



GAO Report: Government Spends Millions to Defend Against FOIA Requests, but Actual Cost Difficult to Determine

According to a newly released report by the Government Accountability Office, the federal government spends millions of dollars to defend itself from Freedom of Information Act requests. The report also notes that while it is the responsibility of the Department of Justice to track agencies' compliance with FOIA requests, there are not enough mechanisms in place to capture the specific details related to the costs of these lawsuits.



The investigation was requested by the House Committee on Oversight and Government Reform and the Senate Committee on the Judiciary in a directive sent to the Government Accountability Office in April. "Requesters repeatedly report to Congress the problems they have encountered with the FOIA process. These problems include indefinite delays, excessive redactions, and other unnecessary barriers to accessing information," the [letter](#) states.

The letter goes on to cite an Associated Press analysis, which found that 77 percent of all requests last year produced either censored files or none at all.

The committees asked the GAO to perform a number of tasks in its investigation, including conducting audits of agencies in compliance with the FOIA requirements, cataloging the number of exemptions and how they were used by each agency, and uncovering the methods used to reduce backlogged FOIA requests.

The GAO [report](#) analyzed costs spent on fighting 1,672 Freedom of Information Act (FOIA) lawsuits that had decisions rendered between 2009 and 2014. For the purposes of the investigation, the GAO examined only the 112 lawsuits in which the plaintiffs prevailed, across 28 federal agencies. The report indicates that the costs associated with these lawsuits are comprised of the DOJ's costs for defending the suits on behalf of the agencies involved, the agencies' costs, and attorney fees and costs based on settlement agreements.

However, even in the examination of this small fraction of the total number of suits, the GAO found that the specific costs associated with the lawsuits could "not be fully determined."

Though the FOIA requires that the Justice Department report on the costs, the GAO found that there were no mechanisms in place to keep track of the costs. "Justice does not collect and track all of the costs that its attorneys and staff incur for individual lawsuits in which the plaintiffs prevailed," the report reads. "Moreover, agencies involved in the selected lawsuits did not have mechanisms in place to track FOIA litigation costs where the plaintiff prevailed, thus hindering their reporting of these costs for 55 of the selected lawsuits."

Upon request for the information, the DOJ responded that without the tracking capabilities to produce



Written by [Raven Clabough](#) on September 9, 2016

the information, significant resources would be required in order to gather data from each of the 93 U.S. Attorneys' Offices across the country.

On several occasions in which records were maintained, the amounts of attorneys' fees and costs specified by the DOJ were different from the amounts reported by the defending agencies. The Justice Department contends the discrepancies are caused as a result of the appeals process and settlement agreements. The inclusion of those costs is not required to be reported to Congress.

Meanwhile, guidance from the Department of Justice asks agencies to provide their total litigation-related costs to the department as part of the reporting process, the report notes. Agencies reported a total of \$144 million in costs related to FOIA lawsuits from fiscal years 2009 to 2014, but as to the 112 lawsuits in which the plaintiffs prevailed, only the costs related to 57 of the lawsuits could be provided. That figure was a staggering \$1.3 million.

"For the remaining 55 selected lawsuits where the plaintiff substantially prevailed, litigation-related costs were not provided by the responsible agencies," the report explains. "Officials representing these agencies generally stated that they did not have the mechanisms in place to track FOIA litigation-related costs where the plaintiffs prevailed."

Those agencies defended their failure by pointing to the Justice's guidance, which does not require them to collect and report the information.

The GAO makes several recommendations based on its findings:

- That Congress require the Justice Department to track and report on appeals and settlement agreements so that there are no discrepancies
- That Congress either require that the Justice Department and agencies to report on the actual cost information on lawsuits in which the plaintiffs prevailed, or that Congress require the Justice Department to at least provide a cost estimate for collecting and reporting information on costs incurred so that it can be an informed decision as to whether the FOIA should be changed to mandate this requirement.

The GAO notes that the added costs related to the addition of that requirement might be a substantial enough reason to warrant not keeping track of that information: "Although requiring Justice and agencies to report actual cost information could lead to better transparency regarding federal operations, costs would be associated with such reporting," the GAO report said. "Considering these costs, as well as potential benefits, could help Congress in determining whether such a requirement would be cost-effective for enhancing oversight of FOIA litigation-related operations."

Perhaps instead of opting against this requirement because of the additional costs that would be associated with such reporting, however, Congress should consider why the reporting process would be so expensive in the first place. Congress should also be curious as to the exorbitant costs of defending the federal government from FOIA requests in the first place, and whether it is in fact worth it in most cases. What is so secretive that the federal government feels justified in spending millions of dollars in keeping it from the public?

The purpose of the FOIA is to increase transparency, a point that is noted in the report. "FOIA establishes a legal right of access to government information on the basis of the principles of openness and accountability in government." By establishing the "right to know" standard, the FOIA made it so that agencies are required to provide justification when denying access to a record. However, the



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failure on the part of the Justice Department and the defending agencies to maintain and report the costs connected to these proceedings fails to fulfill the purpose of the FOIA. Allowing this to continue will simply lend to the already prevalent notion that the federal government can cloak itself in an air of secrecy.



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