclusion, no one at the State Department will argue with the importance that a well-informed citizenry plays in the democratic process. The FOIA exemplifies the value that our government places on this ideal. It is abundantly clear that the interest of the public in foreign affairs and the Congress' commitment to the principles of the FOIA are enduring. I can assure you that the Department is fully committed to carrying-out the statutory mandates of this important legislation. Our challenge is to allocate the scarce resources in order to meet the public's demands under the Freedom of Information Act.