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THE CLINTON AND GEORGE W. BUSH ADMINISTRATIONS' FOIA POLICIES:

THE PRESIDENTS' INFLUENCES ON FOIA POLICIES

By

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ABSTRACT

The purpose of this study is to develop a better understanding of the *Freedom of Information Act* (FOIA) policy formulation and implementation by analyzing the Bill Clinton and George W. Bush administrations' FOIA policies. The problem this study addresses is why the Clinton and Bush administrations pursued different FOIA policies even though it appears that "an informed citizenry" was a basic FOIA principle shared by federal FOIA employees through both administrations. This study assumes that the President's comments and statements greatly affect the actions and decisions of the Executive Branch.

This study used the principal agent theory, which identifies "hierarchical control," "goal conflict" and "difficulty in monitoring" as significant concepts. To answer the research questions, this study employed multi-qualitative methods, which are mainly non-reactive or unobtrusive research methods including content analysis, secondary analysis and document analysis. The author collected quantitative data from the OIP newsletter, the *FOIA Update* (1993 to 2000) and the *FOIA Post* (2001 to 2006), distributed quarterly in paper format until 2000.

The FOIA was not a main agenda item of the Clinton and Bush administrations, although both Presidents Clinton and Bush showed some interest in the FOIA. The president's role in FOIA policy formulation is more than symbolic; Presidents Clinton and Bush had different political philosophies regarding the FOIA. Clinton considered the FOIA an essential facet of democracy, whereas Bush considered that the FOIA could be limited for national security, effectiveness of government performance, and personal privacy;

The September 11, 2001 terrorist attacks seemed to have added impetus to extend the Bush administration's restrictive FOIA policy, accelerating the administration's drive to regain presidential power. The Ashcroft memorandum and the Card memorandum seemed to change the climate of FOIA implementation from encouraging information release to protecting national security information.

The similarities in FOIA policy between the two administrations are issuing FOIA directives, user-friendly ways, and acknowledgement of the importance of national security, effective government performance, and privacy. The differences in FOIA policy between the two administrations are opposite FOIA initiatives, different political environments, and structural changes for FOIA organization.

Finally, the main implications of this study are that the president's philosophy on the FOIA had effects on federal FOIA policies; high level officers and political appointees were also able to affect FOIA policy formulation and implementation; middle-level FOIA officers had a critical role in FOIA implementation, a dual role in which they served both as principal and as agent; FOIA culture seemed to affect federal departments' FOIA implementation; insufficient and poor guidance have been a major hindrance to FOIA implementation; and Congress is one of the most important principals in FOIA policy formulation.

CHAPTER 1

INTRODUCTION

The purpose of this study is to develop a better understanding of the *Freedom of Information Act* (FOIA) policy formulation and implementation by analyzing the Bill Clinton (Clinton) and George W. Bush (Bush) administrations' FOIA policies. Specifically, to determine a comprehensive understanding of the relationship between Presidents Clinton's and George W. Bush's (Bush's) FOIA initiatives and the administrations' responses to political directions, this study examines Presidents Clinton's and Bush's perspectives on the FOIA and the executive branch's competent authority's responses to the presidents' FOIA initiatives. In other words, this study analyzes how the Clinton and Bush administrations' FOIA initiatives affected FOIA implementations and how federal FOIA agencies responded to external stimuli, especially to the presidents' influences.

It seems that "FOIA application and emphasis has fluctuated throughout presidential administrations" (Anderson, 2003, p. 1611). The Clinton and Bush administrations pursued quite different FOIA policies. The Clinton administration initiated an open government policy. Unlike previous presidents, Clinton issued a memorandum expressing a commitment to enhancing the effectiveness of the FOIA in the fall of his first year as president and issued a statement stressing "an informed citizenry" in 1996.

In contrast, the Bush administration stressed the importance of government efficiency and placed a high value on privacy and national security rather than on a free flow of information. In addition, the terrorist attacks of September 11, 2001 may have led the Bush administration to direct government policies toward an increased non-disclosure approach (Gordon-Murnane, 2002; Nancy, 2002; Uhl, 2003). This trend toward non-disclosure is often labeled a "restrictive information policy" in the literature.

The problem this study addresses is why the Clinton and Bush administrations pursued different FOIA policies even though it appears that "an informed citizenry" was a basic FOIA principle shared by federal FOIA employees through both administrations.

It is necessary from the outset to define three FOIA principles. "An informed citizenry" means that citizens can debate public issues, hold elected officials accountable for their actions, and offer meaningful consent to the actions of the government because they are well educated

and are supposed to be given information by the government (Katz & Plocher, 1989, p. 115). An "open government" is one whose policy-making and decisions are open to inspection at any time. Access by citizens to government documents is total except for the FOIA exemptions and is not restricted by espionage laws, rules about confidentiality, and the obstructions of officialdom (Bealey, 1999). This research uses the term "open government" interchangeably with "openness in government." Finally, "disclosure" means "the giving out of information, either voluntarily or to be in compliance with legal regulations or workplace" (Wikipedia, 2006). The term "disclosure" implies "information disclosure" in the study.

Several studies related to the Clinton and Bush administrations' FOIA policies have been conducted. Studies regarding the Clinton administration's FOIA policies have mainly focused on FOIA processing, such as how to implement the provisions of the *Electronic Freedom of Information Act (*e-FOIA, P.L. 104-231). In contrast, FOIA reports about the Bush administration noted not only the e-FOIA requirements but also FOIA policy issues, such as the effects of the September 11, 2001 terrorist attacks, the impacts of the Ashcroft memorandum and Andrew H. Card, Jr. memorandum, which is also called the White House memorandum in the literature and in this document, and the Bush administration's "secrecy policy." There were, however, few comprehensive and empirical studies of the Clinton and Bush administrations' FOIA policy formulation and implementation.

This study assumes that the President's comments and statements greatly affect the actions and decisions of the executive branch. Consumer advocate Ralph Nader argued that government secrecy policies developed partly from the agencies' own bureaucratic culture, but "some of it came from how they read the White House" (Foerstel, 1999, p. 164). Based upon that assumption, this research uses the principal agent theory to investigate the Clinton and Bush administrations' FOIA policies and the presidents' influences on the policies.

The principal agent theory was developed to explain contract issues between parties interacting in a hierarchical fashion (Jensen, 1983). In economics, the principal is the buyer of the goods or services, and an agent is the provider of them. In politics, the theory looks at the relationship between decision-makers and bureaucracies as a relationship of superiors and inferiors in terms of the issue of control. Generally, principals are elected officials and agents are bureaucracies (Day 2000, p. 13). This study considers the president as a principal and bureaucrats as agents.

In sum, the study of the Clinton and Bush administrations' FOIA policies provides a greater understanding of the president's influence on FOIA policy formulation as well as the characteristics of the Clinton and Bush administrations' FOIA policies and related information policies.

Study Goals and Objectives

One of the primary goals of this study is to examine the presidents' influences on FOIA policies and the responses of the Office of Information Policy (OIP, previously Office of Information and Privacy) of the Department of Justice (DOJ) to the presidents' initiatives. Chapter 4 presents not only Presidents Clinton's and Bush's political philosophies in light of freedom of information through document analysis, but also the results of a content analysis that was conducted to compare FOIA principles stressed by the two administrations.

The second goal of this study is to investigate characteristics of the Clinton and Bush administrations' FOIA policies and related information policies. Chapter 2 presents various levels of FOIA materials such as laws, statements, memoranda, directives and other related policy documents in the Clinton and Bush administrations. Chapter 4 analyzes federal agencies' responses to the presidents' FOIA initiatives through secondary analysis of annual FOIA reports and annual ISOO reports by comparing some figures including costs/ FOIA staffing. Moreover, the study deals with congressional FOIA hearings during both the administrations in terms of FOIA policy formulation and implementation.

There are four objectives under the two goals. The first objective of this study is to review how the presidents affected FOIA policies. In doing so, the author examined Presidents Clinton's and Bush's political philosophies on the FOIA. It seems that, even though bureaucrats are considered independent from elected officials, "the choice of policy is traceable entirely to the preferences of elected officials" (Calvert, McCubbins & Weingast, 1989, p. 588). This objective gives a picture of the presidents' roles in formulation of FOIA policies.

The next objective is to examine the two administrations' FOIA policies in terms of the concepts of "an informed citizenry," "open government" and "disclosure." The author chose "an informed citizenry" because it is a basic FOIA principle (*NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 1978; *FBI v. Abramson,* 456 U.S. 615, 1982), and "open government" because it is what the FOIA was originally designed to serve. Then the author added the concept of "disclosure" because it is a "transcendent goal" of the FOIA (Clark, 1967). This objective is

used to discover how the OIP of the two administrations interpreted the original FOIA principles in reaction to Presidents Clinton's and Bush's philosophies on the FOIA.

The third objective is to examine the similarities and differences between the Clinton and Bush administrations' FOIA policies by comparing the two administrations' FOIA policies and affiliated information policies. This objective can result in a basic understanding of what kinds of FOIA policies have been formulated during the two administrations.

Finally, the fourth objective of the study is to examine how selected federal agencies have responded to the presidents' FOIA initiatives. While political appointees tend to be sensitive to external stimuli, their subordinates may tend to pursue their own interests by moving in different or opposite directions from the presidents' initiatives. This objective gives an understanding of why various responses may have occurred within each administration.

An important benefit of this study is pragmatic: not only the public, but also civil liberties groups and the media need a better understanding of the FOIA policy formulation and implementation processes as they relate to the government being more transparent and accountable. Table 1.1 shows the study goals and objectives.

Research Questions

The specific research questions are:

- To examine Presidents Clinton's and Bush's influences on FOIA policies:
    1. What are Presidents Clinton's and Bush's political philosophies on the FOIA?
    2. How often were the principles of an informed citizenry, open government and disclosure presented in the *FOIA Update* and the *FOIA Post* during the Clinton and Bush administrations?
- To investigate the Clinton and Bush administrations' FOIA policies and related information policies:
    1. What kinds of FOIA policies and related information policies were issued during the two administrations?
    2. How did federal agencies respond to the two presidents' FOIA initiatives?

        a. What were the federal agencies' overall responses to President Clinton's FOIA initiatives?

b. What were the federal agencies' responses to the Ashcroft memorandum in the Bush administration?
c. How did the federal agencies of the Bush administration use Exemptions 2 and 4 to restrict government information disclosure after the White House memorandum?
d. What are the trends in classifications and declassifications during the Clinton and Bush administrations?

Table 1.1

Study Goals and Objectives

Study Goals	
Goal 1:	Examine the presidents' influences on FOIA policies.
Goal 2:	Investigate characteristics of the Clinton and Bush administrations' FOIA policies and related information policies.
Study Objectives	
Objective 1:	Examine the presidents' political philosophies regarding the FOIA.
Objective 2:	Compare the kinds of FOIA principles the two administrations stressed.
Objective 3:	Examine the similarities and differences in the Clinton and Bush administrations' FOIA policies.
Objective 4:	Examine how federal agencies responded to the presidents' FOIA directions.

The Need for Theory: Principal Agent Theory

The principal agent theory is conceived to deal with the agency problem. The agency problem arises whenever "an individual (the principal) has another person (the agent) perform a service on her behalf and cannot fully observe the agent's actions." The theory "focuses on mechanisms to reduce the problem, such as selecting certain type of agents, and instituting forms of monitoring and various amounts of positive and negative sanctions" (Varse, 2003, principal-agent problem).

The principal agent theory became a predominant theory of political control of the bureaucracy after the notion of iron triangle relationships and capture theory were unable to adequately explain the deregulation movement in the early 1970s (Waterman, Rouse & Wright, 1998). The principal agent theory has been used extensively with a quantitative, empirical method in political science (Waterman & Meier, 1998). In addition, research on bureaucratic politics used to focus on a principal's influences over small government organizations like regulatory agencies by using a quantitative empirical method (Moe, 1985), but more recently has examined multiple principals' influences over bureaucracy (Waterman, Rouse & Wright, 1998).

The principal agent theory provides an approach that can assist in understanding how the federal government's FOIA policies were formulated and changed during the two administrations in terms of the presidents' FOIA policy directions. This theory also helps explain why Presidents Clinton and Bush propelled ambiguous or sometimes contradictory goals concurrently during their presidencies.

Significance of the Study

Insufficient study of the process of FOIA policy formation

The FOIA has been studied as a subject of information policy (Archibald, 1979; Feinberg, 1986; Relyea, 1996b) and as it relates to the First Amendment (Cooper, 1986) and to government secrecy (Baker, 2003; Jost, 2005). It has also been studied as a tool for access to government information (Johnson, 1998). After the e-FOIA enactment in 1996, the efficiency of the e-FOIA became a pressing issue.

There are several reports about federal agencies' e-FOIA implementation, timeliness of responding to FOIA requests and backlogs of pending requests. OMB Watch reports (Henderson & McDermott, 1998; McDermott, 1999) asserted that the Office of Management and Budget (OMB) and the DOJ did not pay much attention to federal agencies' FOIA implementations and that the agencies made little progress in meeting the e-FOIA requirements. The reports pointed out that even three years after the e-FOIA enactment, agencies had difficulties in fulfilling e-FOIA requirements because of a shortage of resources and poor directions by the OMB and the DOJ. Government Accountability Office (GAO) reports also revealed that federal agencies needed to provide more of their documents electronically (GAO, 2001, 2002).

The relationship between the FOIA and government secrecy is the other side of coin, so the FOIA has been studied as a part of "government secrecy." Jost (2005) noted the Bush

administration's justification for over-classification and the open-government advocates' concern about the restrictive information policies. Baker (2003) contended that national security and the war against terrorism accelerated the Bush administration's non-disclosure policy. He also argued that the Bush administration regarded civil liberties as a weakness in defending America. Schmitt and Pound (2003) criticized that the Bush administration was trying to withhold government information as much as possible.

Despite an increased concern about the Bush administration's secrecy policies and interest in the impact of the terrorist attacks of September 11, 2001 on the FOIA, little comprehensive research has been conducted on the process of FOIA policy formulation, especially with a focus on the role of the president's influence.

Need for comparative and empirical study of FOIA policy

There have been few comparative studies of the Clinton and Bush administrations' FOIA policies, although "the FOIA policies of the Clinton and Bush administrations provide an interesting study of contrasting approaches to government disclosures" (Uhl, 2003, pp. 270-271). Gordon-Murnane (2002) examined the Clinton administration's FOIA policies and how those policies changed during the Bush administration after the September 11, 2001 terrorist attacks.

In addition, most FOIA studies do not rely on objective data. For example, the Reporters Committee for Freedom of the Press (Reporters Committee) said that a GAO report in 2002, requested by Senator Patrick Leahy, was "largely anecdotal and did not attempt to analyze data, other than to note that agency Freedom of Information officials and the requester community viewed the impacts of the events of September 11 differently" (Reporters Committee, 2005, Freedom of Information).

Although federal agencies issue FOIA annual reports and the Information Security Oversight Office (ISOO) provides overall data on classification and declassification, it is not easy to compare the Clinton and Bush administrations' FOIA policies using those data. Recently, however, OpenTheGovernment.org (2005) and the Coalition of Journalists for Open Government (2005) showed quantitative indicators of secrecy in the federal government. This study examines the secrecy trend during the two administrations and compares how the classification and declassification rates changed during the period by using government and civil liberties groups' reports.

Increasing concerns of Congress and public interest groups

Unlike the Clinton administration, the Bush administration pursued consecutive non-disclosure policies that prevented the public from accessing government information. Concern about the Bush administration's non-disclosure policies after the September 11, 2001 terrorist attacks has been explored mainly by Congress, civil liberties groups and the media (GAO, 2003; Archive, 2003a; Reporters Committee, 2003; Schmitt & Pound, 2003; Shane, 2005).

Congress, in a bipartisan move, asked the GAO to examine the impact of the Ashcroft memorandum and the September 11, 2001 terrorist attacks on the Bush administration's FOIA policy. Also, in February 2002, the GAO filed suit against the White House for failing to release the information from Vice President Dick Cheney's National Energy Policy Development Group (NEPDG or Energy Task Force) to Congress. In March 2002, the House Government Reform Committee edited "*A Citizen's Guide on using the Freedom of Information Act and the Privacy Act of 1974 to Request Government Records*" (*Citizen's Guide to the FOIA*) to call for the fullest possible disclosure, which contradicts the Ashcroft memorandum. Furthermore, "*Restoration of the FOIA*" was introduced in the Senate by Senator Leahy and in the House by Representative Barney Frank (Reporters Committee, 2004).

Public interest groups have also conducted independent research. The National Security Archive (Archive) investigated how the Ashcroft and Card memoranda affected the FOIA policies of federal agencies. The first Archive report (2003a) revealed that whereas more than half of the agencies (52 percent) had few changes in their regulations, guidance or training materials, military agencies including the Air Force, Army and Navy, and some other agencies such as the Nuclear Regulatory Commission (NRC) and the Department of the Interior (DOI) changed the FOIA regulations, guidance and training materials greatly. The preview of the second Archive report that was attached to the first Archive report pointed out that the White House memorandum affected agencies' FOIA policies more severely than did the Ashcroft memorandum.

Additionally, the Reporters Committee has regularly issued "Homefront Confidential" reports since 2002 to reveal how the war on terrorism affects information and the public's "right to know." The white paper has labeled "freedom of information" as a "severe risk to a free press" since its first edition (Reporters Committee, 2005).

In summary, there is no concrete study of why the Bush administration pursued such policies or what factors affected the administration's FOIA policy even though there is an assertion that the Bush administration pursued secrecy policies.

First FOIA research based upon the principal agent theory

Previously, even though the president has been regarded as a hierarchical master of bureaucracy (Waterman, Rouse & Wright, 1998), the president's role in bureaucracy control has not been spotlighted in the capture theory or congressional dominance theory (Moe, 1985). Moreover, the principal agent theory has been used frequently to examine how Congress influenced federal agencies (Boutrous, 2002). The theory also has been used to analyze regulatory agencies including the Federal Trade Commission (FTC), the Securities and Exchange Commission (SEC), the Equal Employment Opportunity Commission (EEOC), and others.

Recently, two reports used the principal agent theory to examine the president's influence on policy formulation. The first report employed case studies to show that the president was able to control the national security bureaucracy to achieve his goals (Day, 2000). The other example used linear regression analysis to explore the president's influence on agency decision-making through the regulatory review process (Boutrous, 2002).

The author used the principal agent theory to examine the presidents' influences on FOIA policy formulation and implementation with multi-qualitative methods. This study is unique because previous research using the principal agent theory focused mainly on small regulatory agencies and a quantitative approach. The author will determine the degree to which the principal agent theory is a useful conceptual framework for studying FOIA policy development in Chapter 5.

Overview of the Study Methodology

From the methodological perspective, the research on political bureaucratic relations was mostly qualitative and used many methods in the 1970s. The principal agent theory, however, has employed mostly quantitative models to produce empirical data supporting "the possibility of political influence over bureaucracy" since the 1980s (Boutrous, 2002, p. 52). The research using this theory mainly employed time series analysis.

This study, however, employed multi-qualitative methods, which were content analysis, document analysis and secondary analysis. It relied on both quantitative and qualitative data collection, and then used qualitative data analysis techniques. In other words, the author used

quantitative data collection to conduct content analysis, then employed qualitative data collection and analysis to determine how the Clinton and Bush administrations pursued their FOIA policies and to examine how the two presidents affected FOIA policies.

The author collected quantitative data from the OIP newsletter, the *FOIA Update* (1993 to 2000) and the *FOIA Post* (2001 to 2006), distributed quarterly in paper format until 2000. The data from the content analysis identify how the FOIA principles were stressed by the Clinton and Bush administrations during that period.

In addition, the researcher used secondary analysis for three reasons: to examine federal agencies' responses to the presidents' FOIA policy goals; to investigate how federal agencies used Exemptions 2 and 4 to restrict information disclosure after the White House memorandum; and to compare the Clinton and Bush administrations' classification and declassification of government documents along with the original classifiers. The secondary analysis is "a form of research in which the data collected and processed by one researcher are re-analyzed – often for a different purpose – by another (Babbie, 2001, p. 269). The researcher re-analyzed the data from the federal departments, the GAO, the Archive, ISOO and other sources.

The author applied document analysis to the Clinton and Bush administrations' FOIA and related information policies. Document analysis can be defined as research that works with document sources including government papers, newspapers, diaries, online documents, etc. The document analysis was used to confirm and supplement the findings of content analysis and secondary analysis.

In using document analysis, qualitative data provided an overview of the two administrations' FOIA policies as shown in laws, Executive Orders (E.O.s), regulations, memoranda and statements, and also the presidents' influences on FOIA policies during the period. The qualitative data for reviewing FOIA policies were collected through literature and policy review. The researcher also obtained primary and secondary sources from Web sites of federal agencies.

In this study, the author employed document analysis mainly by retrieving the *Weekly Compilation of Presidential Documents* from 1993 to 2006. The data from this analysis show Presidents Clinton's and Bush's political viewpoints on the FOIA. The period covered by the document analysis begins when Clinton took office in January of 1993 and continues through May 2006.

Structure of the Dissertation

This dissertation consists of five chapters. The first chapter introduces the study goals, significance of the study, an overview of the research design, and limitations. Chapter 2 provides a context for the research by reviewing policy and scholarly literature relating to the FOIA, government secrecy, presidential studies and the theoretical framework. The FOIA section provides specific FOIA policies and related information policies that had direct or indirect impact on FOIA policies during the Clinton and Bush administrations. The government secrecy section reviews several levels of government secrecy, its history and recent developments. The presidential studies section gives a better understanding of the president's institutional power, roles and influence, and of the relationship between the presidents' influences and the implementation of FOIA policy. Finally, the theoretical framework section describes several theories of bureaucratic control and explains why the author employed the principal agent theory as a theoretical framework.

Chapter 3 describes the research design employed in this study through content analysis, document analysis and secondary analysis. Content analysis was performed on the *FOIA Update* and the *FOIA Post*. The researcher used secondary analysis to examine federal agencies' responses to presidential FOIA initiatives and to compare the two administrations' FOIA implementation. The document analysis was mainly used to supplement the findings from content analysis and secondary analysis.

Chapter 4 presents the study findings, showing Presidents Clinton's and Bush's political philosophies and influences on FOIA policy formulation and implementation and also the federal agencies' responses to the presidents' policy goals. Specially, the content analysis on the *FOIA Update* and the *FOIA Post* shows how the executive branch's competent FOIA authority responded to Presidents Clinton's and Bush's FOIA initiatives. The findings provide the basis for answering the research questions.

Chapter 5 highlights overall findings, implications and recommendations for FOIA officers, policy analysts and those who intend to pursue scholarly research in this area. The final chapter also describes additional areas for future research.

Limitations

This study supposed that the president has a significant amount of control over the FOIA formulation and implementation. The FOIA policy process has, however, a complicated policy

environment that draws upon and is affected by many factors and variables. Policy can be initiated not only by the president and his inner circle but also by Congress and even in response to political events.

First, it is undisputable that the president, Congress, the courts, public interest groups and the media are all considered principals in the field of political science. It does not seem to be easy to understand the vast picture of FOIA policy formulation and its implementation without examining all of the principal agents involved. It would be, however, a daunting task to decipher the roles of all principals. Thus, by focusing on the president's role in FOIA policy formulation and implementation, this study can begin to understand FOIA policy more easily.

Second, it seems clear that the president's policy initiatives might not come solely from the president's own ideas but could include input from the Vice President and the staff of the Executive Office of the President (EOP). Thus, in some cases, the author used the word "president" to include the inner circle of the president and the top political elites of the administration.

Finally, there is an assumption that should be considered when understanding the Bush administration's FOIA policies. This assumption is that the September 11, 2001 terrorist attacks triggered a trend toward non-disclosure. After that date, the phrase "national security" became synonymous with "personal safety" (Talbott, 2003). The Bush administration removed information from federal agencies' Web sites and made efforts not to disclose government information to the public because it realized that some government information could be utilized by terrorists (OMB Watch, 2002b; NARA, 2006). This study, however, does not focus on that issue because, even though the events of September 11, 2001 escalated the Bush administration's non-disclosure policy, the administration had pursued a non-disclosure policy from the beginning (Feinberg, 2004).

Summary

This study was concerned with determining why the Clinton and Bush administrations pursued different FOIA policies even though the federal FOIA employees of the two administrations shared such FOIA principles as an informed citizenry, open government and disclosure. To resolve the issue, the study looked for evidence of Presidents Clinton's and Bush's influences on FOIA policy formulation and implementation.

The significance of this research is fourfold: 1) insufficient previous study of the process of FOIA policy formulation and implementation; 2) need for comparative and empirical study of FOIA policy during Clinton's and Bush's administrations; 3) increasing concerns of Congress and public interest groups on the Bush administration's non-disclosure policy; and 4) the first FOIA research based upon the principal agent theory.

This study addressed the following research questions:

- To examine Clinton's and Bush's influences on FOIA policies:
  1. What are Presidents Clinton's and Bush's political philosophies on the FOIA?
  2. How often were the principles of an informed citizenry, open government and disclosure presented in the *FOIA Update* and the *FOIA Post* during the Clinton and Bush administrations?
- To investigate characteristics of the Clinton and Bush administrations' FOIA policies and related information policies:
  1. What kinds of FOIA policies and related information policies were issued during the two administrations?
  2. How did federal agencies respond to the two presidents' FOIA initiatives?
     a. What were the federal agencies' overall responses to Presidents Clinton's and Bush's FOIA initiatives?
     b. What were the federal agencies' responses to the Ashcroft memorandum in the Bush administration?
     c. How did the federal agencies of the Bush administration use Exemptions 2 and 4 to restrict government information disclosure after the White House memorandum?
     d. What are the trends in classifications and declassifications during the Clinton and Bush administrations?

This study provides a better understanding of FOIA policy changes caused by government change, the presidents' influences on FOIA policies, and federal agencies' response to those policy changes. Furthermore, this study provides clues as to why different, even sometimes contradictory, FOIA policies have been formulated and implemented variously by the government.

CHAPTER 2

LITERATURE REVIEW

Introduction

Chapter 1 introduced the research study, presenting study goals and objectives, articulating research questions, explaining the significance of the study, and describing the research methods used. Chapter 2 provides information about the major issues related to the research questions.

This study seeks to improve the understanding of how Presidents Bill Clinton and George W. Bush affected FOIA policies and how federal agencies responded to the two presidents' FOIA policy initiatives. To do so, this chapter provides a basis for understanding the FOIA, government secrecy and its impact on the FOIA, presidential studies regarding political control of bureaucracy, and the principal agent theory.

This chapter has four objectives. The first objective is to provide an understanding of the FOIA from several perspectives. Specifically, Chapter 2 presents a review of the literature on the FOIA to provide background information on how the FOIA was developed, what policy instruments were implemented during the Clinton and Bush administrations, and what research was conducted by governmental and private sectors and in the academic arena.

The second objective of this chapter is to present the categories of government secrecy, government secrecy instruments, and the impact of government secrecy on the FOIA. This section reviews the E.O.s on classification as well as newly emerging categories including sensitive but unclassified (SBU), which is used interchangeably with UBS, and critical infrastructure information (CII).

The third objective of this chapter is to present an overview of presidential studies to provide the context in which the president operates. This review explains the major theoretical framework of presidential studies; presents the president's institutional power such as appointment, budget, reorganization and central clearance; and summarizes the relationship between the president's influence and policy implementation.

The final objective of this chapter is to provide a discussion of the principal agent theory, which is one of the major theories about the political control of bureaucracy. The last part of Chapter 2 explains the history, major assumptions, concepts, research trends and limitations of

the principal agent theory. Most of the literature regarding the principal agent theory comes from the discipline of political science, although the theory has also been affected by the human relations school of management, economics, the scientific management school (theory of organization), and other rational choice models (Brehm & Gates, 1997).

In summary, this chapter reviews a wide range of academic, policy-oriented government and private sector literature to:

- Summarize the FOIA's development history in terms of the relationship between the bureaucrats and the open government advocates.
- Review the Clinton and Bush administrations' FOIA policy instruments, including laws, directives, memoranda, statements and other related tools.
- Present various FOIA research and reports produced by the academic arena, the government and the private sector.
- Summarize the history of government secrecy, E.O.s on classification, the trend of government secrecy since the September 11, 2001 terrorist attacks, and the impact of government secrecy on the FOIA.
- Summarize presidential studies regarding the political control of bureaucracy, major theoretical approaches in presidential studies, and the results of research found in studying these approaches.
- Explain the principal agent theory as a conceptual framework, and present the results of empirical research based upon the theory.

The FOIA

Introduction

The United States was founded on the principle of checks and balances. Government, especially the executive branch, however, has a tendency to be somewhat closed and secretive (Jost, 2005) and, thus, "avoid criticism, hinder opposition, and maintain power over citizens and their elected representatives" (Wiener, 1998, p. 83). To address this tendency, the public and Congress worked to find a way to monitor government secrecy and to obtain a legal right to access government information (Foerstel, 1999).

The FOIA was enacted in 1966 after 11 years of dispute and became effective in July 1967 (Relyea, 2009a). The FOIA established, for the first time, an effective statutory right of access to government information. The FOIA is "the main legal tool to combat government

secrecy" (Jost, 2005, p. 1023). Before the FOIA enactment, it was very difficult for individuals or organizations to access information the government did not want to distribute. The FOIA is regarded as one of the three fundamentals of federal government information activities, along with the First Amendment and Section 105 of the *Copyright Act* (Gellman, 1997).

This section reviews FOIA history including its enactment and amendments, attorneys general's FOIA memoranda, the FOIA structure, and the Clinton and Bush administrations' FOIA policies.

History of the FOIA

Since its enactment, the FOIA has been amended seven times as of June 1, 2006. The changes include major amendments in 1974, 1986 and 1996 and minor amendments in 1976, 1978, 1984 and 2002. The amendments in 1974 through 1986 modified exemptions from the FOIA, protected sensitive law enforcement information, made procedural changes, and created new fee and fee-waiver provisions. The 1996 FOIA amendments added the components of electronic information and the Internet environment, and were meant to expedite the FOIA request process and reduce the increasing FOIA backlogs. The 2002 FOIA amendments are reviewed in section 2.2.6, which covers the Bush administration's FOIA policy.

FOIA enactment

In 1946, the *Administrative Procedure Act* (APA) was enacted, requiring agencies to make their forms more uniform and to establish a procedure for the promulgation of agency regulations. According to the APA, government records should be accessible to the public, but only when there is a good cause or when that accessibility is in the public interest.

In the 1950s, Senator Thomas Hennings and Representative John E. Moss made efforts to pass a law that guaranteed the public's right to know, but no effective legislation was enacted until 1966. In February 1965, the FOIA Bill (S. 1160) was passed by the Senate on a voice vote and, in June 1966, the House passed the bill by a vote of 308 to 0, with 125 members not voting (Foerstel, 1999, p. 42).

The FOIA was initiated by Congress and accepted by the president. President Lynden Johnson's FOIA statement contains many concerns about information disclosure. President Johnson emphasized the importance of executive privilege and also stressed the point that government information should be disclosed unless "the security of the nation," "public interest," "the welfare of the nation," "rights of individuals," and/or "military secrets" were in peril. He

also insisted that the president's power of confidentiality should be protected and that "officials within government must be able to communicate with one another fully and frankly without publicity" (Johnson, 1967).

The memorandum of Attorney General Ramsey Clark, which was based upon the House Committee Report (Davis, 1967; Foerstel, 1999), summarized the FOIA as saying that:

- Disclosures are the general rule, not the exception.
- All individuals have equal rights of access.
- The burden is on the government to justify withholding a document, not on the person who requests it.
- Individuals improperly denied access to documents have a right to seek injunctive relief in the courts.
- There will be a change in government policy and attitude.

Davis (1967), however, pointed out several concerns about the FOIA Bill, including weakness of enforcement, problems of basic policy, drafting deficiencies, abuse of legislative history, and preclusion of judicial correction of legislative ineptitudes.

A more detailed discussion of two of those concerns will help explain why FOIA implementation faced many difficulties from the beginning. First, drafting deficiencies are due to "congressional formulation of its own legislation, without the help of executive" (Davis, 1967, p. 808). According to Foerstel (1999), Representative Moss worried that, if the bill were open to change, it would be harmed by the DOJ. Thus, Moss negotiated with the DOJ to prevent it from amending the bill, but conceded that the DOJ could draft the House FOIA Report.

Second, abuse of legislative history occurred because the DOJ played such a strong role in drafting the House FOIA Report. Senate and House committee reports are considered the most valuable sources for knowledge about the spirit of a law, and for interpreting the provisions of that law. However, the Senate Committee Report of FOIA (S. Rep. No. 813, 1965) and the House Committee Report (H.R. Rep. No. 1497, 1966) present different opinions about the clauses and about the intent of the bill. According to Davis (1967), while the Senate Committee Report is considered to be faithful to the words of the Act, the House Committee Report is regarded as undermining the meaning of the Act.

Snyder (1998, pp. 49-50) reviewed early problems administering the FOIA. According to him, the difficulties for the ensuing problems of implementing the FOIA were due not only to

the conflicting Congressional and DOJ FOIA reports or "the ill-will of bureaucrats," but also to "congressional lawmaking and oversight roles."

FOIA amendments during the Ford administration

Although the FOIA received widespread public support after its enactment, the law did not work appropriately in the beginning. First, the federal bureaucracy not only had a tendency to keep information veiled, but also had little experience disclosing information in response to public requests. Second, the FOIA had some defects. The law did not contain a statutory deadline for compliance that included penalties for violation. Moreover, the law did not have limits on requester fees. According to Foerstel (1999), many agencies delayed responses to FOIA requests and charged high fees to discourage requesters. For instance, the State Department once charged $10 per page to photocopy a pamphlet (Powell, 2003).

In 1972, the House Government Operations Subcommittee on Foreign Relations and Government Information, chaired by Representative William S. Moorhead, revealed widespread bureaucratic resistance to compliance with FOIA requirements (Foerstel, 1999; Hammitt, 2000). The Congressional hearings, along with "the concern about excessive government secrecy which resulted from the Watergate investigations," led Congress to pass the 1974 amendments (Hammitt, 2000, History). President Gerald Ford, however, vetoed the bill. Nevertheless, on November 20, 1974, the House and Senate overrode the president's veto, and finally the FOIA amendments became a public law (P.L. 93-502) (Archive, 2004; Foerstel, 1999; Mart, 2006).

The first revision, in 1974, mandated further disclosure and created a presumption of disclosure unless one of nine exemptions applied. The changes in the legislation fit into two categories: amendments pertaining to the scope and applications of the exemptions (the first three parts); and amendments pertaining to administration and other matters. The changes were as follows:

- Exemptions pertaining to classified information (Exemption 1) and law enforcement materials (Exemption 7) were narrowed.
- "Reasonably segregable" portions of record could be released after necessary deletions.
- Courts were allowed to have "in camera inspections" for review of contested materials.
- Fees could be waived or reduced in the pursuit of public interest.

- Personnel responsible for "arbitrary and capricious" withholding would be disciplined.
- The definition of "agency" was enlarged and clarified.

FOIA amendments during the Carter administration

In 1976, during President Jimmy Carter's administration, the Supreme Court ruled that government could use Exemption 3 if other statutes "simply gave agencies broad discretion over whether the information could be withheld" (Foerstel, 1999, p. 49). In response to that case (*FAA Administrator v. Robertson*, 1975), Congress amended the exemption in the *Sunshine Act* (P.L. 94-409) to effectively nullify the Supreme Court's decision. According to Powell (2003), Nader's activism and public objections to government secrecy contributed to the amendments. The 1976 FOIA amendments were meant to ensure that agencies could not withhold information simply because another statute gave them discretion to do so. In other words, if a statue did not specifically require agencies to deny information requested under the FOIA, the agencies were obligated to release their information.

In 1978, Congress amended the FOIA to update a provision for administrative disciplinary proceedings (OIP, 2004). Specifically, the *Civil Service Reform Act of 1978* (P.L. 95-454) changed the name of the agency responsible for administrative disciplinary proceedings from the "Special Council" to the "Civil Service Commission" at 5 U.S.C. §552(a)(4)(F).

FOIA amendments during the Reagan administration

During the 1980s, President Ronald Reagan's administration and the Republican-led Congress asked for expanded exemptions for law enforcement agencies while also asking for protection for business information that companies submitted to the government (Foerstel, 1999). In 1984, the FOIA was amended as part of the *CIA Information Act* (P.L. 98-477), making a number of Central Intelligence Agency (CIA) files exempt from the FOIA. These amendments led to restriction of FOIA litigation against the CIA and also to the revision of CIA files through in camera inspection. In addition, the amendments repealed the expedited judicial review provision at (a)(4)(D) of the FOIA, allowing courts to expedite an FOIA lawsuit only if "good cause therefor is shown" (OIP, 2004). At the same time, the amendments stated that the *Privacy Act* (P.L. 93-579) is not an Exemption 3 statute under the FOIA.

Two years later, Congress passed the *1986 Freedom of Information Reform Act* as part of the *Anti-Drug Abuse Act of 1986* (P.L. 99-570). These amendments broadened Exemption 7 and added exclusions for law enforcement agencies' secrecy. Specifically, the scope of Exemption 7

of the FOIA was expanded to have a current provision. The original FOIA protected only "investigatory files," but the 1974 amendments substituted "records" for "files." The 1986 amendments removed the "investigatory" referent and added "information." In addition, new exclusions gave law enforcement agencies limited authority to respond to "a request without confirming the existence of the requested records" (Foerstel, 1999, p. 55).

The amendments also established a new fee and fee waiver structure (§552(a)(4)(A)(ii)). To encourage agencies to have unified fee structures, the OMB issued its "Uniform FOIA Fee Schedule and Guidelines" in March 1987, based upon the *Freedom of Information Reform Act*'s provision (§552(a)(4)(A)(i)).

e-FOIA Amendments

Further revisions in 1996 provided public access to information in an electronic format and also established e-FOIA reading rooms through agency FOIA sites on the Internet. The e-FOIA amended the definition of "record" (§552(f)(2)) to include all information collected and maintained by an agency, regardless of format. Moreover, it mandated agencies to exert all reasonable efforts to make government records available to requesters in the medium of their choice (§552(a)(3)). The other major changes to the e-FOIA were as follows:

- The agency would determine within 20 working days after the receipt of any request whether to comply with such request and would notify the requesters of that determination immediately (§552(a)(6)(A)).
- The agency would provide both "multi-track processing" (§552(a)(6)(D)) and "expedited processing" (§552(a)(6)(E)).
- The reporting period was changed from calendar year to fiscal year (§552(e)(1)).
- The agency would provide its annual report to the Attorney General by February 1 of each year (§552(e)(1)) and the Attorney General would report to Congress, no later than April 1 of each year, that each report was issued and available in electronic forms (§552(e)(3)).

Attorneys General's FOIA memoranda

The DOJ plays a central role "in interpreting and developing FOIA, overseeing agencies' compliance with FOIA, defending agencies' decisions in court, and serving as the primary source of policy guidance for agencies" (Uhl, 2003, p. 269). Specifically, the Justice Department issues FOIA memoranda for guidance in interpreting the statute, publishes an online newsletter

called the *FOIA Update*, and provides training to FOIA employees in how to interpret the statute (Feinberg, 2004; Uhl, 2003).

The Attorney General issues an FOIA memorandum to reflect a new administration's FOIA policy changes, to interpret FOIA provisions, and to give agencies specific guidance about FOIA amendments (Feinberg, 2004). First, a new FOIA policy statement has been issued traditionally by the Attorney General at the beginning of each new administration. New FOIA policy memoranda were issued under Presidents Jimmy Carter, Ronald Reagan, Bill Clinton and George W. Bush. Second, memoranda giving interpretations and guidance were issued by Attorneys General William Ramsey Clark in the Johnson administration, Edward H. Levi in the Ford administration, and Edwin Meese III in the Reagan administration. Third, the Attorneys General also issued FOIA memoranda to encourage federal agencies to implement FOIA policies more efficiently. Attorney General Janet Reno's 1999 FOIA memorandum fits into this third category.

In June 1967, Attorney General Clark issued a 47-page FOIA pamphlet, which was entitled "*Attorney General's memorandum on the public information section of the Administrative Procedure Act,*" for the federal government that explained how to apply and interpret the FOIA. The Clark memorandum reflects the agencies' viewpoint of the FOIA but is contrary to the spirit of the FOIA (Davis, 1967). Clark stressed the importance of "the balancing of competing principles within our democratic order," although he recognized that "an informed public" is the basic component of self-government and is necessary for maximum participation by the citizenry in affairs of state (Clark, 1967).

After the 1974 FOIA amendments (P.L. 93-502), Attorney General Levi announced an FOIA memorandum to guide federal agencies facing amended FOIA provisions including Exemptions 1 and 7. Levi asserted that the DOJ considered encouragement of sound and effective implementation of the FOIA as one of its most important responsibilities (Levi, 1975).

On May 5, 1977, Attorney General Griffin B. Bell released an FOIA memorandum, attached to President Carter's statement, which expressed concern over the increase in FOIA litigation. The memorandum states that the DOJ would "defend Freedom of Information suits only when disclosure is demonstrably harmful even if the documents technically fell within the exemptions in the Act" (Bell, 1977). In addition, the memorandum suggested four criteria that the DOJ would consider in FOIA litigations: a substantial legal basis, an acceptable risk of

adverse impact, a sufficient prospect of actual harm, and sufficient information about the controversy for those three criteria. Specially, the "sufficient prospect of actual harm" criterion was aimed at unnecessary use of Exemption 5 (Bell, 1977; OIP, 1979).

Attorney General William F. Smith issued the Reagan administration's FOIA memorandum on May 4, 1981, saying the new policy was to defend agencies in FOIA suits if the agencies' denial had "substantial legal basis" and if defense did not undermine other agencies' ability to withhold records (OIP, 1981). This policy shift was partly due to the Reagan administration's understanding that the Bell memorandum had increased the number of FOIA suits (OIP, 1981).

In December 1987, Attorney General Meese announced a memorandum to clarify the law enforcement provisions of the *FOIA Reform Act* (P.L. 99-570). Meese stated that FOIA protections including the amended Exemption 7 (§552(b)(7)) and the new exclusions (§552(c)(2)) were essential to the effective functioning of all federal law enforcement agencies, and he insisted that federal agencies should apply those provisions comprehensively toward that end (Anderson, 2003; Meese, 1987).

The author reviewed the memoranda of the Attorneys General Reno and John Ashcroft in other parts of this chapter. Table 2.1 summarizes the attorneys general's memoranda prior to the Clinton administration.

Table 2.1

Summary of Attorneys General'FOIA Memoranda

Year	Attorney General	Summary	URL
1967	Ramsey Clark	Clark stressed not only an "informed public" and "disclosure," but also competing principles such as "national security," "privacy" and "executive privilege."	www.justice.gov/oip/67agmemo.htm
1975	Edward H. Levi	Levi stressed that encouragement of sound and effective implementation of the FOIA was one of the most important responsibilities of the DOJ.	www.justice.gov/oip/74agmemo.htm
1977	Griffin B. Bell	Bell stressed that the government would defend FOIA suits only if a "substantial legal basis," an "acceptable risk of adverse impact," "demonstrably harmful" components, and "sufficient information about the controversy" were present.	
1981	William F. Smith	Smith stressed that the government would defend agencies in FOIA suits unless the agency's denial lacked "substantial legal basis" or unless "defense presents a warranted risk of adverse impact on other agencies' ability to withhold records."	www.justice.gov/oip/foia_updates/Vol_II_3/page3.htm
1987	Edwin Meese III	Meese stressed the importance of the amended Exemption 7 and newly established exclusions for law enforcement agencies and he encouraged agencies to apply those provisions comprehensively toward that end.	www.justice.gov/oip/86agmemo.htm

Structure of the FOIA

The FOIA, first signed into law by President Johnson in 1966 and codified at *United States Code* (U.S.C.) §552, is designed to give any person an enforceable right of access to selected federal agency records. The FOIA provides public access to government information through two means: affirmative agency disclosure and public request for disclosure. An affirmative agency disclosure fulfills the FOIA publication requirement through the *Federal Register* (FR) and the FOIA reading room requirement. In contrast, a public request disclosure means that the public can request information from government agencies.

The FOIA made it possible for the public to request government information beyond that which government offers on its own initiative (Relyea, 1989, p 144). In addition, the public need not indicate a reason for the request, but federal agencies are obligated to reveal a reason for withholding materials. Requesters are entitled to appeal denials and to challenge them in court. Moreover, agency employees are responsible for responding to requests and screening requested records to remove or redact exempted material from release. However, an agency need not create documents that do not exist.

Agencies have timeframes for FOIA requests: agencies are required to respond to a FOIA request within 20 business days; agencies are required to make a determination on a administrative appeal within 20 business days from filing of the appeal; agencies are also required to inform the public whether they provide expedited processing of requests within 10 business days from receipt of the request. There is no statutory deadline for records release, but agencies are required to release records promptly (GAO, 2005).

The FOIA has three types of fee categories based upon types of requesters (§552(a)(4)): commercial; educational or noncommercial scientific institutions and representatives of the news media; and other. Further, fees can be imposed to recover three types of agency activities: search, duplication and review. Commercial requesters can be charged for all three FOIA activities: search, duplication and review. Requesters in the second category can be exempted from search and review fees. Everyone not in the first two categories can be charged for document search and duplication. Agencies must provide all noncommercial requesters with the first 100 pages of duplication or the first 2 hours of search time for free (5 U.S.C. §552(a)(4)(A)(iv)(II). Table 2.2 shows the FOIA charges by category.

Table 2.2

FOIA Charges by Category

	Activities for which agencies can charge		
Category of requester	Search	Review	Duplication
Category 1: Commercial requester	Yes	Yes	Yes
Category 2: Educational or noncommercial scientific institutions and representatives of the news media	No	No	Yes (100 pages free)
Category 3: Other	Yes (2 hours free)	No	Yes (100 pages free)

Source: 5 U.S.C. §552(a)(4)(A)(iv), Adapted from GAO 2005 FOIA Report (GAO-05-648T), Information management; Implementation of the Freedom of Information Act. p. 9.

The FOIA does not apply to Congress, the courts, or the EOP, nor does it apply to any records of state or local governments. However, nearly all state governments have their own FOIA-type statutes. In the case of Congressional records, the public can easily access Congressional records via the Thomas Web site (thomas.loc.gov), which was launched in January of 1995. The Web site provides public laws and joint resolutions plus House and Senate bills and committee reports. The public is able to access previous House papers and documents that are more than 50 years old or already published with the consent of the Clerk of the House (House Document No. 108-241, 2005; Relyea, 1989).

Access to old Senate records requires a similar process. The public can access all routine Senate records 20 years after their creation. So-called "sensitive records" are available after 50 years of custody (Relyea, 1989, p.148-149). Access to these Senate records requires the consent of the Senate Historian (S. Res. 474, 1980). The public can gain access to federal court decisions through governmental and commercial publications. Also, most of the federal courts provide their decisions via their Web sites.

The FOIA provides access to all federal agency records except those protected from disclosure by any of nine exemptions or three exclusions. The nine exemption categories include classified information for national security, an agency's internal rules or practices, information exempted under other laws, privacy-related information, law enforcement records, and so on. The three exclusions include records or proceedings that relate to violations of criminal law, informant records, and some records including foreign intelligence maintained by the Federal Bureau of

Investigation (FBI) (5 U.S.C. §552(c)(1) through (c)(3)) Table 2.3 shows the exemptions to the FOIA.

The Clinton administration's FOIA policies

Since its enactment in 1966, the FOIA has been revised in response to changing circumstances such as requests for extended disclosure, pressure of law enforcement agencies, the advent of the Internet, and political events like the Watergate scandal. During the Clinton and Bush administrations, there were significant FOIA policy changes. This section details important FOIA policies and research during the Clinton administration.

Open government was a major policy initiative of the Clinton administration (Clinton, 1993; Jost, 2005). President Clinton showed his support for the FOIA during his tenure. For instance, President Clinton issued an FOIA statement in the first year of his presidency, saying the FOIA is a "vital part of the participatory system of government" (Clinton, 1993).

Furthermore, in his 1996 e-FOIA statement, President Clinton stressed that open access to government information is crucial in a democracy. The Clinton administration set an example of disclosing government information affirmatively and making public access to government information easier (Clinton, 1996). For example, his administration established Web sites throughout the federal government; encouraged agencies to disclose as much government information as possible within the constraints of the FOIA policies; and declassified large quantities of national security materials.

President Clinton's memorandum on the FOIA

President Clinton issued his FOIA memorandum, attached to the Reno memorandum, for heads of departments and agencies on October 4, 1993. In the memorandum, Clinton stated that the FOIA had strengthened the democratic form of government and he stressed his intention to enhance the effectiveness of the FOIA during his administration. He also clarified that the FOIA was enacted based upon the fundamental principle that an informed citizenry is essential to the democratic process and emphasized that "openness in government" was crucial to government accountability (Clinton, 1993).

Further, he argued that the American people should be treated like the federal government's customers, so the government should handle FOIA requests in a customer-friendly

Table 2.3

Freedom of Information Act Exemptions

Exemption #	Matters that are exempt from the FOIA
(1)	(A) Specifically authorized under criteria established by an E.O. to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such E.O.
(2)	Related solely to the internal personnel rules and practices of an agency.
(3)	Specifically exempted from disclosure by statute (other than section 552(b) of this title), if that such statute (A)(i) requires that matters be withheld from the public in such a manner as to leave no discretion on the issue; or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld; and (B) if enacted after the date of enactment of the OPEN FOIA Act of 2009, specifically cites to this paragraph.
(4)	Trade secrets and commercial or financial information obtained from a person and privileged or confidential.
(5)	Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.
(6)	Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
(7)	Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information: (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution that furnished information on a confidential basis and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclosure guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or (F) could reasonably be expected to endanger the life or physical safety of an individual;
(8)	Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
(9)	Geological and geophysical information and data, including maps, concerning wells.

Source: 5 U.S.C. § 552(b)(1) through (b)(9) from http://uscode.house.gov

manner. He made clear that "the use of the Act by ordinary citizens is not complicated, nor should it be," and "the existence of unnecessary bureaucratic hurdles has no place in its implementation" (Clinton, 1993). Finally, he emphasized that each agency had a responsibility to give out information on its own initiative, and encouraged each agency to enhance public access through the use of electronic information systems.

Clinton's statement on the e-FOIA

On October 2, 1996, President Clinton signed H.R. 3802 into law as the *e-FOIA Amendments of 1996* (P.L. 104-231). In his statement on the e-FOIA, he stated that the e-FOIA broadened public access to government information by clarifying that the law applied to records maintained in electronic format, by placing more materials online, and by expanding the role of the agency reading room. He reiterated that the U.S. was founded upon "democratic principles of openness and accountability; that FOIA had supported these principles"; and that the e-FOIA would increase the ability of American citizens to access government information (Clinton, 1996).

President Clinton, however, acknowledged that the increasing backlogs of requests were due to government downsizing combined with a growing number of requests that should be reviewed for declassification, business information and privacy concerns. Clinton said that the amendments "extended the legal response period to 20 days and established procedures for an agency to discuss with requesters ways of tailoring large requests to improve responsiveness" (Clinton, 1996).

Attorney General Reno's memoranda on the FOIA

Attorney General Janet Reno issued four FOIA memoranda during her tenure. She issued two FOIA memoranda in 1993. Reno issued her first FOIA memorandum on October 4, 1993, calling for attention to the FOIA at the highest levels of all agencies. The second FOIA memorandum was a follow-up FOIA memorandum of December 13, 1993. In that second memorandum, Reno stressed the importance of "backlog reduction efforts" and "institutional attitude" toward FOIA administration (Reno, 1993).

The first FOIA memorandum, which was attached to President Clinton's FOIA memorandum, clarified that the DOJ would change FOIA policy from "substantial legal basis" to "presumption of disclosure." It also made it clear that the Justice Department would no longer

defend an agency's withholding of information merely because there was a substantial legal basis for doing so (Reno, 1993).

Reno encouraged FOIA officers to make "discretionary disclosures whenever possible under the Act," and made clear that even when an item of information might fall within an exemption, it must be reviewed to determine whether to disclose the information. According to the memorandum, the Department would "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" (Reno, 1993).

Reno also requested that the Assistant Attorney General for the Department's Civil and Tax Division and the U.S. Attorneys review all pending FOIA cases based upon the new standards. In addition, she stated that the DOJ planned to undertake a complete review and revision of its regulations for implementing the FOIA including the *Privacy Act of 1974* (5 U.S.C. § 552 a) and the Department's general disclosure policies.

Moreover, the memorandum encouraged agencies to conduct a review of FOIA forms. Specifically, all standard FOIA forms and correspondence were to be reviewed for correctness, completeness, consistency, and particularly for their use of clear language. The memorandum also recognized that the longstanding administrative backlog under the FOIA was a serious problem, so it urged agencies to reduce backlogs during the coming year.

Finally, Reno acknowledged that "FOIA requesters are users of a government service, participants in an administrative process, and constituents of democratic society" (Reno, 1993). She also emphasized the importance of cooperative efforts between the FOIA requester community and Congress to reduce backlogs and made clear that the DOJ stood prepared to assist all federal agencies in becoming "more open, more responsive, and more accountable" (Reno, 1993).

In May 1997, Reno issued a follow-up FOIA memorandum to reiterate the "fundamental principles of openness in government" and urge "the maximum responsible disclosure of information under the FOIA." She said that "Most significant is that an agency should make a discretionary disclosure of exempt information whenever it is possible to do so without foreseeable harm to any interest that is protected by a FOIA exemption." She also called upon FOIA officers to pay more attention to the requirements of the e-FOIA (OIP, 1998).

On September 3, 1999, Reno issued the last FOIA memorandum in her tenure. In that memorandum, she displayed her personal encouragement of FOIA officers and urged close cooperation between the agency's FOIA officers and the agency's non-FOIA personnel to implement FOIA work most effectively. Further, she noticed the growing importance of an agency's FOIA Web site as essential means of the "prompt and accurate disclosure of information" and emphasized a new partnership between FOIA officers and Information Resources Management (IRM) personnel (OIP, 1999). Table 2.4 summarizes the Clinton administration's FOIA implementation policies.

OMB memoranda

The DOJ and the OMB have critical roles in the implementation of the FOIA (GAO, 2005). While the DOJ plays an integral role in overseeing agencies' compliance with the FOIA, the OMB is basically responsible for issuing guidelines on the uniform schedules of fees. However, because the OMB has the power to assure efficiency and practical utility in federal information policy and information resources management (McClure, Bishop & Doty, 1989), it can affect FOIA implementation in many ways.

On September 29, 1995, the OMB issued a memorandum (M-95-22), *Implementing the Information Dissemination Provisions of Paperwork Reduction Act of 1995.* The memorandum was designed to help agencies review their information dissemination practices according to the standards of the *Paperwork Reduction Act* (PRA, P.L. 104-13) and *Circular A-130.* The PRA and *Circular A-130* were based upon the premise that government information is a valuable national resource that should be utilized in a timely and equitable manner to maximize economic benefits to society.

The memorandum encouraged agencies to communicate their information dissemination plans to the public and to monitor the activities of their intermediaries, whether private contractors or other governmental entities, to ensure compliance with the PRA, *Circular A-130*, and other statutes such as the FOIA. In addition, the memorandum gave specific guidance on "cost of dissemination," "restrictive practices," and "international relationships" (OMB, 1995).

On April 7, 1997, the OMB issued a memorandum (M-97-10), *Guidance on Developing a Handbook for Individuals Seeking Access to Public Information.* This memorandum was intended to help agencies develop reference material or a guide for requesting records or information from the agency, as required by the e-FOIA (U.S.C. §552(g)).

Table 2.4

The Clinton Administration's FOIA Policies

FOIA Policies	Issues	URL	Summary
Clinton FOIA memorandum October 4, 1993	Stressed the concepts of "an informed citizenry" and "openness in government."	www.justice.gov/oip/foia_updates/Vol_XIV_3/page2.htm	Recognized the FOIA as a vital part of the participatory system of government.
Reno FOIA memorandum October 4, 1993*	Stressed "presumption of disclosure" and "maximum responsible disclosure."	www.justice.gov/oip/foia_updates/Vol_XIV_3/page3.htm	Stressed discretionary disclosure and adopted the foreseeable harm standard.
E.O. 12958 October 14, 1995	Set 10-year limit on newly classified documents.	www.justice.gov/oip/foia_updates/Vol_XVI_2/page5.htm	Required declassification of documents 25 years old or older unless they fall within nine broad national securities categories.
The e-FOIA October 2, 1996	Applied the e-FOIA to government electronic information.	www.justice.gov/oip/foia_updates/Vol_XVII_4/page2.htm	Extended legal response period and established negotiation procedures between agencies and requesters.
Clinton FOIA statement October 2, 1996	Re-stressed principles of openness in government.	www.justice.gov/oip/foia_updates/Vol_XVII_4/page2.htm	Established the public's right of electronic access to government information.
Reno FOIA memorandum May 16,1997	Re-stressed the concept of discretionary disclosure and the importance of reducing backlogs.	www.justice.gov/oip/foia_updates/Vol_XVIII_2/page1.htm	Required and sustained priority on FOIA administration responsibilities.
Reno FOIA memorandum September 1, 1999	Noted the concepts of "an informed citizenry," "openness in government," and "customer-friendly manner."	www.justice.gov/oip/foia_updates/Vol_XIX_4/page1.htm	Re-stressed discretionary disclosure and cooperation between FOIA officers and Information Records Management personnel.

* Attorney General Janet Reno's follow-up memorandum of December 13, 1993 was not included.

The OMB recommended that agencies use the Government Information Locator Service (GILS) to satisfy the requirements of an "index of all major information and record locator systems maintained by the agency." This memorandum also suggested that agencies prepare a handbook for obtaining government information and encourage the public to use the agencies' home pages or to search in their reading rooms (OMB, 1997). OMB Watch, however, argued that the GILS could not meet these two requirements (Henderson & McDermott, 1998).

On April 23, 1998, the OMB issued another memorandum (M-98-09), *Updated Guidance on Developing a Handbook for Individuals Seeking Access to Public Information*. This memorandum repealed the previous Memorandum 97-10 and slightly changed its provisions concerning reference material or a guide. The memorandum emphasized that agencies should have an "index and description of major information and record systems in their reference material or guide" and encouraged agencies to make the handbook available online. It did not, however, mandate the use of the GILS (OMB, 1998). In sum, under the Clinton administration, the OMB issued several memoranda related to government information dissemination. Those memoranda gave guidelines for agencies to expedite communication with the public and to provide access tools for the public to find government information. Table 2.5 summarizes the OMB memoranda related to the FOIA during the Clinton administration.

Table 2.5

OMB Memoranda Related to the FOIA during the Clinton Administration

Memorandum	Title	URL
M-95-22 September 29, 1995	Implementing the Information Dissemination Provisions of the PRA of 1995.	http://clinton3.nara.gov/omb/memoranda/m95-22.html
M-97-10 April 7, 1997	Guidance on Developing a Handbook for Individuals Seeking Access to Public Information.	http://www.whitehouse.gov/omb/memoranda_m97-10
M-98-09 April 23, 1998	Updated Guidance on Developing a Handbook for Individuals Seeking Access to Public Information	http://www.whitehouse.gov/omb/memoranda_m9809

Armstrong v. Executive Office of the President

In early 1989, the Reagan administration tried to erase White House e-mails including those in the Professional Office System (PROFS), the computer communications, which was used to store National Security Council (NSC) interagency e-mails. Scott Armstrong, the founder of the Archive, argued that White House e-mails should be protected under the *Presidential Records Act* and the FOIA, and that "some of the emails should be available to the public under the FOIA" (Foerstel, 1999, p. 169). Judge Charles R. Richey, U.S. District Court for the District of Columbia, ruled that "email tapes from both the Reagan and Senior Bush administrations should be preserved like any other government records" (*Armstrong v. Executive Office of the President,* 1992; Foerstel, 1999, p. 169).

In March 1994, the Clinton administration tried to exempt NSC documents by arguing that the NSC was not an agency but a group of presidential advisers. In February 1995, Judge Richey ruled that the NSC was an agency. However, in August 1996, the U.S. Court of Appeals for the District of Columbia ruled that the NSC was not an agency; therefore, it was not subject to the FOIA or to the Federal Records Act (*Armstrong v. Executive Office of the President*, 1996). Finally, the Supreme Court denied certiorari on May 27, 1997. After the Supreme Court's decision, Armstrong criticized the Clinton administration for pursuing a secrecy policy (Armstrong, 1998; Foerstel, 1999).

Public Citizen v. John Carlin

Under the Clinton administration, the National Archives and Records Administration (NARA) revised General Records Schedule (GRS) 20 to have "a single general schedule for all disposable electronic records" by moving the electronic records instructions from GRS 23 into GRS 20 (GAO, 2002b). Further, GRS 20 allowed the destruction of electronic copies of program records "once it has copied them to a paper or an electronic record keeping system" (*Public Citizen v. John Carlin, 1999*).

Shortly after the NSC case, the Public Citizen and a number of other public interest groups sued John Carlin, the Archivist of the United States, "alleging that GRS 20 violated the *Records Disposal Act* and was arbitrary and capricious" (*Public Citizen v. John Carlin, 1997*). Armstrong called the GRS "the electronic shredder," but the Clinton administration supported the GRS 20 policy.

District Judge Paul Friedman ruled that GRS 20 was "null and void," and pointed out that "electronic records often had unique and valuable features not found in paper printouts" (Foerstel, 1999, p. 173). The U.S. Court of Appeals of the District of Columbia, however, overturned the judgment of the District Court and noted that GRS 20 "authorizes the disposal of word processing and electronic mail files that have been copied to an agency record keeping system from a personal computer" (*Public Citizen v. Carlin, 1999*). The Supreme Court agreed with the decision of the Appeals Court.

The Bush administration's FOIA policies

President Bush took office in 2001 and faced the terrorist attacks of September 11, 2001 during his first year. After that September 11, the Bush administration argued that terrorists could use civil liberties to attack America (Baker, 2003) and kept government information secret under the guise of national security. Specifically, the administration quickly ordered the removal of thousands of documents and a great quantity of data from agency Web sites. Information such as pipeline maps, airport safety data and environmental data was removed and has not reappeared. Furthermore, the NARA requested the federal depository libraries to destroy a CD-ROM containing surface water resources information (OMB Watch, 2002a; 2002b).

However, even before the September 11, 2001 terrorist attacks, President Bush showed a tendency to support the concepts of government secrecy (Anderson, 2003; Baker, 2002; Jost, 2005). On April 5, 2001, at the American Society of Newspaper Editors (ASNE) Annual Convention, when he was asked about his view of First Amendment freedoms and the FOIA, he stressed the balance between access to government information and other fundamental values such as national security. He added that "…but we'll cooperate with the press, unless we think it's a matter of national security, or something that's entirely private" (the White House, 2001).

His comment can be construed to mean that if information contains national security or privacy issues, it should be considered more carefully before its disclosure. This "tone," however, is very different from the Clinton administration's "presumption of disclosure" and "discretionary disclosure." President Bush's viewpoint was maintained through his tenure and was clarified by the Ashcroft and Card memoranda.

The Bush administration issued two FOIA-related memoranda that forced agencies to maintain stricter disclosure processes. On October 12, 2001, Attorney General Ashcroft released a new FOIA memorandum to agencies asking them to withhold information whenever possible.

In March 2002, White House Chief of Staff Card issued a memorandum instructing agencies to review the procedures for disclosure of "sensitive but unclassified" information (OIP, 2002).

The FOIA was also amended as part of the *Intelligence Authorization Act* (P.L. 107-306) in December 2003. That amendment restricted intelligence agencies including the CIA, the National Security Agency (NSA), and various Departments of Defense and State agencies from disclosing any record to foreign governments or international government organizations.

This section reviews FOIA-related memoranda, an FOIA amendment, and laws and E.O.s that affected the administration's FOIA implementation. This section also covers Congressional reaction to the administration's non-disclosure policy.

Ashcroft FOIA memorandum

Attorney General Ashcroft released the Bush administration's FOIA memorandum that superseded Reno's FOIA memorandum of 1993. In the first two paragraphs, Ashcroft emphasized not only "a well-informed citizenry" but also other fundamental values such as "safeguarding national security, enhancing the effectiveness of law enforcement agencies, protecting sensitive business information, and preserving personal privacy" (Ashcroft, 2001).

Ashcroft claimed that Exemption 5 of the FOIA (5 U.S.C. § 552 (b) (5)) for "inter-agency or intra-agency memorandums or letters" should be carefully considered to protect executive privileges and the policies underlying them. In addition, when any discretionary decision is made, agencies are expected to exercise "full and deliberate consideration of the institutional, commercial, and personal privacy interests" (Ashcroft, 2001). The Attorney General also asserted that in cases with a "sound legal basis" or that posed no harm for other agencies to protect their records, the DOJ would defend the withholding of information by agencies (Ashcroft, 2001).

Dan Metcalfe, co-director of the DOJ's OIP, contended that the Ashcroft memorandum was not intended to change FOIA policy on a fundamental level, but was "a shift in tone." However, others voiced concerns that Ashcroft's memorandum encouraged government officials to find reasons to withhold information and that the DOJ would back those reasons up (Marquand, 2001; Halstuk, 2002).

Card Memorandum

White House Chief of Staff Card issued a memorandum on *Information regarding weapons of mass destruction and other sensitive documents related to homeland security* on March 19, 2002. This memorandum was attached to a memorandum from the ISOO and the OIP.

Card urged agencies to safeguard government records about "weapons of mass destruction" (WMD) and other important information related to national security. The Chief of Staff also pushed agencies to "review their records management procedure and their holding of documents based on the attached guidance," and to "report the status of their review to the office" by June 19, 2002 (OIP, 2002b).

The memorandum grouped government information into three categories: "classified information," "previously unclassified or declassified information," and "sensitive but unclassified information" (OIP, 2002b). According to the memorandum, although classified information must be declassified within 10 years of its original classification, information pertaining to the possibility of the development or use of WMD should remain classified in accordance with Section 1.5 and 1.6 of E.O. 12958. In addition, information that is more than 25 years old and is still classified should remain classified if it relates to the development or use of WMD in accordance with E.O. 12958, Section 3.4.(b)(2). Moreover, information that is "previously unclassified or declassified" and had a possibility of being used for WMD should be classified or reclassified in accordance with Part 1, Section 1.8 (d) of E.O. 12958 (OIP, 2002b).

The memorandum also urged agencies to protect "sensitive but unclassified" information related to homeland security by giving "full and careful consideration" to all applicable FOIA exemptions. The memorandum suggested that "the sensitive critical infrastructure information" may fall within the protection of Exemption 2 of the FOIA and "voluntarily submitted" information from the private sector to the government may be protected under Exemption 4 of the FOIA (OIP, 2002b).

Although the Card memorandum mentioned the importance of the FOIA in government accountability, it much valued protection of information related to homeland security. In other words, the memorandum seemed to be primarily concerned with privacy and security issues (Halstuk, 2002). Specifically, the memorandum extended the duration of classification as well as exempting some classified information from automatic declassification. In addition, the definition of such information is so broad that much information useful to the public but

unnecessary to terrorists could be included (Moteff & Stevens, 2002). Likewise, the public's right to know has been weakened to "need to know" (OMB Watch, 2002b). Table 2.6 summarizes the Bush administration's FOIA implementation policies.

E.O. 13233

Historically, a president's papers that related to his official duties were regarded as his personal property. Then Congress passed the *Presidential Records Act* (P.L. 95-951) in 1978, establishing that the records of a president relative to his official duties belong to the American people (44 U.S.C. § 2202). According to the *Presidential Records Act*, a former president can limit public access to sensitive records for up to 12 years after leaving office but, after that, presidential records should be open to the public with access to those records through the FOIA.

President Bush signed E.O. 13233, *Further Implementation of the Presidential Records Act*, on November 1, 2001. This E.O. effectively restricts the public's right of access to presidential documents by giving a former president and an incumbent president veto power over any release of such materials (Craig, 2002; Rozell, 2002). In other words, the new E.O. allows sitting and former presidents to withhold the papers of a former president by asserting executive privilege. On the whole, E.O. 13233 not only effectively overruled Reagan's E.O. 12667 issued on January 19, 1989, but also essentially undermined the *Presidential Records Act of 1978*.

The FOIA amendment of 2002

In 2002, Congress amended the FOIA as part of the *Intelligence Authorization Act for Fiscal Year 2003* (P.L. 107-306) at 5 U.S.C. § 5(a)(3)(A) and (E). The amended FOIA precludes the intelligence community from disclosing records in response to an FOIA request made by any foreign government or international governmental organization, either directly or through a representative (OIP, 2002a). The agencies affected by this amendment are the CIA, the NSA, the Defense Intelligence Agency, the FBI, parts of the Departments of Defense and State, and any other federal agencies designated by the President, the Director of the CIA, and the heads of agencies as an element of the intelligence community (OIP, 2002a).

This FOIA amendment is similar to the Reagan era's legislative proposal that would have limited the FOIA's use to "United States persons," and seems to be a retreat from the general rule that "any person" may submit an FOIA request (OIP, 2002a). According to Feinberg (2004), this amendment can be used to identify the FOIA requester and, thus, this amendment gives negative implications to the public.

Table 2.6

The Bush Administration's FOIA Polices

FOIA Policies	Major Issues	URL	Summary
Bush remarks on the FOIA April 5, 2001	Stressed the concept of national security and privacy.	www.gwu.edu/~nsarchiv/nsa/foia/bush.pdf	Stressed "balance of interests."
Ashcroft memorandum October 12, 2001	Noted a well-informed citizenry but stressed the other fundamental values like national security, law enforcement effectiveness, business confidentiality, internal agency deliberations and personal privacy.	www.justice.gov/archive/oip/foiapost/2001foiapost19.htm	Recognized the FOIA as a means of maintaining an accountable system of government and adopted a "sound legal basis."
E.O. 13233, Presidential Record November 1, 2001	An incumbent and former president have veto power over release of presidential records.	en.wikisource.org/wiki/Executive_Order_13233	Restricted public access to the papers of former presidents.
Card and ISOO memoranda March 19, 2002	Stressed protection of "sensitive but unclassified" information.	www.justice.gov/archive/oip/foiapost/2002foiapost10.htm	Card ordered agencies to protect "weapons of mass destruction" information.
The FOIA amended December 2002	Foreign government or international government organization were prohibited from receiving any information from intelligence agencies.	www.usdoj.gov/oip/foiapost/2002foiapost38.htm (unavailable)	Prohibited disclosure in response to requests made by other-than-U.S. governmental entities either directly or through a representative.

E.O. 13392

On December 12, 2005, President Bush issued E.O. 13392: *Improving Agency Disclosure of Information* to improve agencies' compliance with the FOIA through "a citizen-centered" and "results-oriented approach." According to the E.O., federal agencies should designate a Chief FOIA Officer to take charge of FOIA implementation such as monitoring, reporting and facilitating public understanding of FOIA restrictions. The E.O. also required agencies to establish one or more FOIA Requester Service Centers and to designate one or more FOIA Public Liaisons.

This E.O., however, did not signify any fundamental changes in the Bush administration's restrictive policy. For instance, President Bush did not rescind the Ashcroft memorandum that stressed the importance of keeping information non-disclosed. In addition, he clarified that the purpose of issuing the E.O. was to avoid disputes and related FOIA litigation. Sprehe (2006) criticized the E.O., saying "the executive order is window dressing" and "another ploy to distract attention from how the administration consistently denies the public the information it has a right to see." Relyea (2009) also noted that some critics saw President Bush's E.O. 13392 as an attempt to avoid legislative reforms to improve the situation. In summary, because the E.O. focused on managerial aspects of FOIA implementation, it does not seem that the Bush administration changed its non-disclosure approach.

Congressional reaction to the non-disclosure policy

The Bush administration withheld government information not only from the public but also from Congress (Committee on Government Reform, 2004). As a result, Congressional members became concerned about the Bush administration's non-disclosure policy.

In June 2001, the Bush administration refused to comply with the GAO's request for information on Vice President Cheney's Energy Task Force. Moreover, when the GAO sued the executive branch, the administration insisted that the GAO did not have authority to conduct the investigation and also that the GAO's inquiry would undermine the constitutional principle of separation of power. The GAO filed suit against the White House for failing to release information to Congress about Vice President Dick Cheney's Energy Task Force (Jaeger, 2007).

On March 7, 2002, the House Government Reform Committee edited *the Citizen's Guide to the FOIA* to reject instructions of the Ashcroft memorandum and called for the fullest possible disclosure (Reporters Committee, 2005). Further, on May 21, 2005, the House Committee on

Government Reform's Subcommittee on Government Management Finance and Accountability held a hearing for testimony on the Bush administration's FOIA implementation.

Congress also introduced many bills to improve FOIA implementation. For instance, Senator Leahy introduced the "*Restoration of the FOIA*" bill on March 13, 2003. Representative Frank also introduced the "*Restoration of the FOIA*" in the House on June 19, 2003 as a companion to the Leahy bill. On February 16, 2005, Senator John Cornyn and Senator Leahy introduced the *OPEN Government Act of 2005* (S. 394) to make government-owned information held by contractors fall within the FOIA and to require reports on secret exchanges of CII. In March 2005, the same two senators introduced the "*Faster FOIA Act*" (S. 589) bill to create a commission to study agency FOIA response delay. On May 12, 2005, Representative Henry A. Waxman introduced the *Restore Open Government Act* (H.R. 2331) to eliminate restrictions on FOIA disclosures that were required in the Ashcroft and Card memoranda (Reporters Committee, 2005).

FOIA studies in the Clinton and Bush administrations

Not only civil liberties groups like OMB Watch, the Archive, and the Reporters Committee, but also the GAO and Representative Waxman released reports concerning the executive branch's non-disclosure policy.

OMB Watch

OMB Watch released two e-FOIA implementation reports in 1998 and 1999 (Henderson & McDermott, 1998; McDermott, 1999). According to the reports, federal agencies made very little progress in fulfilling the OMB 97-10 memorandum's guidance and the public still had difficulty in accessing government information electronically. For instance, more than one-third of the agencies' FOIA Web sites were not linked from the agencies' home pages. In addition, some departments fulfilled the e-FOIA requirement separately with their sub-agencies. This decentralized system and the departments' "hand-off" approach made fulfillment of the e-FOIA requirements inconsistent (McDermott, 1999).

The OMB Watch reports also pointed out that the OMB and the DOJ did not pay much attention to agencies' FOIA implementations. For example, even though agencies were required to provide electronically any information "created on or after November 1, 1996," the DOJ argued that the term "created" should be interpreted to mean "created by the agency." Moreover, Congress did not anticipate the necessity of additional means to implement the e-FOIA.

Consequently, federal agencies did not receive sufficient budgetary increases to cover the expenses incurred by such implementation.

In summary, it seems that in the three years after the e-FOIA enactment, federal agencies in the Clinton administration still had difficulties in fulfilling e-FOIA requirements because of the shortage of resources along with poor directions from the OMB and the DOJ. The second OMB Watch report, also labeled "A people armed? Agency E-FOIA implementation" and published in 2002, recommended as follows:

- OMB must provide better guidance and support to agencies;
- Agencies' information must be better organized to make locating records online a user-friendly experience;
- Enforcement mechanisms for agency non-compliance must be established immediately; and
- Congress must provide regular oversight.

Center for Media and Public Policy

For six months from January to June 2001, the Center for Media and Public Policy report compared copies of FOIA logs at four government agencies: U.S. Department of Education, U.S. Department of Transportation, the General Services Administration (GSA), and the Environmental Protection Agency (EPA) (Tapscott & Taylor, 2001). The report revealed that journalists, making only 5 percent of the FOIA requests, appeared to be the least frequent FOIA users among corporations, lawyers, individuals not identifying their employment, and individuals representing nonprofit advocacy groups.

According to the report, there are four reasons why so few journalists are making use of the FOIA. First, journalists can get much of their information from informal sources. Second, government agencies often delay their responses and journalists generally need the information on a schedule. Third, many other individuals and organizations are using the FOIA and releasing the information in their own newsletters, so journalists do not have as much need to cover the same federal government materials. Fourth, the number of journalists covering federal agencies is declining.

GAO 01-378

In 2001, the GAO conducted research on the implementation of the e-FOIA at the request of the Subcommittee on Government Management, Information, and Technology of the House

Government Reform Committee. The GAO found that all 25 agencies had electronic reading rooms, but that all needed to make greater efforts to provide their documents electronically. According to the report, even though the agencies complied with the e-FOIA provisions, the usefulness of their FOIA annual reports was hampered by poor data quality. The GAO report encouraged agencies to make more information available electronically and to make their annual reports more complete and consistent.

GAO 02-493

In 2002, the GAO conducted research to review the government's timeliness in responding to FOIA requests for information and to review the status of backlogs of pending FOIA requests. The GAO also checked whether agencies had followed previous GAO recommendations concerning the accessibility of electronic government information and the upgraded quality of their annual reports.

According to the report, although timeliness had improved, the backlogs had increased from 1999 through 2001. In addition, certain government information was not available and not easy to find on agencies' Web sites even though the agencies had improved their online information accessibility.

This report revealed the different viewpoints between FOIA officials and public interest groups on the terrorist attacks of September 2001. Except for mail delays brought about by the anthrax scare, FOIA officials underestimated the effects of the terrorist attacks. In contrast, the public interest groups showed general concern about government access and dissemination policies including the removal of information from government Web sites. The public interest groups argued that a series of government secrecy policies since September 2001 had discouraged the public from requesting government information.

GAO 03-981

The GAO was asked to determine (1) whether the Ashcroft memorandum changed the DOJ's FOIA guidance; (2) the opinions of FOIA employees regarding the new FOIA policy and its effect; and (3) the views of FOIA officers regarding available FOIA guidance.

According to the GAO, the DOJ changed its FOIA guidance to reflect the two primary policy changes in the Ashcroft memorandum. First, the memorandum recommended that agencies give "careful consideration" in making discretionary disclosures relative to national security, effective law enforcement and personal privacy. Second, the memorandum emphasized

that, where a "sound legal basis" existed, the Department would defend agencies' decisions to withhold information based upon FOIA exemptions.

The GAO found that the DOJ's FOIA guidance was affected by the new policy. Whereas approximately half of the officers did not report discretionary disclosure changes, about one-third of the FOIA officers attributed a decrease in discretionary disclosures to the new policy. Of those, "75 percent cited the Ashcroft memorandum as persuasive influencing the change" (Reporters Committee, 2005, p. 9). With regard to changes in the use of particular FOIA exemptions, while 62 percent reported no change concerning the use of these exemptions, one-fourth of officers reported a change.

GAO 04-257

The GAO conducted research to review (1) the current status of FOIA implementation between 2000 and 2002; (2) the "data quality" problems in the annual FOIA reports including inconsistency concerns; and (3) whether the terrorist attacks of September 11, 2001 and the subsequent anthrax attacks forced agencies to accept FOIA requests electronically.

The GAO found that government-wide FOIA requests decreased during that time period if the Department of Veterans Affairs (VA) data were not included. The VA receives approximately 60 percent of the requests. The VA's huge and growing number of requests is because first-party requests based upon the *Privacy Act* have been recorded as FOIA requests since 1999. Agencies increased the disclosure rates each year while the denial rates dropped greatly between 2000 and 2001, then remained low in 2002. Agencies decreased their backlogs of pending requests in that time period also.

According to the GAO report, three agencies began receiving FOIA requests electronically after the September 2001 terrorist attacks. The agencies reported, however, that acceptance of the online submission capabilities is not due to terrorist and anthrax attacks but instead to the time-saving aspect and the easier process. Even though the electronic submission capability was not mandated by the FOIA, the 1998 DOJ memorandum M-98-09 recommended that agencies receive FOIA requests electronically. As of July 2003, 11 agencies out of 25 did not yet have electronic submission capabilities (GAO, 2004, p. 3).

GAO 05-648T

GAO 05-648T was prepared to explain the FOIA process and discuss the reported implementation of the FOIA in testimony before the Subcommittee on Government Management,

Finance, and Accountability, Committee on Government Reform, House of Representatives on May 11, 2005. According to the report, from 2002 to 2004 the number of FOIA requests increased by 71 percent, and the number of requests processed increased by 68 percent. Agency backlogs of pending requests, however, which were carried over from one year to the next, had increased by 14 percent since 2002. Specifically, in 2002, the government-wide backlog numbered about 140,000; in 2004, there were about 160,000. Table 2.7 summarizes the GAO's reports on the FOIA since 2001.

Archive Report I

The Archive, an FOIA-related citizen group, has conducted three consecutive studies on FOIA implementation from 2002 to 2006. The first study reviewed the influences of the Ashcroft and White House memoranda. The first report focused on how the Ashcroft memorandum influenced the agencies' FOIA regulations, guidance and training materials. Then it investigated how far the memorandum reached into the agencies. For the survey, the Archive requested data from 33 agencies, including 25 GAO-targeted agencies.

According to the report, more than half of the agencies (52 percent) revealed that the Ashcroft memorandum brought about few changes in their FOIA regulations, guidance or training materials. However, military agencies, including the Air Force, Army and Navy, and other agencies such as the NRC and the Department of the Interior revealed that their FOIA regulations, guidance and training materials greatly changed. The military agencies also reported that the memorandum was widely circulated.

The report also reviewed the influence of the White House memorandum on agencies. According to the preliminary findings from the "Phase Two of the Audit" section of the report**,** the Card memorandum affected agencies' FOIA policies more severely than did the Ashcroft memorandum.

Archive Report II

The second Archive study was about FOIA backlogs. To address the late FOIA response problem, the Archive filed an FOIA request by fax for the 10 oldest pending requests to 35 agencies on January 31, 2003 and released its findings on November 17, 2003.

Table 2.7

The GAO's FOIA Reports Since 2001

Year	Report #	Summary	URL
2001	GAO-01-378	Data quality issues limited the usefulness of agencies' annual FOIA reports. In addition, agencies have not made all required documents electronically available.	www.gao.gov/new.items/d01378.pdf
2002	GAO-02-493	Backlogs of pending requests were substantial and growing from 1999 through 2001, and consistency and accuracy of FOIA reporting still has some problems.	www.gao.gov/new.items/d02493.pdf
2003	GAO-03-981	Regarding effects of the Ashcroft memorandum, about half of respondents said that they did not notice any changes in their agencies' responses to FOIA requests and about one-third of the FOIA officers reported a decreased likelihood of their agencies making discretionary disclosures.	www.gao.gov/new.items/d03981.pdf
2004	GAO-04-257	Inconsistency and data quality problems still existed in annual FOIA reports.	www.gao.gov/new.items/d04257.pdf
2005	GAO-05-648T	The number of FOIA requests increased by 71 percent from 2002 to 2004. Also, the number of backlogged requests has been increasing, rising 14 percent since 2002.	www.gao.gov/new.items/d05648t.pdf

The Archive report pointed out several problems that FOIA requesters might face frequently. First, it is difficult to know the exact waiting times because median processing time, which was recommended by the DOJ, is used in an annual report. It is more complex when some agencies use "business days" and others use calendar days to calculate median days. In addition, when calculating the median processing time, agencies sometimes excluded delay days for logging in receipt of an FOIA request, assigning the request to an FOIA officer, referring requests to other agencies, and so forth. Those days prolonged the actual response time.

Second, the referral of FOIA requests to another agency may delay the responses. After requests were referred, there was no way of "forcing the processing of the requests" (Archive, 2003b, p. 12).

Third, some larger decentralized agencies have difficulty in tracking FOIA requests when the requests are referred to components. Because the agencies' central FOIA offices did not handle requests efficiently, many agencies' FOIA Web sites recommended requesters use a direct component.

Fourth, agencies' responses to Archive requests were variable, so the Archive argued that agencies should evaluate their monitoring and tracking system consistently "to take advantage of multi-track processing advantages" (Archive, 2003b, p. 16).

Fifth, many agencies experienced reductions in FOIA requests from 1998 through 2002. That reduction is surprising because agencies have treated all *Privacy Act* requests as FOIA requests since 1999. One possible explanation for this reduction was the "availability of electronic information via the Internet" (Archive, 2003b, p. 16). Another interpretation is that many requesters, especially journalists, may have been sufficiently disappointed by late FOIA responses to cause them to rarely use the FOIA program.

Sixth, late FOIA processing is due to a shortage of agencies' resources. The report revealed that non-FOIA staff frequently did the "actual search and review part of FOIA processing" (Archive, 2003b, p. 17). According to Gellman, many FOIA offices, like many other government offices, do not have the staff they need to do their job as well as they might like (Gellman, 1997). In addition, few agencies have senior management assigned to the FOIA program. Consequently, no one took ultimate responsibility for FOIA requests within the agencies.

Seventh, the burdens of the agencies' FOIA programs varied greatly, so federal resources need to be distributed appropriately among agencies.

In summary, late responses might have the same results as denials to disclosure (Reylea, 1989a; Tapscott & Taylor, 2001; Archive, 2003b). The report gave several recommendations (Archive, 2003b, pp. 11-18).

- Agencies are required to report "average, median, and range of time for processing a request from the date that the request is received by the agency."
- Agencies are also required to "provide detailed notice including referral component information" and provide "a list of all of its initial denial authorities along with a description of their functions."
- It is recommended that an interagency process system be established for monitoring referred FOIA requests.
- Agencies need to evaluate the FOIA monitoring system and increase efforts to provide information electronically.
- Agencies' senior management should be involved in the FOIA program, and FOIA performance should be evaluated as a major workload.
- The OIP and the OMB need to issue guidance and train agencies' staff in calculating the exact cost of processing FOIA requests.

The Reporters Committee report

The Reporters Committee has issued its white paper, "*Home-front Confidential: How the war on terrorism affects access to information and the public's right to know*" since 2002. The paper consists of a chronology of events and seven sections including "Freedom of Information."

According to the paper, 'the public's right to know' was severely threatened by the Bush administration in light of "domestic coverage," "the reporter's privilege," and "Freedom of Information." For instance, federal officers acted "under directions to give strong consideration to exemptions before handing out information and to protect sensitive but unclassified information" (Reporters Committee, 2005, p. 53).

The Waxman report

On September 14, 2004, Representative Henry A. Waxman issued a white paper, *Secrecy in the Bush administration*. The paper examines how the Bush administration implemented principal laws, regulations and E.O.s that govern access to government records.

According to the Waxman report, the Bush administration attempted not only to expand the government's capacity to classify documents and to operate in secret but also to avoid Congressional oversight by restricting access to federal records. The paper asserts that the Bush administration tried to limit public access to government information and allow more secret government operations.

Summary

The FOIA has been the main legal tool to access government information since its enactment in 1966. When comparing Presidents Clinton and Bush, while President Bill Clinton recognized the FOIA as a vital part of the participatory system of government, President George W. Bush had much valued national security and privacy. As a result, the FOIA appeared less and less effective in providing access during the Bush administration (Jost, 2005).

Throughout the Clinton and Bush administrations, FOIA studies focused on FOIA implementation and on the causes and impacts of increasing government secrecy. There are several reasons for the weakened FOIA. First, the FOIA is not priority work in most agencies (Jost, 2005) and, thus, the agencies suffered from limited resources with which to implement the FOIA, including budget, personnel and poor management (Sternstein, 2005). Second, the Bush administration pursued a non-disclosure policy under the name of national security.

Government Secrecy and Its Impact on the FOIA

Introduction

From the days of the U.S. founding fathers through the present, the U.S. government has been based upon an elementary principle that the operation of government agencies should be open to scrutiny and criticism. This makes it possible for the public to participate in government and to contribute to the advancement of society. Indeed, the American political system rests upon the widespread acceptance of ready and fair access to information about the government and to information produced by the government.

On the other hand, it is undeniable that a government needs secrecy to maintain national security. In addition, secrecy permits policymakers the freedom to get information from their advisers, to consider alternatives, and to compare the consequences of each action they may take. Moreover, secrecy protects individuals from possible harm that could arise from publicity (Commission, 1997).

There has always been a tension between openness and secrecy in the U.S. government. The conflict between reducing secrecy and protecting secrecy more extensively continues to increase, most notably when national security concerns surge (Commission, 1997). Since the September 11, 2001 terrorist attacks, public interest groups and some members of Congress have voiced concerns about the administration's extensively applied non-disclosure policy in the guise of national security (Committee on Government Reform, 2004; Archive, 2003a; Uhl, 2003).

Historically, the protection of U.S. government secrecy was left to the discretion of the executive branch. Its authority to maintain secrecy, however, is not assigned by the Constitution. The Constitution says that Congress may not publicize information when, in its judgment, secrecy is required (Article I, section 5). According to the report of the Commission on Protecting and Reducing Government Secrecy (Commission), the authority of the executive branch to maintain secrecy is partly based upon four statutes: the *Espionage Act*, the *National Security Act*, the *Atomic Energy Act*, and the FOIA (Commission, 1997, p. 5.). There are, however, numerous types of information that are protected by the government without proper scrutiny, including information designated as "Unclassified But Sensitive" (UBS) or "For Official Use Only" (FOUO) (Archive, 2007).

This section reviews government secrecy-related laws including the four stated above, plus E.O.s on national security classification and information that is not regulated but is protected by the executive branch. This section, then, discusses how government secrecy impacts the FOIA.

Categories of government secrecy and FOIA exemptions

According to the Commission's report (1997, p. 5), government secrecy consists of five major categories:

- National defense information, encompassing military operations and weapons technology;
- Foreign relations information, including that concerning diplomatic activities;
- Information pertaining to personal privacy;
- Information developed in the context of law enforcement investigations; and
- Information relevant to the maintenance of a commercial advantage.

National security is the first major reason for government secrecy. The first two categories cover national security information. This section discusses how national security information has been protected through E.O.s.

Personal privacy is the second major reason for limiting access to government information. The *Privacy Act of 1974* and numerous other statutes prohibit the public disclosure of personal information (Relyea, 1989). Exemption 6 (5 U.S.C. § 552(b)(6)) and Exemption 7 of the FOIA (5 U.S.C. § 552(b)(7)(C)) restrict public scrutiny from becoming "an unwarranted invasion of personal privacy."

Law enforcement investigation is the third major reason to limit public access to information (Relyea, 1989). Exemption 7 of the FOIA (5 U.S.C. § 552(b)(7)) prohibits "records or information compiled for law enforcement purpose" from public scrutiny in case any of six enumerated types of harm might happen. The 1986 amendment to the FOIA also inserted three exclusions for law enforcement agencies, specifically including the FBI (5U.S.C. §552 (c)(1)(c)(3)).

Commercial advantage is the fourth major reason for information restriction. Exemptions 4, 8 and 9 of the FOIA protect commercial or business information from public scrutiny. The author reviews the protection of commercial information more deeply in the CII section.

Secrecy laws

The U.S. government has recognized the importance of national security since its earliest days. In the 1910s, however, federal laws began to protect information that was related to national defense in a specific way. Shortly after the U.S. joined World War I in April 1917, Congress enacted the *Espionage Act of 1917* (40 Stat. 217) in a wartime situation (Relyea, 1981). This Act and the *1911 Secrets Law* (36 Stat. 1084) prohibited the unauthorized disclosure of national defense secrets. Specifically, the *Espionage Act of 1917* authorized the government to wiretap, search, censor writings, and open mail. Further the *Espionage Act of 1938* (1938 Defense Installations Protection Law, 52 Stat. 3, 4) prohibited the photographing and/or sketching of defense installation without proper permission.

After World War II, Congress passed the *Atomic Energy Act of 1946* (60 Stat. 755). This act authorizes "an entirely separate system for protecting information from that established by E.O." (Commission, 1997, p. 23). To protect information related to atomic energy, the Act obligated the Atomic Energy Commission to control the dissemination of "Restricted Data,"

which include data concerning design, manufacture or utilization of atomic weapons; production of special nuclear material; or use of special nuclear material in the production of energy. Although the *Atomic Energy Act of 1954* ended the government monopoly and enabled official exchanges of atomic energy information with other countries, the restricted data were still kept secret. According to Moynihan (1998), the Act introduced the principle of automatic classification and it became a pattern of governance.

In 1947, the *National Security Act* created the NSC and the CIA. This Act provided a basis for civilian agencies in the executive branch to participate in the government's military security functions (Huzar, 1950, p. 130). According to Huzar (1950, p. 149), the NSC was established to advise the president on integrated information about "domestic, foreign, and military policies relating to the national security." Under the NSC, the Director of the CIA was authorized to protect intelligence sources and methods from unauthorized disclosure, and to inspect the national security intelligence of other agencies (Relyea, 1981). This authorization was reiterated in the *Central Intelligence Agency Act of 1949*.

After the September 11, 2001 terrorist attacks, the Bush administration pushed Congress to pass the *USA PATRIOT Act* (P.L. 107-56) and the *Homeland Security Act* (P.L. 107-296) to strengthen national security preparedness. The *USA PATRIOT Act*, an acronym for *The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act* (P.L.107-56), was enacted on October 26, 2001, only 6 weeks after the September 11 attacks, with little debate by members of Congress.

The *USA PATRIOT Act* expanded the FBI's ability to obtain records easily and gave law enforcement agencies more authority to track e-mail and telephone communications and to eavesdrop on those conversations through a Foreign Intelligence Surveillance Court (Reporters Committee, 2005; Jaeger, Bertot & McClure, 2003). In other words, the *USA PATRIOT Act* gave more authority to law enforcement agencies to obtain records in secret, conduct secret wiretaps, expand use of sneak-and-peek warrants, and use foreign intelligence or counterintelligence information collected by federal grand juries (Committee on Government Reform, 2004).

The national security letter is a good example of the FBI's new authority. The national security letter was created in the 1970s to enable the FBI to review secretly the customer records of suspected foreign agents. The *USA PATRIOT Act* and the Bush administration, however,

changed the guidelines to permit FBI agents to scrutinize U.S. residents and visitors who are not alleged to be terrorists or spies. Moreover, in 2003, Attorney General Ashcroft ordered the FBI to retain all records it collects and authorized the FBI to disseminate those records among federal agencies (Gellman, 2005; Gorham-Oscilowski & Jaeger, 2008).

The *Homeland Security Act* (P.L. 107-296) was enacted in November 2002 as a reaction to the September 11, 2001 terrorist attacks. The *Homeland Security Act* created the Department of Homeland Security (DHS) to provide security for the American people, territory and sovereignty within the United States. The DHS's mission is to prevent terrorist attacks within the United States, reduce the United States' vulnerability to terrorism, and to minimize the damages and assist in recovery from any such attacks that may occur.

The Bush administration included a major new FOIA exemption in the *Critical Infrastructure Information Act of 2002* (CIIA), which is a part of the *Homeland Security Act*. The CIIA defined CII as "systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters" (§214(f)). According to the CIIA, voluntarily submitted CII should be exempt from the FOIA and such information could not be used in civil action suits or antitrust actions. Moreover, the CIIA grants federal agencies the authority to impose "a fine or imprisonment, or removal from employment when any government employees disclose this protected infrastructure information" (Steinzor, 2003, 648).

In December 2004, Congress passed the *Intelligence Reform and Terrorism Prevention Act of 2004* (P.L. 108-458) based upon the 9/11 Commission's recommendations. This Act amended the *National Security Act of 1947* to create the National Intelligence Council and a Director of National Intelligence, giving the Director authority to: (1) serve as head of the Intelligence Community; (2) act as principal adviser for intelligence matters related to national security; and (3) manage, oversee and direct the execution of the National Intelligence Program. The Director is required to manage the intelligence budget and to oversee parts of 15 different agencies including the CIA, the FBI, the Department of Defense, and the DHS. Table 2.8 summarizes the national security-related laws.

Table 2.8

National Security-related Laws

Law	Reasons for Enactment	Year
Espionage Act	It was enacted to prohibit the unauthorized disclosure of national defense secrets.	1917
Atomic Energy Act	It was enacted to protect atomic energy-related information.	1946
National Security Act	It was enacted to create the CIA and give the Director of the CIA the right to protect intelligence and methods from unauthorized disclosure.	1947
USA PATRIOT Act	It was enacted to expand the FBI's ability to obtain records through secret court orders and to give government investigators more authority to track private information.	2001
Homeland Security Act	It was enacted to establish the Department of Homeland Security and to call for confidentiality on voluntarily submitted information pertinent to Homeland security, exempting it from the FOIA.	2002
Intelligence Reform and Terrorism Prevention Act	It was enacted to create a Director of National Intelligence with the mandate to control 15 intelligence agencies.	2004

E.O.s on classification

Introduction

The protection of national security information has evolved through a series of E.O.s. In other words, the national security classification policy has been set by the U.S. presidents. Specifically, it has been argued that the executive privilege, especially the privilege of the Chief Executive not to disclose requested information, is a legal basis for the protection of national security information (Relyea, 1981).

The FOIA provides a statutory basis for the E.O.s on national security information, and E.O. 11652 issued by President Richard Nixon clarified that national security information should be protected based upon the FOIA. Specifically, Exemption 1 of the FOIA protects national security information concerning national defense or foreign policy from disclosure, provided that the information was properly classified in accordance with the substantive and procedural requirements of an E.O (5 U.S.C. §552 (b)(1)).

The U.S. government has always recognized the importance of protecting its national security information. Prior to President Franklin D. Roosevelt's administration, however, the armed forces administered the classification system of national security information through military regulations (Relyea, 1981).

E.O. 8381

On March 22, 1940, President Franklin D. Roosevelt issued E.O. 8381, *Defining Certain Vital Military and Naval Installations and Equipment,* the first E.O. regarding national security policy. The E.O., which was based upon the *1938 Defense Installations Protection Law* (52 Stat. 3), was the prevailing presidential directive on security classification until 1950 (Relyea, 1981). E.O. 8381 was mainly utilized by the War and Navy Departments to classify national security information into three categories: (1) secret, (2) confidential, and (3) restricted.

E.O. 10104

In 1950, President Harry Truman issued a security classification order, E.O. 10104, *Definitions of Vital Military and Naval Installations and Equipment*, to replace E.O. 8381. E.O. 10104 added a fourth designation, "Top Secret," which brought American information security categories into alignment with those used by its World War II Allies. Like E.O. 8381, E.O. 10104 was supervised by the armed forces. Specifically, the Secretary of Defense and the secretaries of the three armed services carried out the provisions of E.O. 10104 (Relyea, 1981).

E.O. 10290

On September 24, 1951, President Truman announced E.O. 10290, covering non-military agencies under the national security classification system. E.O. 10290 applied the classification procedures to all departments and agencies of the executive branch and made that system known to, and applicable to, those who did business with the federal government. This E.O., however, lacked the constitutional or statutory authority for such expansion of coverage. Shortly after its issuance, Congress unsuccessfully attempted to repeal the order (Relyea, 1981).

E.O. 10501 and its amendments

Under President Dwight Eisenhower, E.O. 10501 on national security information (18 FR 7049) was issued on November 5, 1953, reflecting "a trend toward limited classification and system of integrity" (Katz, 1987, p.15). Specifically, E.O. 10501 was designed to achieve four goals: (1) narrowing the criteria for classification; (2) reducing the discretionary authority of

government personnel for classification; (3) reducing the volume of classification; and (4) creating schedules for systematic declassification (Katz, 1987).

Eisenhower's E.O. 10501 also eliminated the designation of restricted data and confirmed the three classification categories, in descending significance to national security: top secret, secret and confidential. This E.O., however, did not provide for the prosecution of government personnel who improperly disclosed classified information, which was included in President John Kennedy's E.O. 10964 in 1961 (Relyea, 1981).

E.O. 11652

After several minor amendments to E.O. 10501, President Nixon released E.O. 11652 (37 FR 5209) on March 8, 1972, confirming that classified information and material covered by this E.O. were expressly exempted from public disclosure through use of the FOIA (5 U.S.C. 552(b)(1)). E.O. 11652 broadened the scope of classified information beyond what the FOIA specified. According to the FOIA, "interests of national defense or foreign policy" are exempt from public scrutiny. E.O. 11652 expanded the exemption to "interests of national defense or foreign relations," making it possible to apply the order to all operational foreign matters (Relyea, 1981).

This E.O., however, made further steps toward declassification in some areas. According to Demac (1984), Nixon's E.O. 11652 reduced the number of government reviewers for classification. In addition, for the first time, a member of the public was given the right to request mandatory review of classification. Furthermore, this E.O. clarified the general declassification schedule. As an example, Top Secret information was scheduled to be declassified after 10 years (Sec. 5 (A)), although there are some exemptions from that schedule (Sec. 5 (B)).

E.O. 12065

On June 28, 1978, President Carter issued E.O. 12065 (43 FR 28949), requiring the application of a balance between "the public's interest in access to government information" and "the need to protect national security information from disclosure." This E.O. confined classification to documents that could reasonably be expected to cause identifiable damage to the national security. In addition, E.O. 12065 specified the types of information that may be considered for classification. Specifically, the information subject to classification had to fit into one of seven categories: (1) military plans, weapon system or operations; (2) foreign government

information; (3) intelligence activities, sources or methods, or cryptology; (4) foreign relations or foreign activities, including confidential sources; (5) scientific, technological or economic matters relating to national security; (6) U.S. government programs for safeguarding nuclear materials and facilities; and (7) other categories of information related to national security that require protection by appropriate persons.

Carter's E.O. 12065 established the ISOO within the GSA. Generally speaking, although E.O. 12065 improved Nixon's classification directives in terms of access to government information (Demac, 1984; House Oversight Committee, 1979), the E.O.'s oversight and control mechanism of classification was insufficient to detect and correct abuses of the system (Relyea, 1981).

E.O. 12356

The CIA played a major role in drafting President Reagan's 1982 E.O. 12356 (47 FR 14874) that reversed the 30-year trend of narrowing classification criteria and governmental authority to classify. E.O. 12356 eliminated the need for government agencies to consider the public's right to know when deciding whether to release information (Foerstel, 1999). Additionally, reasonable doubts regarding different levels of classification were to be resolved by stamping the documents at the higher level of nondisclosure (Demac, 1984). Moreover, the order had very broad criteria for creating official secrets and provided no automatic declassification timetable (Relyea, 1981). As a result, E.O. 12356 allowed a reduction in the amount of information routinely disseminated by the government and increased the cost of any information released (Foerstel, 1999).

E.O. 12958

President Clinton issued E.O. 12958 (60 FR 19825) on April 17, 1995. This E.O. shortened the duration of classification. If the original classification authority did not establish a specific date or event for declassification, then all undecided documents were assigned a 10-year limitation from the date of the original decisions. In addition, within 5 years from the date of the order, E.O. 12598 required agencies to automatically declassify classified records that were more than 25 years old and had been determined by the Archivist of the U.S. to have permanent historical value.

Moreover, this E.O. established the Interagency Security Classification Appeals Panel (ISCAP) to adjudicate classification controversies such as classification challenges appeals. The

ISCAP, which is composed of the senior representatives of the secretaries of State and Defense, the Attorney General, the Director of the CIA, the Archivist of the U.S., and the Assistant to the President for National Security Affairs, has the sole purpose of advising and assisting the President to protect the national security of the U.S. (Relyea, 1996).

Clinton's E.O. 12598 also created the Information Security Policy Advisory Council (ISPAC), which is composed of seven private sector members who have demonstrated interest and expertise in the national security area. The ISPAC advises the President, the Assistant to the President for National Security Affairs, the Director of the OMB, and/or other appropriate executive branch officials on national security classification policies or its implementing directives, including recommended changes to those policies (Relyea, 1996).

This E.O. replaced a vague provision for "other categories of information" in E.O. 12065 with "vulnerabilities or capabilities of systems, installations, projects, or plans relating to national security" (Sec.1.5). Furthermore, it clarified that government agencies cannot prevent the release of information to: (1) conceal violations of law, inefficiency or administrative error; (2) prevent embarrassment to a person, organization, or agency; (3) restrain competition; or (4) prevent or delay the release of information that does not require protection in the interest of national security (Sec. 1.8.).

The Clinton administration released more decades-old secrets between 1995 and 1997 than had been released in all of the previous 16 years. Nevertheless, most agencies did not meet the 5-year automatic declassification plan (Melanson, 2001).

E.O. 12958, Amended

On March 25, 2003, President Bush issued E.O. 13292 that amended E.O. 12958, stressing the policy continuation between E.O. 12958 and E.O. 13292. As an example, William Leonard, director of the ISOO, argued that the major reason for the amendment was to extend the automatic classification deadline to December 31, 2006 (Sec. 3.3), which had already been delayed once from April 2000 to April 2003 by E.O. 13142 during the Clinton administration. E.O. 13292 made few but significant changes favoring secrecy, thus reinforcing the government's ability to maintain secrecy from the public (Reporters Committee, 2005; Committee on Government Reform, 2004).

President Bush's E.O. 13292 eliminated the presumption of disclosure provisions from President Clinton's E.O. 13142, expanded the government's authority to reclassify information

that had previously been declassified (Sec. 1.7. (c)), and established a presumption that unauthorized disclosure of foreign government information would cause damage to national security (Sec. 1.1. (c)), "increasing the likelihood of a decision to classify the information" (Committee on Government Reform, 2004, p. 47).

Additionally, E.O. 13292 expanded the scope of the classification authorization, inserting the Vice President into the classification authority circle. This E.O. also made significant additions to the number of agencies given original classification authority. Among others, the Secretary of Health and Human Services, the Administrator of the EPA, and the Secretary of Agriculture were added to the list of those allowed to classify information originally as secret (Committee on Government Reform, 2004).

Moreover, E.O. 13292 transferred important authority from the ISCAP to the Director of the CIA (Committee on Government Reform, 2004). Specifically, the Director of the CIA received veto power over declassification decisions about information owned or controlled by the CIA, a decision that can be appealed and reversed only by the President (Sec.5.3.(f)). Table 2.9 shows the evolution of the E.O.s on national security classification and Table 2.10 shows provisions in past E.O.s promoting public access to information.

Table 2.9

E.O.s on National Security Classification Evolution

E.O.	Key Elements	URL	Date
8381	Classified information was defined as Secret, Confidential, or Restricted.	www.presidency.ucsb.edu/executive_orders.php	March 22, 1940
10104	Top secret was added to the classification categories.	www.fas.org/irp/offdocs/eo10104.htm	February 1, 1950
10501	Restricted category was eliminated.	www.fas.org/irp/offdocs/eo10501.htm	November 5, 1953
10964	An automatic declassification and security downgrading procedure was adopted.	www.fas.org/irp/offdocs/EO10964.htm	September 20, 1961
11652	FOIA Exemption 1 was adapted as a statutory source for the classification.	www.fas.org/irp/offdocs/eo/eo-11652.htm	March 8, 1972
12065	A provision for mandatory review for declassification was adopted.	www.fas.org/irp/offdocs/eo/eo-12065.htm	June 28, 1978
12356	The definition of classifiable information was expanded.	www.fas.org/irp/offdocs/eo12356.htm	April 2, 1982
12958	An automatic declassification deadline was set up. Information that may not be classified was specified.	www.fas.org/sgp/clinton/eo12958.html	April 17, 1995
13292	The automatic deadline was delayed to December 31, 2006. The Director of the CIA received veto power over some parts of declassification decisions.	www.fas.org/sgp/bush/eoamend.html	March 25, 2003

Table 2.10

Provisions in Past E.O.s Promoting Public Access to Information

PROVISIONS	E.O.s						
	10501	10964	11652	12065	12356	12958	13292
Declassification date or event on documents at time of classification	*Yes*	*Yes*	*Yes*	*Yes*	*Optional*	*Yes*	*Yes*
Portion marking of paragraphs in a document	*No*	*No*	*Yes*	*Yes*	*Yes*	*Yes*	*Yes*
Emphasizing the importance of the public's right to know open government	*No*	*No*	*No*	*Yes*	*No*	*Yes*	*No*
Appeals or oversight	*Yes*	*No*	*Yes*	*Yes*	*Yes*	*Yes*	*Yes*
Scheduled automatic declassification review or release	*No*	*Ye*	*Yes*	*Yes*	*No*	*Yes*	*Yes*
Formal mandatory review procedures	*No*	*No*	*Yes*	*Yes*	*Yes*	*Yes*	*Yes*

Source: Adapted and revised from the *Report of the Commission on Protection and Reducing Government Secrecy*, p. 55.

SBU, CII and FOUO

SBU

On March 19, 2002, White House Chief of Staff Card issued a directive addressing the need to protect information concerning WMD and other sensitive homeland security-related information. This memorandum defines SBU as information that does not meet the criteria for classification but is "sensitive information related to America's homeland security" (OIP, 2002b).

At that time, the SBU category was not included in any statutes that applied to the FOIA. Subsequently, Congress authorized agencies to exempt "sensitive security information" from the FOIA through separate legislation (Feinberg, 2004; Archive, 2006). For instance, sensitive security information was exempted from public scrutiny along with classified information under the *Aviation and Transportation Security Act* (P.L. 107-71). That Act, however, did not define sensitive security information.

CII

From 1975 into the 1980s, FOIA information requests about other businesses dramatically increased. In other words, companies tried to get competitive companies' business

information through the FOIA. Subsequently, during those years, corporations showed increased concerns that business information might be made public under the FOIA. Thus, corporations have sought legal safeguards to protect business information that is submitted to the government.

As a result, in 1986, the Reagan administration tried to block public access to unclassified information. Congress and the public, however, insisted that the definition of sensitive information was too broad and argued that "anything that government did not want to release could be deemed sensitive and withheld." Thus, the policy was rescinded (Foerstel, 1999).

On May 22, 1998, President Clinton issued *Presidential Decision Directive 63* on critical infrastructure protection. According to the Directive, every department and agency of the federal government shall appoint a Chief Infrastructure Assurance Officer (CIAO) for protecting its own critical infrastructure, especially its cyber-based systems (White House, 1998).

Since President George W. Bush took office, there have been two relevant and significant policy changes. Specifically, the CIIA under the *Homeland Security Act* exempts certain business information from the FOIA. Business information that is voluntarily submitted to the government can be protected "by placing it off-limits to requests made under FOIA" (James, 2003).

The OIP of the DOJ announced new FOIA guidance after the issuance of the Ashcroft memorandum. The OIP guidance suggested a way to protect "critical infrastructure information" from Exemption 2 of the FOIA and "the information that is voluntarily submitted to the government from the private sector" from Exemption 4 of the FOIA (OIP, 2002b).

The FOUO

The origin of the FOUO designation dates back to November 22, 1917, when General Headquarters, American Expeditionary issued *General Orders No. 64* on the protection of official information. That directive categorized official information into three levels: Confidential, Secret and FOUO. FOUO information is designated "for ordinary official circulation and not intended for the public, but the accidental possession of which by enemy would result in no harm to the Allied cause" (Relyea, 1981, p. 12).

In 1997, the Commission's report revealed "at least 52 different protective markings being used on unclassified information, approximately 40 of which are used by departments and agencies that also classify information." FOUO was one of the widely used protective markings

along with SBU, "Limited Official Use" (LOU) and "Official Use Only" (OUO) (Commission, 1997, pp. 28-29).

On May 11, 2004, the DHS imposed FOUO on a category of information that applies to both the Department employees and its contractors. According to Feinberg (2004, p. 443), "FOUO can be assigned by any employee or contractor if the documents fall within any of 11 categories." The DHS, however, has no control system for FOUO such as government oversight, internal or judicial appeals process, or an automatic declassification process.

Government secrecy and its impact on the FOIA

Mosaic theory

Mosaic theory is defined as "the concept that apparently harmless pieces of information when assembled together could reveal a damaging picture" (32 C.F.R. § 701.31, 2005). The theory was based upon a "conservative vision of information policy, when executive agencies, not courts, should control information and more control is presumed safer" (Pozen, 2005, p. 667). According to Pozen (2005, p. 630), federal agencies have invoked the theory "to justify both classifying documents at higher levels of confidentiality and withholding documents requested through FOIA or through pretrial discovery."

It seems that the mosaic theory acquired new salience in national security strategy after September 11, 2001, and agencies used the theory more frequently and more aggressively. According to Lepper (1983, P. 395), courts generally defer to agency expertise regarding national security. After the September 11, 2001 terrorist attacks, the courts cited the mosaic theory even more frequently.

After the mosaic theory rationale was first mentioned in 1972 in a Fourth Circuit case (*United States v. Marchetti*, 466 F. 2d. 1309), the theory was also applied to FOIA cases. In 1982, the Reagan administration inserted the context of the theory into E.O. 12356. According to the E.O., information that has a potential to cause damage to national security "either by itself or in the context of other information" should be classified (§ 1.8 (e)). In 1995, the Clinton administration amended Section 1.8(e) somewhat more restrictively, but did not provide practical measures to promote the changed section.

The mosaic theory regained its importance when the Bush administration exposed a penchant for secrecy as it rushed to classify and safeguard information after September 11, 2001. The mosaic theory provides grounds for federal agencies' non-disclosure approach. In other

words, the theory underlies federal agencies' control of information for the sake of national security. It is clear that the Bush administration's restrictive policy of withholding SBU information was backed up under a mosaic theory rationale (Pozen, 2005).

Executive privilege

The executive privilege is the notion that "executive officials have an inherent right to withhold information from the public and the legislature" (Rourke, 1961, p. 11). It seems that the power of executive agencies to withhold information without legal basis stems from the authority of the president. The argument relies on the concept that "the president has certain independent constitutional duties to discharge, including the obligations to take care the laws be faithfully executed, which entitle him to the privilege of withholding information if he considers that its disclosure would be harmful" (Rourke, 1961, p. 64).

The president has asserted the right to prohibit executive employees from disclosing certain kinds of information without his approval (Rourke, 1961, p. 71). It is believed that "a president has great leverage when he withholds information in the areas of foreign policy and national defense" (Fisher, 2004, xvi). Civil liberties groups, however, maintain that "for our democracy to properly function, both Congress and the public must be fully informed of what the executive branch is doing." Still, the executive branch has had a "lack of trust in Congress" and, thus, often hesitated to give the Congress certain kinds of information out of fear of public disclosure (Rozell, 2002, pp. 12-14).

Rozell (2002, p. 5) reviewed against and for the legitimacy of privilege. Critics of the executive privilege argue that "(1) there is no constitutional grant of executive privilege, (2) the Framers' fear of tyranny prevented such a power from being granted, (3) the public and the coordinate branches of government have a right to know what the executive branch is doing, and (4) presidents have abused the power of executive privilege."

In contrast, defenders of the executive privilege insist it is necessary, based upon "(1) its theoretical and constitutional underpinnings; (2) the historical precedents for its exercise; (3) the demands of national security; (4) the need for candid internal White House deliberations; (5) limitations on the congressional power of inquiry; (6) historical necessities; and (7) the widely accepted secrecy practices of the coordinate branches of government" (Rozell, 2002).

According to Rozell (2002, p. ix), Presidents Bill Clinton and George W. Bush tried to reestablish executive privilege as a legitimate presidential power. In doing so, the two presidents

were criticized for their "attempts to withhold testimony, documents and other sources of information about the operations of the executive branch."

Summary

The FOIA provides access to most federal agency records except those that are protected from disclosure by any of the nine exemptions or three exclusions to the FOIA. National defense or foreign policy, collectively referred to as national security, comprises one group of exempted information under the E.O.s.

The national security classification system has evolved into the exclusive domain of the president. As a result, the amendments to E.O.s on classification have varied mainly with the changes in the political parties' control of the executive branch. During the last 60 years, the E.O.s tended to flip-flop between a focus on public access to information and a focus on secrecy in the name of national security, depending upon which party controlled the executive branch (Commission, 1997).

In sum, the E.O.s on national security classification have affected FOIA implementation. During the Bush administration, however, there were an increased number of executive branch policy instruments ostensibly intended to protect national security that had the effect of marginalizing the FOIA.

Presidential Studies

Introduction

America has "a government of separated institutions sharing powers" (Neustadt, 1990, p. 29). In other words, the president, Congress and the judiciary are institutionally separate and interdependent. All administrative functions within the executive branch are responsible to the president, but those functions should be accountable to Congress.

The president's power comes not only from the Constitution but also from statutes and court decisions. According to Article II of the Constitution, the president has constitutional responsibility to execute laws and has the power to appoint certain members of government. The statutes also provide the president with the authority for central budgeting and a degree of personnel control. The Supreme Court recognized the president's right to discharge agency officials (*Myers v. United States,* 1926).

Prior to President Franklin D. Roosevelt, however, presidential influence was not as strong as nowadays (Edwards & Wayne, 1990; Waterman, 1989). The effects of World War I

and the Great Depression empowered the presidency during the Roosevelt administration. President Roosevelt increased his control and influence on the executive branch based upon the results of the Brownlow committee report, which recommended the creation of a presidential office (Benze, 1987).

Presidential scholars have examined the presidency from various aspects, which are the president's agenda (Light, 1999), presidential leadership (Edwards & Wayne, 1990), presidential power (Neustadt, 1990; Benze, 1987), presidential influence (Waterman, 1989) and the administrative presidency (Nathan, 1983). Among them, Neustadt's theory of leadership has greatly influenced most subsequent presidential studies. Thus, there have been many complementary studies in reaction to his paradigm. For instance, Light (1999) synthesized and grouped the president's resources into three categories: personal resources (the sense of power, self-confidence and bargaining skills); political resources (public approval, Washington reputation and congressional support); and institutional resources (the OMB, the staff and legislative liaison).

To understand the role and influence of the president on bureaucrats more clearly, this section explains two perspectives: Neustadt's theory and Nathan's approach to the administrative presidency. This section reviews the president's institutional authority including personnel, reorganization, budgeting and central clearance, and also reviews the president's influence on policy implementation. Finally, this section explains how presidential studies are related to this study.

Major approaches to the presidency

Neustadt's theory

Neustadt asserted that "presidential power is the power to persuade" (Neustadt, 1990, p. 11) and pointed out that, while command has limited utility, persuasion becomes give-and-take. According to Neustadt (1990), the sources of presidential power are from a president's bargaining advantages based upon status and authority; his personal reputation based upon the expectations of the Washington community; and his public prestige, which depends upon how the Washington community thinks the public perceives the president and his actions.

Neustadt's theory is very useful in understanding the reciprocal nature of power between the president and Congress. Neustadt also applied his persuasion theory to the president's relations with bureaucracy. According to Neustadt, the president's power to persuade is his most

effective method of influence on the bureaucracy, since agency administrators have several masters, including Congress, agency clientele and their staff members in addition to the president. Waterman (1989) argued that, even though Neustadt's theory is not a panacea, it applies to both presidential-Congressional relations and presidential-administrative relations.

However, Neustadt neglects other important sources of presidential influence such as the constitutional roles of the president and presidential authority (Hale, 1983). Another drawback to Neustadt's theory is that it applies mainly to the decision-making process without addressing the relationships between the president and the public.

Nathan's approach to the administrative presidency strategy

According to Waterman (1989), there are two main views on presidential-administrative relations: "the purveyor of neutral competence" and the "administrative presidency strategy." The first view is that "a president is best served by a non-politicized bureaucracy because it provides the Chief Executive with neutral information about a wide range of policy alternatives." The second view is that "presidents should politicize the bureaucracy in order to increase their influence over it" (Waterman, 1989, p. 1).

The "administrative presidency" is an example of the second view. Specifically, "administrative presidency" means that politicizing the bureaucracy is necessary to achieve the administration's domestic policy goals (Nathan, 1975). The administrative presidency strategy was designed to counteract the fact that "the expanding bureaucracy often did not support the president's programs and, in some cases, actively opposed presidential initiatives" (Waterman, 1989, p. 9). President Nixon introduced the administrative presidency strategy to increase presidential influence by requiring senior bureaucrats to follow the president's lead on major issues. Although Nixon's attempt was derailed by the Watergate affair, the process was effectively utilized by President Reagan (Van Horn, Baumer & Gormley, 1989; Waterman, 1989).

The trend of the administrative presidency strategy was weakened when both the public and scholars became concerned about abuse of presidential power. Nathan, however, pointed out that a lack of bureaucratic responsiveness became a great threat to presidential leadership when the public demanded that presidents respond to every important national issue. Nathan identified several techniques used by presidents to extend their influence over the administrative functions. These tools of the administrative presidency strategy include the president's power of

appointment, reorganization, budgetary authority and legal clearance (Boutrous, 2002; Nathan, 1983; Waterman, 1989).

Institutional power of the president

Power of appointment

The power of appointment is the most influential administrative power of the president and is derived directly from the Constitution. According to Article II, Section 2, the president not only can nominate and appoint ambassadors, other public ministers and counsels, judges of the Supreme Court by and with the advice and consent of the Senate, but also can appoint all other officers of the United States.

Presidential appointment power has increased as the government has expanded. For instance, under the *Reorganization Act of 1950*, Congress gave the president new authority to designate all chairmen of independent regulatory commissions. As the number of political appointees the presidents could nominate increased over the years, however, the president could not personally consider each of the political appointees. As a result, many political appointees, especially Cabinet officials, who had been selected for various political reasons, often did not reflect the president's political philosophy (Edwards & Wayne, 1990).

According to Waterman (1989), several obstacles constrained presidential appointment power. First, it was hard to find well-qualified nominees who shared the president's political philosophy and also had good political experience or management skills. In addition, the appointment of loyal individuals to the bureaucracy does not guarantee expanded presidential influence, although it may stabilize bureaucratic structure and facilitate promotion of the president's programs. Furthermore, without proper political experience or management skills, political appointees can put the president in political danger.

Second, poor payment and long working hours are obstacles to recruitment of qualified individuals. Additionally, under the *Ethics in Government Act of 1978* (P.L. 95-521), political appointees must report their detailed financial information to Congress and sometimes are forced to sell stock and other holdings. The Act also limits post-government employment options for these political appointees.

Third, the role of Congress regarding the appointment is a major constraint on the president's appointment power. When nominating individuals for office, the president needs to

consider potential opposition in the Senate confirmation process. Congress can also appoint certain officers, especially in the independent regulatory commissions.

Fourth, interest groups have influenced presidents to select individuals who serve on the federal regulatory commissions. The pressures of interest groups can lead a president to hire individuals who are inclined to be amenable to a particular group's interests.

Finally, appointed officials can neglect the wishes of the president, even when he or she selects the most qualified individuals. After they assume office, political appointees face the reality that they must perform legally mandated functions based upon Congressional legislation.

In summary, "presidents can increase their influence over the bureaucracy by appointing loyal and competent individuals, but they cannot force subordinates to comply with their policy demands" (Waterman, 1989, pp. 33-34).

Reorganization

Reorganization is one of the earliest and most widely used administrative techniques for presidential influence. The president can submit legislation directly to Congress to change the structure of the executive branch. In addition, presidents can establish small, temporary entities within the EOP through the issuance of E.O.s (Relyea, 1996a).

There are two primary issues to be considered in terms of organizational structure. Whether an agency or department is centralized or decentralized can have a great impact on policy outcomes. Generally, centralized agencies tend to be subjected to more presidential influence than are decentralized agencies. The other consideration is the extent to which an agency shares jurisdiction for certain programs with other agencies. The president can exert influence more easily when an agency has sole jurisdiction over a particular program.

The president's reorganization power has been changed over time. The *Legislative Appropriations Act of 1932* authorized the president to reorganize the executive branch by E.O.s (Benze, 1987, p. 31). Specifically, that Act gave the president the authority "to transfer, consolidate, or abolish governmental agencies unless both Houses of Congress vetoed the president's plans within a period of sixty days after they were submitted to Congress" (Waterman, 1989, pp. 40-41). In 1939, President Franklin D. Roosevelt created the EOP and transferred the Bureau of the Budget (BOB) from the Treasury Department to the EOP.

In 1964, Congress restricted the president's power to submit reorganization plans that established an executive department (78 Stat. 240). The *Reorganization Act of 1977* retained the

provision prohibiting establishment of an executive department by reorganization, and expanded the prohibition to independent regulatory agencies (Moe, 2003). In accordance with the Supreme Court's 1983 *Chadha* decision (462 U.S. 919), the *Reorganization Act Amendments of 1984* made the president's reorganization plans subject to congressional approval within 90 calendar days. The amendment did not extend the president's reorganization plan authority; thus, that authority automatically expired in 1984.

In summary, between 1932 and 1984, Congress authorized the president to reorganize the executive branch. Prior executive reorganization authority reflected a changing balance between the roles of the president and Congress. First, most previous authorities made the president's reorganization plans effective unless Congress disapproved, but the 1983 *Chadha* decision gave Congress a stronger role than in the past. Second, after the passage of the *Reorganization Act of 1949*, Congress gradually reduced the president's power of reorganization. Third, the reorganization authority limited "the period of time during which a President could propose any reorganization plans" (GAO, 2003, p. 8).

Budgetary Process

The president has real influence over the administration through the budgetary process. The president can influence agencies "by proposing increases or reductions in funding, initiating new programs, and vetoing appropriations." In addition, the president's budget proposal can be used to set a major agenda. The president can "set the tone for the budget" by establishing general budget and fiscal year policy guidelines (Waterman, 1989, p. 37).

Presidential budgetary power, however, was not established by the Constitution; Congress has the authority to pass the required spending bills. Prior to the *Budget and Accounting Act of 1921*, department secretaries sent their budget proposals directly to Congress. That Act, however, provided the president and the BOB with the authority to receive departmental estimates, to review the agencies' requests, to develop a detailed budget, and to submit those budgets to Congress. In short, "the Act of 1921 and the procedures used by BOB made the president a central figure in the executive budget process" (Benze, 1987, p. 46).

According to Waterman (1989), the president has limitations on using the budget as a means of influencing administrative operations. First, the president may withhold appropriated amounts from obligation under only limited circumstances. In addition, it is hard for the president to cut program budgets that have strong support from powerful interest groups.

Second, federal departments and agencies have complained about the OMB's role as the central clearance for all budgetary requests. As a result, those departments and agencies tend to promote close relations with Congressional committees and interest groups to circumvent the OMB's control over the budget.

Third, economic trends including a rising deficit, natural disasters and international conflict may restrict the president's pursuit of policy priorities. For instance, it is more difficult to advocate new programs in the face of hurricanes and other natural disasters.

Finally, using the budgetary power to pursue presidential initiatives can bring political risks. By politicizing the budgetary process, presidents can face not only increased Congressional oversight but also bureaucratic resistance. In addition, a president can lose neutral bureaucratic advice.

In short, "although budgetary reductions can be a powerful tool in altering agency goals, they can also increase congressional and bureaucratic opposition to presidential objectives" (Waterman, 1989, p. 39).

Central legislative clearance

Central clearance is a means of using the OMB to review all federal agencies' legislative proposals before they are transmitted to Congress. Specifically, the centralized rulemaking review process encourages federal agencies not only to make regulatory legislative efforts in accordance with the president's goals but also to consider each other's views and to help resolve inter-agency disputes. The clearance requirement, however, can be a constraint from a department's perspective. Without OMB clearance, agencies may not submit their legislative proposals directly to Congress; neither may they issue regulations.

The central clearance was caused by the passage of the *Budget and Accounting Act of 1921*. In earlier days, central clearance was employed as a tool for checking appropriation bills. President Franklin D. Roosevelt began to use the technique to expand presidential control over all legislative initiatives, using the BOB to examine policy-related bills and appropriation bills. President Nixon changed the name of the BOB to the OMB and increased its management capabilities, but he did not put central clearance under the OMB.

In 1985, President Reagan issued E.O. 12498*, Regulatory Planning Process*, requiring all federal agencies, except for the independent regulatory agencies, to submit their administrative proposals of new rules and regulations to the OMB, which would review the proposals for

consistency with the administration's policy goals. Through this reform, the president not only can get more information about agencies' activities but also can alter or veto administrative proposals before they are sent to Congress.

The president's power and the FOIA

Although the freedom of information issue has been covered by the media and civil liberties groups, it has not been a major concern for the president when compared with other domestic issues. Presidents have not discussed freedom of information in their State of the Union addresses. Instead, presidents have revealed their perspectives on the freedom of information through a statement on FOIA, through their attorneys general's FOIA memoranda, through E.O.s related to classification, or through short comments on the issue in interviews. Thus, it seemed remarkable when President Bush issued E.O. 13392 to improve agency disclosure of information in December 2005.

President Clinton initiated disclosure of previous government information but he was reluctant to disclose information about himself, using the guise of executive privilege (Rozell, 2002). President Bush – unlike Clinton – valued a citizen-centered, result-oriented, market-based approach (OMB, 2002), so he made an effort to improve the disclosure of government information technically. However, Bush showed his concern for privacy and national security when asked about his opinion on FOIA in the Question-and Answer Session with the ASNE. Further, he pursued non-disclosure policies and withheld government information as often as he could under the guise of national security.

When comparing Presidents Clinton's and Bush's appointive power, while President Clinton appointed Reno as Attorney General for his tenure, President Bush appointed Ashcroft in his first term, then Alberto R. Gonzales and Michael Mukasey in his second term. Reno, a former reporter's daughter, was supportive in pursuing President Clinton's open government initiative. Ashcroft complied with President Bush's FOIA philosophies and requested federal agencies to institute stricter guidelines for disclosing government information and Gonzales maintained his predecessor's policy. This study did not deal with Attorney General Michael B. Mukasey because Mukasey served after the timeframe covered in this study.

Summary

Presidential studies have expressed theories on what empowers the leadership of the president. Presidential scholars have mainly focused on decision-making rather than policy

implementation when considering presidential power (Benze, 1987, p. 7). While Neudtadt's theory of leadership states that a president's power comes from the president's ability of persuasion, the notion of administrative presidency emphasizes the importance of political officials who lead the administration in accordance with the president's policy goals.

Not only the president's persuasive ability and his institutional power, but also the presidential personality can make a difference in an administration's responses to events. For instance, President Bush's religious belief and instinctive reaction to events played a major role in his foreign policies (Pfiffner, 2004). However, this study does not focus on how the president's religious standpoint affects government policy. Instead, it examines the presidents' philosophies on freedom of information to determine how a president's perspective affects less-spotlighted domestic policies.

Specifically, this research is designed to examine presidential influence on FOIA policy formulation and implementation. To do so, this study examines the *Weekly Compilation of Presidential Documents* during the administrations of Presidents Bill Clinton and George W. Bush in Chapter 4, detailing how each of the two presidents mentioned the freedom of information issue during their tenures. This study then analyzes how frequently the *FOIA Update* and the *FOIA Post,* the official newsletter of the OIP, mentioned the three FOIA principles, "informed citizenry," "disclosure" and "open government," and how those three principles were emphasized by the OIP during the two presidents' tenures.

Principal agency theory

Brief history of political bureaucracy theories

The question of who controls bureaucratic institutions has been an important topic in political science. Although researchers have applied various theories and models regarding political bureaucratic relations to explain complicated political phenomena, it has been difficult to find a conceptual framework that fits every situation. Many different bureaucracy theories have been developed simultaneously and one after another as the political environment changed and former theories no longer explained political phenomena appropriately.

Before 1950, the politics-administration dichotomy was the dominant paradigm in the public administration literature. However, during the 1950s and 1960s, the paradigm was replaced by the "capture theory" and the "notion of iron triangle." The capture theory asserts "the responsiveness of bureaucratic agencies to clientele groups" (Moe, 1985, p 1094). In other

words, agencies tend to be submissive to the entities they were created to regulate. The political bureaucracy also had been explained by an iron triangle relationship among administrative agencies, legislative committees and interest groups at a single level of government.

During the 1970s, the "bureaucratic dominance model" was used to explain bureaucrats' discretion "at many stages and many levels throughout the policy making process" (Boutrous, 2002, p. 47). By the early 1970s, as the deregulation movement arose from airline and railroad industries and spread to financial and communications industries, the capture theory and the notion of iron triangle could no longer explain the political bureaucracy situations.

In the 1980s, there was a paradigm shift in political control of the bureaucracy from the bureaucratic dominance model to the principal agent model (Wood & Waterman, 1991). Studies on political-bureaucratic relations focused more on the president and Congress as an effective institution for control of the bureaucracy in hierarchical fashion. In addition, it became clear that agencies are not free from political influence even though many studies revealed that there always has been bureaucratic discretion (Boutrous, 2002).

In the 1990s, Sabatier and Jenkins-Smith (1993) initiated the Advocacy Coalition Framework (ACF), arguing that some principals act like a group of actors or as part of a coalition. In other words, the ACF does not recognize the hierarchical relationships, but it regards the bureaucracy as one political actor among many. Specifically, the ACF broadens the conception of a policy subsystem including journalists, researchers and policy analysts who play an important role in policy development and also including other actors at all levels of government in policy formulation and implementation (Sabatier, 1999, p. 119).

This section explains the principal agent theory as the theoretical framework used in this research. Table 2.11 summarizes a brief history of political bureaucracy theories.

Table 2.11

Summary of the Political Bureaucracy Theories

Period	Theory	Scholars	Contents
1940s	Politics-administration dichotomy	Wilson	Bureaucracy should lie outside the sphere of politics.
1950s	Capture theory, iron triangle	Huntington, Cater, Freeman	Agencies tend to be submissive to the entities they were created to regulate.
1970s	Bureaucracy dominance model	Niskanen, Wilson	The bases of bureaucratic autonomy and discretion are stressed.
1990s	Principal agent theory	Moe, Wood, Waterman	The President and Congress are stressed as an effective institution for control of the bureaucracy in hierarchical fashion.
2000s	ACF	Sabatier, Jenkins-Smith	Not only bureaucracy but also journalists, researchers and policy analysts are regarded as political actors.

History of the principal agent theory

The principal agent theory was developed initially in the fields of economics and finance and then transferred to political science (Carr & Brower, 1996; Day, 2000; Eisenhardt, 1989; Jensen, 1983). More specifically, the principal agent theory was derived from the agency theory. Thus, it is sometimes used with no distinction from the agency theory.

The principal agent theory was originally conceived to explain the business environment in which managers seek to motivate workers who want to minimize effort. However, as the theory was transferred to other areas, it began to be used to explain organizational relations in which a principal engages an agent to perform some service on his behalf in a series of contracts (Carr & Brower, 1996) and to address the contracting problem between parties interacting in the hierarchical structure.

In political science, the theory focuses on issues of control and examines the relationship between decision-makers and bureaucracies as a relationship between superiors and inferiors. In other words, the principal agent theory is used to examine the relationships between elected elites and non-elective bureaucrats in a hierarchical fashion (Wood & Waterman, 1991). Specifically, the theory has been used to examine the influence on bureaucracy of presidents, Congress, and other principals such as the courts, the media and public interest groups. According to Waterman, Rouse and Wright (1998, p. 13), however, the principal agent theory has tended to focus on three major principals – the president, Congress and the courts – even though bureaucratic agents have been affected by other principals such as "the regulated industry, interest groups, the public, the media and state-level actors."

The principal agent theory was primarily applied to regulatory politics in the 1980s (Waterman, Rouse & Wright, 1998). For example, Moe (1982) examined the annual output of the FTC, the National Labor Relations Board (NLRB), and the SEC. Moe (1985) also conducted an empirical analysis of the NLRB to clarify the causal structure of regulatory performance. Wood and Waterman (1991) analyzed seven agencies' output to determine the scope and mechanisms of political control of bureaucracy, in which three agencies are regulatory agencies: the EEOC, the FTC and the NRC. Waterman, Rouse and Write (1994; 1998) examined the EPA's National Pollutant Discharge Elimination System (NPDES) that oversees the regulation of surface water.

There were also research method changes in the field of principal agent theory studies. In the 1970s, most research on political-bureaucratic relations was qualitative and seldom considered the relationship between external stimuli and bureaucratic responses. More specifically, the principal agent theory was implemented by using many methods including questionnaires, secondary sources, laboratory experiments and interviews (Eisenhardt, 1989, p. 70). For instance, Eccles (1985) conducted research on the agency theory of transfer pricing by interviewing 150 managers, reviewing internal documents such as memoranda and special studies, and analyzing publicly available information.

The research in the 1980s, however, became more quantitative because of "an economic theory of political bureaucratic relations and a growing body of empirical support of that theory" (Wood & Waterman, 1991, p. 802). Scholars of the principal agent theory mainly conducted empirical studies, using statistical methods. While most of them used time series analysis (Moe, 1982, 1985; Scholz & Wood, 1998; Wood, 1988; Wood & Waterman, 1991; 1993), other methods including the survey (Waterman, Rouse & Wright, 1998) were also used.

Agency theory

The agency theory was developed to analyze and explain risk-sharing issues among individuals or groups in the 1960s and early 1970s. According to Eisenhardt (1989, p. 59), the theory was conceived to resolve two problems that occur in agency relationships. The first problem arises because of (a) the conflict of desires or goals between the principal and agent, and (b) the difficulties in or price for monitoring what the agent is actually doing. The second problem revolves around risk-sharing that arises when the principal and the agent have different risk viewpoints. The agency theory considers a principal and an agent "who are engaged in corporative behavior, but have differing goals and differing attitudes toward risk."

She also states that the agency theory has three types of assumptions: human, organizational and informational. Specifically, a human being is considered self-interested, has bounded rationality, and tends to avoid risk. In the organization, efficiency is regarded as the preeminent criterion. Additionally, there are partial goal conflicts among participants and information asymmetry between principals and agents. Information is considered a purchasable commodity.

Perrow (1986, p. 224) also argues that the agency theory assumes that social life consists of a contract. According to him, "the principal agent relationship is governed by a contract

specifying what the agent should do and what the principal must do in return," and is filled with "the problems of cheating, limited information, and bounded rationality in general." In addition, the agency theory identifies a few contracting problems including moral hazard and adverse selection within agency and risk sharing. Table 2.12 provides a summary of the agency theory.

Table 2.12

Summary of the Agency Theory

Human assumptions	Self-interest. Bounded rationality. Risk aversion.
Organizational assumptions	Partial goal conflict among participants. Efficiency as the effectiveness criterion. Information asymmetry between principal and agent.
Information assumption	Information as a purchasable commodity.
Contracting problems	Moral hazard and adverse selection within agency. Risk sharing.

Adapted partially from Eisenhardt, K. M. (1989), Agency theory: An assessment and review. *The academy of management review*, 14, p. 59.

Jensen (1983) divided the agency theory into the "principal agent theory" and the "positive theory of agency." According to Jensen, the two theories derived from the same papers and covered the same problems, but resulted in almost separate literatures. In addition, the principal agent theory is more mathematical than the positive theory of agency (Jensen, 1983); thus, organizational scholars were not interested in the principal agent theory (Eisenhardt, 1989).

Jensen points out that both theories deal with the contracting problem between self-interest maximizers and both address the cost of monitoring. However, while the principal agent theory focuses on contracts between parties interacting in the hierarchical fashion, the positive agency theory has focused on "modeling the effects of additional aspects of the contracting environment and the technology of monitoring and bonding on the form of the contracts and organizations that survive" (Jensen, 1983, p. 334). In other words, the principal agent theory focuses more "on the contract between the principal and the agent" and "indicates the most

efficient contract alternative in a given situation," whereas positive theory is used to "identify a policy or behavior in which stockholder and management interests diverge and then to demonstrate that information systems or outcome based incentives solve the agency problem" (Eisenhardt, 1989, p. 69).

Perrow (1986, p. 224), however, criticizes that the pure agency theory, using mathematical formulation with a limited number of variables and no data, has an unreasonable assumption: "the preferences of the parties, the nature of uncertainty, and the information available." This assumption is discussed in the following section.

Assumptions

Scholars vary in the assumptions they make about the principal agent theory. Jensen (1983, p. 334) argues that the principal agent theory generally has been interested in three factors in hierarchical fashion: "(1) the structure of the preferences of the parties to the contracts, (2) the nature of uncertainty, and (3) the informational structure in the environment." He also insists that the principal agent theory copes with contracting issues between parties that are simultaneously self-interested maximizers and cost-minimizers. According to Jensen (1983, p. 334), the theory focuses on (a) "risk sharing and the form of the optimal contract between principal and agent," and (b) comparing contracting solutions with or without information costs.

Moe (1985) assumes that all actors are rational and self-interested. According to him (1984), actors here have a dual role as principal and as agent, from the president to political appointees like agency heads to middle-level FOIA officers to low-level FOIA employees. He also argues that the principal agent theory is based upon the three concepts: hierarchical control, information asymmetry and conflict of interest. According to Moe (1985, p. 1098), the principals' efforts to control agent behavior tend to be partially successful for these reasons. First, the Board and the staff have different interests in some cases. For instance, "the Board may be much more sensitive to politics, the staff more preoccupied with legal precedent and organizational routines." Second, the staff tends to avoid control and seeks to meet its own interests by using information asymmetry. Third, because the Board's criteria may be ambiguous, the staff has room to interpret liberally.

Eisenhardt (1989, p. 61) points out that the theory assumes "goal conflict between principal and agent, an easily measured outcome, and agent who is more risk averse than principal." She, however, shows the possibility of reverse extensions to those assumptions. For

instance, there may be no goal conflict, a hardly measured outcome, and a less risk-averse agent. According to Eisenhardt, the principal agent theory also has other assumptions such as individuals with bounded rationality and self-interest, information asymmetry, and goal conflict at the organizational level.

Wood (Cook & Wood, 1989, p. 971) argues that bureaucrats act independently and sometimes try to maintain established policy in opposition to political principals, which is against the assumption that "bureaucrats are passive, lazy and calculative only to the extent they want to avoid work" in its original context (Cook & Wood, 1989, p. 971). According to the principal agent theory, elected politicians (principals) bind and mold bureaucracies (agents) in a policy hierarchy. Wood, however, asserted that the theory does not precisely fit the issue of political control of bureaucracy because the principal agent theory is rooted in economics.

Carr and Brower (1996, p. 323) point out that the principal agent theory is about "the idea that organizational relations are essentially a series of contracts under which one or more persons engage another person to perform some service on their behalf." They offer three basic assumptions about agency relationships: goal conflict between principals and agents, agents' tendency to risk aversion, and difficulty in monitoring agent behavior. Carr and Brower argue that outcome-based contracts are preferable to behavior-based contracts to curb agent opportunism.

In political science, the theory deals with the relationship between decision-makers and bureaucracies as a relationship of superiors and inferiors in terms of the issue of control (Day 2000, p. 13). In other words, the principal agent theory is about how politicians control their bureaucratic agents regardless of information asymmetry and goal conflict. Given these problems, principals try to avoid an "inevitability of control loss" phenomenon (Waterman & Meier, 1998, p. 175). To do so, elected officials monitor their bureaucratic agents and even use incentive systems to make control easier (Waterman & Meier, 1998, p. 177).

This study, however, paid attention to the three assumptions of a hierarchical control, goal conflict and difficulty in monitoring. First, the study assumed that there has been a hierarchical relationship between the president and bureaucrats. Thus, political appointees are sensitive to the president's policy initiative. Second, this study assumed that there have been goal conflicts between the president and federal agencies. It explains why federal agencies responded in different ways to the president's policy initiatives. Finally, the study assumed that

the principal has difficulty in monitoring agents' implementation. It is likely that the president as well as Congress consistently required agencies to report that they had complied with what they were required to do. Table 2.13 summarizes many assumptions of the principal agent theory.

Adverse selection and moral hazard

Eisenhardt (1989) notes that the principal agent theory covers two agency problems, "adverse selection" and "moral hazard." Adverse selection and moral hazard problems mainly come from the situation of asymmetric information. While adverse selection exists when a principal does not know the preferences and abilities of an agent, moral hazard occurs when a principal does not know how an agent acts (Brehm & Gates, 1998). In other words, whereas "adverse selection" happens when the principal chooses inappropriate delegates because of his lack of expertise or information, moral hazard occurs because agents have an incentive to cheat, shirk, or pursue their own interests (Guston, 1996).

Table 2.13

Assumptions of the Principal Agent Theory

	Scholar				
Assumption	Jensen	Moe	Eisenhardt	Wood	Carr & Brower
Hierarchical control	√	√	√	√	
Goal conflict	√	√	√	√	√
Self-interest	√	√	√	√	
Bounded rationality			√		
Information asymmetry		√	√		
Information as a commodity	√		√		
Risk aversion or sharing	√		√		√
Difficulty in monitoring	√	√	√		√

To avoid these agency problems, the principal is supposed to invest in information systems such as reporting procedures, boards of directors, and so on (Eisenhardt, 1989; Guston, 1996). In addition, the principal can contract with an agent for the outcomes of the agent's behavior (Eisenhardt, 1989). Moreover, the principal can formulate, articulate and evaluate the pursuit of goals to share the goals with an agent more effectively (Guston, 1996).

Monitoring, however, is not cheap. There are two monitoring analogies: "police patrol" and "fire alarm." The principal attempts to monitor through police patrol: "regular and intensive scrutiny of the performance of agencies" (Brehm & Gates, 1998, p. 173). Police patrol, however, is costly although it has the effect of preventing abuse, fraud and wrongdoing. In the fire alarm monitoring system, outsiders of agencies, such as client and interest groups, are encouraged to voice their objections to agency performance. The fire alarm analogy is considered a good model for public participation in monitoring non-elected public officials (Brehm & Gates, 1998).

Limitations

Although the principal agent theory became a dominant theory in political science (Waterman, Rouse & Wright, 1998), it has some limitations in applying to all political cases. First and foremost, the theory originally assumes both principals and agents are unitary actors. Wood and Waterman (1993) note that previous research on political control of bureaucracy ignores the complexity of the external environment and underestimates dynamic bureaucratic responses. Carr and Brower (1996) also argue that a simple dyadic model does not show the dynamic interactions between principals and agents; bureaucracy agents do not perceive a unitary principal but various principals.

Waterman, Rouse and Wright (1998, p. 17) also point out that the principal agent studies have been conducted in a dyadic pattern with one principal and one agent, while bureaucrats consider the presidents, Congress, courts, the media and interest groups to be principals. Waterman, Rouse and Wright contend that the principal agent theory has been used to study the influence of very limited principals "in a possibly unrealistic dyadic fashion," because the theory tends to ignore other nonhierarchical actors such as interest groups, the media and the public.

Day (2000) also notes that the theory has previously examined the relationship between a single principal and an agent instead of multiple principals. Specifically, Congress has been highlighted as a political principal. According to Day, the United States is founded on the principles of the separation of powers and the bicameral legislature; the federal government is expected to have multiple principals.

Second, the principal agent theory has very simple assumptions that do not easily explain a various and complicated real society. Perrow (1986) argues that agency theory does not have a clear problem that needs a solution and has few testable implications. In other words, the agency theory is "hardly subject to empirical test since it rarely tries to explain actual events or make

predictions" (Perrow, 1986, p. 224). For example, the theory has difficulty explaining the possibility of a principal's shirking or workers' organized action, and also has difficulty considering contract violations like whistle-blowing (publicizing illegal labor practices). Further, the theory does not anticipate the cost of changing jobs.

Sabatier (1999, p. 263) also insists that the principal agent theory is "a rather minimal conceptual framework identifying the relationships between principals and agents in institutional settings as its scope." Sabatier (1999, pp. 271-272) says that the principal agent theory is limited by its models of agent because it treats an agent as "a passive receptor responding to stimuli from principals" or just "budget maximizers," so it needs to "start with clear and reasonably valid models of the principals and the agents."

Carr and Brower argue that the agents' and principals' behaviors are more complex than the theory suggests through an ethnographic study. They note that the theory presupposes unitary organizational goals; it does not assume multiple objectives, thus, it fails to differentiate between "acts that breach organizational goals and those that challenge organizational procedure but support the goals" (Carr & Brower, 1996, p. 324). In addition, it is not easy to identify one exclusive objective in the public sector where, in some cases, opposing objectives coexist among multiple policies.

They also point out that the theory fails to explain principals' possible opportunism. Even if the principal assumes that he/she is honest and decent and tends to be self-interested in order to make agents meet the ends of contracts, the principal behaves in various ways and even takes advantage of agents. Furthermore, the theory fails to visualize "the organization as a succession of principal-agent chains," and, thus, to explain the role of managers. Carr and Brower say that each manager is supposed to act as a principal to his/her subordinates and as an agent to his/her supervisors (Carr & Brower, 1996, p. 324).

Third, the theory has been confined to certain areas and methods. It has not paid much attention to the president, nor has it been widely studied in non-regulatory agencies. In addition, it has not been widely used with qualitative methods to look deeply into structures of political control of bureaucrats.

Although the president and Congress have been considered two major principals in political control of bureaucracy, there still is an opinion that the principal agent theory has not been used to focus on the president's influence (Day, 2000). Congressional scholars argue that

legislators are the most important principals in the political control of bureaucracy because bureaucrats are very sensitive to the "rewards and sanctions from the Congress" (Wood & Waterman, 1991, p. 804). In other words, Congress has been regarded as a major political principal of bureaucrats because legislators raise important issues, allocate budgets, and monitor bureaucracy implementation (Van Horn, Baumer & Gormley, 1989). In contrast, presidents seemed to have insufficient resources to monitor and control bureaucrats and were often regarded as a "bystander with limited influence" (Wood & Waterman, 1991, p. 802).

In short, the principal agent theory does not appear to have been applied to the presidency and non-regulatory agency issues, nor has it been examined extensively through qualitative methods. It seems, however, that these limitations have not stemmed from the theory itself but from inadequate application of the theory (Day, 2000).

Summary

The principal agent theory, which identifies "hierarchical control," "goal conflict" and "difficulty in monitoring" as significant concepts, was selected to study and understand the Clinton and Bush administrations' FOIA policies for several important reasons. First, the principal agent theory offers an approach to explain how the Clinton and Bush administrations handled FOIA policies in light of the presidents' influences. It is likely that the presidents and the top FOIA officers of the two administrations affected FOIA policies, as did other principals including Congress and the courts.

Second, the principal agent theory is able to explain why the president's political philosophy is important to government implementation. According to the theory, federal agencies are likely to follow the president's policy goals. In other words, they are very sensitive to the president's policy initiatives.

Third, the principal agent theory helps to explain the importance of recruiting political appointees who share the principal's goals. The concept of "adverse selection" refers to "the misrepresentation of ability by agent" (Eisenhardt, 1989, p. 61). It explains why the principal has difficulty selecting the appropriate agent (Day, 2000). For instance, Presidents Clinton and Bush appointed attorneys general who had different styles from one another, but whose policy views were consistent with the views of the appointing president.

Fourth, the principal agent theory helps explain why a principal such as a president might create a monitoring system for FOIA employees. "Moral hazard" occurs when agents may not

behave as agreed (Eisenhardt, 1989, p. 61). To avoid this, a principal may invest in information systems such as reporting procedures or boards of directors, or may contract on the outcomes of the agent's behavior.

Finally, the principal agent theory is expected to provide a basis for recommendations to design and control bureaucracies rationally (Cook & Wood, 1989). This characteristic is compatible with the goal of policy analysis that may yield final recommendations. Further, the principal agent theory is well suited to provide a useful means to study FOIA implementation. This approach also has good potential to generate additional research questions after the study is completed.

This study has limitations as a result of using the principal agent theory as a theoretical framework. It is clear that FOIA policy has been affected by other possible principals including Congress, the courts, the media and the public. The author, however, mainly focused on the president and the bureaucrats. This study was intended to examine how the president's political philosophies on the FOIA affected the main FOIA competent authority's FOIA policy guidance and how federal agencies responded to the president's FOIA initiatives. Therefore, this study did not to fully analyze the hierarchical control within an organization or at the organizational level, which needs more complicated assumptions.

CHAPTER 3

METHODOLOGIES

Introduction

Civil liberties groups argued that the George W. Bush administration hid government information behind the curtain in the guise of national security. In contrast, officials of the Bush administration maintained that its FOIA policies were not basically different from those of the Clinton administration, but were cautious about the potential for exploitation of the FOIA by terrorists who intended to hurt the American people.

Previous studies of the FOIA rarely provided clear explanation or objective data for either of these two arguments. For instance, there were several studies comparing the Clinton and Bush administrations' FOIA and secrecy policies (Gordon-Murnane, 2002; Uhl, 2003); these studies did not elucidate the full implications of the differences between the two administrations' FOIA policies. Some studies argued that the Bush administration pursued a non-disclosure policy before the September 11, 2001 terrorist attacks (Feinberg, 2004; Jaeger, 2007; Nancy, 2002) the administration did not clarify the perceived reasons for such a restrictive policy.

As indicated in Chapter 1, this study focuses on how each president's initiatives on the FOIA affected the two administrations' FOIA implementation. Using the principal agent theory, this study focused on three assumptions: hierarchical control, goal conflict and difficulty in monitoring. Among them, hierarchical control implies that government officials, especially political appointees, are very sensitive to the president's policy initiatives. Based upon these premises, this study's main objectives are to:

- Examine the two presidents' political philosophies on the FOIA;
- Compare the kinds of FOIA principles the two administrations stressed;
- Examine the similarities and differences between the Clinton and Bush administrations' FOIA policies; and
- Examine how federal agencies responded to the two presidents' FOIA directions.

To accomplish the research objectives, this study addressed the following research questions concerning Presidents Clinton's and Bush's political philosophies on the FOIA, the trend of the OIP's FOIA guidance during the two administrations, and how federal agencies responded to the two presidents' FOIA initiatives.

1. What are Presidents Clinton's and Bush's political philosophies on the FOIA?
2. How often were the principles of an informed citizenry, open government and disclosure presented in the *FOIA Update* and the *FOIA Post* during the Clinton and Bush administrations?
3. What kinds of FOIA policies and related information policies were issued during the two administrations?
4. How did federal agencies respond to the two presidents' FOIA initiatives?
    - 4-1 What were federal agencies' overall responses to President Clinton's FOIA initiatives?
    - 4-2 What were federal agencies' overall responses to the Ashcroft memorandum in the Bush administration?
    - 4-3 How did federal agencies of the Bush administration use Exemptions 2 and 4 to restrict government information disclosure after the White House memorandum?
    - 4-4 What are the trends in the classifications and declassifications of the Clinton and Bush administrations?

The next sections describe and detail the general research design and the methods including content analysis, secondary analysis and document analysis used for this dissertation.

Research Design

This study employed a multi-method, qualitative approach rather than a mixed approach. It is necessary to define both the multi-method and the mixed method here. This study used the typology of research design of Teddlie and Tashakkori (Tashakkori & Teddlie, 2003). They report that both the multi-method and the mixed method fall into the "multiple method designs," which are defined as "research in which more than one method or more than one worldview is used." While multi-method designs consist of both multi-quantitative method and multi-qualitative method, mixed methods designs consist of both "mixed method research" and "mixed model research" (Teddlie & Tashakkori, 2003, p. 11).

The multi-method qualitative approach uses different qualitative methods, for instance, a document analysis followed by interviews. In contrast, a mixed method approach conducts the data collection associated with both qualitative and quantitative forms of data (Creswell, 2003). For instance, the mixed method approach uses a variety of methods including mail survey research, interviews, focus groups and more qualitative methods (Bertot, 1996; Neuendorf, 2002),

Both the multi-method approach and the mixed method approach provide a researcher with the opportunity to investigate from different angles. For instance, the author examines Clinton and Bush administrations' FOIA policies by employing three different methods. If the multi-method approach reveals similar findings, the research result is particularly strong.

Moreover, the multi-method approach tends not only to gain the strengths of each method but also to compensate for each method's weaknesses (Brewer & Hunter, 1989, p. 17). For instance, while mail survey has the shortcomings of being "somewhat artificial, potentially superficial, and relatively inflexible," interview survey has "generally higher return rates, and flexibility in terms of sampling and special observations" (Babbie, 2001, p. 271). Thus, if researchers use both mail survey and interview survey, they can offset the shortcomings of each method. In short, the use of multiple methods to investigate the same phenomena is likely to provide more reliable and valid empirical analysis than that of a single method (Bertot, 1996; Brewer & Hunter, 1989).

The research objectives and questions of this study were exploratory and descriptive. The author primarily focused on identification and exploration of the similarities and differences in the Clinton and Bush administrations' FOIA policies, on the impacts of the two presidents' political viewpoints on the FOIA, and on federal agencies' responses to each president's FOIA initiatives.

To answer the research questions, this study mainly used non-reactive or unobtrusive research methods including content analysis, secondary analysis and document analysis. Non-reactive or unobtrusive measures are defined as when "those being studied are not aware that they are part of a research project" (Newman, 2003, p. 308). These are not mutually exclusive methods. Content analysis can be done on documents and secondary analysis can be done on any available type of data. An unobtrusive observation is a part of non-reactive research, but this study does not use it.

Specifically, content analysis of the *FOIA Update* and the *FOIA Post* during the Clinton and Bush presidencies allowed the author to identify the presidents' political philosophies regarding the FOIA and also identify the OIP's responses to each of the two presidents' FOIA initiatives. Moreover, the author could get more concrete information about what kinds of FOIA policies were developed during the Clinton and Bush administrations by investigating the FOIA newsletter.

An examination of existing government documents allowed for two additional analyses. Specifically, they allowed for (1) an analysis of the federal agencies' overall responses to the Ashcroft and White House memoranda and (2) the comparisons and identification of the Clinton and Bush administrations' FOIA and secrecy policies and implementation. For the former study, the author used the GAO and Archive FOIA reports. The latter compared the numbers of FOIA personnel, the numbers of public requests and the total costs under the FOIA, the numbers of newly classified documents, the numbers of pages declassified, and other figures related to secrecy during the two administrations. Then the author examined the use of Exemptions 2 and 4 after the White House memorandum (OIP, 2002b) that recommended federal agencies use the exemptions to prevent disclosure of SBU information.

The author employed document analysis to examine the Clinton and Bush administrations' FOIA and related information policies. The document analysis was used to confirm and supplement the findings of the content analysis and secondary analysis. For confirmation and supplementation, the author examined not only the government documents and newspapers but also secondary sources including the writings of experts. In doing so, the author retrieved the information via not only government and civil liberties group Web sites but also from online databases including JSTOR. By using these data, the author complemented the areas that content analysis and secondary analysis did not cover.

The combination of content analysis, document analysis and secondary analysis allowed the following:

- Identification and description of Presidents Clinton's and Bush's political philosophies on the FOIA through document analysis;
- Identification and in-depth exploration of the use of the FOIA principles by the OIP through content analysis;
- Identifications and description of the Clinton and Bush administrations' FOIA and related information policies through document analysis;
- Comparisons and description of the Clinton and Bush administrations' FOIA and secrecy policies through secondary analysis;
- Analysis of federal agencies' responses to the Ashcroft and White House memoranda through secondary analysis;

- Identification of the use of Exemptions 2 and 4 after the White House memorandum through secondary analysis; and
- Confirmation and further interpretation of the findings from the data collection (content analysis and secondary analysis) through document analysis.

Content Analysis of FOIA Newsletter

Characteristics of content analysis

There are several definitions of content analysis, but this study used Neuendorf's and Krippendorf's definitions. Neuendorf defined content analysis as "a summarizing, quantitative analysis of messages that relies on the scientific method including attention to objectivity-intersubjectivity, a priori design, reliability, validity, generalizability, replicability, and hypothesis testing and is not limited as to the types of variables that may be measured or the context in which the messages are created or presented" (Neuendorf, 2002, p. 10). Krippendorf defines it as "a research technique for making replicable and valid inferences from texts (or other meaningful matter) to the contexts of their use" (Krippendorf, 2004, p. 18).

Neuman pointed out that a content analyst uses "objective and systematic counting and recording procedures to produce a quantitative description of the symbolic content in a text" (Neuman, 2003, p. 311). According to Neuman, with content analysis, a researcher can compare and analyze many texts with quantitative techniques like charts and tables, and can thus reveal aspects of the text's content that are otherwise difficult to see.

Four measurements are characteristic of text content: frequency, direction, intensity and space. A researcher may measure from one to all four characteristics (Neuman, 2003, pp. 312-313).

- *Frequency*: Frequency simply means counting whether something occurs and, if it occurs, how often.
- *Direction*: Direction is noting the direction of messages in the content along some continuum (positive or negative, supporting or opposed).
- *Intensity*: Intensity is the strength or power of a message in a direction.
- *Space*: Space is the size of a text message or the amount of space or volume allocated to it. Space in written text is measured by counting words, sentences, paragraphs or space on a page (square inches).

This study measured frequency and direction for content analysis. Specifically, the author examined whether each article of the *FOIA Update* and the *FOIA Post* contained key words or related phrases rather than counting each occurrence of key words or related phrases in the documents. For the direction, the author categorized the key words or phrases into three groups – endorsing, neutral or critical – because the same word can have different or multiple meanings depending upon the context. The author added one more category, "ambiguous," after a pilot test. The author, however, did not measure intensity and space because the content analysis of this study was designed to investigate how the Clinton and Bush administrations disseminated key FOIA principles and what policy initiatives the two administrations pursued.

There are two types of coding methods: manifest and latent coding. Manifest coding refers to "coding the visible, surface content in a text," and latent coding refers to "coding the underlying implicit meaning in the content of a text" (Neuman, 2003, p. 313). Manifest coding is highly reliable because it is easily measurable. In contrast, latent coding seems less reliable than manifest coding because it depends upon a content analyst's knowledge of language and social meaning (Babbie, 2001; Neuendorf, 2002; Neuman, 2003). This study used manifest coding for reliability.

Content analysis has several strengths. First, it is easier to re-analyze a content analysis study than a study performed using other research methods. In addition, a researcher can recode only a portion of the data rather than all of it. Second, a researcher can cover a long time frame and apply the analysis to many fields – literature, history, journalism, political science, etc. Third, content analysis is nonreactive. In other words, a researcher has no effect on the subject being studied. Finally, content analysis allows a researcher to save time and money. A content analyst does not require a large research staff or special equipment (Babbie, 2001).

Content analysis also has limitations. First, a researcher cannot examine unrecorded communications. In other words, he or she can analyze only recorded communication such as oral, written or graphic. Second, content analysis has validity and reliability concerns. Specifically, this study is intended to have policy implications; thus, validity and reliability in content analysis are especially critical.

Validity refers to "the extent to which an empirical measure adequately reflects the real meaning of the concept under consideration" (Babbie, 2001, p. 143). Valid content analysis can be done if "the finding does not depend upon or is generalized beyond the specific data, methods,

or measurements of a particular study" (Weber, 1990, p. 18). In other words, a content analysis is valid if the inferences drawn from the contents match the results of other evidence, of new observations, and so forth (Krippendorf, 2004). To achieve validity, the author employed document analysis and secondary analysis. Where the three methodological approaches have similar findings, the validity of this study is presumed to be strong.

Reliability is "the extent to which a measuring procedure yields the same results on repeated trials" (Neuendorf, 2002, p. 112). When human coders conduct content analysis, it is critical to have inter-coder reliability, a level of agreement among two or more coders. In addition, without reliability, a measure cannot provide validity (Neuendorf, 2002). To achieve reliability, at least two content analysts are required; even if a principal investigator does all of the coding, it is critical to conduct a reliability check with a second coder. In addition, the reliability coefficient should be measured for every variable and reported separately for each. It is also said that a reliability coefficient of .90 or greater would be acceptable to all cases, .80 or greater would be satisfactory in most cases, but below 80 there could be disagreement as to the study's reliability (Neuendorf, 2002).

This study used three content coders to provide inter-coder reliability. The author coded all the content first; then the second and third coder repeated the same process and the author checked reliability coefficients of every variable to determine whether these coefficients would be acceptable.

Whether to use a statistical test depends upon each research question. For instance, one research question might need a t-test to show whether two means and distributions are different enough due to different populations, but another research question might be addressed with simple frequencies of occurrence and no test of statistical significance (Neuendorf, 2002, p.168). This study used a simple frequency check for three reasons. First, this study does not involve a random sample. Second, the coverage of the two administrations is not the same. Finally, the study is descriptive and exploratory.

Content analysis on the FOIA Post and the FOIA Update

This study employed content analysis to analyze the OIP's use of FOIA principles during those two administrations. Specifically, the author conducted content analysis on the *FOIA Update* (http://www.justice.gov/oip/foi-upd.htm) and the *FOIA Post* (http://www.justice.gov/archive/oip/foiapost/mainpage.htm; http://www.justice.gov/oip/foiapost/mainpage.htm) to

determine how the Clinton and Bush administrations discussed the concepts of "informed citizenry," "open government" and "disclosure." The *FOIA Update* and the *FOIA Post* is a primary means of FOIA policy dissemination to federal agencies by the DOJ's OIP. In 2001, the *FOIA Post* replaced the *FOIA Update* that was published from 1979 to 2000.

The author chose the *FOIA Update* and the *FOIA Post* because it is one of three major federal FOIA publications, the other two being the annual *Freedom of Information case list* and the biennial *Justice Department Guide to the FOIA*. Specifically, the *FOIA Update* and the *FOIA Post* provides not only FOIA-related information but also policy guidance to all federal FOIA employees. It also serves as a vehicle for the dissemination of FOIA-related information (DOJ, 1981). According to Piotrowski (2003), more than half of her survey respondents, 53 percent, read the *FOIA Post* always or regularly and 41 percent of her respondents regarded the *FOIA Post* as one of the major tools that FOIA personnel used to become aware of changes to FOIA policy. In addition, more than 60 percent of FOIA officers were satisfied with the guidance from the *FOIA Post* (GAO, 2003a).

The *Freedom of Information case list* was excluded from this study because it is "an alphabetical compilation of judicial decisions, both published and unpublished, addressing access issues" (DOJ, 2002). The *Justice Department Guide to the FOIA* was not included because it gives practical guidance to FOIA personnel and does not have much influence on FOIA policies.

After reviewing all the articles from the *FOIA Update* and *FOIA Post*, the author excluded four types of articles from the content analysis because the articles did not have any political implications for FOIA guidance. The excluded articles include job postings, judiciary decisions, training and conference notices, and FOIA contact information. Specifically, the author did not analyze articles with titles like "FOIA/ Privacy Act position available at Federal agency," "New FOIA decisions," "FOIA Training opportunities, Fiscal Year (FY) 2005," "FOIA Guide seminar schedules," and "FOIA Administrative and Legal contacts at Federal agencies."

It is necessary that "one more individual can use the coding scheme as a measurement tool, with similar results" (Neuendorf, 2002, p. 142). For the pilot study, the second and third coders were given examples of endorsing, neutral and critical articles and a brief explanation of the coding process and criteria. The coders were two doctoral students, a male and a female, at Florida State University.

Overall, there was 75 percent correlation coefficient among the two researchers when using the percent agreement ($PA_o = A/ n$) in the pilot test. The pilot study should be done "on a randomly selected sub-sample of the total sample message pool," but this study used most of the articles as a sample because the total pool was affordable. After the pilot study, the author expanded the *FOIA Post* samples to April 2006 to add more articles including President Bush's E.O. 13392. In addition, the author added one more category, "ambiguous," because the second coder said there were a few confusing articles; sometimes he had to change his decisions. After the pilot study, the author analyzed the articles, then, the second and third content analyzers each conducted a content analysis of the *FOIA Update* and the *FOIA Post*. Finally, the author checked for consistency across coders.

To analyze the OIP's newsletter, the author chose three FOIA principles - "an informed citizenry," "open government" and "disclosure" - as key words. The notion of an informed citizenry has long been a critical component of a democratic society. Accordingly, it is not strange that its origins, along with the notion of government accountability, can be traced back to the founders of the nation. Thomas Jefferson wrote: "If we are to guard against ignorance and remain free, it is the responsibility of every American to be informed" (White, 1991). James Madison said: "… a people who mean to be their own Governors, must arm themselves with the power knowledge gives" (Katz & Plocher, 1989; McDermott, 2000).

In the 1970s and 1980s, the Supreme Court played a critical role in fair information practices by interpreting the FOIA as a basic tool of an informed citizenry (Cooper, 1986). The Supreme Court declared that "the basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed" (*FBI v. Abramson, 1982; NLRB v. Robbins Tire & Rubber Co., 1978*). Even Ralph Nader asserted that "A well informed citizenry is the lifeblood of democracy" (Nader, 1970, 1). In short, the ideal of an informed citizenry is the most critical component for democratic self-government (Katz & Plocher, 1989).

The concept of "open government" was chosen because it is what the FOIA was originally designed to strengthen. Attorney General Clark stressed in his FOIA memorandum that "the United States is an open society in which the people's right to know is cherished and guarded" (Clark, 1967). The *Freedom of Information Act Guide* also clarified that "the FOIA is an important means of maintaining an open and accountable system of government" (OIP, 2004).

Then the author added the concept of "disclosure" because it is closely related to the goals of the FOIA. Attorney General Clark maintained that "disclosure is a transcendent goal, yielding only to such compelling considerations as those provided for the exemptions of the act." He also clarified that disclosure is the general rule, not the exception (Clark, 1967). Attorney General Meese also labeled the FOIA "the new general disclosure policy" (Meese, 1987).

For the content analysis, the author also used key words that were derived from the FOIA's principles. Specifically, the author expanded keywords that had similar meanings to the principles. In addition, to ensure selection of the most appropriate articles, the author picked articles in which certain words were in the same sentence. In doing so, the author tried to achieve a more accurate analysis. For instance, the author added "enhanced public" into the category of "an informed citizenry." The author also put "making government accountable," "openness in government" and "government openness" in the "open-government" category. Finally the author considered "e-FOIA requirement" and "e-FOIA provisions" as a sub-concept of "disclosure," because e-FOIA requirements or provisions were closely related to disclosure of electronic format. The author also analyzed articles that contained "record disclosed" or "information disclosed" in the same sentence. Table 3.1 summarizes the categories used for content analysis.

Table 3.1

FOIA Principle categories for Content Analysis

Principle	Related Key Words and Phrases
An informed citizenry	Informed citizenry, well-informed citizenry, enhanced public
Open government	Government openness, openness in government, making government accountable
Disclosure	Information disclosed, record disclosed e-FOIA requirement e-FOIA provisions

The unit of content analysis of this study is an article. An individual article could be coded as including more than one of the content analysis categories. Even if an article contained a specific key word or phrase more than once, it was counted only once per article because this paper is not intended to see how many times each article in the *FOIA Update* and the *FOIA Post* contained the key terms, but rather to see whether each article in the *FOIA Update* and the *FOIA Post* covered the key concepts and how each article in the *FOIA Update* and the *FOIA Post* presented those concepts.

The author identified each article as endorsing, neutral, critical or ambiguous based upon how the article presented the concept. In most cases, the correlation between the key concepts and the key terms and phrases occurred. In few cases, even though articles did not contain key words or phrases, the author identified them as fitting into categories.

The author coded an article as endorsing the FOIA principles if it stressed the importance of the key concepts or encouraged agencies to disclose information. The author coded an article as critical if it mainly valued national security or privacy, or if it introduced methods to exempt information from disclosure. In addition, the author coded articles conveying objective research results or incidents as neutral. Finally, the author considered articles as ambiguous if they could be interpreted both in positive and negative ways. Table 3.2 summarizes the definitions of this study's coding categories.

Table 3.2

Coding Categories

Category	Underlying Concept
Endorsing	The subject of the content category is viewed in a supportive way.
Neutral	The subject of the category is mentioned but not presented in either an approving or disapproving tone.
Critical	The subject of the category is presented in a disapproving light.
Ambiguous	The subject of category is understood in two or more possible ways.

The following three examples illustrate how the categories were chosen. The first example covers the issue of the departmental policy change (OIP, 1993). The DOJ adopted a new Exemption 7(D) policy that encouraged the discretionary disclosure of confidential source information by withholding information only to the extent necessary to prevent source information. This issue was coded as an endorsement of disclosure.

The second is demonstrated by the Ashcroft memorandum (Ashcroft, 2001). The memorandum reconfirmed that a well-informed citizenry is the only way to make government accountable. But its remark on an informed citizenry was not distinguished because Ashcroft stressed the importance of protecting other values such as national security, law enforcement effectiveness, protecting sensitive business information and personal privacy. Thus, the Ashcroft memorandum was analyzed two ways; the memorandum endorsed the concept of an informed citizenry but had negative implications for open government. However, the OIP regarded this issue as one of the articles that highlighted the full implementation of the e-FOIA (OIP, 2003).

The third issue concerns the anthrax emergency after the September 11, 2001 terrorist attacks (OIP, 2001). This issue was designed to explain how the FOIA correspondence was delayed and to ask requesters to understand the mail emergency situation. This issue was reviewed but was not coded because it seemed just to transfer information on anthrax to FOIA officers and public. Appendix A shows the titles of endorsing, neutral and critical articles that were examined.

Secondary Analysis of Existing Data on FOIA Activities

Characteristics of secondary analysis

Secondary analysis refers to "a form of research in which the data collected and processed by one researcher are analyzed by another" (Babbie, 2001, p. 269). In other words, a researcher re-analyzes previously collected survey or other data that were gathered by others in secondary analysis (Neuman, 2003). Secondary analysis is considered an inexpensive method compared to large-scale data collection. Whereas primary research requires both data collection and analysis, secondary analysis involves the application of creative analytical techniques to collected data (Kiecolt & Nathan, 1985, p. 10).

According to Kiecolt and Nathan, in addition to its economic advantage, secondary analysis has a few other strengths. First, secondary analysis allows researchers to avoid additional data collection. Data archives provide a large amount of machine-readable survey data spanning many time periods and countries. Second, it may be employed for a variety of research designs, and previously used data can be combined with other types of data for more thorough investigation. For instance, secondary analysis can be used to supplement in-depth interviews. In addition, existing data can be used for policy-related projects. Third, the familiarity with and use of databases and preexisting data encourage researchers to conduct trend studies.

Regardless of its advantages, secondary analysis has recurrent validity and other concerns. According to Neuman (2003), validity problems in secondary analysis arise from three major causes. First, validity problems can occur when there are differences in theoretical definitions between a new researcher and the researcher who collected the information. Second, validity problems can arise if a researcher used a surrogate or proxy for a consult in which the researcher is interested. Finally, validity problems can occur because a researcher did not control how the information was collected. Specifically, there can be systematic errors in collecting the initial information, errors in organizing and reporting information, and errors in publishing information.

There are also a few limitations to secondary analysis. First, a researcher may use secondary data or existing statistics that are not appropriate for the research questions. Therefore, a researcher should check the units in the data, the time and place of data collection, etc. Second, if a researcher does not know the substantive topic, he or she could make incorrect assumptions or false interpretations about the result. Thus, a researcher must be well informed about the topic.

Finally, a researcher may quote a statistic in greater detail than warranted. Thus, a researcher needs to use rough figures to avoid the fallacy of misplaced concreteness (Neuman, 2002).

Secondary analysis of the GAO's and the Archive's FOIA reports

This study employed secondary analysis to compare the similarities and differences in the Clinton and Bush administrations' FOIA and secrecy policies with objective data. Although civil liberties groups and some journals argued that the Bush administration pursued a nondisclosure policy, researchers compared the Clinton and Bush administrations' FOIA and secrecy policy implementation with government data. For instance, OpenTheGovernment.org (2004) issued a report with quantitative indicators of secrecy in the Clinton and Bush administrations.

The secondary analysis conducted for this study consists of two parts: one was to analyze federal agencies' responses to the Ashcroft and White House memoranda by using the GAO's FOIA report survey (2003a) and the Archive's second FOIA report (2003a); the other was to compare the Clinton and Bush administrations' FOIA and secrecy policies and implementation by using federal agencies' annual FOIA reports and ISOO reports.

For the first secondary analysis, the author re-analyzed the survey and interview data on the Bush administration's new FOIA policy from the GAO and the Archive. The two FOIA reports had slightly different focuses and populations. The GAO's FOIA report (2003a) was designed to determine (1) to what extent, if any, DOJ guidance for agencies on FOIA implementation had changed as a result of the new policy; (2) the views of FOIA officers at 25 agencies regarding the new policy and its effects, if any; and (3) the views of FOIA officers at 25 agencies regarding available FOIA guidance.

The Archive conducted research to examine how federal agencies changed their regulations, guidance and training materials and to verify that the Ashcroft memorandum was widely disseminated. The civil liberties group, however, surveyed 35 federal agencies including 25 of the same agencies the GAO contacted. To verify the result of secondary analysis, the author employed document analysis. Thus, the author used four FOIA hearings' data from March 2005 through March 2007 to demonstrate the Bush administration's and civil liberties groups' positions on the FOIA.

Secondary analysis of annual FOIA reports and ISOO reports

The second secondary analysis used annual FOIA reports and annual ISOO reports. To analyze the Clinton and Bush administrations' FOIA and secrecy policies, the author used annual FOIA reports from 1998 through 2005 to compare general FOIA information such as the number of public requests for information under the FOIA, the total cost of the FOIA implementation, the number of FOIA employees in the federal government, and the average cost of handling a request.

Then the author compared the uses of Exemption 2 and Exemption 4, which were guided by the White House memorandum for protection of sensitive CII and voluntarily submitted information between 1998 and 2005. The comparison of Exemption 2 and Exemption 4 analyzes how federal agencies responded to the memorandum. Table 3.3 shows specific items compared by the first secondary analysis.

Table 3.3

Secondary Analysis of Annual FOIA Reports

Item	Coverage	Source
Number of public requests for information under the FOIA	1998 to 2005	FOIA reports
Total cost of FOIA implementation	1998 to 2005	FOIA reports
Number of FOIA employees in federal government	1998 to 2005	FOIA reports
Cost of FOIA litigation	1998 to 2005	FOIA reports
Use of Exemption 2	1998 to 2005	FOIA reports
Use of Exemption 4	2000 to 2005	FOIA reports

The author also employed annual ISOO reports to compare the number of classification decisions, the number of classified documents, the number of declassified pages, and the number of secret classifiers. Table 3.4 shows the specific items and coverage years compared by the second secondary analysis.

Table 3.4

Secondary Analysis of ISOO Reports

Item	Coverage	Source
Number of original classification decisions	1998 to 2005	ISOO
Number of derivative classification decisions	1998 to 2005	ISOO
Number of declassified pages	1980 to 2005	ISOO
Number of secret classifiers	1998 to 2005	ISOO

A secondary analysis is especially appropriate for this study. First, the author was able to collect and analyze data easily due to the existence of information that was already in an electronic format. For instance, DOJ's annual FOIA reports had been provided through the Internet since 1975 (http://www.justice.gov/archive/oip/annual_report/foia-ar.htm). Second, the data that the GAO and the Archive collected are appropriate for the research goals. In other

words, the goals of this research matched well with previous studies that examined the impact of the Ashcroft and White House memoranda on the FOIA implementation of federal agencies. Finally, the data was collected by government auditors and officials who had direct legal authority to collect reliable data from the federal agencies in question.

Document Analysis of FOIA Materials

Characteristics of document analysis

Although document analysis was a main research tool of classical sociologists, it was not seriously considered as a research method (Scott, 1990). For instance, Babbie (2001) and Newman (2003) explained content analysis and secondary analysis but did not introduce document analysis. Instead, they presented the historical and comparative research methods and traced the origin of historical and comparative research methods back to the classical sociologists.

The term "document analysis" is used interchangeably with "documentary analysis" in this study. It seems that "documentary research" is preferred in England. For instance, while Johnson and Reynolds named it "document analysis," McCulloch called it "documentary research."

Document analysis is a research method that uses written records. It appears that document analysis is closely related to historical research. In historical analysis, documents were divided into two groups such as primary sources and secondary sources. McCulloch (2004), however, criticized that the traditional distinction of documents between the primary and the secondary source become problematic. Even Johnson and Reynolds (2005, p. 207) categorized written records in a different way: episodic record and running record.

To include the traditional document distinction and Johnson and Reynolds's categorization, this study employed the typology of documents of Newman (2003), which has four document types: primary sources, secondary sources, running records and recollections or episodic records.

- Primary sources: documents that are gathered by people actually involved in the events. They are likely to be accurate due to firsthand, eye-witness accounts.
- Secondary sources: "documents of non-participants who use secondhand information" (Scott, 1990, p. 23).
- Running records: files or existing statistical documents maintained by an organization. They are carefully stored and easily accessed; and they are available for long periods

of time. Good examples of running records are government documents such as judicial decisions, statistics, mass media materials, biographical data, etc. (Johnson & Reynolds, 2005, p. 211).

- Episodic or recollections: "words or writings of individuals about their past lives or experiences based on memory" (Newman, 2003, p. 416). In other words, "records that are not part of an ongoing, systematic record-keeping program but are produced and preserved in a more casual, and accidental manner." The episodic record includes personal diaries, memoirs, manuscripts, correspondence, autobiographies, media of temporary existence, such as brochures, posters, pamphlets, etc. (Johnson & Reynolds, 2005, p. 207).

McCulloch (2004) asserted that while historians considered documents as main source materials, other social scientists favored interviews, questionnaires and direct observation as the basic tools of their research and viewed documents as of only marginal utility. According to Johnson and Reynolds (2005, p. 207), however, document analysis is used extensively in political science. Document analysis is one of three main research methods of collecting data, along with interviewing and observation.

It is worthy to compare document analysis with focused synthesis. Focused synthesis is a method for technical analysis in policy research. According to Majchrzak, focused synthesis might include "discussions with experts and stakeholders, congressional hearings, anecdotal stories, personal past experience of the researchers, unpublished documents, staff memoranda and published materials." Focused synthesis is similar to document analysis in using the selected review of written materials and existing research findings, but it differs from document analysis in "discussing information obtained from a variety of sources beyond published articles" (Majchrzak, 1984, p. 59).

There are four criteria for assessing the quality of document sources: authenticity, credibility, representativeness and meaning (Scott, 1990, p. 7).

- Authenticity refers to the extent to which the document is genuine and of unquestionable origin. An initial problem for the researcher is to decide whether the document is an original or a copy. Even an original might have significant errors in spelling and grammar.

- Credibility refers to the extent to which the document is free from error and distortion. The question of credibility concerns how accurate observations and records are.
- Representativeness refers to the extent to which the document is representative of the total relevant document. In other words, it concerns "the general problem of assessing the typicality, or otherwise, of evidence."
- Meaning refers to the extent to which the document is clear and comprehensible to the researcher: what is it, and what does it tell us?

The above four criteria are interdependent; thus, researchers should not regard them as distinct stages in assessing the quality of documentary sources.

Analysis of presidential and congressional documents

Political scientists tend to employ document analysis when the political phenomena cannot be measured through interviews or by direct observation (Johnson & Reynolds, 2005, p. 206). The author employed document analysis to supplement the findings of content analysis and secondary analysis. Specifically, the author used document analysis to examine Presidents Clinton's and Bush's political philosophies on the FOIA (Research Question 1); to examine the Clinton and Bush administrations' FOIA and related information policies (Research Question 3); and to investigate FOIA officers' and civil liberties groups' opinions on the Clinton and Bush administrations' FOIA policy formulation and implementation (Research Question 3).

According to Edwards and Wayne (1990), the president's orders do not tend to be specific. In those situations, the press can be a means of presidential communication. The White House uses not only newspapers including *The New York Times* and *The Washington Post*, but also television, news magazines and other publications to send messages to government officials. Although the president's response to a reporter's question is not enough to guide policy implementation, it is sufficient for the president to reveal his political preferences. In other words, if a policy issue is considered minor and the president does not show his opinions through legislation or agenda-setting, the president's unofficial viewpoints or a departmental head's spoken viewpoint on a specific policy issue can be an important administrative guideline for government employees.

The author examined all of Presidents Clinton's and Bush's public documents including interviews through the *Weekly Compilation of Presidential Documents*, but could not get their

personal records like diaries, e-mails, etc. Neither president's public documents contain the items that were reported to the presidents from the White House policy advisors.

The first document analysis was performed on the *Weekly Compilation of Presidential Documents* to examine Presidents Clinton's and Bush's personal values regarding the FOIA and to demonstrate what kinds of FOIA and related information policies were issued during the two administrations. The *Weekly Compilation of Presidential Documents* (http://www.gpoaccess.gov/wcomp/index.html) is the official publication of presidential statements, messages, remarks and other materials released by the White House Press Secretary. The publication began in 1965 and is available on *GPO Access* from 1993 to the present.

The author examined all of the contents of the *Weekly Compilation of Presidential Documents* from 1993 through May 31, 2006. The author chose "FOIA" and "freedom of information" to find articles containing FOIA issues. However, the author used "freedom of information" with quotation marks as a key phrase because, if there were no quotation marks, some documents that do not reference FOIA issues would be searched.

In addition, the author searched for the same key terms used in previous searches: "informed citizenry," "open government" and "disclosure." The author searched for "open-government" to examine what kinds of open-government policies were initiated by the Clinton and Bush administrations. The author used "information disclosure" as a key term because using only "disclosure" retrieved too many unrelated documents.

This study also chose two prestigious newspapers and materials to supplement the findings of the *Weekly Compilations of Presidential Documents* for the Research Question 1. The author searched *The New York Times* and *The Washington Post* from 1993 to 2006 to discover the two presidents' published political philosophies on the FOIA.

Further, the author used the documents of the OMB and of the DOJ, which had been developed to guide FOIA policy within the executive branch. Specifically, the author analyzed OMB Circulars and other documents available on the White House Web site (http://www.whitehouse.gov/omb), plus documents from the Office of the Attorney General, including policy statements, staff manuals and instructions to staff (http://www.justice.gov/ag/readingroom/ag_foia1.htm) to review FOIA and other related information policies.

Moreover, the author investigated transcripts of FOIA hearings during the Clinton and Bush administrations. There were three FOIA hearings in the Clinton administration and four FOIA hearings in the Bush administration as of June 1, 2006. The author used GPO Access and the Web site of the Federation of American Scientists (FAS: http://www.fas.org) to get most of documents of FOIA hearings. Specifically, the FAS provides FOIA-related documents in the 'Congressional Documents on Secrecy' section under the 'Project on Government Secrecy.'

Finally, the author utilized "the American Presidency Project" managed by the University of California Santa Barbara (http://www.presidency.ucsb.edu). The Web site provides many useful presidential documents including State of the Union messages, inaugural addresses, executive orders, signing statements and party platforms in its collection of papers of the presidents.

Summary

As previously stated, this exploratory and descriptive study's main objectives were to:

- Examine the two presidents' political philosophies on the FOIA;
- Explore how the two administrations stressed the three main FOIA principles;
- Compare and identify the Clinton and Bush administrations' overall FOIA and secrecy policies; and
- Explore how federal agencies responded to presidential FOIA initiatives.

For Research Question 1, the author used document analysis to examine the two presidents' political philosophies on the FOIA. Then, the author retrieved major newspapers including *The New York Times* and *The Washington Post* from 1993 to 2006 by using Lexis/Nexis to examine Presidents Clinton's and Bush's political philosophies on the FOIA.

For Research Question 2, the author employed content analysis. For the content analysis, the researcher chose the *FOIA Update* and the *FOIA Post* and analyzed them from the spring of 1993 through May 2006. Then a second and third analyzer re-tested the articles. After the pilot study, the author added one more category, "ambiguous," to define articles with the possibility of interpretation in two or more ways.

For Research Question 3, the author used document analysis. Through the document analysis, the author reviewed the two administrations' general FOIA and secrecy policies. To do so, the author examined the FOIA and related information policies of each president, the OMB,

and each attorney general by searching governmental Web sites including the White House, Attorney General, OMB, FOIA hearings and other resources.

For Research Question 4, the author employed secondary analysis and document analysis. The author used the reports of the GAO and the Archive on the Ashcroft memorandum, federal agencies' annual FOIA reports, and the ISOO's annual reports for the secondary analysis. The reasons for the secondary analysis were to compare the Clinton and Bush administrations' FOIA and secrecy policies and to examine how the two presidents' FOIA initiatives affected the two administrations' FOIA implementation. Document analysis was used to supplement the secondary analysis.

In summary, to achieve these research objectives, this study used quantitative and qualitative data collection and multi-qualitative data analysis techniques. The primary methods of data collection were content analysis, secondary analysis and document analysis. The dissertation employed content analysis and document analysis to analyze Presidents Clinton's and Bush's philosophies on the FOIA and to compare the two administrations' FOIA and secrecy policies. This study then used secondary analysis to compare federal agencies' responses to the presidents' FOIA initiatives in a quantitative way. Table 3.5 shows the relationship of the research questions to the data collection instruments used.

Table 3.5

Relationship of Research Questions to Data Collection Instruments Used

Research Questions	Content Analysis	Secondary Analysis			Document Analysis	
	FOIA Update/ Post	GAO/ the Archive Reports	FOIA Annual Reports	ISSO Annual Reports	Weekly Compilation of Presidential Documents	FOIA Hearings
1. What are Presidents Bill Clinton and George W. Bush's political philosophies on the FOIA?	Yes	x	x	x	Yes	Yes
2. How often had the principles of an informed citizenry, open government and disclosure been presented in the *FOIA Update* and the *FOIA Post* during the Bill Clinton and George W. Bush administrations?	Yes	x	x	x	x	X
3. What kinds of FOIA policies and related information policies were issued during the two administrations?	Yes	x	x	x	Yes	Yes
4. How did federal agencies respond to the two presidents' FOIA initiatives?	x	Yes	Yes	Yes	x	Yes

CHAPTER 4

FINDINGS

Introduction

Chapter 4 reports on the data analyses, based upon the procedures outlined in Chapter 3. This research was mainly to analyze the president's influence on FOIA policies and to examine the similarities and differences between the Clinton and George W. Bush administrations' FOIA policies. Specifically, it sought to answer the following research questions:

1 What are Presidents Clinton's and Bush's political philosophies on the FOIA?

2 How often were the principles of an informed citizenry, open government and disclosure presented in the *FOIA Update* and the *FOIA Post* during the Clinton and Bush administrations?

3 What kinds of FOIA policies and related information policies were issued during the two administrations?

4 How did federal agencies respond to the two presidents' FOIA initiatives?

4-1 What were federal agencies' overall responses to Presidents Clinton's and Bush's FOIA initiatives?

4-2 What were federal agencies' responses to the Ashcroft memorandum in the Bush administration?

4-3 How did federal agencies of the Bush administration use Exemptions 2 and 4 to restrict government information disclosure after the Card memorandum?

4-4 What are the trends in the classifications and declassifications of the Clinton and Bush administrations?

The subsequent sections of this chapter are organized in the following way: (1) general characteristics of the findings; (2) findings related to research questions 1 through 4; and (3) a chapter summary and conclusion.

General Characteristics of the Findings

This research mainly used three methods – content analysis, secondary analysis and document analysis – to review the characteristics of the Clinton and Bush administrations' FOIA policies and to examine how Presidents Clinton's and Bush's FOIA philosophies affected the two administrations' FOIA policy formulation and implementation. Although content analysis

was a basic research method of this study, all these three methods were designed to recheck the findings and supplement each other's responses to the research questions.

The study examined the *FOIA Update* and the *FOIA Post* for content analysis, investigating one issue: the Clinton and Bush administrations' approaches to FOIA principles. Specifically, the author reviewed the *FOIA Update* and the *FOIA Post* from the spring of 1993 to May 2006 and coded the articles that contained any of the three FOIA principles to examine to what degree the OIP leaned toward the presidents' philosophies on FOIA.

The secondary analysis is designed to obtain quantitative data about the FOIA, and also about the differences in information policies between the Clinton and Bush administrations. It also investigated the Bush administration's response to the president's FOIA initiatives. To compare the two administrations' FOIA policies, the author used annual FOIA reports of federal agencies from 1998 to 2005 and annual reports of the ISOO. To analyze federal agencies' responses to President Bush's FOIA initiatives, the author used the 2003 FOIA report of the GAO and the 2003 report of the Archive that surveyed federal agencies' responses to the Ashcroft and Card memoranda.

Finally, documentary research was used to acquire additional depth to answers to the research questions and to obtain diverse information that is hard to get from the other methods. The author cited the FOIA hearing documents from 1992 through 2007, the *Weekly Compilation of Presidential Documents*, and other documentary resources.

Research Question 1: The presidents' political philosophies on the FOIA

Introduction

Research Question 1 examines Presidents Clinton's and Bush's political philosophies on the FOIA. According to the principal agent theory, a president is a major principal in politics, as is the Congress. In other words, federal agencies' policy decisions tend to support the preferences of elected officials. Thus, it is reasonable to assume that a president's comments and statements affect the actions and decisions of the executive branch and that political appointees who oversee agencies are sensitive to their president's goals. Using the principal agent theory as the theoretical framework, this study investigated the Clinton and Bush administrations' FOIA policies and the presidents' influences on those policies.

To examine Presidents Clinton's and Bush's political philosophies on the FOIA, the author used "Freedom of Information" and "FOIA" as keywords in the *Weekly Compilation of*

Presidential Documents database. The author also investigated President Clinton's political philosophies on the FOIA when he served as the governor of Arkansas to explore Clinton's position on the FOIA more thoroughly. The author contacted the William J. Clinton Presidential Library and Museum (http://www.clintonlibrary.gov), which opened in November 2004.

According to the *Weekly Compilation of Presidential Documents* database, President Clinton used "Freedom of Information" or "FOIA" nine times during his tenure. However, he did not comment on the FOIA during his last three years. Specifically, President Clinton issued four E.O.s regarding the FOIA; two memoranda, two statements and one remark. In contrast, President George W. Bush had commented on "Freedom of Information" or "FOIA" eight times as of June 1, 2006. Specifically, he issued three E.O.s, one memorandum and four comments concerning the FOIA.

Political position of President Clinton on FOIA

Governor Clinton and FOIA

The researcher emailed the Clinton Presidential Library on October 7, 2005 to obtain official records of interviews or documents concerning the FOIA that President Clinton had generated during his tenure as Governor of Arkansas. Adam Bergfeld, an Archives Technician of the Clinton Presidential Library, replied on October 11 and introduced Bob Razor, a curator of the Clinton State Government Project at the Central Arkansas Library System.

In his email response, the curator said that there were no gubernatorial documents related to the FOIA except for "a short typed statement that appears to have been an introduction that then Attorney General Bill Clinton wrote." He noted, however, that it was not an insightful or in-depth statement on the subject. In the statement, he added, Attorney General Clinton had thanked specific staff members for their work on the document and made a few generic remarks about what a good thing Freedom of Information was.

According to the curator, there was nothing on the state level – at least in Arkansas – similar to the *Weekly Compilation of Presidential Documents.*

E.O.s regarding the FOIA

The Clinton administration issued four E.O.s concerning the FOIA during his tenure.

- E.O. 12937: Declassification of selected records within the National Archives of the United States;
- E.O. 12958: Classified national security information;

- E.O. 12951: Release of imagery acquired by the space-based National Intelligence Reconnaissance System; and
- E.O. 12968: Access to classified information.

In November 1994, President Clinton issued E.O. 12937 to disclose declassified information within the NARA. Clinton ordered the Archivist of the United States to make declassified documents available for public research in 30 days unless specific information within such records fell into any FOIA exemptions other than the exemption pertaining to national security information.

In February 1995, President Clinton issued E.O. 12951 to "restore certain scientifically or environmentally useful imagery acquired by space-based national intelligence reconnaissance systems." But President Clinton clarified that the release should be consistent with the interest of national defense and foreign policy.

In April 1995, President Clinton issued E.O. 12958 to reform "a uniform system for classifying, safeguarding, and declassifying national security information." In the order, Clinton recognized the importance of "an informed citizenry" and "the free flow of information" along with "protecting national security information." However, he made it clear that the administration valued an "open government" by revealing his perception that national security threats confronting the United States were dramatically reduced.

In August 1995, President Clinton issued E.O. 12968 to establish " a uniform Federal personnel security program" for employees who would be assigned to handle classified information. In that E.O., President Clinton said that unauthorized disclosure of national security information could cause "irreparable damage to the national security and loss of human life."

When President Clinton visited the CIA on January 4, 1994, he stated the end of the Cold War increased America's security. On February 8, 1995, while announcing the nomination of Michael Carns to be the Director of the CIA, President Clinton said again that the Cold War was over but added that many new dangers had taken its place, including terrorists. On July 14, 1995, President Clinton revisited the CIA and said that it was hard to cut the intelligence budget despite the end of the Cold War.

In summary, President Clinton seemed to recognize the value of both open government and national security. The four orders show that Clinton considered that the Cold War was over,

thus he initiated the release of government information previously seen as having national security considerations.

Memoranda and statements regarding the FOIA

President Clinton issued two memoranda and two statements regarding the FOIA during his tenure. In his FOIA memorandum of 1993, Clinton asserted that the FOIA is "a vital part of the participatory system of government," and it has played "a unique role in strengthening our democratic form of government." Moreover, he valued "informed citizenry" and "openness in government" as fundamental principles of the FOIA.

In February 1994, Clinton issued a memorandum on "*Federal actions to address environmental justice in minority populations and low income populations*." In the memorandum, Clinton encouraged federal agencies to make government information accessible to minority and low-income populations under the FOIA, *the Government in the Sunshine Act* (P.L. 94-409), and *the Emergency Planning and Community Right-to-Know Act* (EPCRA) as a part (Title III) of *the Superfund Amendments and Reauthorization Act of 1986* (SARA, P.L. 99-499).

In October 1996, President Clinton issued a FOIA statement related to the *Electronic Freedom of Information Act* (e-FOIA). In that statement, Clinton confirmed that the FOIA was "the first law to establish an effective legal right of access to government information." He stressed that the FOIA had supported democratic principles of openness and accountability for 30 years. Clinton also showed his understanding of FOIA employees' difficulties with government downsizing, increasing numbers of FOIA requests for classified information, proprietary interest and a privacy concern, and his hopes that the e-FOIA would be a tool to solve those problems.

In October 1996, President Clinton issued a statement on "*Signing war crimes document disclosure legislation*." In the statement, Clinton said that his administration devoted all efforts to "the widest possible disclosure of government documents." He also stated that "our democratic principles require that the American people be informed of the activities of their government." He asserted that the goal of the *War Crimes Disclosure Act* is to use lessons from any remaining secrets about the Holocaust to help prevent such a catastrophe from ever happening again. Clinton, however, stressed the balance of interests between "disclosing government records" and "national security and law enforcement interests."

Remarks on the FOIA

President Clinton had few occasions to display his political philosophies on the FOIA through his remarks during his presidency. In April 1994, when President Clinton was asked about access to electronic government information via the FOIA, he said that the press and the president were in accord and that the administration was moving forward to opening more records.

The author found one interview done in Argentina in 1997. The article did not contain President Clinton's political philosophies on the FOIA, although it had "FOIA" as the section title.

Political philosophies of President Bush on the FOIA

E.O.s regarding the FOIA

President Bush issued three E.O.s concerning the FOIA from the time he took office in 2001 through June 1, 2006.

- E.O. 13233: Further implementation of the Presidential Records Act;
- E.O. 13292: Further Amendment to E.O. 12958, as amended, classified national security information; and
- E.O. 13392: Improving agency disclosure of information.

President Bush's non-disclosure polices were displayed by the issuances of directives and spurred by the September 11, 2001 terrorist attacks. On September 11, 2001 in his address to the nation about the terrorist attacks, President Bush expressed his resolve to win the war against terrorism. On September 21, 2001, 10 days later, President Bush said in his address to Congress on the terrorist attacks that America met violence and faced "new and sudden challenges" (George W. Bush, September 21, 2001, Address to Congress).

In November 2001, President Bush issued E.O. 13233, "*Further implementation of the Presidential Records Act*." He insisted that the E.O. was to establish policies and procedures implementing the *Presidential Records Act* with respect to constitutionally based privileges. Specifically, he emphasized the privileges of Presidential records "reflecting military, diplomatic, or national security secrets, Presidential communications, legal advice, legal work, or the deliberative process of the President and the President's advisors." In the Order, the President cited *Nixon v. Administrator of General Services* (423 U.S. 425, 1977), asserting "the Supreme

Court set forth for constitutional basis for the President's privileges for confidential communications."

In March 2003, President Bush issued E.O. 13292, "*Further amendment to Executive Order 12958, as amended, classified national security information*," to prescribe "a uniform system for classifying, safeguarding, and declassifying national security information, including information relating to defense against transnational terrorism." In the E.O., although Bush admitted that an informed citizenry and a free flow of information were democratic principles, he argued that national security information needed to remain in confidence to protect citizens, democratic institutions, homeland security, and interactions with foreign nations. In sum, he stressed that protecting national security information should be a priority.

On December 14, 2005, President Bush issued E.O. 13392, "*Improving Agency Disclosure Information*." At first, Bush noted the significance of an informed citizenry's participation in public life and that the FOIA had been an important tool to provide government information to the public. Then he said he valued "a citizen centered" and "results-oriented" approach in FOIA processing (Sec. 1). Pursuant to this E.O., each federal agency was required to designate a "Chief FOIA Officer" at the Assistant Secretary or equivalent level to control overall FOIA activities. Further, each agency was required to review its policies and practices of FOIA operations and to submit a report to the Attorney General and OMB Director by June 14, 2006. Each agency was also required to develop an agency-specific plan for reducing backlogs, increasing public awareness of FOIA processing, and so forth. Then each agency should report its development and implementation of the plan through the annual FOIA report (OIP, 2006).

President George W. Bush's remarks on the FOIA

President Bush commented on the FOIA two times during his presidency, both at ASNE conventions. On April 5, 2001, before the infamous September 11 of that same year, when the president was asked to give the fundamental message of his administration on access to government information, he made it clear that "there needs to be balance when it comes to freedom of information laws," stressing the importance of national security and personal privacy. He said that the Bush administration would "cooperate fully with freedom of information requests, if it does not jeopardize national security, for example." Then he added that he did not email any more because of concern for freedom of information laws and his privacy (NARA, 2001).

On April 15, 2005, when asked about the FOIA at the ASNE convention, he said that he had believed in open government, but that there needed to be a balance. He maintained that he did not want people reading his personal notes, and there had to be a certain sense of privacy. President Bush also put national security as one part of the balance, arguing that America was still at war (NARA, 2005). In short, President Bush appeared to give mixed messages on the FOIA to his administration (Archive, 2006). Although he said that he valued open government and free press, he showed his concern for national security and privacy when disclosing information.

Summary

This study found that both Presidents Clinton and Bush acknowledged the importance of FOIA principles in addition to the significance of national security. There were, however, different nuances and different information policies within their positions. President Clinton gave more value to open government and he stressed the importance of "disclosing government records" whenever he mentioned the FOIA. Further, President Clinton insisted that minority and low-income populations be cared for in terms of the accessibility of government information.

President Bush gave more value to national security, personal privacy and the efficiency of law enforcement. President Bush showed his concern for private emails in both ASNE responses. In 2005, he insisted that national security should be considered because America was at war but, even before September 11, 2001, he had stressed national security at the ASNE meeting in April 2001. Thus, it seems reasonable to say that the September 11 terrorist attacks gave a reason to strengthen the Bush administration's restricted information policy.

The data also showed that Presidents Clinton and Bush confronted different political situations in terms of war. President Clinton deemed that the Cold War was over and declassified a great amount of government information. But President Bush proclaimed the war against terrorism and tried to hide government information in the name of national security and to restore the president's privileges.

Research Question 2

Research Question 2 analyzes how often the Clinton and Bush administrations presented three basic FOIA principles of an informed citizenry, open government and disclosure through the *FOIA Update* and the *FOIA Post*. The objective of the question was to compare the trends of the two administrations' FOIA policy guidance.

Findings

The author analyzed 46.3 percent of the articles from the spring of 1993 through May, 2006. Specifically, the author analyzed 61.9 percent of the articles in the *FOIA Update* and 34.7 percent of the articles in the *FOIA Post* in the content analysis. The author examined a higher percentage of articles published during the Clinton administration because each issue of the *FOIA Update* contained more items concerning FOIA guidance as compared with the new FOIA decisions and available job notices in the *FOIA Post.*

Table 4.1 displays the numbers of total and tested articles from the *FOIA Update* and the *FOIA Post.*

Table 4.1

Content Analysis of FOIA Update & FOIA Post: 1993-2006

Period	Years	# of total articles	# of tested articles	Informed Citizenry	Open Government	Disclosure
Clinton (1993-2000)	1993	18	13	2	3	5
	1994	19	14	-	1	2
	1995	23	15	-	-	1
	1996	16	9	2	2	-
	1997	17	8	-	1	1
	1998	17	10	1	1	3
	1999	7	5	2	2	2
	2000	4	1	-	-	-
Subtotal		121	75 (61.9%)	7	10	14
Bush (2001-2006)	2001	23	12	1	1	2
	2002	32	15	-	2	2
	2003	44	11	-	-	3
	2004	35	12	-	-	1
	2005	24	5	-	-	-
	2006	6	2	-	-	2
Subtotal		164	57(34.7%)	1	3	10
Total		285	132(46.3%)	8	13	24

In general, as Table 20 shows, the Clinton administration issued the *FOIA Update* less often than the Bush administration issued the *FOIA Post*. While the Clinton administration produced 121 articles in eight years, the Bush administration produced 164 articles in five and a half years. The Clinton administration, however, released more variety in the kinds of articles than did the Bush administration. The author reviewed 75 articles from the Clinton administration, 62 percent of the total. The researcher also reviewed 57 articles from the Bush administration, 35 percent. Overall, the author analyzed 101 articles out of the 285 available, 46.3 percent of the total.

The author chose 32 articles that included words or phrases about the FOIA principles. While 11 articles were interpreted to have two or three FOIA principles, 21 articles were considered to have only one FOIA principle. That means the coders had to analyze 45 times with 32 articles.

About 20 articles were not included, even though they contained the key words or phrases of the FOIA principles being studied. Most of them contained the concept of "disclosure." The author excluded the articles because the concept seemed to be used without any political implication. Thus, for more accurate research, the content analysis needs to add all of the articles that have key words or phrases of FOIA principles. Appendix A shows the list of articles that were used for the content analysis.

Table 4.2 also shows that the Clinton administration mentioned the three FOIA principles more frequently than the Bush administration did. Specifically, the Clinton administration used the concept of "informed citizenry" seven times, "open government" 10 times, and "disclosure" 14 times. The Bush administration rarely mentioned "informed citizenry" or "open government," but talked about "disclosure" 10 times. Both administrations used the concept of "disclosure" more frequently than "informed citizenry" or "open government."

Table 21 shows that an informed citizenry, open government and disclosure were addressed often during the two administrations. Comparatively, the three principles were not only mentioned but also endorsed more often in the Clinton administration than in the Bush administration during the time studied.

Table 4.2

Analysis of FOIA Principles on FOIA Update & FOIA Post

Years		Informed Citizenry				Open Government				Disclosure			
		E	N	C	A	E	N	C	A	E	N	C	A
Clinton (1993-2000)	First Analyzer	7	-	-	-	10	-	-	-	14	-	-	-
	Second Analyzer	7	-	-	-	10	-	-	-	13	1	-	-
	Third Analyzer	7	-	-	-	10	-	-	-	14	-	-	-
Bush (2001-2006)	First Analyzer	1	-	-	-	-	1	2	-	4	3	3	
	Second Analyzer	1	-	-		1	-	2	-	5		2	3
	Third Analyzer	1	-	-		2	1	-	-	7		3	

Note. E: Endorsing N: Neutral C: Critical A: Ambiguous

The correlation rate of the whole 45 articles among the three researchers is 77 percent, but the correlation rates between each pair of two researchers are higher than the rate of the three researchers. While the rate between the author and the second analyzer is 88 percent, the rate between the author and the third analyzer, and between the second and third analyzers are 84 percent each. Considering that the second analyzer used "ambiguous" three times, the correlation rate may be a little bit higher.

In summary, the Clinton administration repeatedly put emphasis on the principles of an informed citizenry, open government and disclosure, and tried to increase the amount of available government information based upon those principles. Furthermore, there are no negative articles on the three FOIA principles from the Clinton administration. In contrast, the Bush administration did not show as much interest in the three principles as the Clinton administration did. Although the Bush administration acknowledged an informed citizenry as a basic FOIA principle, it displayed mixed responses to open government and disclosure.

Analysis

The previous section discussed how often the three FOIA principles were mentioned in the FOIA newsletters, how the articles were chosen by the author, and how they were coded by the researchers. This section examines directions of the articles. In other words, it analyzed the differences between how the three concepts were used during the Clinton and Bush administrations.

An informed citizenry

The three researchers had a 100 percent correlation rate for "an informed citizenry." In other words, the two administrations mentioned "an informed citizenry" positively all the time. The concept of an informed citizenry was endorsed seven times in the Clinton administration and once in the Bush administration. In addition, the three researchers agreed that the Clinton and Bush administrations recognized the concept of an informed citizenry as an important FOIA principle. But, whereas the Clinton administration consistently endorsed this principle, the Bush administration did not seem to place much value on it.

An informed citizenry is a principle of the Clinton administration's FOIA policies. The Clinton administration had the belief that the FOIA was based upon the fundamental principle of an informed citizenry, and that the FOIA was crucial to the openness and accountability of government performance. President Clinton stated that an informed citizenry was vital to the democratic process in his FOIA memorandum in 1993, and top-level officers of the Department of Justice (DOJ) emphasized the concept during his presidency.

In the 1993 memorandum, President Clinton called the FOIA "a vital part of the participatory system of government," and stressed the importance of enhancing its effectiveness. He emphasized that "the statute was enacted based upon the fundamental principle that an informed citizenry is essential to the democratic process and that the more the American people know about their government the better they will be governed."

OIP Co-Director Daniel J. Metcalfe commented on an informed citizenry at the National Press Club's annual celebration of FOIA in 1993. He said, "Our system of government works best when its citizens are as informed as possible about government functioning."

On April 17, 1996, Attorney General Janet Reno reconfirmed the concept of an informed citizenry, saying that American citizens were their own governors and should be armed with knowledge. In the fall of 1999, Reno re-stressed the importance of the FOIA and an informed

citizenry. She said at the DOJ's major FOIA training session, "FOIA is at the heart of open government and democracy cannot be effective unless its people understand its process."

An informed citizenry was also endorsed in the Bush administration, but only once in the documents reviewed, and it was never mentioned again. Instead, that administration pursued a series of non-disclosure policy initiatives after his inauguration.

On October 12, 2001, Attorney General John Ashcroft mentioned an informed citizenry in his FOIA memorandum. "It is only through a well-informed citizenry that the leaders of our nation remain accountable to the governed and the American people can be assured that neither fraud nor government waste is concealed." The memorandum, however, more strongly stressed the importance of other fundamental values such as "safeguarding national security, enhancing the effectiveness of law enforcement agencies, protecting sensitive business information, and preserving personal privacy."

In short, an informed citizenry, which was noted in the Clinton memorandum on the FOIA in 1993, was continuously emphasized by high-level FOIA officers including President Clinton and Attorney General Reno during the Clinton administration. During the Bush administration, however, it was commented on once but was not highlighted in the Ashcroft memorandum in 2001 and other FOIA documents. The Bush administration's memorandum instead emphasized protecting information in regard to national security, law enforcement effectiveness, and business, internal personnel rules, and personal privacy.

Open government

The three researchers had a 76.9 percent correlation rate for "open government." Specifically, the correlation rate for "open government" between the first and second analyzers was 92.3 percent, which means the researchers had one disagreement. The correlation rate between the author and third analyzer was 84.6 percent, which means the researchers had two disagreements. Finally, the second and third analyzers had a 76.9 percent correlation rate, which means there were three disagreements about the use of "open government."

All three analyzers, however, noted that "open government" was endorsed 10 times and never criticized in the Clinton administration, which means they agreed unanimously that the Clinton administration supported the concept of "open government."

The Clinton administration's initiative in open government was sustained through his tenure. President Clinton emphasized open government in his FOIA memorandum in 1993. He

said, "openness in government is essential to accountability and the Act has become an integral part of that process." He also urged agencies to provide information "in a customer-friendly manner" and to remove "unnecessary bureaucratic hurdles."

Attorney General Reno reconfirmed President Clinton's principle of open government. She stated, "… 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." She also made clear that the Department stood prepared to assist all Federal agencies in becoming "more open, more responsive, and more accountable."

On March, 16, 1994, Attorney General Reno gave a speech at the National Press Club on the subject of openness in government. She mentioned that she and President Clinton shared "a broad philosophy of open government" and emphasized that the Department's goal was to create meaningful and lasting change in FOIA. On April, 17, 1996, she also gave an address on open government at the annual convention of the ASNE.

In 1996, President Clinton again stressed the principle of open government in his statement on the e-FOIA. He explained how his administration had made government information more open and said the country was founded on the principles of openness and accountability.

In May, 1997, Reno issued a FOIA memorandum, reminding all federal agencies that openness in government was the fundamental principle of the Clinton administration. She urged them to "place a sustained priority on FOIA administration responsibilities." She also emphasized "customer service attitudes," "a presumption of disclosure," and "a discretionary disclosure."

In the fall of 1998, Reno gave a keynote address at the DOJ's major FOIA training session, showing strong support for the administration of the FOIA throughout the Executive Branch. She thanked more than 600 FOIA personnel and encouraged them. Further, she stressed that "FOIA is at the heart of open government and democracy cannot be effective unless its people understand processes."

In the 1999 FOIA memorandum, Attorney General Reno reiterated what President Clinton stressed in his FOIA memorandum in 1993. She also said the Clinton administration put any possible resources to promote openness in government and to respond to FOIA requests in a

customer-friendly manner. Moreover, she emphasized the importance of discretionary disclosure and cooperation with IRM personnel.

The three researchers, however, showed different interpretations of the articles on "open government" in the Bush administration. The correlation rate for "open government" between the first and second analyzers was 66.6 percent, which means the researchers had two agreements and one disagreement. The correlation rate between the author and third analyzer was 33.3 percent, which means the researchers had one agreement and two disagreements. The second and third analyzers also had a 33.3 percent correlation rate, one agreement and two disagreements. Specifically, the author called the articles that mentioned the concept of "open government" neutral once and critical twice. The second analyzer regarded the articles as endorsing one time and critical two times. The third analyzer considered them as endorsing twice and neutral once.

While the author and the second analyzer regarded "New Attorney General FOIA memorandum issued" and "Guidance on Homeland Security information issued" as critical, the third analyzer considered them endorsing. The author thought the Ashcroft memorandum set a new "sound legal basis" standard that replaced the "foreseeable harm" standard. Under the new standard, the DOJ was told to defend agencies' decisions if there were factual and legal grounds when agencies withheld requested information. The third analyzer, however, thought the article "New Attorney General FOIA memorandum issued" was endorsing because the article said, "The Ashcroft Memorandum emphasizes the Administration's commitment to full compliance with the FOIA as an important means of maintaining an open and accountable system of government."

Two researchers considered the Card memorandum in March, 2002 as critical and one researcher interpreted it as endorsing. The author thought the White House memorandum was designed to urge agencies to safeguard government records related to WMD and other important information related to national security. The Chief of Staff pushed agencies to "review their records management procedure and their holding of documents based on the attached guidance," and "report the status of their review to the office" by June 19, 2002. The Archive report argued that the Card memorandum affected the agencies' FOIA practice more severely than the Ashcroft memorandum had.

While the author and the third analyzer regarded the article "OIP gives FOIA implementation advice to other nations" as neutral, the second analyzer considered it endorsing. The Bush administration's implementation-level FOIA officers seemed to recognize that sharing the concept of open government was fundamental to disclosure of government information. For instance, the OIP recommended to other nations that the concept of open government should be explicitly incorporated in implementation memoranda and training materials.

During the Bush administration, however, top-level officers did not make any official policy statements regarding open government. There was no presidential statement or Attorney General memorandum that commented on open government. Instead, the Ashcroft memorandum encouraged agencies to protect institutional, commercial and personal privacy and replaced the "foreseeable harm" standard with a new "sound legal basis" standard. Moreover, the Card memorandum urged agencies to protect information about "weapons of mass destruction" and "sensitive but unclassified information," and to report the review of their record management process based upon the new guidance. In short, the Clinton administration set an open government initiative as a major goal, but the Bush administration showed unclear and dual positions on the concept and seemed to be more interested in information security.

Disclosure

Disclosure appears to be the most controversial concept among the three FOIA principles. The correlation rate for "disclosure" among the three researchers was 70.8 percent, which is the lowest correlation rate in this study. The correlation rate for "disclosure" articles between the author and second analyzer was 75 percent; the rate for the author and third analyzer was 79.1 percent; and the second and third analyzers' correlation rate was 75 percent.

They showed, however, almost unanimous agreement on the Clinton administration's "disclosure" articles. Two researchers noted that "disclosure" was endorsed 14 times in the Clinton administration, and one researcher interpreted "disclosure" as endorsed 13 times with one neutral opinion. The Clinton administration supported disclosure clearly and consistently. The only disagreement between the researchers was regarding the Administrative corner that showed how to reach agreements between requesters and agencies. The author and the third analyzer considered "Administrative corner" as endorsing, but the second analyzer regarded it as neutral.

Stressing the need for an informed citizenry and for open government naturally brings out the need for disclosure of governmental information. After the Clinton and Reno memoranda, the administration continued to emphasize the importance of disclosure of government information as much as it could. This policy was evidenced by the DOJ changing FOIA regulations to make government information more easily disclosed and also introducing examples of good FOIA practices.

The Clinton memorandum treated the American people as customers and encouraged agencies to develop a user-friendly manner and to take on the responsibility for information distribution on their own initiatives. The Reno memorandum endorsed the "presumption of disclosure" and encouraged agencies to practice "discretionary disclosures" whenever possible under the Act. She also suggested a "foreseeable harm" standard to ease the way toward more FOIA disclosures.

A week after the Reno memorandum, the DOJ adopted the new Exemption 7(D) policy that "encouraged the discretionary disclosure of confidential source information whenever possible under the FOIA." Exemption 7(D) routinely withheld all such sources, but it was required to withhold information only to prevent source identification.

In the summer of 1994, Attorney General Reno designated a FOIA and Privacy Act (PA) project as one of the DOJ's laboratories under the Vice President's National Performance Review (NPR) to analyze current processing procedures, create a more efficient response to requesters, and facilitate the sharing of information, technology and systems. NPR was tasked with treating FOIA requesters as customers and empowering FOIA employees to make decisions within the implementation process.

On August 28, 1995, Reno issued a directive for the DOJ's work performance standards for FOIA-related work. Under this new rule, all of the DOJ's FOIA personnel and those working with FOIA even for short periods were provided with the same standards as part of their evaluation process. The new standards were designed to "include an appropriate element for compliance with FOIA requirement."

The administration's effort to disclose government information was revealed in some issues of the *FOIA Update*. The DOJ had encouraged agencies to disclose as much government information as possible. For instance, the *FOIA Update* created a new feature, "Administrative corner," to highlight an example of FOIA administration cases. In addition, the *FOIA Update*

inaugurated a new corner "web site watch" to help agencies to develop their Web sites. OIP also provided information about how a document imaging technology was used for efficient and cost-effective FOIA operations.

During the Bush administration, there were 10 articles dealing with "disclosure." The author regarded four articles as endorsing, three articles as neutral, and three articles as critical. The second analyzer regarded five articles as endorsing, two articles as critical, and three articles as ambiguous. The third analyzer considered seven articles as endorsing, and three articles as critical.

All three analyzers regarded four of the articles as endorsing. The researchers, however, had different interpretations on the other six articles. Four of them were recognized totally differently by the analyzers. Among those four articles, the second analyzer used the ambiguous category on three articles. The last two articles were regarded as critical or endorsing by two researchers.

The first article considered as endorsing demonstrated agencies' obligations to continue e-FOIA implementation. The article emphasized that federal agencies had to make all records created by an agency since November 1, 1996 available to the public in electronic form and also had to maintain indexes of such records. The second endorsing article, issued just two months after Bush's inauguration, urged agencies to make effective use of the GAO's recommendations. The third endorsing article, in 2003, promoted the full and proper implementation of the e-FOIA's provisions by providing electronic compilation of the e-FOIA implementation guidance. The last endorsing article provided guidance regarding E.O. 13392 implementation. The article assisted federal agencies to address a wide range of points and considerations that were needed when they implemented E.O. 13392. However, that guidance article was not published until four months after the issuance of E.O. 13392, which seemed late compared to the Clinton administration's immediate *FOIA Update* responses to the Clinton and Reno memoranda.

The first article on which the researchers disagreed is "*Follow-up report on e-FOIA implementation issued*." The article introduced and explained the findings of the GAO's FOIA report entitled "*Update on the implementation of the 1996 Electronic Freedom of Information Act Amendments*." The author thought the article was designed to inform federal agencies about the findings of the GAO report that was requested by the House committee. The author thought it might be possible to conclude that the article would encourage federal agencies to follow all

provisions of the e-FOIA. Compared to the OIP under the Clinton administration, however, the Bush administration's OIP responded in a different way. The report was requested by Representative Stephen Horn and Senator Patrick Leahy, representing bipartisan interest in this subject, so the OIP could issue a memorandum. The OIP, however, announced nothing and just introduced the contents of the report through the *FOIA Post.* The article did not mention an informed citizenry or open government. The author regarded it as neutral, but the two other researchers considered it as endorsing.

The second article on which the researchers disagreed is "*Homeland security law contains new Exemption 3*." The article explained Section 214 of *the Homeland Security Act of 2002*, "Protection of voluntarily shared critical infrastructure." According to Section 214, the CII obtained by the DHS was exempted from FOIA requests. The author thought that, although this article was explanatory, it could have provided a negative influence on federal agencies. The second analyzer viewed it as ambiguous, and the third analyzer saw it as neutral.

The third article on which the researchers disagreed is "*Agencies rely on wide range of exemption 3 statutes*." It shows examples of nondisclosure provisions that were inserted in other federal statutes. Specifically, the OIP provided information on how agencies relied on Exemption 3, which allowed agencies to keep information under FOIA by using other statutes to allow them to withhold government information. This article did not openly recommend that agencies withhold information by using Exemption 3; but it gave an impression that the OIP no longer supported disclosure of government information. The author considered it as critical because the article revealed that OIP would "regularly review prospective Exemption 3 statutes for legal sufficiency wherever possible." The second analyzer regarded it as ambiguous, and the third analyzer considered it neutral.

The fourth article on which the researchers disagreed is "*Critical infrastructure information regulations issued by DHS*." This article is the most confusing one. The author thought that it described how the CII regulations by DHS impact the government-wide FOIA implementation. According to the article, the section 214 of the Homeland Security Act was designed to promote the flow of sensitive information about the nation's critical infrastructure to the federal government for homeland security purposes and placed CII under Exemption 3 protection under the FOIA. Whereas the author regarded the article as neutral, the second analyzer considered it critical, and the third analyzer viewed it as endorsing.

The fifth article on which the coders disagreed is disagreed is "*FOIA Counselor Q & A*." This article answered some practical issues that had surfaced in the implementation process. The author thought the selected cases seemed unbiased because they dealt with practical issues like how to protect government information from disclosure. For instance, one case said federal agencies did not have an obligation to forward incorrectly directed FOIA requests to other agencies or to other components of the same agency. The author considered it as neutral, but the second analyzer regarded it as ambiguous and the third analyzer thought it was endorsing.

The last article that the three analyzers disagreed on was "*FOIA amended by Intelligence Authorization Act*." The author and the second researcher thought that the article gave a negative impact on federal agencies regarding disclosure, but the third researcher considered it neutral. The author thought that, although this FOIA amendment would affect part of the intelligence community, it was a backing down from the concept that any person could request federal agencies to disclose government information.

In short, under the Bush administration, the *FOIA Post* did not often express positive opinions of disclosure and did not provide the agencies with FOIA disclosure examples for guidance.

Summary

This section reviewed the two administrations' FOIA policies by using content analysis of articles containing selected policy statements, memoranda, etc. For the analyses, the *FOIA Update* and the *FOIA Post* were reviewed for three FOIA principles: an informed citizenry, open government and disclosure.

The Clinton administration's open government initiatives were easily found in the *FOIA Update*, whereas the Bush administration's position on open government was more complex in the *FOIA Post*. The Clinton administration publicized its support for open government rhetorically as well as practically. The administration made efforts to disclose government information not only through top-level FOIA announcements but also through amendment of FOIA regulations, provision of useful Web site information, etc. In contrast, the Bush administration tried to stick with the principles of the FOIA rhetorically and seemed to restrict the public's access to government information in the name of national security. The content analysis reveals the characteristics of the two administrations' FOIA policies.

First, both the Clinton and Bush administrations seemed to recognize an informed citizenry as an indispensible principle of the FOIA. While an informed citizenry was endorsed continuously through the Clinton administration, it was commented on only once during the Bush administration. Still, an informed citizenry appeared to be an undeniable value in American democracy during both administrations.

Second, open government was endorsed during the Clinton administration consistently, but was not promoted during the Bush administration. In fact, the Bush administration did not address the concept of open government at all during the period of this study. Nevertheless, the OIP appeared to recognize that the open government principle should be explicitly shared among agencies for more disclosure. Instead of open government, the Bush administration stressed a "balance of interests," and it emphasized the importance of national security, legal enforcement effectiveness, and commercial, internal and personal privacy.

Third, disclosure was mentioned more often than the other two concepts in the *FOIA Update* and the *FOIA Post* during both administrations, perhaps because disclosure was not a value-containing word but a technical word. Whereas disclosure was stressed in various ways during the Clinton administration, it was shown in more complicated responses during the Bush administration.

The Bush administration's supervisory or managerial FOIA officers seemed to support disclosure of government information, even though the administration's FOIA policy initiative emphasis was changed from open government to a balance of interests. In other words, while top-level politicians including President Bush put an emphasis on national security, the OIP did not support the prevention of government information disclosure unilaterally. It is likely that the FOIA officers who were familiar with the FOIA principles still recognized the importance of disclosure at the implementation level.

Research Question 3

Research Question 3 examines the Clinton and Bush administrations' FOIA and related information policies. The author reviewed the *Weekly Compilation of Presidential Documents* not only for Research Question 1 but also for Research Question 3. In this section, the author examines the documents of the OMB and the Attorney General through their Web sites and FOIA hearing reports during the Clinton and Bush administrations.

FOIA policy of the Clinton administration

Openness initiative

The Clinton administration's FOIA policies were reviewed in Chapter 2, including President Clinton's and Attorney General Reno's memoranda, OMB memoranda, and other relevant documents. This section reviews the Clinton administration's FOIA policies in terms of the "openness initiative" that originated in 1993.

According to Foerstel (1999), Attorney General Reno pushed FOIA personnel to release information to the public. There are, however, two opposite opinions on the achievement. Some FOIA critics argued that President Clinton's openness initiative was not well implemented due to bureaucratic behavior left in place by the restrictive policies of Presidents Ronald Reagan and George H. W. Bush. Others contended that FOIA professionals were value-neutral careerists and, thus, they did not find any difficulties in administering the FOIA within the openness initiative.

Charlene Thomas at the OIP stated that the openness initiative of the Clinton administration gave positive effects on the FOIA compliance. She said that, because upper-level attention was given to the FOIA work, FOIA employees' commitment grew stronger. She also asserted that there was "little difficulty in reversing the restrictive policies of the Reagan and Senior Bush administrations." According to her, FOIA professionals were flexible due to their experience on working through many administrations. In addition, they needed simple clear direction and the Reno memoranda gave it to them (Foerstel, 1999, p. 97).

Peggy Irving, then the deputy director at the OIP, stated that the shortage of staff and funding had been a major problem in implementing the FOIA partly because "FOIA work is a very labor intensive process." She claimed, however, that the DOJ during the Clinton administration was supportive of its open initiative (Foerstel, 1999, p. 97).

John Podesta, the fourth and final White House Chief of Staff under President Clinton from 1998 until 2001, also influenced the Clinton administration's open government policy. When he addressed the 4th Annual Intelligence Community Information and Classification Management Conference, he talked about the Clinton administration's three tenets on openness in government and classification policy. First, "in a free society, the public must have access to information about the workings of government." Second, "in the information age, government must use technology to promote openness." Third, "in an era of shrinking budgets, the management of government must be cost effective" (Podesta, 1998). Podesta gave several

examples of openness initiative such as declassification of more than 400 million pages of documents in FY 1997 and FY 1998, E.O. 12937 on declassification of World War Two and Vietnam War documents and releases of overhead imagery and other records. He also said that "FOIA is the least efficient way to make government information public, not only from a Federal budget standpoint, but also in terms of its cost to the public and delay in getting information out."

Hearings on the FOIA during the Clinton administration

There were three hearings on Freedom of Information during the Clinton administration. However, the records of a FOIA hearing (S. Hrg. 102-1098) in 1992, before the Clinton administration took office, show the bureaucrats' attitude about the e-FOIA amendment at that time. Thus, it is included here to give perspective to the hearings held during the Clinton administration. The hearing is reviewed briefly by using the summary article from the *FOIA Update* (http://www.usdoj.gov/oip/foia_updates/Vol_XIII_2/page1.htm). Then this section reviews three FOIA hearings during the Clinton administration to show its FOIA policy and the federal agencies' responses to that policy in terms of improving the FOIA process. Table 4.3 shows the outline of FOIA hearings in 1992 and in the Clinton administration.

A hearing on April 30, 1992

On April 30, 1992, the Subcommittee on Technology and the Law, Committee on the Judiciary, the Senate held a hearing entitled "*Electronic Freedom of Information Improvement Act of 1991*." Testifying on behalf of the DOJ were Steven R. Schlesinger, Director, Office of Policy Development; and Daniel J. Metcalfe, Co-Director, OIP. The private sector witnesses were representatives of the American Bar Association, the American Foundation for the Blind, and a variety of media organizations.

While the DOJ expressed concerns with S. 1940 based upon the Department's government-wide survey and report on "electronic record" FOIA issues, the public interest groups were supportive of S. 1940.

A hearing on June 13 and 14, 1996

On June 13 and 14, 1996, the Subcommittee on Government Management, Information, and Technology of the Committee on Government Reform and Oversight, in the House of Representatives held a FOIA hearing entitled "*Federal Information Policy Oversight*" (Subcommittee on Government Management, Information, and Technology, 1996).

Table 4.3

Hearings on FOIA under the Clinton Administration

Title	Committee	URL	Date
Electronic Freedom of Information Improvement Act of 1991*	Subcommittee on Technology and the Law, Committee on the Judiciary, the Senate	http://www.justice.gov/oip/foia_updates/Vol_XIII_2/page1.htm	April 30, 1992
Federal Information Policy Oversight	Subcommittee on Government Management, Information, and Technology, Committee on Government Reform and Oversight, the House of Representatives	http://www.access.gpo.gov/congress/house/pdf/104hrg/43928.pdf	June 13, 14, 1996
Implementation of the Electronic Freedom of Information Amendments of 1996: Is Access to Government Information Improving?	Subcommittee on Government Management, Information, and Technology, Committee on Government Reform and Oversight, the House of Representatives	http://ftp.resource.org/gpo.gov/hearings/105h/98649.pdf	June 9, 1998
Agency response to the Electronic Freedom of Information Act	Subcommittee on Government Management, Information and Technology, Committee on Government Reform, the House of Representatives	http://www.fas.org/sgp/congress/2000/061400_efoia.html	June 14, 2000

* This hearing was held before the Clinton administration took office.

Testifying on behalf of the executive branch were Roslyn A. Mazer, Deputy Assistant Attorney General, Office of Development, Department of Justice; Kevin O'Brien, Section Chief, Freedom of Information/Privacy Acts Section, FBI; Anthony H. Passarella, Director, Directorate for Freedom of Information and Security Review, Office of the Assistant Secretary of Defense; G. Martin Wagner, Associate Administrator, Office of Policy, Planning and Evaluation, General Services Administration; and other experts. The private sector witnesses were Eileen Welsome, Society of Professional Journalists, ASNE; Larry Klayman, Chairman, Judicial Watch Inc.; Jane E. Kirtley, executive director, the Reporter's Committee for Freedom of the Press; Byron York, reporter, the American Spectator; and Paul Kamenar, executive director, Washington Legal Foundation.

Ms. Mazer from DOJ said that under the leadership of President Clinton and Attorney General Janet Reno, the DOJ had taken steps to reinvigorate the FOIA throughout the executive branch. She spoke of Reno's three-disclosure standard: presumption of disclosure, foreseeable harm and discretionary disclosure. She pointed out that the Clinton administration inculcated the importance of the opportunity for affirmative disclosure without the necessity of a FOIA request. According to her testimony, Attorney General Reno requested that all agencies provide specific backlog figures and updated backlog information.

Ms. Welsome testified that federal agencies had changed in implementing FOIA requests since the Clinton administration took office. However, she spoke of the problem of "long delays" or "skimmy responses" (Subcommittee on Government Management, Information, and Technology, 1996, p. 96).

Mr. Klayman pointed out that despite President Clinton's open government policy, the openness did not spread throughout federal agencies and he felt the FOIA was manipulated by government officials when it meets their own interests. In other words, he asserted that there was "an entrenched bureaucracy" in place in the federal government (Subcommittee on Government Management, Information, and Technology, 1996, p. 113). Further, Klayman blamed the Clinton administration for "the misuse of FOIA" and "a continuing obstruction of justice." He also argued that the Clinton administration limited public access to government information by refusing to respond to FOIA requests.

Ms. Kirtley said that the Clinton administration made an effort to curtail government secrecy with the issuances of the 1993 President's and Attorney General's FOIA memoranda and

E.O. 12958. She noted that, although citizens as well as journalists needed government information in time, the government did not recognize the significance of prompt responses.

Mr. York implied that the Reagan and Senior Bush administration agencies were obstructive to FOIA requests but that the Clinton administration might usher in a new open government era. But he revealed that when he made a FOIA request seeking the financial facts of Vice President Gore's NPR task force, he was told that the Vice President's Office was not subject to the FOIA.

A hearing on June 9, 1998

Then came the first hearing on the FOIA after enactment of the e-FOIA. On June 9, 1998, the hearing examined the implementation of the e-FOIA before the Subcommittee on Government Management, Information, and Technology of the Committee on Government Reform and Oversight, in the House of Representatives, entitled "*Implementation of the Electronic Freedom of Information Amendments of 1996: Is Access to Government Information Improving?*"

Testifying on behalf of private sector were Patrice McDermott, information policy analyst, OMB Watch; Michael Tankersley, senior staff attorney, Public Citizen Litigation Group; Jim Riccio, staff attorney, critical mass energy project, Public Citizen; and Jane Kirtley, executive director, Reporters Committee. The representatives from federal agencies were Richard L. Huff, Co-Director, OIP, DOJ; John E. Collingwood, Assistant Director, Office of Public and Congressional Affairs, FBI; Patricia M. Riep-Dice, Freedom of Information Officer, National Aeronautics and Space Administration (NASA); and Abel Lopez, Acting Director, Freedom of Information Division, Department of Energy (DOE).

Ms. McDermott testified that, although federal agencies were moving at a great speed to provide information online, their compliance with the e-FOIA was overwhelmingly inadequate. She put the poor compliance down to three reasons: insufficient funding by Congress, poor guidance or assistance from the OMB, and low priority on public access to government information by federal agencies.

Mr. Tankersley pointed out that the affirmative disclosure provisions of the e-FOIA had not been fully realized, mainly due to poor leadership of the OMB that did not ensure full compliance. In addition, he argued that the DOJ did not encourage agencies to make repeatedly requested records available online. Mr. Tankersley also put emphasis on the importance of real

leadership from the OMB, funding for electronic records, adequate policies on electronic records from NARA, and a commitment from agencies to make access to government information a priority.

Mr. Riccio said that the e-FOIA had resulted in a substantial increase in timeliness and in the amount of online information available to the public. He added that making electronic information available was not a panacea, and that federal agencies had to be cautious not to lose information in transition.

Ms. Kirtley pointed out that a lot of federal agencies had not met their deadlines for compliance with the e-FOIA and had not even adopted implementing regulations. From a journalist's perspective, she mentioned the importance of timely responses and the issue of dealing with permanent backlogs. She added that measures to reduce delay need monitoring by Congress.

Mr. Huff discussed how the DOJ worked to implement the e-FOIA and to take steps to encourage Federal agencies in the implementation of the e-FOIA. He expressed the strong commitment of Attorney General Reno to proper implementation of the e-FOIA and to the principles of openness in government. He also testified that the DOJ encouraged agencies to comply and tried to explain why and when they needed to release information in response to administrative appeals.

Mr. Collingwood said that the Attorney General and the Director of the FBI were committed to eliminating the FBI backlogs. He noted that the FBI's two goals were to eliminate the backlogs very quickly and to produce records in whatever format best met the needs of requesters. He also pointed out that the lack of resources was one reason for the backlogs.

Ms. Riep-Dice reported on how NASA worked to meet the e-FOIA mandates after enactment of the e-FOIA. She also mentioned that NASA received full support and encouragement from the DOJ in implementing the FOIA.

Mr. Lopez testified that the DOE sought ways to improve its responsiveness to requesters under the FOIA by following the President's call to renew agencies' commitment to the FOIA and to support the principles of openness in government. Mr. Lopez said that in July 1996 the Openness Advisory Panel of the DOE had made recommendations focusing on three areas: the classification and declassification processes, improving the availability of information, and changing the culture of secrecy.

A hearing on June 14, 2000

On June 14, 2000, the Subcommittee on Government Management, Information and Technology, Committee on Government Reform, the House of Representatives held a hearing entitled "*Agency response to the Electronic Freedom of Information Act*." The hearing was to determine whether federal agencies were complying with the e-FOIA.

Testifying on behalf of federal agencies were Joshua Gotbaum, Executive Associate Director and Controller, the OMB; Ethan Posner, Deputy Associate Attorney General, the DOJ; and Henry J. McIntyre, Director, Directorate for the Freedom of Information Security and Review, Department of Defense (DOD). The private sector witnesses were Lucy Dalglish, executive director, the Reporters Committee, accompanied by Rebecca Daugherty, director, Reporters Committee FOI Service Center; Patrice McDermott, policy analyst, OMB Watch; and Ian Marquand, Freedom of Information Chair, the Society of Professional Journalists

Mr. Gotbaum testified that the basis of the FOIA was an informed citizenry and that the principle had been recognized and supported by administrations of both parties for many years. He said that taking advantage of information technology to provide greater accountability, greater transparency and more information was an essential part of government management. Mr. Gotbaum said the role of the OMB was to provide general guidance and encouragement in implementation of the e-FOIA. He noted that the government should put information out and online aggressively and affirmatively.

Mr. Posner said that Attorney General Janet Reno regarded the FOIA and the e-FOIA as the heart of open government and that, under her leadership, the administration had placed a sustained priority on improving FOIA services to the public. He maintained that by putting government information on FOIA Web sites, the public could obtain it directly, making the FOIA the last resort.

Mr. McIntyre explained how the DOD had implemented the e-FOIA after its enforcement in April 1997. He added that resources including additional personnel and funding for servers were needed to fulfill the services required by the e-FOIA.

Ms. Dalglish stated that many reporters would not use the FOIA because they could not get useful information in time. She said that obstacles the FOIA faced were the lengthy delays and the "over-broad interpretations of the privacy exemptions." She noted that if the information was well indexed and readily available, the agencies' site would be more useful.

Ms. McDermott said the administration did not pay attention to the details of the implementation process. She pointed out that agencies' compliance with the e-FOIA was inadequate due to four reasons: insufficient funding by Congress; inadequate guidance or assistance from the OMB; insufficient encouragement to comply from the DOJ; and the agencies' low priority on providing public access to government information for accountability. Then she made four major recommendations: better guidance and support from the OMB; better organization for locating records; establishment of an enforcement mechanism for agency noncompliance; and regular oversight by Congress.

Mr. Marquand said there was no doubt about the improvement of access to government information but journalists rarely took advantage of the FOIA because of time issues. He maintained that Congress needed to use its authority to ensure that agencies meet the e-FOIA standard.

The George W. Bush administration's FOIA policies

The President's management agenda

The Bush administration's information policy including its FOIA policy was pursued based upon the *President's Management Agenda*. The agenda, which was issued by the OMB in 2002, was the Bush administration's "bold strategy for improving the management and performance of the federal government" (OMB, 2002). In the agenda, President Bush stressed the importance of "performance" and "results." He said in his message that "government likes to begin things – to declare grand new programs and causes. But good beginnings are not the measure of success. What matters in the end is completion, performance, results."

The agenda has five government-wide initiatives and nine program initiatives to improve government performance. The Bush administration listed "expanded electronic government" as one of five government-wide initiatives. The e-government was meant to allow the government to make it simpler for citizens to receive high-quality service from the federal government and to reduce the cost of delivering those services. In addition, the administration expected to make "government more transparent and accountable." To pursue these initiatives, the agenda suggested three principles. Government should be:

- Citizen-centered, not bureaucracy-centered;
- Results-oriented; and

- Market-based, actively promoting rather than stifling innovation through competition.

The agenda, however, did not seem to be the Bush administration's own idea. Osborne and Gaebler (1992) suggested these three principles in their ten principles for reinventing government. Facing a crisis of confidence in government, they provided a map to a new form of governance. Considering the Clinton administration also championed many of these principles, "reinventing government" seems to have been a trend of both the Clinton and Bush administrations. Table 4.4 shows the five government-wide and nine program initiatives.

Table 4.4

The Bush administration's government-wide and agency-specific initiatives

Government-wide initiatives	Program initiatives
1) Strategic management of human capital	6) Faith-based and community initiative
2) Competitive sourcing	7) Privatization of military housing
3) Improved financial performance	8) Better research and development
4) Expanded electronic government	investment criteria
5) Budget and performance integration	
	9) Elimination of fraud and error in student aid program and deficiencies in financial management
	10) Housing and urban development management and performance
	11) Broadened health insurance coverage through state initiative
	12) A "right-sized" overseas presence
	13) Reform of food aid programs
	14) Coordination of veterans affairs and defense programs and systems

OMB memoranda

It seems that the goal of the Bush administration's government management was to pursue citizen-centered and results-oriented government. In December, 2005, based upon the *President's Management Agenda*, the OMB issued a memorandum (M-06-02), *Improving Public Access to and Dissemination of Government Information and Using the Federal Enterprise Architecture Data Reference Model*, to federal agencies to improve cost effective and consistent access to and dissemination of government information. The memorandum was given out mainly to provide procedural information about how to organize and categorize information and make it searchable across agencies and also to encourage agencies to use the Federal Enterprise Architecture Data Reference Model.

The OMB issued two FOIA memoranda, both associated with E.O. 13392. In the E.O., President Bush directed agencies to ensure their FOIA operations were citizen-centered and results-oriented, and the memoranda re-stressed President Bush's FOIA direction.

On December 30, 2005, the first OMB FOIA memorandum (M-06-04), *Implementation of the President's Executive Order "Improving agency disclosure of information,"* was issued to require federal agencies to take the following actions: Designation of a Chief FOIA Officer; completing the review, plan, and reporting; establishment of a FOIA requester service center; and designation of public liaisons.

On April 13, 2006, OMB issued the second FOIA memorandum (M-06-12), *Follow-up memorandum on "Implementation of the President's Executive Order 'Improving agency disclosure of information'"* to encourage federal agencies to complete a review of their FOIA operations and to prepare a plan for improving them by June 14, 2006. It also required federal agencies to have specific plans to eliminate or reduce the agency's FOIA backlog.

In sum, under the Bush administration, the OMB released two FOIA memoranda related to E.O. 13392 and a memorandum on the Federal Enterprise Architecture Data Reference Model. The two FOIA memoranda were designed to spur the enforcement of E.O. 13392. Table 4.5 shows the OMB memoranda related to the FOIA during the Bush administration.

Table 4.5

OMB Memoranda related to the FOIA during the Bush administration

Memorandum	Title	URL
M-06-02 December 16, 2005	Improving Public Access to and Dissemination of Government Information and Using the Federal Enterprise Architecture Data Reference Model	http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2006/m06-02.pdf
M-06-04 December 30, 2005	Implementation of the President's E.O. "Improving agency disclosure of information"	http://www.whitehouse.gov/omb/memoranda/fy2006/m06-04.pdf
M-06-12 April 13, 2006	Follow-up Implementation of the President's E.O. "Improving agency disclosure of information"	http://www.whitehouse.gov/omb/memoranda/fy2006/m06-12.pdf

The DOJ's initiatives

According to the Web page of the OIP (http://www.justice.gov/oip/oip.html), the OIP of the DOJ issued two FOIA policy statements during the Bush administration. Those policy statements, the Ashcroft memorandum, and the ISOO OIP memorandum attached to the Card memorandum served as basic directions for the Bush administration's FOIA implementation.

After the September 11, 2001 terrorist attacks, Ashcroft supported the passage of the *USA PATRIOT Act* and went on a 30-city tour to defend the Act. In a September 18, 2003 speech to police and prosecutors in Memphis, Tennessee, Ashcroft asserted that the protection of life and liberty of Americans was the mission of the DOJ and boasted of no major terrorist attack plus a lower overall crime rate since the September 11 terrorist attacks (Ashcroft, 2003). He even stated in his handwritten resignation letter on November 2, 2004, "The objective of securing the safety of Americans from crime and terror has been achieved" (Ashcroft, 2004). These assertions showed no consideration for the culture of open government.

After the issuance of E.O. 13392 on December 14, 2005, the DOJ took many steps to guide agencies to implement the E.O. more effectively and efficiently. On December 15, 2005, the DOJ conducted a Department-wide meeting on the E.O. The DOJ also designated its third-ranking official as its Chief FOIA Officer and established 34 FOIA Requester Service Centers.

On March 8, 2006, the DOJ and the OMB held a government-wide conference for chief FOIA officers and key FOIA personnel.

On April 27, 2006, the DOJ issued implementation guidance on E.O. 13392 (http://www.justice.gov/archive/oip/foiapost/2006foiapost6.htm). The guidance was to assist federal agencies to address a wide range of points and consideration in implementing the Presidential initiative. It provided potential improvement areas, standard format for improvement plans, supplemental annual FOIA report guidelines, and more.

On June 14, 2006, the DOJ issued the DOJ FOIA Improvement Plan under E.O. 13392 (http://www.justice.gov/archive/oip/ourplan.htm). The plan contained a comprehensive review of the DOJ's operations and its plan for the improvement of FOIA administration throughout the Department. On July 11, 2006, the DOJ held a special FOIA training conference. On October 16, 2006, the DOJ submitted to the President a report on agency FOIA implementation.

Archive Report on Pseudo-Secrets

The 2006 Archive report mainly investigated unregulated "pseudo-classification," new categories of safeguarded sensitive unclassified information (SUI). The result covered the impact of the Card memorandum and policies on protection of SUI. The Archive made FOIA requests to each of 35 federal agencies to examine the impact of the Card memorandum and received 24 responses with documents. It also gathered data on the information protection policies of 37 federal agencies and components (Archive, 2006).

The Archive report pointed out that the Card memorandum caused significant removal of information from public Web sites, increased emphasis on FOIA exemptions for withholding, and the proliferation of new categories of information protection marking.

Further, the Archive report warned of the possibility of excessive use of SUI without proper oversight. According to the report, only 8 of 37 (22%) had policies regarding SUI based upon statute or regulation, while 24 of 37 (65%) had their SUI based upon directive or other informal guidance. The report also found that federal agencies did not have consistent policies for protection of SUI. Specifically, 8 of 28 policies (29%) granted unlimited permission to make SUI for protection.

With regard to designation, 10 of the policies permitted only managerial-level officials to designate information for protection; and 7 policies (25%) allowed agencies to name a particular employee to oversee information protection. However, 12 policies (43%) did not have a

concrete provision for removing protective markings and only one policy had an automatic decontrolling provision.

Hearings on the FOIA during the Bush administration

This section covers four hearings on the FOIA briefly, to show the Bush administration's information policy and its impacts on the FOIA. Table 4.6 is an outline of these four hearings.

A hearing on March 15, 2005

The first hearing (S. HRG. 109-69) on the FOIA since 1992 was held on March 15, 2005 by the Subcommittee on Terrorism, Technology and Homeland Security of the Committee on the Judiciary, in the Senate. The hearing was entitled "*Openness in Government and Freedom of Information: Examining the Open Government Act of 2005*."

Testifying on behalf of the public sector was Katherine Minter Cary, Chief, Record Division, Office of the Texas Attorney General. The panel of witnesses from the private sector was comprised of Meredith Fuchs, General Counsel, Archive; Lisa Graves, Senior Counsel for Legislative Strategy, American Civil Liberties Union (ACLU); Walter Mears, former Washington Bureau Chief and Executive Editor, Associated Press; Thomas M. Susman, Ropes and Gray LLP; and Mark Tapscott, Director, Center for Media and Public Policy, the Heritage Foundation.

Ms. Cary detailed her experiences in handling the *Texas Public Information Act* and insisted that people keep informed so they may maintain control over government. She also emphasized the importance of openness and accountability to make democracy strong and enduring.

Mr. Mears pointed out that government people had an instinct or acquired an instinct to limit the free flow of information and that they regarded the public as a "noisy outsider." He also said that the government should function within a presumption of openness.

Mr. Tapscott agreed with Senator Leahy that there still remained some opposition in government to changing the FOIA system. He described some problems the agencies had, including inaccurate agency contact information on the Web, late response times and lack of central accountability, based upon a 2003 survey by the Archive. Finally, he stated that sunshine could be the best disinfectant for waste and fraud in government.

Table 4.6

FOIA Hearings in 2005 and 2007

Title	Committee	URL	Date
S.HRG.109-69 Openness in Government and Freedom of Information: Examining the Open Government Act of 2005	Subcommittee on Terrorism, Technology and Homeland Security, Committee on the Judiciary, Senate	http://www.fas.org/sgp/congress/2005/031505transcript.pdf	March 15, 2005
Serial No. 109-46 Information Policy in the 21st Century: A Review of the Freedom of Information Act	Subcommittee on Government Management, Finance, and Accountability, Committee on Government Reform, House of Representatives	http://www.fas.org/sgp/congress/2005/foia.pdf	May 11, 2005
Serial No. 110-56 The State of the FOIA: Assessing Agency Efforts to meet FOIA Requirements	Subcommittee on Information Policy, Census, and National Archives, Committee on Oversight and Government Reform, House of Representatives	http://www.fas.org/sgp/congress/2007/foia.pdf	February 14, 2007
S.HRG.110-55 Open Government: Reinvigorating the Freedom of Information Act	Committee on the Judiciary, Senate	http://www.fas.org/sgp/congress/2007/open.pdf	March 14, 2007

Ms. Graves noted that there had been an epidemic of over-classification in the name of national security and stated that "government secrecy could be an enemy of an open society and democracy." Regardless of the limit of openness, she insisted that the public should keep an eye on the culture of secrecy when it excessively permeated the government.

Ms. Fuchs said that an informed citizenry was the most important weapon the country has and that the FOIA was the best system to enable the public to participate in governance. She pointed out the problems of a long delay and an increase of information labeled FOUO, SBU or any other names that prevented public access. She also maintained that the FOIA system needed to set up an Office of Government Information Services and a FOIA ombudsman in Senate Bill 394, the OPEN Government Act of 2005. Further, Ms. Fuchs pointed out the importance of policy credibility as a result of "a balanced perspective and non-political nature" supported by Congress, agency heads and attorney general.

Mr. Susman mentioned three issues: creation of the Office of Government Information Services; recovery of attorneys' fees in litigation; and enhanced Congressional oversight. He stated that the FOIA employees followed the policy guidance from above and worked with the resources they had. Thus, he attributed the problems not to the professionals but to the structure for resolving disputes.

A hearing on May 11, 2005

On May 11, 2005, the Subcommittee on Government Management, Finance, and Accountability, Committee on Government Reform, in the House of Representatives held a hearing entitled "*Information Policy in the 21st Century: A Review of the Freedom of Information Act.*" Testifying on behalf of the executive branch were Allen Weinstein, Archivist of the United States, accompanied by Michael Kurtz, Assistant Archivist for Records Programs, NARA; Carl Nichols, Deputy Attorney General, Federal Programs Branch, Civil Division, DOJ; and Linda Koontz, Director, Information Management, GAO. The private sector witnesses were Jay Smith, chairman, Newspaper Association of America and president, Cox Newspapers, Inc.; Ari Schwartz, associate director, Center for Democracy and Technology; and Mark Tapscott, Director, Center for Media and Public Policy, the Heritage Foundation.

Mr. Weinstein said he viewed the FOIA as a disclosure statute. He maintained that NARA treated the FOIA with great seriousness. The Archivist said the timeliness issue could be explained by the lengthy process of declassifying documents.

Mr. Nichols said the Bush administration made an effort to ensure government compliance with the FOIA, and he recognized that the timely processing of requests was the biggest challenge under the FOIA. He displayed the same viewpoint that President Bush had, stressing that an informed citizenry should go along with other societal aims, including national security and privacy.

Ms. Koontz reported on the GAO's recent findings concerning implementation of the FOIA for Fiscal Years 2002 through 2005 from 25 major agencies (GAO-05-648T).

Mr. Smith pointed out the "agencies did not have strong incentives to act on requests in a timely fashion or to avoid costly litigation." He provided three recommendations: an FOIA ombudsman, reasonable attorney fees, and compliance with the e-FOIA of 1996.

Mr. Schwartz noted that the FOIA was a critical tool to ensure government accountability and stressed the importance of an informed citizenry. His major interest, however, was to improve information management within agencies so the public could access government information via the Internet without a FOIA request.

Mr. Tapscott argued that government FOIA employees needed to have a certain degree of insulation from political appointees and their pressures. He also pointed out that there were no penalties for not properly administering FOIA requests.

A hearing on February 14, 2007

On February 14, 2007, the Subcommittee on Information Policy, Census, and National Archives, Committee on Oversight and Government Reform in the House of Representatives held a hearing entitled "*The State of the FOIA: Assessing Agency Efforts to meet FOIA Requirements.*" The first three witnesses were from the private sector; the last two witnesses were from the public sector: Clark Hoyt, McClatchy Newspapers, the Sunshine in Government Initiative; Meredith Fuchs, General Counsel, Archive; Caroline Fredrickson, Director, Washington Legislative Office, ACLU; Linda Koontz, Director, Information Management, GAO; and Melanie Ann Pustay, Acting Director, Office of Information Privacy, DOJ.

Mr. Hoyt said the FOIA was one of the most important tools for both journalists and citizens to monitor the waste and fraud of government performance. He suggested four broad changes: creation of a FOIA ombudsman; elimination of "the *Buckhannon* tax" to get legal fees without difficulty; some consequences for breaking deadlines; and assignment of a tracking number to each FOIA request for information.

Ms. Fuchs also mentioned that the FOIA did not have any incentives to improve poorly functioning FOIA programs. She suggested that the FOIA request should be disaggregated from the PA request. Furthermore, she noted that FOIA reform could be done with support from above and some funding.

Ms. Fredrickson labeled the FOIA "democracy's x-ray machine." However, she pointed out that the current administration hid government information intentionally and improperly from view, using national security as a barrier. She also claimed that secrecy was the default response from the Bush administration. Presenting nine recommendations for reform, she stressed the need to work together to ease the restrictions caused by the Bush administration's obsession with secrecy.

Ms. Koontz reported on the GAO's recent findings concerning agency FOIA Improvement plans created under E.O. 13392 (GAO-07-491T). The GAO report analyzed 25 agencies' annual FOIA reports from 2002 to 2005 and their improvement plans containing four areas emphasized by the E.O. 13392 of December 14, 2005. According to the report, the numbers of FOIA requests and pending requests steadily increased; The GAO did not explain the reasons for the inability to keep pace with increasing requests. Ms. Pustay detailed eight steps taken by the DOJ and the OMB to ensure government-wide compliance with both the FOIA and E.O. 13392.

A hearing on March 14, 2007

On March 14, 2007, the Committee on the Judiciary in the Senate held a hearing (S. HRG. 110-55) entitled "*Open Government: Reinvigorating the Freedom of Information Act*." The witnesses were Meredith Fuchs, General Counsel, Archive; Sabina Haskell, Editor, Brattleboro, Vermont; Tom Curley, President and Chief Executive Officer, The Associated Press, representing the Sunshine in Government Initiative; and Katherine Minter Cary, General Counsel, Texas Office of the Attorney General.

Ms. Fuchs argued that some agencies viewed the public not as the customer or part of the team but as the enemy, and she illustrated the reality of obtaining government information through litigation. She added her experiences with how some agencies reduced or eliminated their backlogs, as her response to the issues raised by Ms. Pustay's testimony at the hearing on February 14, 2007.

Ms. Haskell stated that the de facto sentiment of secrecy spread from federal to state to local level, and that it began at the top. She added that local government made efforts to close doors on government transparency.

Mr. Curley also pointed out that the agencies did not respond in 20 working days because they had no incentives to do so since the FOIA imposed no penalty for ignoring deadlines. He argued that litigation was so costly that small business or private constituents were generally unable to afford to sue. While most FOIA officers responded correctly to requests, some of them still acted as though obstructing information flow was a national policy, which undermined most of the other FOIA employees' achievements.

Ms. Cary defended FOIA employees by saying that noncompliance with a FOIA request often resulted from a misunderstanding rather than a malicious intent. Thus, she suggested mandatory training for public FOIA officers. She emphasized the purpose of the FOIA, an informed citizenry, and reminded the other attendees that remaining informed was necessary to retain control over the instruments the people had created.

Summary

Research Question 3 mainly dealt with FOIA hearings to take stakeholders' opinions on FOIA policy in the Clinton and Bush administrations. The author also reviewed other documentary resources, including the *President's Management Agenda*, to enhance the understanding of the two administrations' FOIA policies.

The data demonstrated that President Clinton showed strong support for the FOIA. He appointed Janet Reno as Attorney General and also issued a FOIA memorandum and statement. Reno propelled an open government initiative and improved the working conditions for FOIA personnel throughout the government.

However, despite President Clinton's vow of open government and Attorney General Reno's FOIA leadership, public interest groups complained about insufficient funding, poor guidance from the OMB, and low priority on public access to government information by federal departments.

In contrast, President Bush and Vice President Cheney not only tried to restore the president's power but also pursued a non-disclosure policy. Further, their lean toward the restricted information policy seemed to spread through federal agencies.

Moreover, the Bush administration issued the Ashcroft memorandum and the Card memorandum that changed the climate of FOIA implementation from encouraging information release to protecting national security information. Further, Bush issued E.O. 13395 based upon the *President's Management Agenda* that focused on citizen-centered and result-oriented principles.

Research Question 4

Research Question 4 looks into how federal agencies responded to the two presidents' FOIA initiatives. Question 4 consists of four subquestions. First, for Subquestion 1 (Research Question 4-1), the author reviewed how the Clinton administration responded to President Clinton's FOIA initiatives. Second, the author investigated how federal agencies responded to the Ashcroft memorandum during the Bush administration. Third, the author compared the rate of federal agencies' use of Exemptions 2 and 4 after the White House memorandum. Finally, the author reviewed the trends in classifications and declassifications during the Clinton and Bush administrations. For Subquestion 2 (Research Question 4-2), the author utilized secondary analysis to examine federal agencies' responses to the Ashcroft memorandum more precisely.

The author used annual FOIA reports from FY 1998 through FY 2005 to answer the subquestions. That period was selected not only because the Justice Department's annual FOIA reports home page (http://www.justice.gov/oip/04_6.html) provided the federal departments' annual FOIA reports since 1998 but also because those eight years covered both administrations' implementation of FOIA policies. Specifically, the period covers about the last three and half years of the Clinton administration and the first term of the Bush administration.

The author excluded the data from the Department of Education (ED) and the DOE because their annual FOIA reports were not available for the entire period through the DOJ's Web site. The Web page did not provide the ED's annual FOIA reports during 1998 and 1999, and the page also failed to connect to the DOE's annual FOIA reports for the years 1998 to 2004. However, the author included the DHS for Research Question 4-1 even though the Department was not created until 2002 because more than half of the Department's components existed prior to the creation of the DHS itself and the five newly established entities were less related to FOIA activities than those components for which data were available.

Research Question 4-1

Research Question 4-1 compares the quantities of resources the Clinton and Bush administrations put into FOIA implementation. Based upon the e-FOIA amendment, the Federal Departments have been mandated to turn over their FOIA reports for the preceding fiscal year to the Attorney General on or before February 1 of each year. The Attorney General is required to post all departments' reports online and report to Congress no later than April of each year.

The annual FOIA reports include the following components:

- Number and disposition of initial requests
- Median proceeding time for requests
- Comparison with previous years
- Staffing levels, including part-time workers
- Costs, including FOIA processing and litigation-related activities
- FOIA fees collected for search, review, duplication, and other direct costs

The author compared the staffing levels, the total costs, and the numbers of FOIA requests received and processed among the components to examine the Clinton and Bush administrations' apparent willingness to respond to FOIA requests. As some public interest groups pointed out (Sternstein, 2005), insufficient resources including budget problems, along with poor oversight, were major problems that helped to create voluminous backlogs. Thus, the numbers of FOIA employees and total FOIA costs show objective inputs during the Clinton and Bush administrations. The author also examined the numbers of FOIA requests received and processed to help provide a clear understanding of each administration's support for the FOIA.

The author applied the Consumer Price Index (CPI) to the FOIA costs to analyze budget and cost values into a constant dollars. In doing so, the author could consider inflation and make comparisons across years more precisely. The CPI inflation calculator was from the Web site of the Bureau of Labor Statistics (www.bls.gov/data/inflation_calculator.htm).

The author set 1 dollar in 1998 as the basis and calculated the other years to get the same buying power. The buying powers of 1 dollar in FY 1999 and in FY 2005 are 1.02 and 1.2 times the buying power of 1 dollar in FY 1998. Then the author calculated the inflation-adjusted value of 1 dollar in each year studied compared to the value of 1 dollar in FY 1998 conversely. The calculations showed that the inflation-adjusted values of 1 dollar in FY 1999 and FY 2005 were 0.98 dollar and 0.8 dollar, respectively. Those constant dollar values were then applied after

nominal dollar values throughout this dissertation so the dollar amounts discussed all have the same basis in the 1998 dollar's value.

The change in the numbers of FOIA staff

The author examined the numbers of FOIA staff from FY 1998 to FY 2005. The total number of FOIA personnel consists of the number of full time personnel and the number of personnel with part-time or occasional FOIA-related duties.

In 2002, the federal departments had the most FOIA employees of any year in the study period. The total number of FOIA personnel increased consistently from 2,952 in 1998 to 4,387 in 2002, to about 1.5 times for the original number during the five years. However, the total decreased to 3,189 in 2005.

The number of full time FOIA personnel shows a pattern similar to the total number of FOIA personnel. In 2002, the federal departments had the most full time FOIA employees of any year in the study period. The number of full time FOIA personnel was 1,617 in 1998, 2,543 in 2002, and 1,854 in 2005.

The number of part-time or occasional FOIA employees also shows a similar pattern to the total number of FOIA personnel, except that 2004 was the year when the number of part-time or occasional personnel peaked. The number of part-time or occasional FOIA personnel was 1,335 in 1998, 1,873 in 2004, and 1,612 in 2005.

In short, the numbers of FOIA staff and full time FOIA staff increased consistently during the last three years of the Clinton administration, peaked in 2002, and then decreased after 2003, the third year of the George W. Bush administration. Figure 4.1 shows the changes in the number of FOIA employees, containing both the numbers of full time FOIA personnel and the personnel with part-time or occasional FOIA duties.

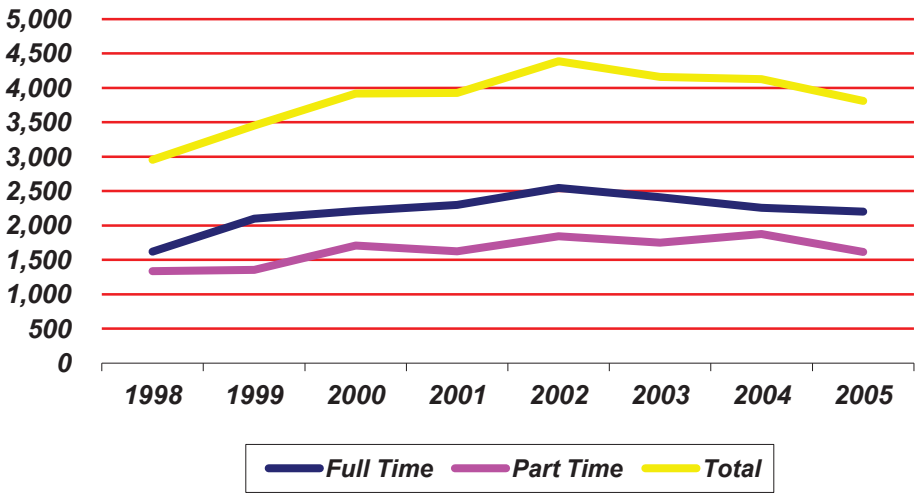


Figure 4.1. The numbers of FOIA personnel from 1998 to 2005

Moreover, the ratio of FOIA Full Time Equivalent (FTE) to the Executive Branch's FTE and the trend of the FOIA FTE in the U.S. Federal employment are barometers to indicate the Clinton and Bush administrations' practical dispositions to implement the FOIA. The FOIA FTE comprises full time FOIA employees and part-time FOIA employees. But the FOIA FTE of this study did not include the FTE of the ED and the DOE. The author used the data of the total Executive Branch Civilian FTE Employees in the 2007 Budget of the U.S. Government on GPO Access as the Executive Branch's FTE (http://www.gpoaccess.gov/usbudget/fy07/hist.html). The author could not exclude the FTE of the ED, the DOE and the EOP because the data was not provided by agencies. Additionally, the total FTE of the Executive Branch was given without the FTE of Postal Services. Table 4.7 shows the total FTEs of FOIA and the Executive Branch FTEs from 1998 to 2005.

The ratio of FOIA FTE to the Executive Branch FTE shows that the Clinton administration allocated a smaller portion of FOIA personnel than the Bush administration did. Whereas the average ratio for the Clinton administration is 0.2002%, the average for the Bush administration is 0.2281 %. At a glance, it seems that the Bush administration allocated more human resources for the FOIA.

Table 4.7

Ratio of total FTEs of FOIA to the Executive Branch FTE from 1998 to 2005

Year	1998	1999	2000	2001	2002	2003	2004	2005
FOIA FTE	2,952	3,452	3,916	3,924	4,387	4,160	4,127	3,811
Executive Branch FTE*	1,790	1,778	1,814	1,737	1,756	1,826	1,821	1,830
Ratio (%)	0.1649	0.1942	0.2159	0.2260	0.2498	0.2278	0.2266	0.2083

* In thousands

However, when comparing the trend of the ratio of the FOIA FTE to the Executive Branch FTE, it is clear that the Clinton administration increased the portion of FOIA FTE to the Executive Branch FTE consistently but the Bush administration went in an opposite way. While the Clinton administration had increased the portion of FOIA FTE from 0.1649% in FY 1998 to 0.2259% in FY 2001, the Bush administration showed a consistent decrease from 0.2498% in FY 2002 to 0.2083% in FY 2005.

The change in the numbers of FOIA requests received and processed

The numbers of FOIA requests received and processed show consistent increases during the eight years reviewed. The number of FOIA requests was 708,793 in 1998, increasing to 2,588,427 in 2005 without any decreases. There are two things to note about these FOIA requests. First, there was a steep increase between 1998 and 1999, in part because the number of FOIA requests in the Department of Veterans Affairs (VA) increased from 210,371 in 1998 to 1,151,326 in 1999, when privacy became a FOIA request. Second, two departments receive a combined total of about 90 percent of all FOIA requests. The VA receives 78.9 percent, and the Department of Health and Human Services (HHS) receives 9.1 percent. Figure 4.2 demonstrates the total numbers of FOIA requests during the eight years reviewed.

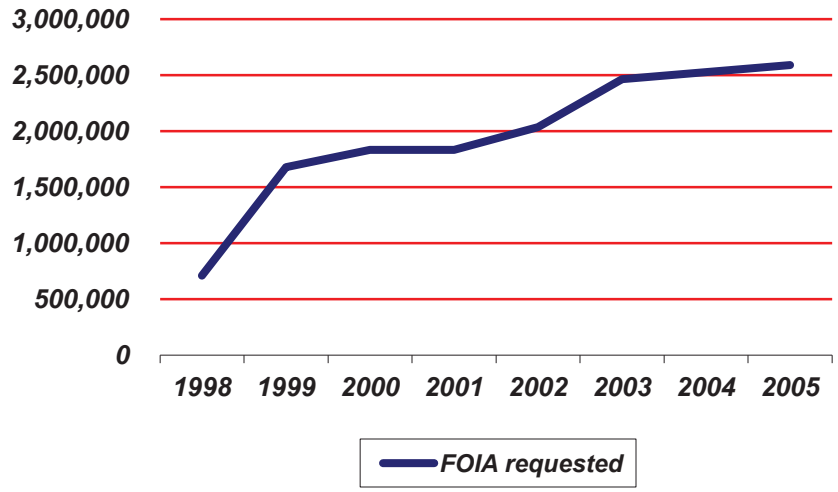


Figure 4.2. The total numbers of FOIA requests from 1998 to 2005

The numbers of FOIA requests processed showed the same pattern of increase as the numbers of FOIA requests. The numbers of FOIA requests processed increased consistently as the numbers of FOIA requests increased. While the number of FOIA requests processed in 1998 was 714, 757, it was 2,546,375 in 2005, more than triple the 1998 number. Figure 4.3 displays the numbers of FOIA requests processed during the eight years reviewed.

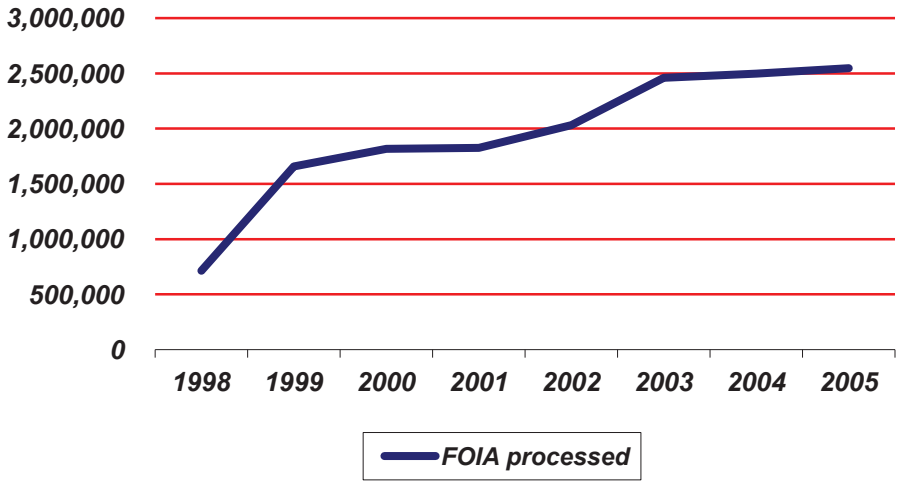


Figure 4.3. The numbers of FOIA requests posted from 1998 to 2005

The change in the FOIA costs

The total FOIA cost includes staff and all resources. It comprised the costs of all FOIA processing and litigation-related activities. The total FOIA costs of the Clinton administration show that they increased consistently except in FY 2000. The total FOIA cost in FY 1998 was $151,605,017 and it went up to $215,553,072 in FY 2001. The total FOIA costs of the Bush administration show that they increased every year. The total FOIA cost in FY 2002 was $243,036,120 and it went up to $274,763,631 in FY 2005.

When the author applied the CPI to this analysis, adjusting all figures to 1998 dollar values (constant dollars), the FOIA processing costs show different trends. The adjusted FOIA costs show two decreases of the adjusted total FOIA costs, in FY 2000 and in FY 2005. Under the Clinton administration, the adjusted total FOIA cost in FY 1998 was $151,605,017 and it went up to $196,153,296 in FY 2001. In contrast, under the Bush administration, the adjusted total FOIA cost in FY 2002 was $218,732,508 and it went up to $228,224,837 in FY 2004 and then it dropped to $219,810,905 in FY 2005. Figure 4.4 shows the trends of the total FOIA costs. The amounts marked "FOIA Total" are shown in dollars for each year before the CPI was applied for consistency. The amounts marked "Adjusted FOIA Total" are shown in constant dollars.

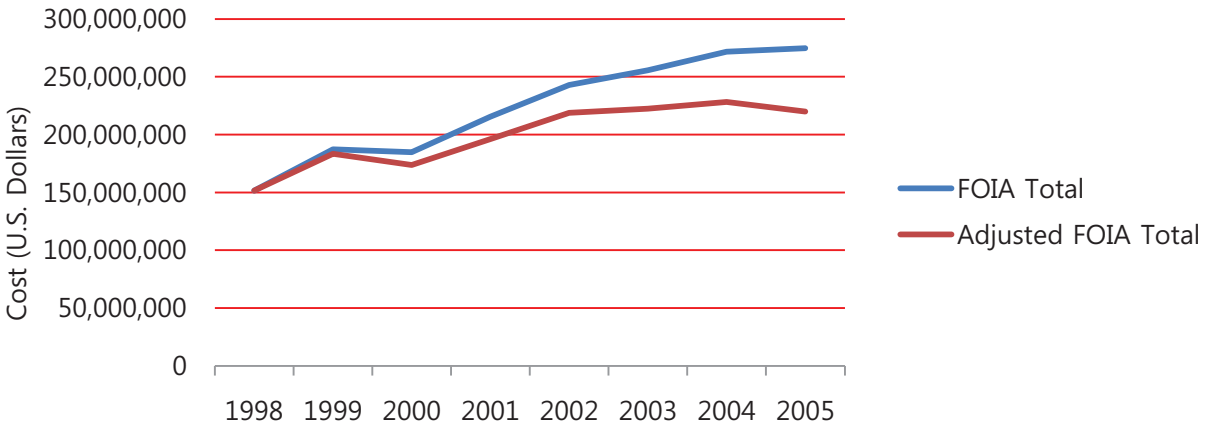


Figure 4.4. The total FOIA cost from 1998 to 2005

The FOIA processing cost increased consistently from FY 1998 to FY 2005. Under the Clinton administration, the FOIA processing cost in FY 1998 was $145,197,145 and it went up to $209,589,235 in FY 2001. According Figure 5, the FOIA processing cost in FY 1999 seemed to decrease a little bit but the figure did not reflect the real FOIA processing cost for FY 1999. The FOIA processing cost in FY 1999 could not include the processing costs of the FBI and the Executive Office for United States Attorneys because the 1999 annual FOIA report of the DOJ did not provide them. Under the Bush administration, the FOIA processing cost in FY 2002 was $235,871,877 and it went up to $261,910,035 in FY 2005.

When the author applied the CPI to this analysis, adjusting all figures to FY 1998 dollar values (constant dollars), the FOIA processing costs display meaningful differences between the Clinton administration and the Bush administration. Under the Clinton administration, the adjusted FOIA processing cost in FY 1998 was $145,197,145 and it decreased to $143,778,148 in FY 1999, then went up again in FY 2000 and 2001. However, the FOIA processing cost of 1999 did not reflect the real FOIA processing cost because FOIA processing cost of DOJ did not include the processing cost of FBI, which In contrast, under the Bush administration, the adjusted FOIA processing cost in FY 2002 was $212,284,689 and it went up to $216,659,608 in FY 2003. However, it fell to $214,074,800 in FY 2004 and continued to fall to $209,528,028 in FY 2005. Figure 4.5 shows the FOIA processing costs from FY 1998 to FY 2005.

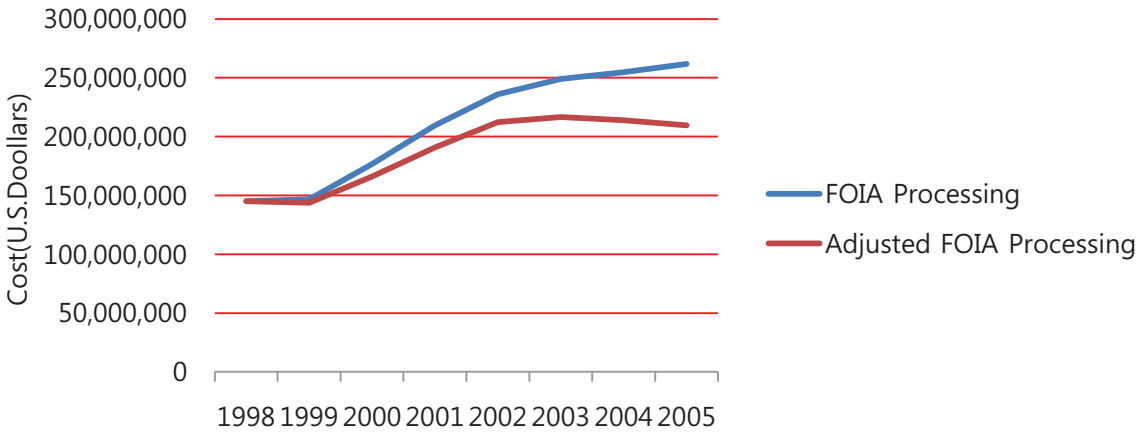


Figure 4.5. The FOIA processing costs from 1998 to 2005

Review of FOIA litigation costs shows that the Clinton administration spent less than the Bush administration did on FOIA lawsuits. While the average annual litigation cost for the Clinton administration, from 1998 to 2001, was $6,251,348, the average for the Bush administration, from 2002 to 2005, was $10,883,479. The lowest litigation cost for any year reviewed was $ 4,723,370 in 1999 and the highest litigation cost for any year reviewed was $ 16,845,282 in 2004.

When the author applied CPI to the average FOIA litigation costs of the Clinton and Bush administrations, the trend was not changed. The Bush administration spent about 1.57 times as much on FOIA litigation as the Clinton administration did. This means that the Bush administration supported federal agencies to shield government information and thus FOIA users made legal claims more frequently than before. Figure 4.6 shows the trends of FOIA litigation costs. The amounts marked "Adjusted FOIA Litigation" are shown in constant dollars. The amounts marked "FOIA Litigation" are shown in dollars for each year before the CPI was applied for consistency.

The ratio of FOIA costs to the Executive Branch budget and the fluctuations of the portion of FOIA costs also show the Clinton and Bush administrations' practical interests on FOIA implementation. The FOIA costs consist of FOIA processing cost and litigation cost. The FOIA costs detailed in this study did not include the FOIA costs of the ED and DOE. The author used the table of the *Discretionary Budget Authority by Agency: 1976-2007* as a basic source. Then, the author excluded the budget of Legislative Branch, the Judiciary and the EOP.

Figure 4.6. The changes in FOIA litigation costs from 1998 to 2005

Table 4.8 shows the ratio of the FOIA costs to the Executive Branch budget from 1998 to 2005. Adjusted FOIA costs, after application of the CPI, and Executive Branch Budgets were rounded to the nearest whole numbers.

Table 4.8

Ratio of FOIA costs to the Executive Branch Budget from 1998 to 2005

Year	1998	1999	2000	2001	2002	2003	2004	2005
FOIA costs	152	187	185	216	243	256	272	275
Adjusted FOIA costs	152	183	174	197	219	223	228	220
Executive Branch Budget	523,872	575,389	577,878	643,686	726,726	838,706	880,406	975,702
Adjusted EBB	523,872	563,881	543,205	585,754	654,053	729,674	739,541	780,562
Ratio(%)	0.0290	0.0325	0.0320	0.0336	0.0334	0.0305	0.0309	0.0282

*In millions

When comparing the actual FOIA costs between the first four years and the last four years, the Clinton administration spent $185 million on average from FY 1998 to FY 2001, the Bush administration spent $275 million on average from FY 2002 to FY 2005. It seems that the Bush administration paid 40 percent more than the Clinton administration did. However, when comparing the average ratio of the FOIA costs to the Executive Branch budget, the Clinton administration spent a higher percentage of its budget for FOIA costs than the Bush administration did. While the Clinton administration's average FOIA costs portion was 0.0318% from FY 1998 to FY 2001, the Bush administration's average FOIA costs portion was 0.0306% from FY 2002 to FY 2005.

Moreover, the ratio of FOIA costs to the Executive Branch budget shows that the Clinton administration had a tendency to increase the portion allocated to FOIA costs whereas the Bush

administration's portion allocated to FOIA costs was decreased. While the Clinton administration had increased its allocation for FOIA costs from 0.0290% in FY 1998 to 0.0336% in FY 2001, the Bush administration had decreased its allocation for FOIA costs from 0.0334% in FY 2002 to 0.0282% in FY 2005. The ratio of the portion of FOIA costs to the Executive Branch budget demonstrates that a larger portion of the budget was spent on FOIA implementation under the Clinton administration.

The author applied the CPI to obtain adjusted FOIA costs, adjusted Executive Branch budgets and the ratio of these for the adjusted dollars. According to the adjusted data, there had been no differences between the trends of the Clinton and Bush administrations' FOIA costs and Executive Branch budgets. However, it seemed that the reduction of the FOIA cost in FY 2000 partly resulted from the decrease in the Executive Branch budget in FY 2000. The ratio of the adjusted FOIA costs and adjusted the Executive Branch budget is the same as the nominal ratios of FOIA costs and Executive Branch budgets.

In short, the number of FOIA staff and the size of the FOIA budget are key parts of FOIA activities and the changes of FOIA and budget seemed to indicate the Clinton and Bush administrations' dedications to FOIA implementation. First, the number of FOIA staff shows how the Clinton and Bush administrations used federal resources for the FOIA. Considering that FOIA requests increased consistently during the eight years studied, the decrease in FOIA staff during the last four years studied implies that the Bush administration did not place much value on the practical aspects of FOIA implementation. In other words, the Bush administration demonstrated a poor allocation of resources for FOIA implementation.

In addition, the FOIA processing costs during the eight years studied demonstrates that both the Clinton and Bush administration increased the FOIA budgets. However, when the author applied the CPI to the costs, the Bush administration decreased FOIA funds in FY 2004 and FY 2005. This study also inferred that the increased FOIA litigation cost was partly due to the Ashcroft memorandum, which changed the standard of FOIA disclosure from "presumption of disclosure" and "discretionary disclosure" to "sound legal basis." Furthermore, the memorandum urged the DOJ to defend agencies in cases regarding the withholding of government information (DOJ, 2001).

Finally, the ratios of FOIA personnel FTEs to the Executive Branch FTEs and FOIA costs to the Executive Branch budget from 1998 to 2005 show that the portions for FOIA

personnel FTEs and FOIA costs had been consistently increased under the Clinton administration. In its turn, the Bush administration showed a tendency to decrease the portions for FOIA personnel FTEs, while total FOIA costs had also been decreased. It seems that the Bush administration spent 40 percent more for FOIA costs than the Clinton administration did during the period studied, but the Clinton administration allocated a higher percentage of its budget for FOIA costs than the Bush administration did.

Research Question 4-2

There are two important FOIA-related reports about the impact of the Ashcroft memorandum. One was issued by the Archive and the other was issued by the GAO. The author briefly summarized the contents of both reports in Chapter 2. This section re-used the survey results and original data that the Archive and the GAO employed, so the author could clarify the impact of the Ashcroft memorandum on the Bush administration's FOIA policy.

First, this study noted the similarities and differences in research methods used by the two reports. The Archive conducted a survey of FOIA policies and procedures by filing simultaneous FOIA requests on 35 different federal agencies. In addition, the Archive staff interviewed a senior FOIA official at each agency that provided a "no records" response. The research period was from September 2002 to March 2003. In contrast, the GAO administered both Web-based and paper-based surveys. In addition, the GAO interviewed 205 agency-identified department-level and component-level FOIA officers at 25 federal agencies. The research period was from October 2002 to April 2003.

The author narrowed the scope of respondents to the federal department level because this research was designed to examine not the specific federal departments' responses but their FOIA positions and trends in general. The DHS was not included, as it was not created until 2002. Thus, this section covers only 14 federal departments. Table 4.9 shows the agencies reviewed in this section and their acronyms.

Table 4.9

Agencies Reviewed and Abbreviation

Department	Abbreviation
Department of Agriculture	USDA
Department of Commerce	DOC
Department of Defense	DOD
Department of Education	ED
Department of Energy	DOE
Department of Health and Human Services	HHS
Department of Housing and Urban Development	HUD
Department of the Interior	DOI
Department of Justice	DOJ
Department of Labor	DOL
Department of State	State
Department of the Treasury	Treasury
Department of Transportation	DOT
Department of Veterans Affairs	VA

The Archive report

After reviewing the 2003 Archive report, the author requested original data for the report from the Archive. The Archive provided the author with the URL for a Web site containing the data of FOIA correspondence and documents on the Ashcroft memorandum, FOIA Audit on Ashcroft Memorandum (http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB84/agdocs.htm).

The author checked all documents the Archive sent to and received from federal departments. The Archive submitted FOIA requests that sought:

> All records, including but not limited to guidance or directives, memoranda, training materials, or legal analyses, concerning the Agency's implementation of U.S. Attorney General John Ashcroft's October 12, 2001 memorandum on the U.S. Freedom of Information Act.

The Archive then clarified the requests through a telephone conversation with an employee of the OIP and revised them as follows:

- FOIA Officers conference held in October of 2001
- Formal guidance regarding the implementation of the Ashcroft memorandum
- Any reports or studies that show the effect of the memorandum on the processing of FOIA requests
- Memorandum/e-mail to senior department offices regarding the implementation of the Ashcroft memorandum
- Samples of the OIP's training outlines pertaining to the Ashcroft memorandum

The 14 departments showed different responses to the Attorney General's memorandum.

- The USDA said it had no responsive records concerning its implementation of the Ashcroft memorandum.
- The DOC issued its own memorandum stressing the government-wide FOIA policy change with circulation of the Ashcroft memorandum and the follow-up ISOO·OIP memorandum.
- The DOD also issued its own memorandum, on November 19, 2001, but it did not change any training material to reflect new guidance from the Ashcroft memorandum.
- The ED answered that it did not initiate any new steps and had no related documents after the memorandum.
- The DOE said that, although it conducted a search in response to the Archive's request, it found no responsive documents.
- The HHS forwarded the Ashcroft memorandum and the Card memorandum to the FOIA officers in several operating divisions with the notation "FYI." The department also sent its own memorandum summarizing the Attorney General's memorandum to FOIA officers.
- HUD received an appeal from the Archive because of a late substantive response. After the Archive sent another request implying the option of filing a lawsuit, HUD replied that it had failed to locate related records.

- The DOI also received an appeal from the Archive due to a late response, but then released copies of five documents totaling 16 pages on January 30, and a second set of copies of 24 documents totaling 79 pages on February 25, 2002. The DOI, however, withheld six documents in part and five documents in full based upon Exemption 5. According to the documents, the DOI had a FOIA officers meeting on October 24, 2001, explaining the Attorney General's new FOIA policy. On October 29, 2001, the Departmental FOIA officer, Alexandra Mallus, notified FOIA employees of the DOI that the DOI would incorporate the Attorney General's new FOIA policy in an IRM bulletin.
- The DOJ issued the Ashcroft memorandum on October 12, 2001. In addition, the OIP announced the FOIA policy change through the *FOIA Post* (http://www.justice.gov/archive/oip/foiapost/2001foiapost19.htm), urging federal agencies to distribute the new FOIA policy memorandum widely and expeditiously on October 15. According to a document from the DOI, the DOJ may have held a FOIA meeting on October 18 to further explain the new policy to other federal agencies. But the DOJ did not provide any information on the meeting. The DOJ continued to raise FOIA policy issues concerning the Ashcroft and Card memoranda. For instance, the DOJ circulated a memo titled "*Current policy issues/ EFOIA*" on April 17, 2002 and another memo titled "*Attorney General Ashcroft's FOIA memorandum and Homeland Security FOIA policy issues*" on October 30, 2002.
- The DOL received an appeal from the Archive. The DOL had a decentralized system, so it forwarded the Archive request to its components for processing. According to the data, the DOL held a FOIA/PA training seminar on February 12-13, 2002, covering the Ashcroft memorandum.
- State also received an appeal from the Archive. State found three relevant documents in the Office of Information Programs and Services. According to the data, a senior FOIA officer stated at a refresher training session on October 16, 2001 that the "foreseeable harm" standard was still in effect. However, the next day, on October 17, 2001, he clarified that the Reno standard was superseded by a "sound legal basis" enunciated by the Attorney General, John Ashcroft. On December 4, 2001, State held a Senior Reviewers Workshop urging attendees to delete mention of

"Foreseeable Harm" in the template for memoranda. A Senior Reviewers Workshop on February 13, 2002 and a Reviewer Refresher Training on February 14, 2002 included "discussion of the Ashcroft memorandum and its impact to date and the use of (b)(2) exemption to protect sensitive infrastructure information."

- The Department of the Treasury responded to the Archive with a document. A Treasury FOIA Officers Meeting on October 30, 2001 covered the new Attorney General's memorandum.
- The DOT received an appeal from the Archive, too. According to the data, the General Counsel of the DOT sent a memorandum to the Chief of Staff and the Director of Public Affairs on October 25, 2001, summarizing the points of the Ashcroft memorandum.
- The VA also received an appeal from the Archive. The VA responded that its "correspondence and communication records might be destroyed as authorized by the GRS 14, NARA."

In summary, based upon all of the departments' responses, this section categorized the departments into four groups like the Archive did. However, the author could not categorize the VA because it did not send any information saying that it destroyed related correspondence and communication records based upon GRS 14. Six departments received one or more appeals from the Archive due to late responses. These departments are HUD, the DOI, the DOL, State, the DOT and the VA. Table 4.10 shows the 14 departments' responses to the Archive's FOIA requests on the Ashcroft memorandum.

Table 4.10

Federal departments' responses to the Archive's FOIA request after the Ashcroft memorandum

Rate	Department	Responses
Significant change	DOI, DOJ	Significant changes in regulations and guidance Wide dissemination of the memorandum
Change	State	Incorporation into FOIA regulation Dissemination of the memorandum
Minor change	DOD, DOD, DOL, HHS, DOT, Treasury	Awareness Dissemination of the memorandum Issuance of their own memoranda
No Documents	USDA, ED, DOE, HUD	No related documents (No changes or unhelpful responses)

GAO Report

The author contacted the GAO to get the original data used for the 2003 GAO report (GAO 03-981). The GAO sent a spreadsheet via email that consisted of two parts: the "number of requests processed" in five formats: Simple, Complex, Single Track, Expedited and Pending; and each agency's and department's 'yes-no-do not know' responses to the GAO's survey questions. This section discusses only the GAO survey questions because the number of requests processed was already covered in Research Question 4-1. The spreadsheet covers 26 federal agencies and departments, which is one more agency than the GAO had. The U.S. Agency for International Development was included in the spreadsheet, but it was omitted in the final GAO report.

The GAO survey had two questions, each with several subquestions. The GAO's Research Question 1 is related to the Ashcroft memorandum, and its Research Question 2 asks about the Card memorandum.

The GAO Research Questions:

1. Has your agency done any of following with regard to implementing the policy statement issued in the Ashcroft FOIA memorandum
2. To the best of your knowledge, since October 2001, has your agency prepared and disseminated written guidance (e.g., directives, memoranda, legal analyses) that further specifies or elaborates on the following?

According to the responses, each department responded to the Ashcroft memorandum and to the Card memorandum.

- Every federal department except Treasury distributed the Ashcroft memorandum to agency personnel. Treasury answered that it did not know. (1 a)
- Seven departments – DOC, DOD, DOE, HHS, DOI, DOJ and DOL – said they prepared and disseminated additional written guidance on implementing the changes to the FOIA policy (e.g., directives, memoranda, legal analyses).(1 b)
- Seven departments – ED, DOE, HUD, DOI, DOJ, DOL and State – prepared training material and/ or held agency training sessions for FOIA processors on implementing the policy. (1 c)

- Ten departments – DOC, ED, DOE, HHS, HUD, DOI, DOJ, DOL, State and the VA – identified particular individuals or units within the agency for FOIA processors to contact for assistance if they have questions about applying the policy to a FOIA case. (1 d)
- Only the DOD further specified or elaborated on criteria or factors to be used in deciding whether to make a discretionary release of information under the policy. (1 e)
- Only the DOI revised or rescinded agency FOIA policies or procedures. (1 f)
- Only the DOI revised instructions or other information provided to the public on how to make FOIA requests. (1 g)
- Four departments – USDA, HHS, DOI and DOL – had criteria to be used in determining whether unclassified records contain sensitive information related to homeland security. (2 a)
- Three departments – HHS, DOI and DOL – had criteria for determining whether to disclose sensitive information related to homeland security in response to a FOIA request.(2 b)
- Four departments – HHS, DOI, DOL and Treasury – had criteria to be used in determining whether material is critical infrastructure information. (2 c)
- Four departments – DOD, HHS, DOL and Treasury – had criteria to be used in determining whether to disclose CII in response to a FOIA request. (2 d)

Each GAO question had its own descriptive question, but the spreadsheet did not provide the results. Thus, it is not clear whether the departments responded to the descriptive questions.

Research Question 4-3

The purpose of Research Question 4-3 is to analyze how much the White House memorandum affected the federal departments' FOIA activities. On March 19, 2002, Andrew H. Card, White House Chief of Staff, issued a memorandum titled "*Action to Safe Guard Information Regarding Weapons of Mass Destruction and Other Sensitive Documents Related to Homeland Security*." This is the only time the Chief of Staff issued a FOIA memorandum, which might have put pressure on the federal agencies. Table 4.11 shows the breakdown of types of responses by the federal departments to the GAO survey.

Table 4.11

Federal departments' responses to the GAO survey on the Ashcroft memorandum

Category	Specific Movement	Department
Circulation of the Memorandum	Dissemination of the memorandum	USDA, DOC, DOD, ED, DOE, HHS, HUD, DOI, DOJ, DOL, State, DOT, VA (13)
	Issuance of additional guidance	DOC, DOD, DOE, HHS, DOI, DOJ, DOL (7)
Procedure Change and Training Session	Designation of units for assistance	ED, DOE, HUD, DOI, DOJ, DOL, State (7)
	Training session with training materials	DOC, ED, DOE, HHS, HUD, DOI, DOJ, DOL, State, VA (10)
Revision of Regulation	Regulation revision on discretionary release	DOD (1)
	Revision or repeal of FOIA policy or procedure	DOI (1)
	Revision of FOIA instruction	DOI (1)

The ISOO and the OIP issued a memorandum to accompany the Card memorandum. That ISOO·OIP memorandum suggests guidance on three kinds of information: classified, previously unclassified or declassified, and SBU. For protection of SBU information, the memorandum encouraged federal agencies to cite Exemption (b)(2) for records related to internal personnel rules and practices of an agency and to cite Exemption (b)(4) for confidential commercial information.

Thus, this section examined how the Card memorandum and the ISOO·OIP memorandum affected federal departments' FOIA processes. To do that, the author investigated how often the federal departments cited Exemptions (b)(2) and (b)(4) to withhold SBU information by comparing the departmental FOIA annual reports from 1998 to 2005.

Exemption 2

The Card memorandum and the ISOO·OIP memorandum were issued on March 19, 2002, the second quarter of FY 2002, thus its guidance could affect federal agencies' FOIA implementation only since 2002. This section compared how many times each of 13 departments invoked Exemption 2 in response to its initial FOIA/PA requests from FY 1998 to FY 2005.

When the author compared the average numbers of each department's Exemption 2 uses between the first four years and the last four years, the Clinton administration used the exemption 9,131 times per year and the Bush administration invoked it 23,569 times per year. In other words, the Bush administration invoked the exemption about 2.6 times more than the Clinton administration. Comparing the ratio of Exemption 2 use to all exemptions used between the first four years, from 1998 to 2001, and the second four years, from 2002 to 2005, the ratio of Exemption 2 use to all exemptions used in the first four years was 0.052 and the ratio of Exemption 2 use to all exemptions used in the second four years was 0.081.

Specifically, nine departments invoked Exemption 2 in a higher ratio under the Bush administration when compared the ratio of Exemption 2 use to all exemptions used during the Clinton and Bush administrations. These nine departments were USDA, DOC, DOD, HUD, DOI, DOL, State, Treasury and DOT. Only HHS and DOJ invoked Exemption 2 in a higher ratio during the Clinton administration. VA had same ratio of Exemption 2 to all exemptions used between the first four years and the second four years.

The number of Exemption 2 used was 9,970 in 1998, decreased to 6,665 in 1999, then went up to 13,465 in 2002. However, it decreased to 10,268 in 2003 and then surged to 40,727 in 2005. Figure 4.7 shows the numbers of Exemption 2 used from 1998 to 2005.

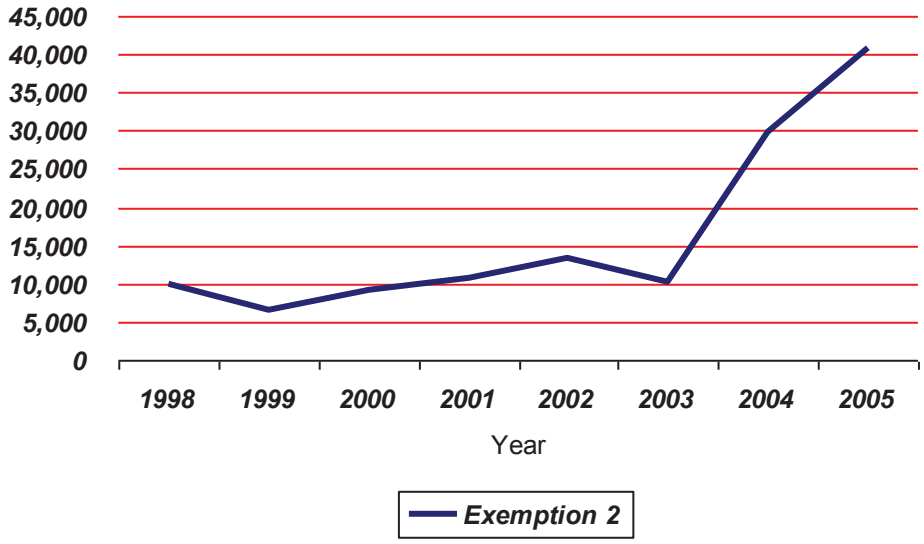


Figure 4.7. The numbers of Exemption 2 used from 1998 to 2005

Exemption 4

When the author compared the average numbers of each department's Exemption 4 usage between the first four and the second four years, the Clinton administration used the exemption 4,958 times per year and the Bush administration used it 8,125 times per year, which means the Bush administration used the exemption 1.64 times more than the Clinton administration. Comparing the ratio of Exemption 4 to all exemptions used between the first four years, from 1998 to 2001 and the second four years, from 2002 to 2005, the ratio of Exemption 4 to all exemptions used was the same between the first and second sets of four years, which was 0.028.

Five departments invoked Exemption 4 in a higher ratio during the Bush administration when compared to the ratio of Exemption 4 to all exemptions between the first four years and second four years. These are USDA, DOD, DOL, State and VA. Six departments – DOC, HUD, DOI, DOJ, Treasury and DOT – invoked Exemption 4 in a higher rate during the Clinton administration. HHS had the same ratio of Exemption 4 to all exemptions used between the first four years and second four years.

The number of Exemption 4 used was 4,594 in 1998, decreased to 4,578 in 1999, and then went up consistently to 8,574 in 2005. Figure 4.8 shows the numbers of Exemption 4 used from 1998 to 2005.

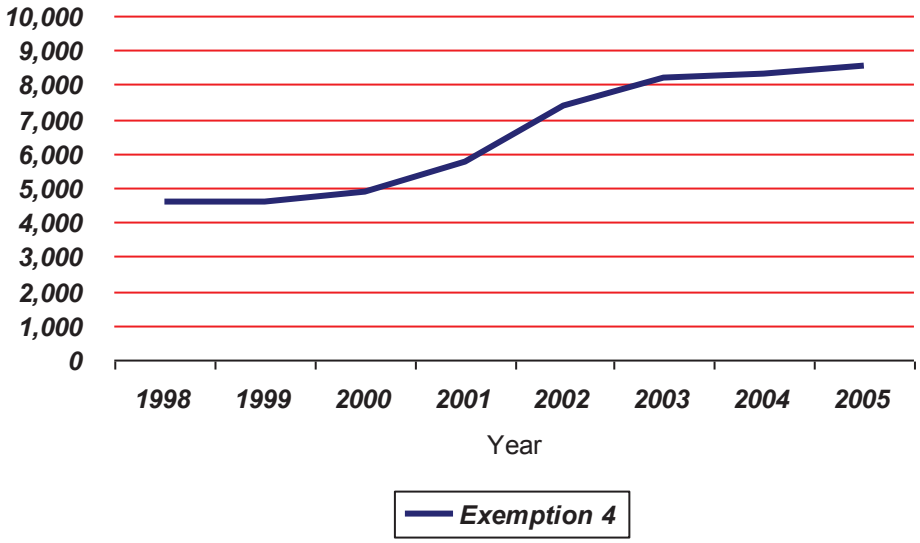


Figure 4.8. The numbers of Exemption 4 used from 1998 to 2005

While four departments – USDA, DOD, DOL and State – invoked both Exemptions 2 and 4 in a higher ratio during the second four years, only the DOJ invoked both Exemptions 2 and 4 in a higher ratio during the first four years.

Consequently, the recommendations of the Card memorandum and the ISOO·OIP memorandum to make use of Exemptions 2 and 4 seemed to affect the departments' FOIA implementation, regardless of their various responses to the Ashcroft memorandum. However, it is not certain that the Card memorandum was more demanding than the Ashcroft memorandum or whether it affected FOIA implementation more severely than the Attorney General's memorandum. Table 4.12 demonstrates the number of each department's Exemptions 2 and 4 plus all exemptions used from 1998 to 2005.

Table 4.12

The numbers of Exemption 2 and 4 and total exemptions from 1998 and 2005

Year		USDA	DOC	DOD	HHS	DHS	HUD	DOI	DOJ	DOL	State	Treasury	DOT	VA
1998	E2	54	7	970	17		5	11	7966	791	19	16	85	29
	E4	324	106	1259	318		80	127	162	1721	32	34	382	49
	Total	2772	417	18513	2085		386	941	63927	30130	856	282	2985	1423
1999	E2	60	7	1149	32		19	16	4872	402	18	16	59	15
	E4	342	65	1124	397		187	108	140	1776	30	39	324	46
	Total	2727	326	19840	2139		739	853	57106	22061	904	335	2651	1785
2000	E2	41	8	1196	61		14	23	7067	517	23	11	33	151
	E4	314	80	1075	309		135	149	405	2055	30	60	232	44
	Total	2628	482	18792	2546		649	1047	130474	25554	914	359	2982	2177
2001	E2	28	17	1219	47		18	24	8682	368	34	66	110	130
	E4	307	96	1119	332		172	145	575	2454	30	212	285	44
	Total	4757	535	18252	2886		846	1053	205911	18123	1008	888	3447	13929
2002	E2	73	27	1891	66		19	25	9214	450	49	1373	105	173
	E4	405	129	1375	397		187	91	581	3264	51	530	282	101
	Total	3546	650	19625	2511		798	1065	419759	21642	1386	11121	3204	7413
2003	E2	95	14	1689	37	4192	18	43	3065	595	125	177	52	166
	E4	463	103	1583	301	358	126	188	269	3942	104	418	245	113
	Total	3759	632	19296	2467	96249	639	1545	22322	23484	2425	8190	2864	7743
2004	E2	198	21	1944	30	23162	25	46	3577	403	138	57	85	131
	E4	364	111	1268	411	285	164	122	227	4503	126	354	230	155
	Total	4066	575	22139	3193	138134	601	1396	23327	25634	2759	3813	3064	11161
2005	E2	81	30	2258	53	33700	31	120	3171	728	97	245	54	159
	E4	360	87	1704	570	343	113	153	127	4130	80	357	188	362
	Total	3063	614	23875	3832	135433	718	3341	19142	22135	1864	8018	2845	11444

Research Question 4-4

The purpose of Research Question 4-4 is to compare the trends of classification and declassification during the Clinton and Bush administrations. It appears that the Clinton and Bush administrations faced different political situations. The Bush administration entered into a war against terror, whereas the Clinton administration operated with the concept that the Cold War was over. Thus, it seems to be excusable that the Bush administration made more classifications and less declassifications than the former administration. The issue is, however, that the Bush administration showed a tendency toward excessive secrecy in the name of national security.

The Archive, OMB Watch, OpenTheGovernment.org, Reporters Committee, and other major press organizations including *U.S. News and World Report* warned that the Bush administration put information that is necessary to the public but not important to terrorists out of the public's reach. Thus, this section presents the trends of numbers of the original classifiers, showing each of 13 federal departments' classification and declassification activity from 1998 to 2005 to demonstrate the Clinton and Bush administrations' secrecy trends.

The classification activity contains original classification decisions, derivative classification decisions, and combined classification decisions. The declassification activity includes declassified pages under both Automatic and Systematic Review Declassification programs and mandatory review and additional declassified pages on appeal.

The data was rearranged based upon annual ISOO reports. The ISOO is a component of the NARA, but it receives its policy and program guidance from the NSC. The ISOO is required by E.O. 12958 to submit information on the status of the security classification program to the President. E.O. 12958 went into effect in October 1995 and was amended on March 25, 2003 as E.O. 13292 and then changed into E.O. 13526 on December 29, 2009 by President Barack Obama.

The Interagency Security Classification Appeals Panel (ISCAP), the highest appellate body for the declassification decisions under the ISOO, provides a venue for appeals for declassification of classified information through the Mandatory Declassification Review (MDR) process. MDR is used not only as a less contentious alternative to lawsuits in support of requests under the FOIA, but also to obtain Presidential papers or records not subject to the FOIA.

Original Classifiers

The President and selected agency heads are able to designate original classification authorities (OCAs), called original classifiers, to classify information not previously classified. Whether information is classified or not depends upon OCAs in each agency. OCAs, however, should be able to identify or describe the damage to national security that would occur if and when the information is leaked. Furthermore, they are required to explain differences between newly and previously classified information.

In general, the number of OCAs from 1998 to 2005 appears to have leveled out, despite the creation of the DHS in 2003. There were a total of 3,903 original classifiers in 1998, which increased only to 3,959 in 2005, showing that the Clinton and Bush administrations had similar patterns in terms of the change in numbers of original classifiers.

However, there are meaningful changes in the number of specific levels of OCAs. OCAs are grouped into three levels of classifiers: top secret, secret and confidential. Specifically, the number of top secret classifiers increased from 884 in 1998 to 994 in 2005, with consistent rise since FY 2002. Although the number of total classifiers did not increase greatly, the number of top secret classifiers showed a 12.4 percent increase. The ratio of top secret classifiers to OCAs increased from 22.6 percent in FY 1998 to 25.1 percent in FY 2005. The number of secret classifiers shows a 3.4 percent increase during the eight years from 2,773 in FY 1998 to 2,864 in FY 2005. The ratio of secret classifiers to OCAs showed a slight increase from 71.04 percent in FY 1998 to 72.34 percent in FY 2005. On the other hand, the number of confidential classifiers decreased from 246 in FY 1998 to 101 in FY 2005. The decrease in the number of confidential classifiers was 59 percent during the eight years. The ratio of confidential classifiers to OACs shows a decrease from 6.03 percent in FY 1998 to 2.55 percent in FY 2005. In short, the Bush administration sustained larger percentages of top secret classifiers and secret classifiers than the Clinton administration did. Figure 4.9 shows the changes in the numbers of the top secret, secret and confidential classifiers and total OCAs during the eight years.

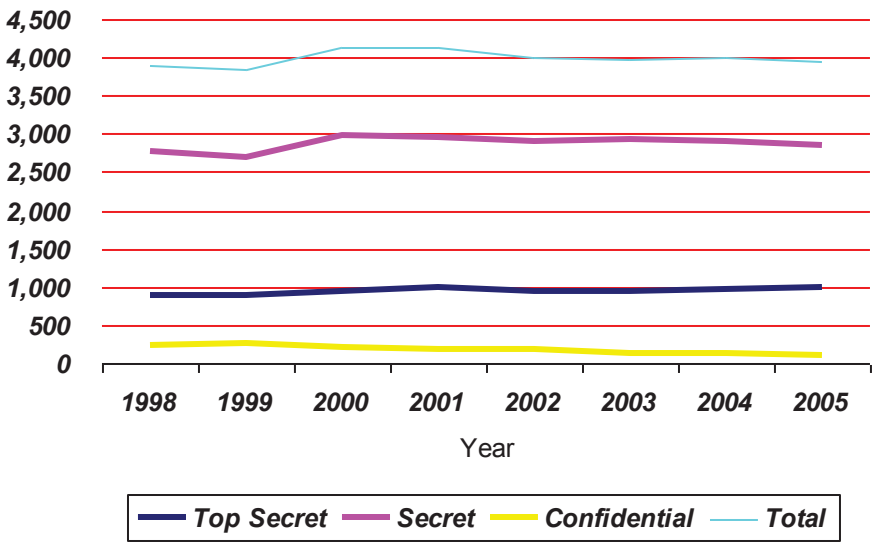


Figure 4.9. The change in numbers of OCAs from 1998 to 2005

Classification

Classification is divided into two categories: original classification and derivative classification. The original classification is an initial determination by an OCA; the derivative classification is the reutilization of information from the original category. A combined classification is the sum of both original and derivative classification activities. Thus, original classification decisions are the basis of every derivative classification action.

The numbers of original classification decisions during the eight years reviewed have shown considerable overall increases with some fluctuations. While there were a total of 137,005 original classification decisions in 1998, there were 258,633 original classification decisions in 2005. The 2005 figure represents an increase to about 1.9 times the number of original classification decisions in 1998.

For 2004, agencies reported 351,150 original classification decisions, a 34 percent increase over 2003. According to the ISOO report of 2004, the increased classification is attributable to a new structure for homeland security and wars against terrorism from 2002 through 2004. During the eight years reviewed, however, two years - 2002 and 2005 - showed decreases in the number of original classification decisions from the previous year. The number of original classification decisions in 2002 showed a decrease of 17 percent from 2001, which is mainly attributable to decreases by the DOD. For 2005, the total showed 26 percent less than the

number of original classification decisions in 2004. The overall decrease in original classification is mostly due to the DOD and State.

The average increase was 68,194 per year when comparing the numbers of original classification decisions between the first four years and the second four years. While the average number of classification decisions from 1998 to 2001 is 197,086, the average increased to 265,280 during the four years from 2002 to 2005. In other words, the Bush administration classified information 34 percent more than the Clinton administration did. Figure 4.10 shows the trend of classification activity from 1998 to 2005.

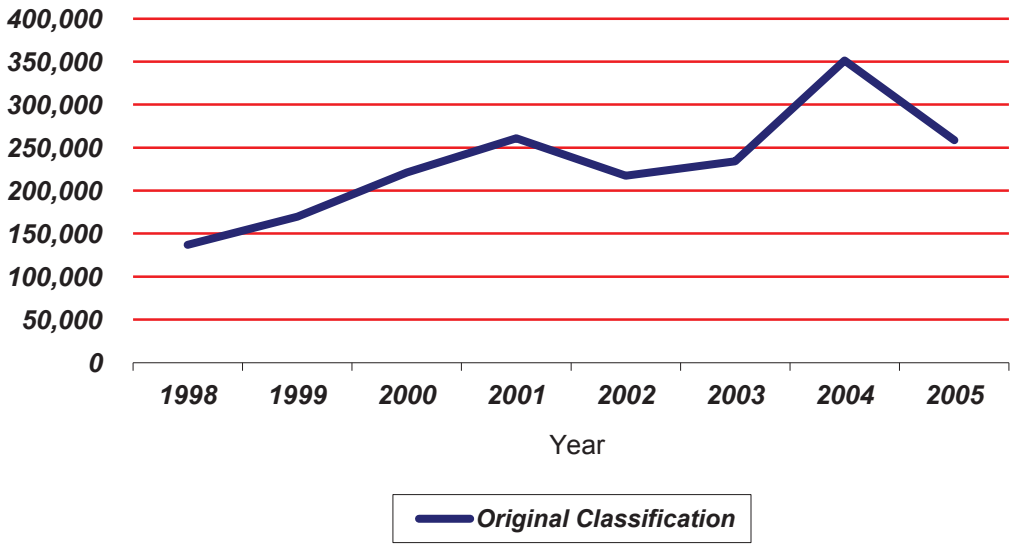


Figure 4.10. The trend of original classification activity from 1998 to 2005

Derivative classification can be defined as "the act of incorporating, paraphrasing, restating, or generating in new form classified source information." The derivative classification produces about 98 percent of classified documents, but it does not create new classified information.

The annual numbers of derivative classification decisions during the eight years reviewed have increased, peaking in 2001. From a total of 7,157,763 derivative classification decisions in 1998, the numbers rose to 13,948,140 derivative classification decisions in 2005, 1.9 times the number of derivative classification decisions in 1998.

For 2000, the ISOO did not report the number of derivative classification decisions, which showed a 189 percent increase from 1999, because the ISOO questioned the value of

reporting the data. According to the 2001 ISOO annual report, the upsurge was due to the increased use of electronic mail and other electronic activities in the federal agencies. The report considered 2000 the watershed, marking the change from paper-centric classification practices to electronic classification practices. The highest number of derivative classification decisions reported was 32,760,209 for 2001, a 44 percent increase from 2000. The data for 2000 came from the ISOO 2001 annual report.

The author did not compare the numbers of the derivative classification activities between the Clinton and Bush administrations because of the missing figures from 2000. Figure 4.11 shows the trend of derivative and combined classification activity from 1998 to 2005.

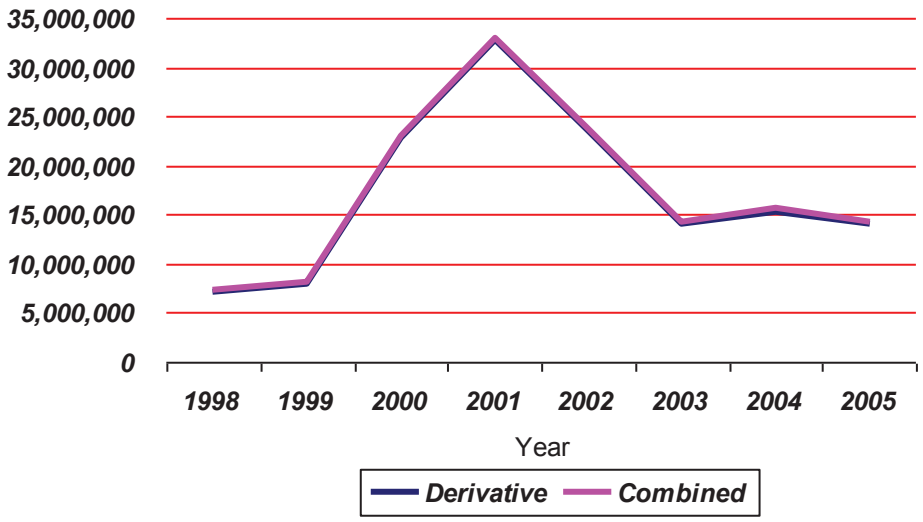


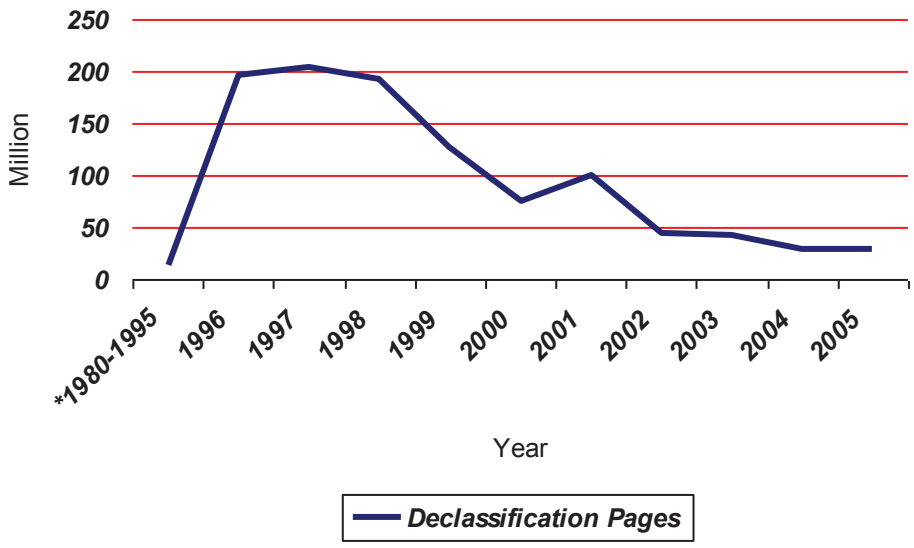
Figure 4.11. The trend of derivative and combined classification activity from 1998 to 2005

Declassification

Declassification is a process to change the status of information from classified to unclassified. There was "a paradigm shift" in the nation's declassification policies when President Clinton issued E.O. 12958 on April 27, 1995. By introducing an Automatic Declassification program and allowing all agencies to operate a systematic declassification review program, the public, researchers and historians were able to access permanently valuable historical records with ease. Before E.O. 12958, the NARA was the only agency that conducted a systematic review of its classified holdings through its Systematic Review for Declassification (ISOO, 2005), which started in 1972 in response to E.O. 12356.

There was a downward trend in numbers of items declassified from 1998 through 2005. Although federal agencies declassified 193 million pages in 1998, only 29 million pages were declassified in 2005. In 1998, 6.5 times as many pages were declassified as in 2005. Of the eight years reviewed for numbers of declassified pages, the first four years averaged 87.6 million more declassified pages for the four combined than did the second four years. While the average number of declassified pages for the four combined years from 1998 to 2001 is 123.7 million pages, that from 2002 to 2005 is 36.1 million pages. In other words, the Clinton administration declassified 3.4 times more pages than the Bush administration did.

The ISOO attributed the downward trend not to the Bush administration favoring secrecy initiatives but to technical issues including the increasing complexity of the remaining documents and the number of interrelated documents. According to the ISOO report, the number of pages declassified in 2005 was more than double the yearly average before 1995. While the number of pages declassified in 2005 was 29.5 million, the average number of declassified pages from 1980 through 1994 was 12.6 million. Figure 4.12 shows the numbers of declassified pages from 1980 to 2005.



* Total numbers of declassified pages for the years 1980-1995: 257 million pages

Figure 4.12. The numbers of declassified pages from 1980 to 2005

It is not easy to specify why the numbers of declassified pages decreased during the Bush administration, but three major factors seem pertinent. The first factor is that, as the media and

citizen groups argued, the Bush administration's secrecy policy drove the federal agencies to lean toward nondisclosure. The second factor is the change of political environment caused by the September 11 attacks, which were cited as the cause of the Bush administration's enhanced secrecy (Jaeger, 2006; Schmitt & Pound, 2003; Uhl, 2003). Finally, factors such as "the concentrated intellectual analysis and the additional administrative processing time" provided additional reasons for the Bush administration's failure to produce more declassified pages (ISOO, 2005, p. 15).

Summary

Research Question 4 was contrived to verify the differences between practical resources for FOIA implementation in the Clinton and Bush administrations. Research Question 4-1 reveals that the FOIA costs and the numbers of FOIA requests received and processed increased from 1998 to 2005. However, the number of FOIA personnel decreased since 2003. Moreover, FOIA litigation cost showed a 1.74 times increase during the Bush administration.

Research Question 4-2 showed that federal departments under the Bush administration showed a range of different responses after the Ashcroft memorandum. According to the Archive and GAO reports, while most of the Departments circulated the Ashcroft memorandum, the DOI and DOJ followed the upper guidance more faithfully than other departments. It seemed that although a president's initiative to improve FOIA implementation was issued, its impact on federal agencies was somewhat dependent upon senior or manager-level officers. In other words, middle-level FOIA officers' roles were critical to implement FOIA policy initiatives.

Research Question 4-3 demonstrated that while the numbers of Exemption 2 cited as non-disclosure showed an increasing trend with two fluctuations, the numbers of Exemption 4 used as non-disclosure showed consistent increase. The Bush administration invoked Exemption 2 about 2.6 times more than the Clinton administration did. It also cited Exemption 4 about 1.64 times more often than the Clinton administration did.

Research Question 4-4 allowed the author to discover that the Clinton and Bush administrations had similar numbers of total classifiers, but the Bush administration had more original classifiers than the Clinton administration had. In addition, the Bush administration classified many more documents as secret than the Clinton administration did. It was argued that the transition from paper to electronic documents and war against terrorism were two main reasons.

CHAPTER 5
DISCUSSIONS AND IMPLICATIONS

Introduction

The two main goals of the study were to examine two presidents' influences on FOIA policies and to investigate characteristics of the Clinton and George W. Bush administrations' FOIA policies and related information policies. To accomplish these goals, this study explored the presidents' political philosophies regarding the FOIA; compared the FOIA principles that each of the two administrations stressed; compared the FOIA policies and related information policies issued during each of the two administrations; and analyzed how federal agencies responded to the two presidents' FOIA initiatives.

Analysis of the data shows each president's influence on FOIA policies was so critical that federal FOIA personnel tried to follow the president's directions. The FOIA was not a major agenda like social welfare, healthcare or national security, and it was not treated as an important policy issue by the presidents or by the presidential candidates. Congress and public interest groups, however, have continued to show their interest in the issue of public access to government information, starting even before the FOIA was enacted.

The FOIA did not seem to have solid support from the executive branch from the beginning, even though the concept of an informed citizenry can be traced back to the country's Founding Fathers and was regarded as "a cornerstone of the democratic vision" (Pettitano, 2007). This study regarded "an informed citizenry," "open government" and "disclosure" as three basic principles of the FOIA, which were re-emphasized by the *OPEN Government Act of 2007* (P.L. 110-175).

This chapter offers an overall summary of the study; discusses the degree to which the study successfully addressed the problem statement, goals and objectives; offers some implications and applications of the findings; and reviews the degree to which the conceptual framework was useful and/or should be revised. In addition, the chapter identifies areas of future research and recommendations related to the research reported here to continue our understanding of the FOIA.

Changes in the FOIA

The author used a variety of research coverage based upon the research methods, which mainly consisted of data collection and evaluation from the comparison periods of the Clinton and Bush administrations. Since the 2007 Congressional FOIA hearings, a number of important changes have occurred in FOIA law and regulations that need to be recognized.

The most important was the amendment of the FOIA by *the Openness Promotes Effectiveness in the National Government Act of 2007* (the OPEN Government Act of 2007) sponsored by Senator Patrick Leahy on December 31, 2007. This amendment consists of 12 sections including the codification of several provisions of E.O. 13392, and addressed a range of FOIA implementation issues.

First, the amendment reconfirmed the FOIA principles of "an informed public opinion," "disclosure, not secrecy," and "a presumption of openness." It also acknowledged that FOIA implementation has not been faithful to the ideals of the FOIA, so Congress always should have oversight of government activity to "ensure that the government remains open and accessible to the American people."

Second, it extended and clarified the definition of "a representative of the news media" relative to access to FOIA issues. In addition, federal agencies were tasked to revise their existing fee regulations and practices in accordance with this provision. This amendment included a provision that the FOIA fees under section 5 USC 552(a) (4) (E) should be paid from "funds annually appropriated for the federal agency."

Third, the amendment gives the Special Counsel the authorization to initiate a proceeding for arbitrary and capricious rejections of FOIA requests and directs the Special Counsel and the Attorney General to submit reports to Congress on their actions.

Fourth, it clarifies how to calculate the 20-day period and assigns a FOIA Public Liaison to "assist in the resolution of any disputes between the requester and the agency" and establishes a system to assign an individualized tracking number to any requester whose request would take longer than ten days to process.

Fifth, it requires new statistics and data for the FOIA annual reports including the average number of days, the median number of days, and the range in number of days for the agency to respond to such requests and to put any information "maintained for an agency by an entity under Government contract" as visible records for purposes of the FOIA.

Sixth, it set up the Office of Government Information Services (OGIS) within the NARA. The OGIS is required to review FOIA policies and procedures of federal agencies and recommend policy changes to Congress and the President. In addition, each agency is required to designate a Chief FOIA Officer at the Assistant Secretary or equivalent level and to assign one or more FOIA Public Liaisons to that Chief FOIA Officer.

In addition to the *OPEN Government Act of 2007*, there were many other positive changes in the FOIA environment after President Barack Obama was inaugurated. President Obama issued a FOIA memorandum on January 21, 2009, his first full day in office. In accordance with that memorandum, Attorney General Eric Holder issued new FOIA guidelines on March 19, 2009, rescinding the Ashcroft memorandum.

Moreover, the Director of the OMB, Peter R. Orszag, issued a FOIA memorandum, "*Promoting Transparency in Government*," called the Open Government Directive (the Directive) based upon President Obama's FOIA memorandum, which mentioned of "a new era of open government" and reaffirmed "commitment to accountability and transparency." The directive made clear that "the three principles of transparency, participation, and collaboration form the cornerstone of an open government." It required federal agencies to "publish government information online, improve the quality of government information, create and institutionalize a culture of open government, and create an enabling policy framework for open government."

Second, *the OPEN FOIA Act of 2009* was enacted on October 28, 2009, as section 564 of the *Department of Homeland Security Appropriations Act 2010* (P.L. 111-83). According to this Act, any statue established after the date of enactment of the *OPEN FOIA Act of 2009* must cite to Exemption 3 in order to qualify as a withholding statute.

Third, on March 16, 2010, during the Sunshine Week, President Obama issued a statement on the FOIA and on that same day, Rahm Emanuel, then White House Chief of Staff, and Bob Bauer, Counsel to the President, issued a FOIA memorandum. In the statement, President Obama said that his administration would pursue an "unmatched level of transparency, participation and accountability across the entire administration." The White House memorandum reconfirmed a "presumption of disclosure" and required federal agencies to take actions for full implementation of the President's memorandum on the FOIA.

Overview of Findings

The section summarized the president's influences on FOIA policies and the characteristics of the Clinton and Bush administrations' FOIA policies. Specifically, it dealt with Presidents Clinton's and Bush's philosophies on the FOIA and their influences on FOIA policies, and with the similarities in and differences between the Clinton and Bush administrations' FOIA policies.

In reviewing the legislative history of the FOIA, government officials were shown to have initially resisted disclosing government information. In other words, government officials had a tendency to maintain secrecy. However, as Mr. Weinstein, then Archivist of United States, reconfirmed the FOIA as a disclosure statute (Subcommittee on Government Management, Finance, and Accountability, 2005), the FOIA made access to government information an irreversible trend in government activity. Thus, it can be said that the FOIA is an extraordinary tool to institutionalize the concept of "an informed citizenry."

The president's role in FOIA policy formulation is more than symbolic. However, the FOIA has not been regarded as a main agenda at any time since it was enacted in 1966, and most presidents did not exert their influence to fully support FOIA policies. The president has the institutional power to execute FOIA polices. According to the administrative presidency strategy (Boutrous, 2002; Nathan, 1983; Waterman, 1989), the president has four institutional powers: appointment, reorganization, the budgetary process, and central legislative clearance. The power to appoint agency heads immensely augments the power of the president (Morris & Munger, 1998). Presidents Clinton and Bush revealed their perspectives on the FOIA by appointing Janet Reno and John Ashcroft, respectively, as their first Attorney Generals. Janet Reno played a pivotal role in extending a culture of open government under the Clinton administration. During President Bush's first term, Attorney General Ashcroft executed his duties aggressively, based upon President Bush's non-disclosure preference.

The president also influences administrative operations through the budgetary process. He or she submits a budget request to Congress in February, which includes funding requests for all federal executive departments and independent agencies. The OMB on behalf of the president develops an initial annual budget for the United States government and submits it to Congress as a President's Budget for each fiscal year. However, that budget does not specify line item amounts for FOIA activity and personnel.

The function of central legislative clearance is one of the major presidential powers to control federal agencies. Since 1985, the OMB has reviewed administrative rules and regulations to maintain consistency with administration policies including the president's budget. The OMB is also responsible for encouraging agency compliance with the FOIA. During the Clinton administration, the OMB issued three memoranda on government information dissemination.

Therefore, it seems that the role of the president is as critical as the role of Congress in propelling FOIA policy. The president is able to initiate a FOIA policy by issuing memoranda, statements and E.O.s, and by allowing chiefs of agencies such as the attorney general and the chief of the OMB to drive the FOIA initiatives and monitor the implementations.

This study found that Presidents Clinton and Bush had different political philosophies regarding the FOIA: Clinton considered the FOIA as an essential tool of democracy, whereas Bush considered that the FOIA could be limited for national security, effectiveness of government performance, and personal privacy.

The Clinton administration consistently put its emphasis on an informed citizenry and open government, but it also recognized the importance of national security and personal privacy in its FOIA policy. The Bush administration openly and consistently supported national security, privacy and effectiveness of government performance in its FOIA policy. The Bush administration did not disregard the value of informed citizenry nominally, but its support of an informed citizenry was rhetoric in relation to its FOIA policy implementation. Further, the September 11, 2001 terrorist attacks seems to have added impetus to extend the Bush administration's restrictive FOIA policy, accelerating the administration's drive to regain presidential power.

This study also identified similarities and differences in Presidents Clinton's and Bush's information policies. One similarity is that both administrations displayed their FOIA interests by issuing directives. It was unprecedented when President Clinton issued a FOIA memorandum and President Bush employed an E.O. to enhance FOIA implementation. While the Clinton administration's messages on FOIA covered information dissemination and access to public information, the Bush administration's messages on the FOIA mainly treated non-disclosure of government information, specifically including WMD and SBU.

President Clinton issued the FOIA memorandum in his first year and the FOIA statement on the e-FOIA amendment in 1996. Attorney General Janet Reno also released four FOIA memoranda. President Bush did not issue his own FOIA memorandum or statement, but Attorney General John Ashcroft issued a FOIA memorandum after the September 11, 2001 terrorist attacks to reverse the first Reno FOIA memorandum. In addition, White House Chief of Staff Andrew H. Card, Jr. issued a memorandum attached to the ISOO·OIP memorandum in the second year of the Bush administration to prevent disclosure of information on WMD and sensitive documents on national security. President Bush issued E.O. 13392 in the guise of agency disclosure improvement. The E.O., however, did not result in any significant change from a culture of secrecy to a culture of open government.

The second similarity is that both Presidents Clinton and Bush emphasized user-friendly ways in government activity. Clinton encouraged federal agencies to have a "customer-oriented" manner in his 1993 FOIA memorandum (Clinton, 1993). The OMB under the Bush administration also set "citizen centered, not bureaucracy centered" as one of three principles making "government more transparent and accountable" in the *President's Management Agenda* (OMB, 2002).

The third similarity is that both Presidents Clinton and Bush acknowledged the importance of national security, effective government performance and personal privacy as critical values of government activity. However, the two Presidents emphasized opposite information policy agendas and pursued contradictory FOIA initiatives. Considering President Clinton's and Bush's recognitions of national security as a priority, it is not astonishing that both the Clinton and Bush administration sometimes pursued contradictory information policies at the same time (Riechmann, 2005; Uhl, 2003).

President Clinton's and Attorney General Janet Reno's FOIA initiatives and statistics such as the number of declassified documents manifested the Clinton administration's steadfast stance on open government. President Clinton, however, also recognized the importance of national security and personal privacy when revealing his own comments in E.O. 12958 and 12968 and his CIA visits in 1994 and 1995. This is an example of policy conflict between reducing secrecy and protecting secrecy when the Clinton White House refused to reveal NSC emails. In contrast, though the Bush administration recognized an informed citizenry as an

essential principle of the FOIA, its support of that principle seemed nominal. Instead, the Bush administration emphasized national security, personal privacy and law enforcement (DOJ, 2001).

There seem to have been four major differences in the Clinton and Bush administrations' FOIA policy formulation and implementation. First of all, the differences in messages sent to their administrations by Presidents Clinton and Bush are striking. President Clinton valued three FOIA principles. Moreover, President Clinton issued E.O. 12958 to establish an automatic declassification deadline, which brought about a large amount of declassification of government information. In contrast, President Bush emphasized the balance between the FOIA, national security and personal privacy at the ASNE convention, even before the September 11 terrorist attacks (NARA, 2001). Furthermore, President Bush and Vice President Dick Cheney intended to restore the powers of the presidency and to expand presidential authority (Savage, 2006).

Second, this study noted that Presidents Clinton and Bush worked in different political environments. As the first President in the post-Soviet Union world, President Clinton proclaimed the Cold War was over. President Bush, by contrast, declared war against terrorism after the September 11 terrorist attacks. Thus, the study indicated that Bush took advantage of the terrorist attacks to reinforce a nondisclosure policy. Considering President Bush's political philosophies on the FOIA, even if there had been no September 11 terrorist attacks, President Bush was likely to have pursued a secrecy policy.

The third difference is that whereas President Clinton's FOIA initiatives did not push structural change, the Bush administration modified the organizational structure for designation of FOIA officers. According to E.O. 13392, the head of each agency should designate a Chief FOIA Officer at the Assistant Secretary or equivalent level, who would be required to designate FOIA Public Liaisons in a FOIA Requester Service Center or a separate office to ensure appropriate communication with FOIA requesters. These organizational changes, however, did not seem to be accompanied by an increase in FOIA personnel. In other words, the Bush administration's requirement for designated FOIA officers does not appear likely to have added ease of access to FOIA information by citizens.

The fourth difference is the allocation of FOIA resources between the Clinton and Bush administrations. Whereas the Clinton administration consistently increased FOIA resources including FOIA personnel and FOIA budget, the Bush administration did not seem to make an effort to increase FOIA resources. Specifically, although the number of FOIA staff consistently

expanded under the Clinton administration, that number decreased under the Bush administration from a peak of 4,387 in 2002 to only 3,189 in 2005. In addition, FOIA cost persistently increased in the Clinton administration, while it was practically decreased in FY 2004 and FY 2005 when considering CPI. Further, the ratio of FOIA personnel FTEs to the Executive Branch FTEs and FOIA costs to the Executive Branch budget demonstrated that the Clinton administration put more resources on FOIA than did the Bush administration. This study did not analyze the changes of FOIA personnel FTEs and FOIA costs after the issuance of E.O. 13392. Thus, it seems a good research topic would be to examine the changes in FOIA personnel FTEs, FOIA costs, the ratio of FOIA personnel FTEs to the Executive Branch FTEs, and the ratio of FOIA costs to the Executive Branch budget since 2006.

In short, Presidents Clinton and Bush pursued different federal information policies. President Clinton, while recognizing the importance of national security, highlighted an informed citizenry and pursued an open government policy. In contrast, President Bush put national security as a top priority and weighed the importance of performance and results of government activity based upon the *President's Management Agenda*. Bush also worked to restore presidential power. The Clinton and Bush administrations' different FOIA initiatives have been attributed to changes in the political environment including, in particular, the war on terrorism that was in large part precipitated by the September 11, 2001 terrorist attacks. This study, however, indicated that the two administrations' contradictory FOIA initiatives were due not only to outside influences but also to the two presidents' different political philosophies regarding the FOIA.

Implications for the FOIA policy

This study examined the president's influence on FOIA formulation and implementation in terms of hierarchical control and investigated the similarities and differences in the Clinton and Bush administrations' FOIA policies. Implications of the study findings are summarized below.

The first implication of this study is that the president's philosophy on the FOIA has effects on federal FOIA policies. As Mr. Haskell argued that the Bush administration's government policy began at the top (Committee on the Judiciary, 2007), a main trend of FOIA policies seemed to be decided by the president. That is why, in FOIA implementation, open government policy predominated in the Clinton administration and secrecy policy related to

national security predominated in the Bush administration. Researchers and policy analysts, however, did not seem to be much interested in the president's philosophy on FOIA or influences on FOIA policies.

The second implication of this study is that high-level officers and political appointees including the Vice President, Attorney General and White House Chief of Staff are also able to affect FOIA policy formulation and implementation. They can be supportive, interruptive or indifferent to the FOIA policy formulation and implementation.

During the Clinton administration, Attorney General Janet Reno not only drove institutional reform of the FOIA but also supported FOIA staff. Moreover, Vice President Al Gore supported open government through the NPR. In contrast, under the Bush administration, Attorney General John Ashcroft rescinded the Reno memorandum and endorsed a non-disclosure policy. Even Vice President Cheney declined to disclose the materials of the Energy Task Force despite FOIA requests. White House Chief of Staff Andrew Card also affected the Bush administration's FOIA policy by issuing a memorandum to urge federal agencies to review record management procedures from the viewpoint of protecting information that could be misused to harm the national security.

Thus, this study inferred that without Attorney General Janet Reno and other high political aides in White House who endorsed the FOIA, President Clinton might not have initiated an open government policy and shown such a strong pro-FOIA standpoint. President Clinton did not exhibit much interest in the FOIA before he became president. As Attorney General of Arkansas, Clinton made only one positive remark on the FOIA. However, there were no gubernatorial documents on the FOIA. Nevertheless, President Clinton initiated an open government policy and supported the FOIA during his tenure.

The third implication of this study is that middle-level FOIA officers have a critical role in FOIA implementation (Tapscott, 2003), a dual role in which they serve both as principal and as agent. Middle-level FOIA officers had an authority to interpret directions from higher-level members of the government and to determine circulation of FOIA memoranda and revision of FOIA regulations. Further, the senior or managerial-level officers seemed to be more influential when political appointees such as chiefs of federal agencies did not appear interested in the FOIA. It seemed that middle-level FOIA officers responded differently to guidance from superiors based upon their FOIA experiences and the FOIA cultures in their agencies. Thus,

policy analysts should pay more attention to middle-level FOIA officers' roles in FOIA implementation. In addition, it appears that more FOIA-related education for middle-level FOIA officers would be desirable.

The fourth implication of this study is that federal departments' various responses to the GAO and Archive surveys are partly due to the FOIA culture within the departments. There was a pendulum swing between openness and secrecy during the Clinton and Bush administrations. The Clinton administration's open government policy for eight years seemed to contribute to spreading a pro-disclosure culture throughout federal agencies. Thus, it did not seem to be easy to change the agencies' FOIA cultures quickly, even though the Bush administration pursued a more restricted information policy. In addition, FOIA employees seem more value-neutral and tend to be more in favor of concepts of openness than their superiors are (Subcommittee on Information Policy, Census, and National Archives, 2010).

In short, FOIA implementation has been dependent upon and influenced by each president and also by the FOIA cultures within the governmental departments and agencies. As associate professor at University of Arizona David Cuillier testified (Subcommittee on Information Policy, Census, and National Archives, 2010), a "stable culture of openness" that "transcends legislation and the whims of changing presidents" should be developed and established through the federal agencies.

The fifth implication of this study is that insufficient resources and poor guidance have been a major hindrance to FOIA implementation. Under the Clinton administration, the OMB Watch pointed out that the shortage of resources and poor guidance from the OMB and the DOJ were the reasons for insufficient e-FOIA fulfillment (McDermott, 1999). Further, FOIA hearings in the Clinton administration testified that lack of resources, inadequate guidance from OMB and DOJ, and low priority within agencies were obstacles to FOIA implementation. According to some public interest groups (Sternstein, 2005), two main reasons for the mounting backlogs were poor oversight and insufficient resources that included lack of staff, funding and technological support such as equipment and availability of the redaction software. In 2005 and 2007, FOIA hearings also said that poor oversight, insulation from political appointees, and a culture of secrecy from the top were main problems hindering FOIA implementation.

The sixth implication of this study is that Congress is one of the most important principals in FOIA policy formulation. The president has the power to initiate information

policy including FOIA policy, but the executive branch still needs Congress to actively participate in dissemination of government information. Congress initiated the enactment of the FOIA and has scrutinized its implementation. It is obvious that, without congressional funding, allocating staff and budget to support the requirements of the FOIA is very difficult. Critics thus insisted that Congress make the effort to supply FOIA employees to agencies, including financial and managerial support (Sternstein, 2005).

In short, this study demonstrated that numerous intervening variables might affect why and how a federal FOIA employee would or would not respond to a presidential memorandum. The strongest intervening variables were insufficient resources and the role of middle class FOIA officers, both of which are critical to low level FOIA employees' implementation. As this study inferred, there might be goal conflicts between the president and low level FOIA employees. In addition, the connection between the president and low level FOIA employees does not seem to be close. Further, inadequate guidance and assistance from upper level FOIA officers may affect low level FOIA employees' performances. Moreover, de facto sentiment of secrecy from the top and low priority also may have a negative effect on morale.

Implications from using the principal agent theory

The literature review of the principal agent theory in Chapter 2 showed that the principal agent theory was generally applied to regulatory politics. The results were from studies of regulatory agencies such as the FTC, the NLRB and the SEC (Moe, 1982); the political control of bureaucracy in seven agencies including three regulatory agencies – the EEOC, the FTC and the NRC (Wood & Waterman, 1991); and the NPDES under the EPA (Waterman, Rouse & Write, 1994, 1998). By contrast, Day (2001) used the theory to refer to "adverse selection" in foreign affairs.

This study examines Presidents Clinton's and Bush's influences on FOIA policy formulation and implementation by using the principal agent theory. This study focuses on three of the eight assumptions of the theory: concepts of hierarchical control, goal conflict and difficulty in monitoring, to gain a more precise picture of the FOIA and its place within two presidents' administrations. This section discusses the usefulness of the principal agent theory in this study.

First, whereas the hierarchical control fits the relationship between the president and his/her political appointees, it did not show close connections between the president and low-

level employees. The low-level FOIA employees seem to have closer relationships with middle-level officers and to be more faithful to their direct superiors than to top-level officers. Except when a chief of agency was interested in FOIA implementation, the low-level FOIA employees were more likely to be influenced by middle-level FOIA officers.

Since low-level employees did not show strong affiliations with the president and since there existed at least three different levels of agents – low level, middle level, and upper level – in the FOIA implementation process, the traditional principal agent theory that has a simple dyadic model – one principal and one agent – does not seem to fit for this study. Moreover, there seemed to be multiple principals participating in FOIA policy formulation in the executive branch during both administrations studied. Without a doubt, the president is the most important principal. There are, however, many staff members in the White House who take part in political affairs around the president, including the Vice President, Chief of Staff of the White House, Director of the OMB, several Assistants to the President, and chiefs of federal agencies.

Therefore, the principal agent theory should be made more sophisticated to understand not only the president's but his or her political appointees' influence on FOIA implementation. Also, the assumption of hierarchical control in the principal agent theory needs to be expanded in scope from the relations between superiors and inferiors to at least four levels of actors.

Second, there seem to be goal conflicts among political appointees and, in some cases, contradictory policies that are pursued simultaneously. For instance, although President Clinton was well known as an open government initiator, his administration exempted NSC documents from the scope of the FOIA and the *Federal Records Act* (Armstrong, 1998; Foerstel, 1999) and revised the GRS 20 to make it possible to destroy electronic copies. In other words, even though the Clinton administration endorsed a disclosure policy, it still pursued contradictory policies concurrently when it came to national security and personal privacy. Thus, the principal agent theory should be revised to consider multi-principal cases in order to provide a more precise understanding of FOIA policy formulation.

Third, there also were goal conflicts between the president and bureaucracies in FOIA policy implementation during the Clinton and Bush administrations. When a president issued a new FOIA initiative, it could be contradictory to previous FOIA positions, in large or small parts. In addition, FOIA employees tend to perceive how strong the president's will is. Nevertheless, since the FOIA was enacted to prevent government secrecy, FOIA employees were supposed to

be familiar with the culture of open government and tended to lean toward an open government policy unless political appointees displayed a strong drive toward a nondisclosure policy.

President Bush valued national security, and high-level officials of the Bush administration leaned toward his secrecy policy rather than toward an open government policy. In addition, the Bush administration power elites worked to restore presidential power, so the concepts of transparency and disclosure were not stressed. Still, the Clinton administration's eight-year pro-FOIA culture seemed to have spread through federal agencies and that culture remained influential in implementing FOIA work even under the Bush administration.

Overall, this study indicated that whereas FOIA employees under the Clinton administration seemed to have comparatively few goal conflicts in FOIA implementation, FOIA employees under the Bush administration seemed to have more noticeable goal conflicts in FOIA implementation. In addition, it seems that the assumption of goal conflicts between a principal and an agent is still useful for this FOIA policy study.

Fourth, this study indicated that there might be goal conflicts among federal agencies in terms of FOIA policy implementation. Further, the actual goals of federal employees related to FOIA are not known but were inferred based upon the employees' actions. As this study demonstrated, federal departments responded in very different ways to the Ashcroft memorandum and the Card memorandum. For instance, the DOI followed FOIA directions from above aggressively, but the USDA was not sensitive to the directions. It is likely the DOJ considered the FOIA as its main work while the USDA saw it as a collateral duty. The OIP under DOJ worked to ensure that the President's FOIA memorandum and the Attorney General's FOIA guidelines were fully implemented across the government. In contrast, the USDA did not seem to have paid much attention to FOIA duty, based upon the author's review of the USDA's annual FOIA reports and its FOIA website.

Fifth, this study found that the assumption of difficulty in monitoring was definitely applicable to this FOIA study. Data demonstrated that the Bush administration had a more effective monitoring process than the Clinton administration had. For instance, the Card memorandum required federal agencies to report the completion or status of their review of information regarding homeland security within 90 days. E.O. 13392 created the chief FOIA officer to monitor FOIA implementation through the agency and its reporting system. Although this study discussed the FOIA monitoring system briefly, it can be studied more intensively in

relation to Congress, the DOJ, the OMB, and other government bodies. Furthermore, since the monitoring system is one of the critical systems for the president in overseeing the bureaucracies' work, policy analysts should have more interest in the monitoring system of FOIA implementation.

Sixth, in using the principal agent theory, this study utilized only the three assumptions of hierarchical control, goal conflict, and difficulty in monitoring. However, in order to examine the FOIA implementation process more clearly, the assumptions of self-interest, information asymmetry, and risk aversion or sharing seem to be good points to include. Using only the three selected assumptions, it was difficult to examine the goal conflicts among federal agencies. Further, the theory seems unequipped to define the relationships between the president and Congress relative to the study questions.

In conclusion, it seems that the principal agent theory provided useful assumptions to analyze and to compare the Clinton and Bush administrations' information policies. The hierarchical control explains how Presidents Clinton's and Bush's FOIA initiatives were implemented through the OMB and the DOJ, and why various departments showed different responses to Presidents Clinton's and Bush's FOIA policies. The concept of conflicting goals gives useful insights into goal conflicts between the president and bureaucracies, and between the presidents' policies themselves.

However, although the principal agent theory was able to shed some light on the president's influences on the FOIA, it does not seem to be able to grasp the grand picture of FOIA policy formulation and implementation process. This study inferred that the president as well as Congress has affected FOIA policy formulation and implementation. The assumptions of the principal agent theory, however, do not quite apply to the other actors because these assumptions were created for the political control of a bureaucracy. It seems that a review of the activities of civil liberties groups and court decisions on the FOIA would add the valuable perspective of their power to affect FOIA implementation.

In order to explain the roles of multiple principals beyond one branch concurrently, the principal agent theory might need to have a new framework to involve them. Thus, this study suggests an alternative framework, which deals with multiple actors, such as the Advocacy Coalition Framework (ACF) to study FOIA policy. The ACF originated from an energy and environmental policy in the United States in the 1980s, and basically deals with "the problems of

achieving coordinated behavior among actors with similar beliefs" (Sabatier & Jenkins-Smith, 1999, 155).

Implications for methodology

Research based upon the Principal Agent Theory in the science of public administration employs the time series analysis as one of its quantitative research methods, although most previous research on political science or the science of public administration selected only a single research method. For instance, Boutrous (2002) and Wallace (2003) employed linear regression analysis to test the president's influence on agency decision-making; Day (2000) used the case study to demonstrate the president's control over national security; and Moe (1984) employed document analysis to explain how multiple principals could control bureaucrats.

This study used the multiple qualitative methods of content analysis, secondary analysis and document analysis. Because all these research methods are non-reactive and investigate written records, this study did not create data files suitable for statistical manipulation by computers. In addition, this unobtrusive research dealt with existing statistics, recorded communications from books, newsletters and speeches; therefore, it had no impact on what is being studied.

The study employed content analysis as a main method to show how the presidents' policy initiatives spread to federal documents through the DOJ, the FOIA charging department. The content analysis made it possible to get valid and reliable data without expending excessive time and money, and to repeat the coding process multiple times. To the researcher's knowledge, this is the first time content analysis has been used in FOIA-related research.

This study used secondary analysis to develop an overview of federal agencies' FOIA responses to the president's and his political appointees' FOIA initiatives. Because the author lived in Florida, it was not practical to undertake survey research for collecting data from federal FOIA officers. Secondary analysis makes it possible to save time in gathering survey data and to avoid costs for postage, phone, and developing questionnaires. Secondary analysis, however, limits its scope to the data already collected and causes validity issues.

This research employed document analysis to review the GAO's and civil liberties groups' reports, Congressional hearings records and other documents. Official government documents including White House documents and Congressional hearings records provided essential data to this study. Document analysis was a critical part of the policy analysis in the current study.

At the outset of the research design, interviews of several FOIA policy analysts were conceived to check whether this study's findings about the Clinton and Bush administrations' FOIA policies are accurate and to gain supplementary explanations from information policy experts. Such interviews with policy analysts were expected to provide in-depth exploration of the Clinton and Bush administrations' FOIA policies, the roles of both presidents on FOIA policy formulation, and other possible reasons for different FOIA initiatives. However, the email interviews were not conducted because it was not easy to get responses from policy analysts via emails and the researcher's time constraints prevented the use of in-person interviews.

This study did not examine FOIA court decisions. It is clear that court rulings affect FOIA policy formation as well as implementation. There were a few cases that directly led to an amendment to the FOIA, including *EPA vs. Mink* (1973). However, this study focused on the presidents' and their top aides' FOIA initiatives.

This study exhibits the characteristics of policy research, which is different from policy analysis. While policy research conducts research on social problems and provides policymakers with recommendations, policy analysis can be narrowly defined as "the study of policymaking process" (Majchrzak, 1984, p.13). Policies are connected to complex and not easily resolved social problems, and they are continually being suggested, formulated, implemented, evaluated and revised. Therefore, policy researchers have to provide empirical evidence and relevant information (Majchrzak, 1984).

Policy research, however, does not always concentrate on problem solutions. Sometimes, the research tends to focus on problem definition. Especially for ill-defined problems, policy researchers pay attention to decision-makers' understanding of the social problem addressed by the policy (Majchrzak, 1984). As one such policy research study , this study focused more on understanding FOIA policy formulation and its implementation processes than on suggesting policy recommendations.

Suggestions for Future Research

The study mainly identified how the presidents' political philosophies on the FOIA affected FOIA policy formulation and implementation. Considering President Bush's political philosophy, it was reasonable to think that the Bush administration's FOIA policy might not be in favor of the free flow of information. The administration had top priorities of national security, effective law enforcement and personal privacy. Furthermore, President Bush and Vice

President Cheney worked to restore presidential power. Thus, the author concluded that the September 11 terrorist attacks triggered the Bush administration's non-disclosure policy, and the war on terrorism justified the Bush administration's control of government-owned information.

However, these conclusions need to be investigated and supplemented by elaborate research in diverse angles and methods. The impact of the September 11 terrorist attacks, plus the influences of executive privilege and political parties' platforms can be examined to get more precise pictures of the Bush administration's FOIA policy formulation. In addition, this study used non-reactive methods of content analysis, secondary analysis and document analysis, so it has limitations in drawing out deeper testimonies from FOIA stakeholders. Thus, additional research is recommended to draw a wider, more precise picture of FOIA policy formulation and implementation.

September 11, 2001 terrorist attacks and FOIA policy

This study demonstrated that President Bush put his FOIA emphasis on national security, personal privacy and effective government performance. This study then suggested that such emphasis might not only be due to the September 11, 2001 terrorist attacks but also might be based upon President Bush's political philosophies on the FOIA. In the Literature Review, this study found that the GAO FOIA report (GAO 03-981) and the first Archive FOIA report covered the influences of the Ashcroft memorandum on FOIA policy. However, there seem to be no comprehensive studies about the influence of the September 11, 2001 terrorist attacks on FOIA policy.

It is undeniable that the terrorist attacks have changed American society greatly in many aspects. Since government policy can be changed by outside impacts, research into the impacts of the September 11, 2001 terrorist attacks on FOIA policies could deliver more precise information on the effects of those attacks on the Bush administration's FOIA policy formulations. For more sophisticated research, interviews with political appointees at the White House and the DOJ would be strongly recommended. In addition, document analysis of high FOIA officers' emails and relevant government records seems to be necessary. With these in mind, a few research questions are suggested for the future researchers:

(1) How did relevant FOIA actors such as the OMB, the OIP in DOJ, or political appointees at the White House define the September 11 terrorist attacks with regard to information policy?

(2) Which FOIA actors most affected the Bush administration's FOIA policies before and after the terrorist attacks?

(3) Who drafted the Ashcroft memorandum, and when?

Executive privilege and the FOIA

This study was limited in some areas by the fact that executive privilege has been an obstacle in obtaining government information. According to a CRS report (Rosenberg, 2008), the executive branch has attempted to expand the scope of its executive privilege and add the notion of deliberative process as an element of executive privilege. The executive privilege issue shows the relationship between the executive and legislative branches with regard to the constitutional scheme of separation of powers. However, there has not been specific research to show the influences of executive privilege on FOIA policy formulation. Thus, answers to the following questions might be expected to provide contradiction of the stereotypes of the Clinton and Bush administrations' information policy:

(1) What are the nature and scope of confidentiality of presidential communications privilege, and how did it affect the Clinton and Bush administrations' FOIA policy formulation?

(2) What are the similarities and differences between the Clinton and Bush administrations' assertions of executive privilege?

(3) How did court rulings related to executive privilege affect the Clinton and Bush administrations' FOIA cultures?

(4) How did civil liberties groups respond to the Clinton and Bush administrations' assertions of executive privilege?

The relationship between parties and their political philosophies on the FOIA

President Clinton came from the Democratic Party, and President Bush came from the Republican Party. Although this study focused on the presidents' philosophies on FOIA, the political parties to which the presidents belonged likely affected their approaches to the FOIA. Thus, the positions the parties had on the FOIA and the reasons the parties had for their positions seem to warrant future study. Historically, the Democratic Party has endorsed the FOIA, and the Democratic presidents have been friendly with the FOIA, while the Republican presidents have pursued the efficiency of government activity. Since not only the President but also the inner

circle of the White House and other political appointees affected federal information policy, the parties' standpoints on the FOIA need to be verified by the civil liberties groups and the media.

For this research topic, document analysis of each party's platform is strongly recommended. In addition, content analysis on the national convention acceptance addresses of each party's presidential candidates would be desirable. Although the FOIA was enacted in 1966, the research scope should contain each party's documents and relevant records of government from 1955, when the Moss subcommittee began. The possible research questions thus include:

(1) What did each party have in the platforms regarding its information policy?
(2) What stands did each party's nominated presidential candidates take on information policies in their addresses?
(3) What are the similarities and differences among the information policies in each party's platforms?

Recommendations

It is clear that the FOIA policy is a barometer of a governmental standpoint on public access to government information. Generally, bureaucrats were not in favor of the FOIA and had a tendency toward emphasizing the effectiveness of government performance. This study confirmed that the FOIA was founded on three basic principles: an informed citizenry, open government and disclosure; and demonstrated that those principles were higher priorities in the Clinton administration than in the Bush administration.

This study also showed that not only Congress but also the president had great influence on FOIA policy formulation and implementation. Further, it noted that middle level FOIA officers' roles are critical in FOIA implementation. However, the FOIA policy formulation and implementation process were very complicated, so there were many stakeholders. Thus, this study offers several recommendations to the stakeholders – in particular, to the executive branch, Congress, civil liberties groups and the media, based upon findings. These recommendations are limited not for implementation level but for high level stakeholders.

First, the DOJ and the OMB should give more practical and timely FOIA guidance to all federal departments. Historically, although Congress issues its *Citizen's guide to the FOIA* irregularly, the DOJ issued FOIA memoranda when the administration changed its FOIA focus in ways that required documented supportive policy changes. FOIA employees have sometimes

stated that they have insufficient FOIA guidance from the upper levels of government. For instance, after E.O. 13392 was issued by the White House, the DOJ did not publish guidance for that FOIA E.O. until four months later, and, even then, that guidance appeared to be the product of a brainstorming session rather than practical output based upon each agency's performance environment.

In addition, the DOJ needs to show more interest in the role of the middle-level FOIA officers and to provide more FOIA education for them. The middle-level FOIA officers are in a position to direct and guide lower-level FOIA employees and to coordinate FOIA work with other departments. As Ms. Cary pointed out, noncompliance with the FOIA arose more often from a misunderstanding than from a malicious intent (Committee on the Judiciary, 2007). A standardized licensing or certificate program is necessary to ensure FOIA officers have a necessary minimum amount of knowledge regarding the FOIA. The program should not only introduce new provisions and technical issues but also should reiterate the importance of FOIA principles. Both the administration and the nation would be better served by consistency through regular education for the middle-level FOIA officers.

This study also suggests that the DOJ and the OMB develop a FOIA index to monitor how federal agencies implement FOIA work effectively and efficiently and to highlight areas for improvement. The DOJ and the OMB should offer incentive systems for federal departments' FOIA implementation. To accomplish FOIA reform plans, incentive systems for FOIA employees would be more useful than punishment systems. The FOIA index can show the ways in which federal agencies implement their FOIA work well and induce them to compete with each other. The index can contain the ratio of FOIA personnel to other employees, FOIA budget, numbers of completed FOIA requests and backlogs, numbers of FOIA lawsuits, and so on. Every federal agency would be evaluated by the index and could have its FOIA budget and number of allocated FOIA employees based upon that index.

Second, members of Congress need to be vigilant observers of federal information policy enforcement and application. As this study shows, even though the Clinton administration endorsed the open government initiative publicly, other principals of that administration often pursued contradictory information policies in consideration of national security. In addition, government employees might mar the concept of the public's right to know through careless or

negligent lack of consistency in supporting the administration's FOIA mandates. Thus, Congress should reinforce its oversight of government-wide FOIA implementation.

Further, building a positive FOIA culture within federal agencies is very critical to prevent FOIA employees from unintentionally undermining the FOIA and its implementation. The concepts of right to know and national security are not incompatible but, when one concept prevails, the other weakens. Therefore, Congress should review the impact of every FOIA and secrecy policy and, when necessary, should ask government agencies with non-disclosure policies to change to an open government policy.

Moreover, Congress needs to give more attention to the Senate confirmation hearings for the Attorney General and other political appointees who may affect FOIA policy formulation and implementation. Since the FOIA has not been a main political agenda of presidents thus far, the roles of the Attorney General and other political appointees in FOIA policy formulation and implementation seem particularly important. Senators should ask nominees related to FOIA policies about their FOIA philosophies and their concrete plans for FOIA policy formulations in the confirmation hearings.

Finally, civil liberties groups and newspaper reporters should pay attention not only to the president's philosophies on the FOIA but also to his or her political aides' philosophies on FOIA. Civil liberties groups have played critical roles in monitoring federal FOIA policy and government secrecy, and have offered suggestions for improving FOIA implementation (McDermott, 1999; Archive, 2003b). They have also attended FOIA hearings, sharing their experiences of FOIA implementation and displaying concerns about the executive branch secrecy. As this study demonstrated, the president and his or her political appointees could influence FOIA policy formulation both directly and indirectly. Presidents generally appoint agency heads who have similar political philosophies to his own. Thus, civil liberties groups need to cooperate with newspaper reporters to check the president's and his or her political aides' philosophies on the FOIA and to monitor the aides' influences on FOIA policy formulation and implementation. It seems that the ASNE annual convention has been a valuable chance to ask the president's philosophies on the FOIA and to be able to hear the answers immediately.

Importance

This section describes how important the study was, how it has improved our knowledge about the FOIA, and how future research can continue this work. First, this study provides a

distinguishable aspect of FOIA policy formulation and implementation by examining the president's role relative to the FOIA. Historically, researchers have highlighted Congress as a guardian of the FOIA. However, this study found that the president's philosophies on the FOIA had been reflected in the *FOIA Update* and the *FOIA Post,* and reconfirmed that he or she could affect FOIA policy through the powers of appointment, reorganization, budgetary process and central legislative clearance. In addition, the study also demonstrated that the OMB, the White House and the DOJ are all used to issue directives that reflect the president's philosophies on the FOIA.

Second, this study implies that middle-level FOIA officers' roles might be critical in FOIA implementation. Because the FOIA has not been a main political agenda, the concrete and practical means and resources for supporting the FOIA have not yet been well institutionalized. Thus, researchers might investigate ways in which other governmental individuals, agencies and departments could support the role of middle-level FOIA officers.

Third, this study introduced the principal agent theory in FOIA study. The theory contains many useful assumptions, including hierarchical control, goal conflict and difficulty in monitoring, that are able to provide various approaches to FOIA study. The bounded rationality theory of Snyder's dissertation can be categorized as one of the assumptions of the principal agent theory. The theory still seems to be a valuable framework for FOIA study.

Finally, by employing content analysis, this study verified that the president's influences on the FOIA existed in actuality, not just in theory. Previously, researchers including the GAO and the Archive analyzed FOIA policies by using questionnaires, interviews and document analysis to focus on the good and bad aspects of federal agencies' FOIA implementation. This study also shows the possibility of content analysis for future FOIA research.

Appendix A

LIST OF THE ARTICLES IN THE *FOIA UPDATE* AND *FOIA POST* (SPRING 1993 THROUGH APRIL 2006)

For ease of access, all articles from the *FOIA Update* and *FOIA Post* that were used while researching and writing this paper are listed in Table 32.

Table A.1

List of the articles in the FOIA Update and the *FOIA Post (Spring 1993 through April 2006)*

Year	Title	FOIA Principle
Summer/Fall 1993	President and Attorney General issue new FOIA policy memoranda	Open government Disclosure
	President Clinton's FOIA memorandum	An informed-citizenry Open government
	Attorney General Reno's FOIA memorandum	Open government Disclosure
	FOIA day presentation	An informed citizenry Disclosure
	Justice changes policy on exemption 7 (d) disclosure	Disclosure
	OIP Guidance: The "reasonable segregation" obligation	Disclosure
Spring 1994	Attorney General Reno celebrates annual FOI day	Open government
	OIP Guidance: Applying the "Foreseeable harm" standard under exemption 5	Disclosure
Fall 1994	Litigation review yields greater review disclosure	Disclosure
Winter 1995	Agencies place increasing emphasis on affirmative information disclosure	Disclosure
Summer 1996	Attorney General gives openness speech	An informed citizenry Open government

Table A.1 *(Continued)*

Year	Title	FOIA Principle
Fall 1996	The FOIA: 5 U.S.C. §552, As amended by public law No. 104-231, 110 Stat. 3048	An informed citizenry Open government
Spring 1997	Attorney General reiterates FOIA policy	Open government Disclosure
Winter 1998	Air Force undertakes affirmative electronic information disclosure	Disclosure
Summer 1998	Justice Department E-FOIA testimony	An informed citizenry Open government Disclosure
	OIP Guidance: Recommendations for FOIA Web sites	Disclosure
1999	Attorney General encourages FOIA officers	An informed citizenry Open government
	Attorney General Reno's September 3, 1999 FOIA memorandum	An informed citizenry Open government Disclosure
	Administrative corner	Disclosure
March 14, 2001	Agencies continue E-FOIA implementation	Disclosure
March 23, 2001	GAO E-FOIA implementation report issues	Disclosure

Table A.1 *(Continued)*

Year	Title	FOIA Principle
October 15, 2001	New Attorney General FOIA memorandum issued	An informed citizenry
		Open government
March 21, 2002	Guidance on Homeland Security information issued	Open government
September 27, 2002	Follow-up report on E-FOIA implementation issued	Disclosure
December 12, 2002	OIP gives FOIA implementation Advice to other nations	Open government
December 23, 2002	FOIA Amended by Intelligence Authorization Act	Disclosure
January 27, 2003	Homeland security law contains new Exemption 3	Disclosure
February 28, 2003	Electronic compilation on E-FOIA implementation guidance	Disclosure
December 16, 2003	Agencies rely on wide range of exemption 3 statutes	Disclosure
February 27, 2004	Critical infrastructure information regulations issued by DHS	Disclosure
January 24, 2006	FOIA Counselor Q&A	Disclosure
April 27, 2006	Executive Order 13,392 Implementation guidance	Disclosure

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Education

Ph. D.	College of Communication and Information	Florida State University	2011
M.A.	Library and Information Science	Yonsei University, Korea	1995
B.A.	Library Science	Yonsei University, Korea	1988

Job Experience

Director	General Affairs Division	National Assembly Library, Korea	2010
Director	Planning Division	National Assembly Library, Korea	2009
Head	Legal Documents Section	National Assembly Library, Korea	1996-1999
Researcher	Information and Documents Team	POSCO Research Institute	1995

Professional Activity

Board Member	Korea Library Association	2011-Present
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