

# U.S. FOIA(FREEDOM OF INFORMATION ACT) AND ACCESS TO INFORMATION AFTER 9/11 TERRORIST ATTACKS

**9/11 테러 이후 강화된 미국 연방정부의 국가안보 정책이 정보자유법  
(Freedom of Information Act) 및 연방 정보공개정책에 미친 영향**

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## 〈요 약〉

The increased concern about national security in the U.S. after the 9/11 terrorist attacks has influenced public rights of access to government information and its legal foundation, the Freedom of Information Act (FOIA). Public access to government information has been restricted at the policy level by a series of legislative and executive changes in FOIA after September 11, 2001, but the examination of statistics on FOIA implementation between fiscal years 1999 and 2004 shows that the strengthened national security measures did not have a considerable impact at the implementation level during this period. These contrasting findings might be due to the public officials' informal reaction to the criticism of the restriction on public access, bureaucratic inertia, and the use of new record categories not subject to FOIA.

**주제어 : Freedom of information, Right to know, Right of Access, Freedom of Information Act, Terrorist attacks.**

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## I. Introduction

The tragic events on September 11, 2001 changed the life of the American people in many ways. New restriction on civil liberties, including the right of access to government information, is one of them. The influence of the increased concern for national security on public access has been most well reflected by recent legislative and executive changes to the Freedom of Information Act(FOIA), the foundation of U.S. information dissemination policy. These policy changes provide an insightful example of the conflicts among the different social values that shape public information policy.

The research question of this paper is: “What impact did increased national security in the U.S. after the 9/11 terrorist attacks have on FOIA and public access to government information?” To answer the research question, this paper will examine the recent amendments to FOIA and the changes in federal FOIA policies, as well as the implementation of FOIA after 9/11.

## II. Methodology

To examine the changes to FOIA at the policy level, various literatures on FOIA and public access were reviewed, including academic journal articles, electronic sources, and primary legal sources such as FOIA and related statutes and executive policies. Next, statistical analyses comparing FOIA implementation data before and after 9/11 were conducted to examine the changes in FOIA at the implementation level. Finally, interviews of four FOI officers were conducted in order to understand practitioner's opinions on this issue.

### III. Background

#### 1. The Freedom of Information Act (FOIA)

The Freedom of Information Act was enacted in 1966 to provide a statutory right of public access to government information. The FOIA requires agencies of the U.S. federal government to disclose information or records they have upon written request. If the request is denied, a requester may file an administrative appeal; if the appeal is denied, he or she may file a lawsuit in a federal court to enforce access to the record. Nine types of information are exempted from disclosure under the Act: classified national defense or foreign policy information; internal agency rules; information exempted by other statute; trade secrets; inter agency memoranda; personal information affecting an individual's privacy; law enforcement records; bank reports; oil well data.<sup>1)</sup>

Major amendments to the FOIA include the 1974 amendments which authorized courts to judge if records fell within an exemption and set time limits for responses and appeals, and the Electronic FOIA Amendments of 1996 (E FOIA) which required agencies to honor format requests and to create electronic reading rooms, which should contain frequently requested records and other important information on FOIA implementation by agencies.

#### 2. Managerial and Implementation Challenges

Large backlogs and long response times have been serious problems in the operation of FOIA. Although the E FOIA amendments set a 20 day time limit for responding to FOIA requests (§552(a)(6)(a)) and adopted mechanisms such as multi track processing ((a)(6)(d)) and expedited processing ((a)(6)(e)), the delay problems still exist. A recent study from the National Security Archive, an independent research institute, reports that the longest median processing time is 1,216 days,<sup>2)</sup> and that the oldest pending FOIA

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1) The Freedom of Information Act, 5 U.S.C. Sec. 552, As amended by Pub. L. No. 104 231, 110 Stat. 3048.

request dates back to November 1987(National Security Archive, 2003a).

Federal agencies have been also criticized for their non compliance with the requirements of the E FOIA amendments of 1996, which include posting frequently requested records online. According to a statement of an information policy analyst in 2000 congressional testimony(McDermott, 2000), “agency compliance with the E FOIA amendments continues to be overwhelmingly inadequate.” To build and maintain government Web sites, agencies need large amounts of extra physical and human resources. However, Congress has not adequately funded agency FOIA offices in general, and information technology staffs are in short supply(Marquand, 2000).

Another problem since 9/11 is the lack of clear guiding principles as shown in conflicting messages from the Bush Administration and Congress. For instance, the Ashcroft memo, issued on October 2001, provided more strict guidelines for FOIA disclosure as discussed below. Five months later, the House Committee on Government Reform revised its Citizen’s Guide on using FOIA to specifically refute the new standard adopted in the memorandum (Feinberg, 2002, p.270). In addition, currently there is no government wide policy on online disclosure of information(Halchin, 2002, p.251). Although the Justice Department has provided guidelines on interpreting FOIA provisions, the Office of Management and Budget, which is responsible for overseeing E FOIA implementation, has not provided federal agencies clear guidance on E FOIA(OMB Watch, 1999).

## IV. Findings and Analysis

### 1. Changes at the Policy Level: Legislative Amendments

Since September 11, 2001, in order to safeguard national security, two amendments have been made to the FOIA: the Homeland Security Act of 2002 and the Intelligence Authorization Act for Fiscal Year 2003(U.S. Department

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2) The Environmental Protection Agency, FY 2001

of Justice, 2002; 2003). These statutes added to the FOIA more exemptions from disclosure.

Section 214 of the Homeland Security Act provides that “Critical infrastructure information that is voluntarily submitted to a covered Federal agency for use by that agency regarding the security of critical infrastructure... shall be exempted from disclosure under section 552 of title 5, United States Code.”<sup>3)</sup> Opponents of this law criticize the broadness of the term “voluntary submission,” and argue that private firms can hide evidence of certain activity like environmentally poisonous dumping by voluntarily submitting such information to federal agencies under this provision(FCNL, 2003).

Also, section 307 of the Intelligence Authorization Act for FY 2003 amended section 552(a)(3) of the FOIA by prohibiting intelligence agencies from responding to FOIA requests made by foreign governments, international government organizations, or their representatives.<sup>4)</sup>

## 2. Changes at the Policy Level: Stricter Executive Policies

Since the enactment of the FOIA, agency interpretation of the statute has been guided, in large measure, by the Department of Justice through a series of memoranda(Feinberg, 2002, p.268). Recently issued FOIA memoranda clearly illustrate the restriction of public access by the executive branch of the U.S. federal government. On October 13, 2001, Attorney General John Ashcroft sent a memorandum on the FOIA to the heads of all federal departments and agencies. The memo provided a new guideline that allowed greater withholding of agency records. Under the previous guideline, established in 1993 by then Attorney General Janet Reno, the policy of the Justice Department was to defend an agency decision to use a FOIA exemption when there exists “foreseeable harm” to the interest protected by that

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3) Section 212(3) of the Act includes an extensive definition of the term “critical infrastructure information.”

The Homeland Security Act of 2002, Pub. L. No. 107 296, 116 Stat. 2135.

4) The Intelligence Authorization Act for Fiscal Year 2003, Pub. L. No.107 306, 116 Stat. 2383.

exemption. On the other hand, the new standard set by the Ashcroft memo provides that an agency decision to withhold information will be defended unless it lacks a “sound legal basis.” The memo also limits an agency’s discretionary decision to disclose exempted information by stating that such decisions should be made “only after full and deliberate consideration.”(U.S. Department of Justice, 2001).

Similarly, a memorandum issued on March 19, 2002 by White House Chief of Staff Andrew Card emphasized the need to safeguard government information regarding weapons of mass destruction as well as other information that could be misused to harm the national security or public safety. The memo urges agencies to carefully consider such need “on an ongoing basis and also upon receipt of any request for records containing such information that is made under the FOIA.”(Card, 2002)

These recent legislative and administrative changes created policies that have made it easier for government agencies to withhold the information requested under the FOIA. The following two sections examine the restriction on public access at the implementation level after 9/11.

### **3. Changes at the implementation Level: Information Removed from Agency Web sites**

Section 4 of the E FOIA Amendment of 1996 requires agencies to make available by electronic means six types of information created on or after November 1, 1996: an agency’s final opinion made in the adjudication of cases, policy statements, administrative staff manuals, frequently requested records, an index of such records, and its annual FOIA report.<sup>5)</sup> This information is usually posted on the agency Web sites, which are commonly called “electronic reading rooms.” According to a study undertaken by GAO(U.S. General Accountability Office, 2002, pp.46-47), 21 out of 25 major federal agencies

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5) The Electronic Freedom of Information Act Amendments of 1996, Pub. L. No. 104-231, 110 Stat. 3048(1996).

surveyed in 2002 made frequently requested records available on their Web pages. Since the 9/11 attacks, however, federal agencies have removed a significant amount of information from their Web sites. OMB Watch, a non profit research organization has been keeping an inventory of “disappeared” information. As of April 2005, it lists information removed from 18 federal departments and agencies’ Web sites(OMB Watch, 2004, November 4), including GIS data on transportation (Bureau of Transportation Statistics), nuclear facility information (Department of Energy), and national pipeline mapping(Department of Transportation).

Many civil rights activists maintain that such actions seriously compromise the right to know. However, most of the removed information does not directly benefit citizens and is potentially dangerous when disclosed to the general public, and limiting access to such information appears to be justifiable, especially with the increased concern for national security and public safety.

#### 4. Changes at the implementation Level: Application Guidance on FOIA Exemptions

The exemption provisions that can be invoked to protect homeland security information from FOIA disclosure include Exemption 1(national defense and foreign policy), 2(internal agency rules and practices), 3(information exempted by other statute), 7(E)(law enforcement information that can cause circumvention of law when disclosed), and 7(F)(law enforcement information necessary to protect the physical safety of a wide range of individuals).

Exemption 1 applies most directly to national security information, but its use is limited because the provision only protects information specifically authorized to be kept secret or classified by an executive order.<sup>6)</sup> Instead, other exemption provisions are being used to protect unclassified sensitive information from disclosure.

Since a 1989 court decision<sup>7)</sup>, Exemption 2(internal agency rules) has

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6) The Freedom of Information Act, 5 U.S.C. Sec. 552, As amended by Pub. L. No. 104 231, 110 Stat. 3048. (b)(1)

7) *Crooker v. BATF*, 670 F.2d 1051, 1074(D.C. Cir. 1981).

applied not only to routine administrative matters, which sometimes referred to as “low 2”, but also to internal agency records which could significantly risk circumvention of laws or regulations (“high 2”) (U.S. Department of Justice, 1989). The Justice Department’s latest FOIA Guide (U.S. Department of Justice, 2004, Exemption 2) states that the “high 2” category of protection is “of fundamental importance to homeland security (p.1),” and encourages agencies to consider the use of Exemption 2 to protect unclassified sensitive information (p.27).

Exemptions 3 (information exempted by other statute), 7(E) (law enforcement information that can cause circumvention of law), and 7(F) (law enforcement information necessary to protect the safety of a wide range of individuals) are applied for similar purposes. The federal FOIA guide (U.S. Department of Justice, 2004) states that “in the current post September 11, 2001 homeland security environment, Exemption 7(F) provides vital new avenues of protection for sensitive information (Exemption 7(F), p.1),” and that homeland security information can be protected by Exemption 7(E) if it meets the statutory requirements of the provision. Also, the exemption of critical infrastructure information by the Homeland Security Act, as explained above, is an example of use of Exemption 3 to protect homeland security information.

## 5. Changes at the implementation Level: Opinion of FOIA Officers

In order to assess the opinions of public sector practitioners on the changes of FOIA implementation after 9/11, four semi structured interviews of freedom of information officers were conducted. Between April and October 2005, two FOIA officers in federal agencies were interviewed by telephone, one federal FOIA officer submitted written answers to interview questions, and one state FOI officer was interviewed in person to provide a counterpoint to the federal view. The interviews lasted about 20 minutes to one hour, and the respondents were asked and answered questions about the process of FOIA requests in their agencies, workload and backlog problems, the use of exemption provisions, and the changes in FOIA implementation due to security issues.



Despite the restrictive policy changes discussed above, all respondents stated that the implementation of freedom of information legislation had not been considerably changed after 9/11. According to them, their agencies had not experienced noticeable restrictive changes in processing FOIA requests, in terms of the grant and denial rate or the use of exemptions.

Another consistency which emerged throughout the interviews was that the implementation of FOIA was not considered a high priority task in federal agencies. It is true that the agencies are obliged to comply with FOIA provisions and have designated FOIA officers and attorneys. However, the impression was that agencies regard the compliance with the FOIA as an inevitable burden - for example, to avoid costly litigation - and not an area in which they actively engage and make investments. This may account for, in part, the chronic problems of delays and backlogs in FOIA implementation.

The interviews also produced some interesting findings on other factors that influence the implementation of FOIA. First, the characteristics of the implementing agency and the requests they receive have to be accounted for. This is clearly shown by the contrast between the first and the third interview. Both agencies had some degree of delay and backlog problems, but for different reasons. The first agency processed very few but highly security related FOIA requests, while the third agency mainly handled many complicated requests that need interagency coordination but were not for any sensitive records.

Second, the change of administration needs to be added as another social/political event that has influenced FOIA implementation. One respondent said, "I've seen more changes after President Bush took office than after 9/11." This is potentially a critical point, considering that the Bush Administration made a series of restrictive policy changes to the FOIA even before the terrorist attacks. The validity of this argument was assessed in the analyses of FOIA statistics in the next section.

## 6. Changes at the implementation Level: Analyses of FOIA implementation data

To find out whether public access to government information was restricted at the implementation level, the annual statistics on agency FOIA implementation between the fiscal year 1999 and the fiscal year 2004 were compared. Since the federal fiscal year begins on October 1 of the previous calendar year and ends on September 30 of the same calendar year, the data for FY 2002 should reflect the influence of the terrorist attacks on September 11, 2001. With these statistics, it is also possible to identify and examine any noticeable changes in FOIA implementation after the change from the Clinton Administration to the Bush Administration on January 20, 2001. To assess the possible impacts of both events, the data for FY 1999 and FY 2000 are compared with the data for FY 2001 and after.<sup>8)</sup> In order to obtain more accurate result, complete time series analyses of these data would be necessary. Due to the reorganization of federal government in this period such as the establishment of Department of Homeland Security (DHS) and insufficient reliability of implementation data from some agencies,<sup>9)</sup> however, such analyses are not possible given the available data. Therefore, this study will only compare the key statistics from annual FOIA implementation data.

The data, summarized in Table 1, are from the FOIA activities reports of fifteen cabinet level federal departments.<sup>10)</sup> Section 10 of the E FOIA

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8) FY 2001 data, which consist of approximately three months of the Clinton Administration and nine months of the Bush Administration, are regarded as the data of the Bush Administration in this paper.

9) In its 2008 report on FOIA implementation, U.S. General Accounting Office decided to exclude data from Department of Agriculture, Department of Housing and Urban Development, and General Services Administration as the data these agencies submitted were deemed not complete and accurate and/or the agencies admitted the incompleteness of their data(GAO, 2008).

10) Departments of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Homeland Security, Housing and Urban Development, the Interior, Justice, Labor, State, Transportation, the Treasury, and Veteran Affairs.

Data sets for FY 1999 to FY 2002 do not include the data of the Department of Homeland Security, which was established in 2002 and began to submit its annual FOIA report in FY 2003. An agency component which is a part of DHS as of the end of FY2003(September

amendments require all federal agencies to submit these reports every fiscal year to the Attorney General and make them available to the public by electronic means.<sup>11)</sup> In order to identify any changes in the implementation of FOIA after 9/11, the rates of grant and denial of FOIA requests as well as the use of exemption provisions - Exemption 1, 2, 3, 7(E), and 7(F) - are compared.<sup>12)</sup>

<Table 1> FOIA Implementation Data of Federal Departments: Disposition of requests, FY 1999 FY 2004

	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004
Total number						
Received request	1,681,878	1,837,005	1,892,630	2,038,247	2,468,378	2,531,654
Processed request	1,660,720	1,822,342	1,883,282	2,036,658	2,464,319	2,502,322
Full grant	1,406,416	1,533,383	1,637,420	1,786,270	2,173,171	2,182,419
Partial grant	65,822	63,511	73,927	79,790	100,374	108,202
Denial	31,214	32,963	14,519	15,414	16,759	20,303
Pending request	114,426	118,755	129,707	129,909	134,587	147,414
Rate(%)						
Processed request	98.74	99.20	99.51	99.92	99.84	98.84
Full grant	84.69	84.14	86.95	87.71	88.19	87.22
Partial grant	3.96	3.45	3.93	3.92	4.07	4.32
Denial	1.88	1.81	0.77	0.76	0.68	0.81
Growth rate(%)						
Received request		9.22	3.03	7.69	21.10	2.56
Pending request		3.78	9.22	0.02	3.60	9.53
Annual rate changes(%)						
Processed request		0.46	0.31	0.41	0.08	1.00
Full grant		0.55	2.81	0.76	0.48	0.97
Partial grant			0.48	0.01	0.15	0.25
Denial		0.07	1.04	0.01	0.08	0.13

Note. From annual FOIA reports for FY 1999, FY 2000, FY 2001, FY 2002, FY 2003, and FY 2004, submitted by 15 U.S. federal departments: Retrieved from U.S. Department of Justice Web site: [http://www.usdoj.gov/04foia/04\\_6.html](http://www.usdoj.gov/04foia/04_6.html). See Appendix for the complete statistics.

30, 2003) included its FY2003 data in FY2003 FOIA report of DHS. All agency components of which FOIA statistics are separately collected were transferred from cabinet level agencies to DHS, with the exception of Federal Emergency Management Agency and Federal Protective Service, which together represent fewer than 500 requests annually.

11) The Electronic Freedom of Information Act Amendments of 1996, Pub. L. No. 104-231, 110 Stat. 3048 (1996).

12) See Appendix for complete annual statistics.

The number of FOIA requests received in each year consistently increased during this period, exceeding two million requests by FY 2002. The number increased by 155,127(9.22%) in FY 2000, 55,625(3.03%) in FY 2001, 145,617(7.69%) in FY 2002, 430,131(21.10%) in FY2003<sup>13)</sup>, and 63,276 (2.56%) in FY 2004. Note the large increase in FY 2003; According to the Justice Department's summary of FY 2003 FOIA reports, the total number of FOIA requests received in this fiscal year, when including those received by sub cabinet level agencies, is 3,266,394 or a 36% growth compared to the previous year. This is the first year in which the three million request level was reached and also the greatest one year increase in FOIA requests to date. According to the Department of Justice, approximately half of this increase was due to the large number of requests received by the Social Security Administration (U.S. Department of Justice, 2004).<sup>14)</sup>

Also in FY 2003 the newly established Department of Homeland Security (DHS) began to receive and process FOIA requests. It received 161,777 requests and processed 160,902 or 99.46% of requests in that year. As the Department of Justice points out(U.S. Department of Justice, 2004), the fact that the federal reorganization took place in the middle of FY 2003 and greatly changed the administration of FOIA in homeland security related agencies makes it difficult to directly compare FY 2003 data with other annual statistics.

Judging from the restrictive changes in the legislative and executive policies on information dissemination which were discussed above, one would expect an increase in the denial of FOIA requests by many agencies. As shown in table

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13) The newly established Department of Homeland Security, which began to receive and process FOIA requests, received 161,777 requests in FY 2003. About 90% of these requests were received by United States Citizenship and Immigration Services, formerly Immigration and Naturalization Service.

14) According to the FY 2003 FOIA report by the Social Security Administration (SSA) and the summary of FY 2003 FOIA reports by the Department of Justice, the number of FOIA requests SSA received had increased more than twelve fold between FY 1998 and FY 2003 due to the popularity of social security documents in general. In FY 2003, the majority of increase involved access requests which have a quick turnaround time of less than a day and occurred in SSA's field locations where its FOIA activities had been enhanced by new automated systems.

1, however, the total grant rate slightly increased by 1.24% and the denial rate decreased by 0.09% between FY 2001 and FY 2003. Although the change is slight, it indicates that the agencies have disclosed more information to the public between September 11, 2001 and late 2003. In FY 2004, on the other hand, the grant rate decreased by 0.97% and the denial rate increased by 0.13%.

The examination of the impact of the administration change also produced unexpected results. Between FY 2000 and FY 2001, the grant rate increased by 2.81%, and the denial rate decreased by 1.04%, both of which are the largest annual change in each rate in the last six fiscal years. It is particularly noticeable that the number of denials dropped by more than half - from 32,963 to 14,519 - after the change of administration. These results, which show improved access to government information in the early Bush administration, appear inconsistent with the stricter access policies of the Bush Administration as discussed below.

<Table 2> FOIA Implementation Data of Federal Departments: Use of exemptions, FY 2000 FY 2004

	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004
Exemption 1 (number of uses)	2,959	2,747	2,504	2,199	2,182	2,538
(use of exemption 1 / total exemption use)	2.63%	1.45%	0.89%	0.45%	1.15%	1.05%
Exemption 2	6,676	9,152	11,922	13,522	10,210	29,987
	5.94%	4.84%	4.22%	2.74%	5.36%	12.43%
Exemption 3	3,838	3,770	17,700	8,914	10,292	9,744
	3.41%	1.99%	6.26%	1.81%	5.41%	4.04%
Exemption 7(E)	4,300	7,260	13,316	16,165	11,635	12,646
	3.82%	3.84%	4.71%	3.27%	6.11%	5.24%
Exemption 7(F)	1,678	2,154	1,635	1,683	1,631	2,023
	1.49%	1.14%	0.58%	0.34%	0.86%	0.84%
Total	19,451	25,083	47,077	42,483	35,950	56,938
	17.29%	13.26%	16.66%	8.61%	18.89%	23.60%

Note. From annual FOIA reports for FY 1999, FY 2000, FY 2001, FY 2002, FY 2003, and FY 2004, submitted by 15 U.S. federal departments: Retrieved from U.S. Department of Justice Web site: [http://www.usdoj.gov/04foia/04\\_6.html](http://www.usdoj.gov/04foia/04_6.html). See Appendix for the complete statistics.

As shown in Table 2, the use of each FOIA exemption related to homeland security constituted less than 7% of annual total exemption use, except for the case of Exemption 2(internal agency rules) in FY 2004(12%). The sharp increase in the use of Exemption 2 in FY 2004 - by 19,777 cases, 77% of which was by DHS - is particularly notable. There do not appear to be any consistent patterns in the use of these exemptions between FY 1999 and FY 2004.

However, the use rate of all five exemptions decreased between FY 2001 and FY 2002, which indicates that the federal agencies did not withhold more records for homeland security reasons within the year following the terrorist attacks. This result is consistent with the above mentioned trends in grant and denial rate in the same period. On the other hand, the use of the five exemptions all increased in rates between FY 2002 and FY 2003. As for the effect of administration change, no particular pattern in exemption use could be found between FY 2000 and 2001.

The backlog(requests pending at the end of a fiscal year) gradually increased between FY 2001 and FY 2004, by 17,507 cases, indicating that a chronic backlog problem in the processing of FOIA requests continues to exist. According to a recent GAO study(U.S. General Accountability Office, 2002, p.44), agency officials cited the reasons for growing backlogs as the increasing complexity of requests, a lack of staff for FOIA processing, and a lack of information technology support, among others.

More rigorous quantitative analyses will be needed in order to draw decisive conclusions. However, the data show that the public access to government information at the implementation level, in terms of grant and denial rates, did not degrade at least through FY 2003 despite the stricter legislative and executive policies that followed the change of administration and terrorist attacks. On the other hand, the large and increasing backlog (147,414 cases in FY 2004) still exists in the processing of FOIA requests.

## V. Discussion and Conclusion

The examination of the legislative and executive changes in FOIA after 9/11 clearly shows a restriction on freedom of access at the policy level. However, the findings from the interviews of FOIA officers as well as the analyses of the FOIA implementation data are not consistent with the policy changes. Public access to government information slightly improved in terms of disposition of requests at the implementation level until FY 2003. And the use of FOIA exemptions that are related to homeland security decreased in FY 2002, the year following the terrorist attacks. The statements of federal FOIA officers support this trend as well. Also, the data show that freedom of information has not considerably degraded with the advent of the Bush administration, which has been harshly criticized for its restrictive access policies.

How can we explain these contrasting findings? First, there has been substantial criticism of the restriction on public access after 9/11, especially from journalists, librarians, and civil rights groups, and various congressional efforts have been made to increase freedom of information. During the 108th Congress, for example, two bills were introduced in order to clarify and narrow the new broad FOIA exemptions. In March 2003, the "Restoration of Freedom of Information Act" bill was introduced in Senate to limit the new exemption on critical infrastructure information established by the Homeland Security Act.<sup>1)</sup> Also, "Restore Open Government" bill was introduced in the House of Representatives in 2004 to revoke the restrictive FOIA guideline on the Ashcroft memo and the Card memo.<sup>2)</sup> Although these bills never became law, federal agencies may informally respond to such demands, and the impact of restrictive policy changes may be offset as a result.

Second, bureaucratic inertia might be a reason why the policy changes failed to strongly influence the implementation. Without clear and specific guidelines

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1) The Restoration of Freedom of Information Act of 2003, S. 609, H.R. 2526, Cong(2003). This bill was reintroduced as S.622 on March 12, 2005 during the 109th Congress.

The Restoration of Freedom of Information Act of 2005, S. 622, Cong. (2005).

2) The Restore Open Government Act of 2004, H.R. 5073, Cong(2004).

as discussed above, the FOIA has been implemented in a decentralized manner with much discretion left to the agencies. According to a recent survey of 35 federal agencies(National Security Archive, 2003b), 61% of the agencies indicated little or no change in regulation, guidance, or training materials reflecting the changes in the Ashcroft memo; only 15% responded that significant changes have been made.

Third, as a recent study points out(Feinberg, 2004), more and more government records are becoming not subject to FOIA at all. These new record categories are often labeled “sensitive but unclassified,” “for official use only,” and “critical infrastructure information” and governed by individual agencies or private entities. Since the FOIA statistics do not cover attempts to access to this information, the positive trend discussed above might be inconsistent with the reality of access.

Fourth, as for the effect of administration change, many scholars and freedom of information activists have criticized the access policy of the Bush administration as shown in the Ashcroft memo as well as the classification of presidential records as secrecy oriented, particularly in comparison with that of Clinton Administration which is represented by the Reno memo and the signing of E FOIA amendments. However, some FOIA experts claim that there is not much difference between the two administrations in terms of the disposition of FOIA requests(Nakashima, 2002). A report by the Heritage Foundation’s Center for Media and Public Policy claims that “the Clinton years were marked by widespread violations of essential transparency in government,” citing hundreds of examples of abuse of FOIA such as prolonged delays and repeated denials(Tapscott & Taylor, n.d.).

The data of DHS are very intriguing in terms of both the disposition of requests and the use of exemptions. The Department, which submitted its FOIA report for the first time in FY 2003, processed the second most and the third most FOIA requests in FY 2003 and FY 2004, respectively. Among these requests, 33% or 52,726 requests in FY 2003 and 36% or 60,612 in FY 2004 were partially granted, which means the redaction of some information in the released records. The high number and rate of partial grant of FOIA requests



by DHS are unprecedented, accounting for more than half of all partial grants in both fiscal years.

Also DHS's use of Exemptions 2 and 7(e), both of which are closely related to the protection of homeland security information, is unusually high compared to other federal departments. Given its function, it seems reasonable to expect that a large number of FOIA requests for DHS will be withheld by the use of Exemption 2 and 7(e); this could be a meaningful future research topic in the area of public access.

This study compared only six sets of annual FOIA implementation data from 15 cabinet level federal departments that process about 2/3 of all FOIA requests. The examination of data from 73 remaining federal agencies which submit annual FOIA reports would lead to more complete results. Also, as Obama administration succeeded Bush administration in January 2009, the accumulation of FOIA implementation data after FY2009 will allow further analysis of implementation changes due to the change of administrations.

Most FOIA research to date focuses on policy, management, and legal perspectives, but there is no generally understood theoretical model and very few empirical analyses concerning the implementation of FOIA. The research ideas discussed above may fill this gap and make contributions to understanding of FOIA and information access policies in the public sector.

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## Appendix:

FOIA implementation data of U.S. Federal Departments, FY 2001 FY 2003

〈Table A1〉 Disposition of FOIA Requests, FY 1999

	Received request	Processed request	Pending request	Total grant	Partial grant	Denial
Agriculture	80,574	80,002	1,879	75,348	1,909	1,524
Commerce	2,804	1,899	259	1,022	180	235
Defense	98,338	97,171	11,407	57,221	11,742	2,147
Education	1,728	1,711	363	1,145	298	68
Energy	2,456	2,387	810	1,365	428	84
Health & Human Services	58,401	59,847	17,148	50,141	731	1,964
Housing & Urban Development	3,607	3,513	4,440	1,839	0*	549
Interior	5,687	5,609	591	3,626	629	240
Justice	230,492	223,644	33,179	82,582	31,232	2,870
Labor	20,135	20,187	942	8,519	4,784	6,884
State	3,716	3,824	5,241	1,203	817	120
Transportation	20,923	20,247	3,414	12,670	2,340	716
Treasury	1,691	1,465	1,121	640	215	50
Veteran Affairs	1,151,326	1,139,214	33,632	1,109,095	10,517	13,763
Total	1,681,878	1,660,720	114,426	1,406,416	65,822	31,214

\* In the FOIA report of the Department of Housing and Urban Development for FY 1999, only the number of total grants and the number of partial or full denials are reported.

〈Table A2〉 Disposition of FOIA Requests, FY 2000

	Received request	Processed request	Pending request	Total grant	Partial grant	Denial
Agriculture	140,239	139,503	2,615	111,263	2,043	1,686
Commerce	2,035	2,026	268	1,189	200	215
Defense	97,266	96,479	11,630	56,836	11,551	2,367
Education	1,633	1,695	298	1,034	331	34
Energy	2,935	2,649	1,000	1,546	328	34

Health & Human Services	61,971	60,060	18,685	50,710	823	2,055
Housing & Urban Development	3,408	2,878	1,022	1,412	0*	473
Interior	5,161	4,966	791	2,937	761	177
Justice	235,042	235,090	33,085	92,134	32,010	3,024
Labor	22,469	22,505	906	8,533	5,591	8,381
State	3,611	3,070	5,782	850	822	93
Transportation	19,750	19,280	3,853	10,670	2,303	477
Treasury	1,641	1,597	1,165	696	234	73
Veteran Affairs	1,239,844	1,230,544	37,655	1,193,573	6,514	13,874
Total	1,837,005	1,822,342	118,755	1,533,383	63,511	32,963

\* In the FOIA report of the Department of Housing and Urban Development for FY 2000, only the number of total grants and the number of partial or full denials are reported.

<Table A3> Disposition of FOIA Requests, FY 2001

	Received request	Processed request	Pending request	Total grant	Partial grant	Denial
Agriculture	83,617	83,194	3,038	75,811	3,750	2,147
Commerce	2,183	2,232	219	1,181	367	206
Defense	81,682	80,357	12,696	44,531	11,371	2,172
Education	1,547	1,555	289	949	342	52
Energy	3,245	2,673	1,572	1,790	445	43
Health & Human Services	61,586	62,599	17,517	48,226	867	1,605
Housing & Urban Development	3,861	3,251	1,632	1,855	447	147
Interior	5,104	4,961	931	2,578	798	185
Justice	196,917	194,612	35,396	94,058	32,325	2,427
Labor	20,222	19,840	1,288	6,969	7,104	1,319
State	3,761	3,329	6,214	572	728	131
Transportation	19,529	19,547	3,767	10,536	2,493	756
Treasury	56,590	54,469	8,947	24,192	5,175	1,157
Veteran Affairs	1,352,786	1,350,663	36,201	1,324,172	7,715	2,172
Total	1,892,630	1,883,282	129,707	1,637,420	73,927	14,519

&lt;Table A4&gt; Disposition of FOIA Requests, FY 2002

	Received requests	Processed requests	Pending requests	Total grants	Partial grants	Denials
Agriculture	78,293	78,062	2,012	70,965	2,339	2,065
Commerce	2,142	2,063	298	855	380	165
Defense	76,579	76,943	12,543	40,458	11,133	2,399
Education	1,744	1,718	219	1,079	344	45
Energy	2,900	3,319	1,027	2,227	277	50
Health & Human Services	105,068	103,163	19,308	91,113	746	1,471
Housing & Urban Development	3,210	4,171	671	1,686	384	281
Interior	4,396	4,378	902	2,212	764	193
Justice	182,079	184,928	32,545	81,426	40,571	2,187
Labor	17,722	18,201	809	5,514	6,442	1,858
State	3,134	4,636	5,343	634	818	104
Transportation	17,910	17,540	3,885	8,803	2,171	519
Treasury	46,879	47,812	7,681	21,144	4,622	830
Veteran Affairs	1,496,191	1,489,724	42,666	1,458,154	8,799	3,247
Total	2,038,247	2,036,658	129,909	1,786,270	79,790	15,414

&lt;Table A5&gt; Disposition of FOIA Requests, FY 2003

	Received request	Processed Request	Pending request	Total grant	Partial grant	Denial
Agriculture	68,049	68,163	1,778	61,092	2,447	1,799
Commerce	1,975	1,981	292	875	327	216
Defense	74,399	73,814	13,128	37,802	10,276	2,173
Education	1,856	1,840	214	1,137	325	49
Energy	2,357	2,371	1,013	1,400	342	44
Health & Human Services	146,257	144,143	21,265	133,487	636	1,500
Homeland Security	161,117	160,902	28,958	63,403	52,726	1,007
Housing & Urban Development	4,027	2,788	1,910	1,613	486	80
Interior	5,243	4,679	1,471	2,117	995	191
Justice	53,904	54,583	7,574	17,712	8,144	1,924
Labor	20,962	21,185	586	7,282	7,661	1,435
State	3,352	5,773	3,008	1,086	1,581	220
Transportation	10,649	10,527	2,542	4,276	1,965	445
Treasury	60,065	59,814	5,772	27,094	3,502	662
Veteran Affairs	1,854,166	1,851,756	45,076	1,812,795	8,961	5,014
Total	2,468,378	2,464,319	134,587	2,173,171	100,374	16,759

〈Table A6〉 Disposition of FOIA Requests, FY 2004

	Received request	Processed request	Pending request	Total grant	Partial grant	Denial
Agriculture	61,803	61,209	2,372	55,475	1,953	1,774
Commerce	2,051	2,035	308	950	277	214
Defense	77,141	77,256	12,826	37,914	11,779	2,340
Education	2,232	2,082	348	1,007	659	61
Energy	2,289	2,440	862	1,590	258	29
Health & Human Services	225,006	222,408	23,545	206,951	753	2,134
Homeland Security	168,882	152,027	45,810	49,835	60,612	955
Housing & Urban Development	4,654	3,978	2,421	1,824	587	237
Interior	4,587	4,219	1,798	1,809	854	183
Justice	57,346	56,865	8,055	19,186	8,495	2,136
Labor	21,833	21,860	559	7,378	7,551	1,931
State	3,951	4,963	1,996	837	1,370	345
Transportation	10,375	10,905	1,971	4,345	2,170	292
Treasury	64,336	64,570	5,538	30,114	3,413	551
Veteran Affairs	1,825,168	1,815,505	39,005	1,763,204	7,471	7,121
Total	2,531,654	2,502,322	147,414	2,182,419	108,202	20,303

〈Table A6〉 Use of FOIA Exemptions, FY 1999

	1	2	3	4	5	6	7(A)	7(B)	7(C)	7(D)	7(E)	7(F)	8	9
Agriculture	3	60	345	342	245	1,207	121	6	290	83	6	5	0	14
Commerce	7	7	86	65	72	56	6	0	26	0	1	0	0	0
Defense	1,423	1,149	1,074	1,124	2,179	7,341	323	22	4,035	738	407	25	0	0
Education	0	5	5	64	34	212	53	0	89	11	8	0	0	0
Energy	15	6	83	112	155	113	9	0	24	5	0	0	0	0
Health & Human Services	0	32	32	397	232	1,208	238*	0	0	0	0	0	0	0
Housing & Urban Development	0	19	25	187	172	263	43	1	21	2	3	0	3	0
Interior	0	16	20	108	199	381	52	3	60	6	3	2	0	3
Justice	1081	4,872	800	140	8,471	11,106	4,982	36	15,550	5,190	3,233	1,641	3	1
Labor	1	402	511	1,776	4,359	2,298	2,371	0	5,115	4,617	610	1	0	0
State	418	18	117	30	96	168	5	1	24	12	11	3	0	1
Transportation	8	59	164	324	502	876	148	11	464	84	11	0	0	0
Treasury	3	16	61	39	75	79	10	0	40	4	7	1	0	0
Veteran Affairs	0	15	515	46	70	1,104	10	8	14	3	0	0	0	0
Total	2,959	6,676	3,838	4,754	16,861	26,412	8,371	88	25,752	10,755	4,300	1,678	6	19

\* In the FOIA report of the Department of Housing and Urban Development for FY 2000, the number of use of Exemption 7 is not reported by sub categories of the exemption.



〈Table A7〉 Use of FOIA Exemptions, FY 2000

	1	2	3	4	5	6	7(A)	7(B)	7(C)	7(D)	7(E)	7(F)	8	9
Agriculture	0	41	58	314	273	1,501	129	3	224	64	11	10	0	0
Commerce	10	8	77	80	100	165	7	1	28	2	4	0	0	0
Defense	1,251	1,196	1,342	1,075	1,933	7,265	229	20	3,638	583	248	32	0	0
Education	0	5	3	69	47	185	49	6	100	5	6	0	0	0
Energy	6	2	41	86	96	120	12	0	25	4	1	0	0	0
Health & Human Services	0	61	28	309	216	1,438	182	0	43	13	9	0	0	0
Housing & Urban Development	0	14	27	135	179	211	39	4	29	3	3	1	4	0
Interior	0	23	16	149	299	419	31	6	83	0	13	1	0	7
Justice	1098	7,067	751	405	13,625	45,383	10,173	76	37,122	6,378	6,314	2,081	1	0
Labor	0	517	592	2,055	5,083	2,729	2,670	0	5,885	5,419	601	3	0	0
State	349	23	107	30	111	196	15	1	35	16	20	11	0	0
Transportation	28	33	145	232	495	1,193	210	15	517	105	8	1	0	0
Treasury	3	11	41	60	79	62	7	0	77	3	14	2	0	0
Veteran Affairs	2	151	542	44	138	1,197	22	2	56	3	8	12	0	0
Total	2,747	9,152	3,770	5,043	22,674	62,064	13,775	134	47,862	12,598	7,260	2,154	5	7

〈Table A8〉 Use of FOIA Exemptions, FY 2001

	1	2	3	4	5	6	7(A)	7(B)	7(C)	7(D)	7(E)	7(F)	8	9
Agriculture	0	28	352	307	248	3,430	65	19	254	38	13	3	0	0
Commerce	5	17	58	96	137	176	9	0	34	1	2	0	0	0
Defense	1,184	1,219	1,141	1,119	1,723	6,729	480	36	4,064	357	117	83	0	0
Education	0	16	2	68	61	234	55	1	117	3	8	0	0	0
Energy	14	7	78	172	93	139	5	0	13	2	2	0	0	0
Health & Human Services	0	47	31	332	199	1,803	148	1	65	21	2	0	0	0
Housing & Urban Development	0	18	31	172	172	326	61	2	54	4	2	0	4	0
Interior	0	24	13	145	331	427	34	9	52	4	8	4	0	2
Justice	913	8,682	1,027	575	13,299	77,808	8,343	16	76,706	6,313	10,753	1,476	0	0
Labor	0	368	54	2,454	3,963	1,894	1,319	0	4,648	2,935	474	14	0	0
State	383	34	133	30	129	210	13	1	34	13	20	8	0	0
Transportation	0	110	108	285	476	1,471	186	19	666	99	14	13	0	0
Treasury	5	1,222	2,762	568	744	1,009	378	13	2,182	328	1,891	24	66	0
Veteran Affairs	0	130	11,910	44	224	1,525	7	4	54	11	10	10	0	0
Total	2,504	11,922	17,700	6,367	21,799	97,181	11,103	121	88,943	10,129	13,316	1,635	70	2

〈Table A9〉 Use of FOIA Exemptions, FY 2002

	1	2	3	4	5	6	7(A)	7(B)	7(C)	7(D)	7(E)	7(F)	8	9
Agriculture	0	73	270	405	345	1,876	197	11	295	52	21	1	0	0
Commerce	4	27	114	129	161	144	12	0	47	2	10	0	0	0
Defense	1,179	1,891	1,159	1,375	1,613	6,583	666	27	4,587	290	93	162	0	0
Education	0	13	0	101	39	234	30	0	86	2	5	0	0	0
Energy	6	44	33	58	71	149	1	14	1	0	0	1	0	0
Health & Human Services	0	66	27	397	215	1,630	104	1	55	15	1	0	0	0
Housing & Urban Development	0	19	19	187	164	294	59	2	42	7	2	1	2	0
Interior	0	25	18	91	349	367	63	12	92	14	21	9	0	4
Justice	508	9,214	920	581	22,141	171,569	11,540	40	181,347	6,774	13,655	1,468	2	0
Labor	0	450	18	3,264	4,280	2,120	1,850	0	5,206	3,758	694	2	0	0
State	496	49	152	51	201	324	14	3	40	15	30	11	0	0
Transportation	4	105	172	282	511	1,334	229	6	456	74	27	4	0	0
Treasury	2	1,373	2,513	530	798	1,092	458	11	2,280	375	1,605	23	61	0
Veteran Affairs	0	173	3,499	101	538	2,954	17	21	89	6	1	1	0	13
Total	2,199	13,522	8,914	7,552	31,426	190,670	15,240	148	194,623	11,384	16,165	1,683	65	17

〈Table A10〉 Use of FOIA Exemptions, FY 2003

	1	2	3	4	5	6	7(A)	7(B)	7(C)	7(D)	7(E)	7(F)	8	9
Agriculture	2	95	252	463	400	2,052	160	7	266	32	20	10	0	0
Commerce	8	14	107	103	149	212	5	0	31	2	1	0	0	0
Defense	1,477	1,689	1,618	1,583	1,432	6,345	371	15	4,339	327	80	19	0	1
Education	0	13	0	100	55	195	52	0	104	3	7	0	0	0
Energy	19	44	40	78	65	203	4	0	24	1	0	3	0	0
Health & Human Services	0	37	37	301	178	1,764	78	1	52	17	2	0	0	0
Homeland Security	44	4,192	331	358	12,360	35,516	7,293	29	26,386	1,222	8,470	48	0	0
Housing & Urban Development	0	18	19	126	110	297	27	0	38	2	2	0	0	0
Interior	1	43	38	188	366	576	83	21	154	43	14	16	0	2
Justice	515	3,065	1,146	269	1,745	2,864	657	25	7,153	2,461	898	1,524	0	0
Labor	0	595	23	3,942	4,967	2,391	1,433	0	5,688	3,573	872	0	0	0
State	105	10	14	0	32	31	4	0	4	2	3	0	0	0
Transportation	1	52	141	245	403	1,268	165	8	462	110	8	1	0	0
Treasury	6	177	2,917	418	637	856	510	4	1,110	236	1,251	10	58	0
Veteran Affairs	4	166	3,609	113	482	3,193	31	4	132	2	7	0	0	0
Total	2,182	10,210	10,292	8,287	23,381	57,763	10,873	114	45,943	8,033	11,635	1,631	58	3

〈Table A11〉 Use of FOIA Exemptions, FY 2004

	1	2	3	4	5	6	7(A)	7(B)	7(C)	7(D)	7(E)	7(F)	8	9
Agriculture	9	198	73	364	363	1,790	173	750	298	24	23	1	0	0
Commerce	6	21	120	111	131	154	11	0	17	0	4	0	0	0
Defense	1,132	1,944	1,627	1,268	1,411	8,990	458	14	4,738	245	107	22	3	180
Education	0	133	2	351	55	252	66	11	181	3	5	0	0	0
Energy	10	30	22	75	57	112	20	8	9	2	2	1	0	0
Health & Human Services	0	37	27	411	159	2,472	67	1	18	6	2	0	0	0
Homeland Security	19	23,162	453	285	29,233	38,439	4,828	42	31,178	982	9,415	98	0	0
Housing & Urban Development	0	25	22	164	93	238	22	1	29	3	4	0	0	0
Interior	0	46	38	122	318	478	82	5	256	13	14	11	0	2
Justice	580	3,577	1,073	227	1,718	2,791	587	24	7,432	2,519	1,021	1,850	0	0
Labor	0	403	30	4,503	5,049	2,062	1,833	9	7,123	3,857	764	1	0	0
State	762	138	485	126	377	624	39	2	121	27	50	8	0	0
Transportation	3	85	74	230	504	1,407	170	11	481	90	8	1	0	0
Treasury	17	57	263	354	203	354	16	3	1,140	99	1,225	13	69	0
Veteran Affairs	0	131	5,435	155	370	4,635	105	9	280	10	2	17	0	12
Total	2,538	29,987	9,744	8,746	40,041	64,798	8,477	890	53,301	7,880	12,646	2,023	72	194

Note. From annual FOIA reports for FY 1999, FY 2000, FY 2001, FY 2002, FY 2003, and FY 2004, submitted by 15 U.S. federal departments. Retrieved from U.S. Department of Justice Web site: [http://www.usdoj.gov/04foia/04\\_6.html](http://www.usdoj.gov/04foia/04_6.html)

## 국문 요약

### 9/11 테러 이후 강화된 미국 연방정부의 국가안보 정책이 정보자유법(Freedom of Information Act) 및 연방 정보공개정책에 미친 영향

권혁빈

2001년 9월 11일, 테러리스트 집단 알케이다(Al-Qaeda)에 의한 미국 뉴욕시 무역센터(World Trade Center) 빌딩 및 국방성(U.S. Pentagon)에 대한 동시다발적 테러 공격은 큰 참사를 불러온바 있다. 이 테러 공격의 여파는 미 연방정부로 하여금 미국의 국가안보와 관련된 사항에 대해 보다 철저한 보호 조치를 취하게 하였으며, 다른 한편 미국 시민들의 알권리(Right to know) 및 공공정보에 대한 접근권(Right of access)을 축소하는 결과를 가져온바 있다.

본 연구의 결과의 따르면 9/11 사건 이후 정책결정 단계에서 연방법 개정 및 주요 정책결정 지침의 중요한 변화를 통해 공공정보에 대한 접근권은 제한되었음을 알 수 있다. 그러나 미 연방 1999 회계연도부터 2004 회계연도까지의 연방 정보자유법(Freedom of Information Act) 집행 성과에 관한 통계자료를 분석한 결과, 이 시기 국가안보 강화를 위하여 취하여진 조치들이 정책 집행단계에서 큰 영향을 미치지 못하고, 전년도 집행결과에 점진적으로 따라갔음이 확인되었다. 이는 미 의회 및 언론계의 알 권리에 대한 억압, 비판에 대한 관료들의 무의식적인 대응행위, 관료적 관성(慣性), 그리고 9/11 이후 정보자유법의 적용을 받지 않은 새로운 공공정보 범주의 이용에 따른 결과로 설명될 수 있다.

주제어 : 정보공개법, 정보자유법, 알권리, 공공정보, 접근권, 정책결정론, 정책집행론

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