

## 국가 안보를 위한 미국 정보 자유법 시행의 결과에 미치는 조직적 요인의 분석

### The Analysis of Organizational Factors Affecting the Outcome of Federal FOIA Implementation for National Security

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#### 〈Abstract〉

This article aims to identify organizational factors that influence the performance of implementation of the U.S. Freedom of Information Act (FOIA) and to investigate the strength and direction of their effects. Explanatory variables include administrative resources, organizational culture, litigation cost, and the complexity of FOIA requests. The study will analyze quantitative secondary data from official statistics of federal agencies and the 2006 Federal Human Capital Survey as well as qualitative data from semi-structured interviews of FOIA officers. The results of statistical analyses are as follows : FOIA funding significantly affects median processing time and number of requests pending. There is a significant relationship between bureaucratic culture and number of requests pending, but not between bureaucratic culture and number of requests pending. There exists a significant relationship between the cost of FOIA litigation to federal agencies and the performance of FOIA implementation. There exists a significant relationship between the complexity of FOIA requests and the performance of FOIA implementation. This

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study also has important implication in South Korea, which has been under a sharp confrontation with North Korea for more than 50 years. As illustrated by the conflict between people's right to know and national security during the investigation of recent Sinking of the ROKS Cheonan, efforts should be made to prepare legal and institutional mechanism for freedom of information policy which can maintain a balance between conflicting values as well as efficient information disclosure in Korea.

**Key Word : Freedom of Information ACT(FOIA), Right to know, National security, Organizational factor, Bureaucratic culture**

## I. Introduction

This article aims to empirically investigate the effects of organizational factors, mainly financial and personnel resources and bureaucratic culture of government agencies, on the performance of implementation of the FOIA (the Freedom of Information Act) in the U.S. federal government.

The Freedom of Information Act, 5 U.S.C. § 552 was enacted in 1966 to provide a statutory right of access. Under the FOIA, agencies of the U.S. federal government are required to disclose information or records they have upon written request. The FOIA has been considered as a critical statute to protect people's right to know and promote democratic accountability. However, it has long been criticized that the promises of FOIA remains largely unfulfilled due to agencies' non-compliance and frequent delay of information disclosure in the implementation process (Henderson & McDermott, 1999; Halstuk, 2000b). The importance of this issue is well illustrated by the recently issued Executive Order No. 13,392 (2005), *Improving Agency Disclosure of Information*, which called upon all federal agencies to "process requests under the FOIA in an efficient and appropriate manner and achieve tangible, measurable improvements in FOIA processing" (p.216) and "identify ways to eliminate or reduce its FOIA backlog" (p.218).

There exist different views on what causes the problems of non-compliance and a large backlog. First, the issue of inadequate financial and personnel resources has been frequently raised in FOIA literature, especially concerning agency compliance with major revisions to the FOIA (U.S. Congress, 1980; Lewis, 1995; Montana, 1998; Henderson & McDermott, 1999). The cost of administering FOIA has a controversial issue since the enactment of FOIA in 1966 (Relyea, 1994).

Second, a group of critics including many freedom of information advocates, journalists, and congressional legislators mainly attribute the problems to bureaucratic culture of government agencies. The criticism has targeted

“resistant, self-protective and fearful agency attitude to disclosure” (U.S. Congress, 1980, p.53), “trend towards more government secrecy and less public access” (Podesta, 2002, p.363), “irrationalities of standard operating procedures” and “bureaucratic rivalry among agencies” (Gibbs, 1995, p.215), and “internal law on open government” (Roberts, 2002, p.175) with regard to the implementation of freedom of information policies.

As discussed in the following literature review, however, there have been few empirical studies on the implementation of FOIA, especially quantitative studies to examine causal relationships between various organizational variables and performance variables of FOIA implementation. Therefore, the proposed study aims to identify main determinants of performance of FOIA implementation, the direction of their effects, and the relative strengths of their effects on the implementation of FOIA in order to address a gap in academic literature on FOIA, contribute to development of theory on studying determinants of performance of public organizations, and offer practical insights on the improvement of effectiveness of FOIA implementation.

The study of FOIA as the mechanism for resolve conflicts between people's right to know and national security also has an important implication for South Korea, which has had a sharp confrontation with North Korea for more than 50 years. The sinking of the ROKS Cheonan on March 26, 2010 and the investigation of the incident is a recent example which illustrates the need for such studies. The incident killed 46 South Korean Navy crew members, and a multinational investigation team concluded that the North Korean torpedo was responsible for the sinking. However, some liberal political figures and NGOs in South Korea have disagreed with this conclusion and criticized the government for its secrecy, claiming that it has refused to disclose detailed information concerning the incident (Park, 2010). A similar conflict emerged during the negotiation with Taliban terrorists in 2007 South Korean hostage crisis in Afghanistan.

In order to resolve such conflicts in similar terrorism or military incidents in the future, efforts should be made to prepare legal and institutional mechanism including revisions of the Act of Disclosure of Information by Public

Agencies of 1996 (the Official Information Disclosure Act), the central freedom of information law in South Korea. As a relatively recent law, the Official Information Disclosure Act has not accumulated as many case laws and supplementary policy mechanisms as other FOI laws worldwide with longer histories. Studies of legal and political cases of other countries such as the case of the U.S. FOIA would be of important help for such efforts.

## II. Literature Review

Since its enactment, the FOIA has evolved through debate among federal agencies, Congress, press, and civil right groups. 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.

Under these circumstances, the literature on freedom of information is wide and surrounds a broad range of disciplines including public policy, political science, law, journalism, communication and media, and information science. One of the main findings of this literature review, however, is the dearth of existing academic studies that involve rigorous empirical analysis of FOIA implementation. Especially, there are few quantitative studies that examine the factors affecting the outcome of FOIA implementation and the social and political influence of policy changes. This finding is somewhat difficult to understand because the problems in FOIA implementation such as large backlogs and their cause (e.g., insufficient resources and bureaucratic behavior) have drawn much attention, and because detailed statistical data on FOIA implementation are available in the annual FOIA reports of federal agencies. Also, there are few academic studies which offer theories or models for analyzing public access policies or which address the social and

technological implications of FOIA. This finding is consistent with the comment of Cain, Egan, and Fabbrini (2003) that scientific research and theory on access to government information is “somewhat scant”(p.117) and that empirical studies of FOI laws tend to be case studies of one or more nations, as well as the argument of Clemens (2001) that “the general state of the FOI literature...is characterised by discussion, commentary and critique”(p.17) and that the amount of actual empirical study appears small both in quantity and scope.

Most studies by government agencies and non-governmental organizations (NGOs) which examine statistics on FOIA implementation (GAO, 2001, 2002; Henderson & McDermott, 1998, 1999) lack advanced statistical analyses of the data. As discussed above, recent empirical analyses by Roberts (2002) and Piotrowski and Rosenbloom (2002) provide very useful insights on some aspects of implementation of FOIA. However, the former investigates only Canadian cases, and the latter focuses on freedom of information as a non-mission, democratic value rather than the implementation of FOIA itself, failing to provide a more comprehensive framework.

On the other hand, the legal perspective appears to be the dominant approach in many FOIA researches. For example, the legislative history of FOIA and, to a lesser extent, case laws are reviewed in the majority of academic articles on the FOIA and are the main focus of most scholarly articles (Feinberg, 1986; Foerstel, 1999; Doty, 2000; Hammit, 2000; Halstuk, 2000b; Halstuk & Chamberlin, 2003). Other major topics that involve the legal approach include privacy and public access (Gates, 2000; Raul, 2002; Davis, 2003), national security and access (Parnes, 1999; Melanson & Summers, 2002; Gansler & Lucyshyn, 2004), privatization and access (Casarez, 1995; Feiser, 1999), and international comparative studies (Birkinshaw, 2002; Lor & As, 2002; Koga, 2003; Darch & Underwood, 2005). As discussed above, existing research provides insights on some aspects of FOIA and identifies various data sources and methods that can be utilized for this article.

### III. Research Model and Research Method

#### 1. Research Model

The findings of the literature review indicate a need for empirical examination of the factors that influence the implementation of FOIA, particularly administrative resources and organizational culture of implementing agencies. This article is expected to make the following academic and practical contributions. First, it will address a gap in FOIA literature by providing a rigorous quantitative analysis on the effects of organizational factors on FOIA implementation. Second, the empirical analysis will make contributions to the development of theory on measuring and explaining determinants of performance in public organizations. Third, it will offer valuable insights on how to improve the performance of FOIA implementation, particularly in terms of increasing agency compliance with statutory mandates and reducing response time and backlog, and how to design effective public access policy structure.

Main research questions in this study are as follows:

1. What are the main organizational factors that influence the performance of FOIA implementation?
2. What are the directions of effects of these factors on FOIA implementation?
3. What are the relative strengths of effects of these factors on FOIA implementation?

Research hypotheses in this study are as follows:

RH1-1: There is a significant relationship between FOIA funding in federal agencies and the performance of FOIA implementation such that the larger the FOIA budget appropriated to an agency, the better its performance of FOIA implementation.

RH1-2: There is a significant relationship between the bureaucratic culture

in federal agencies and the performance of FOIA implementation such that the greater the bureaucratic culture in agencies, the poorer the performance of FOIA implementation.

RH1-3: There is a significant relationship between the cost of FOIA litigation to federal agencies and the performance of FOIA implementation such that the greater the litigation cost, the poorer the performance of FOIA implementation.

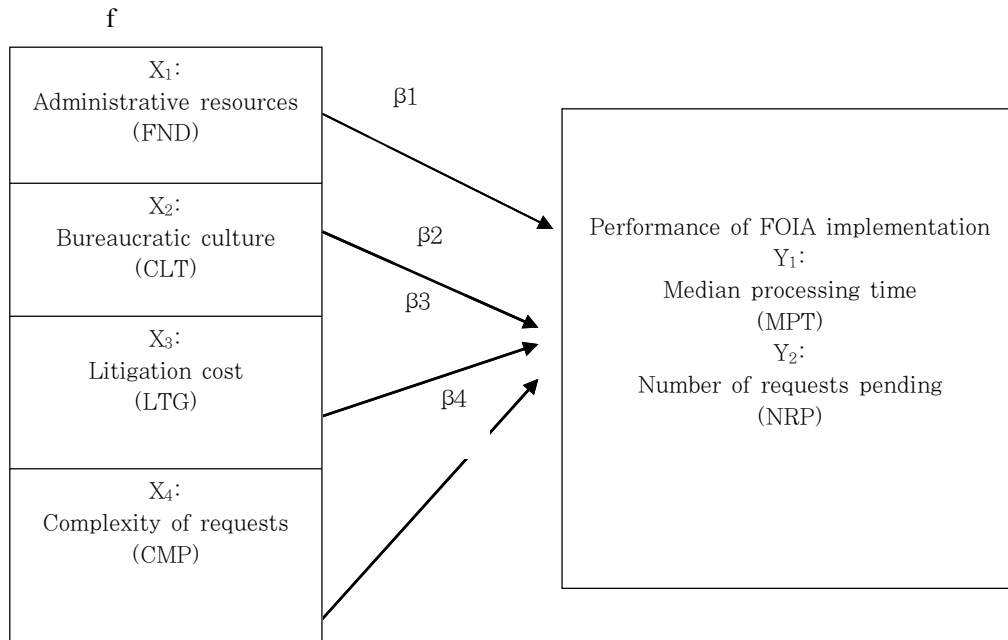
RH1-4: There is a significant relationship between the complexity of FOIA requests agencies receive and the performance of FOIA implementation such that the more complex the requests, the poorer the performance of FOIA implementation.

RH2: The FOIA funding of federal agencies has more influence on the performance of FOIA implementation than does the bureaucratic culture in the agencies.

In this model, the dependent variables, which measure the performance of FOIA administration, are median processing time of FOIA requests (MPT) and number of requests pending at the end of a fiscal year (NRP). Independent variables are administrative resources (FND), bureaucratic culture (CLT), litigation cost (LTG), and complexity of requests (CMP). Although many scholars agree that the two key explanatory variables in this model - administrative resources and organizational culture - affect organizational performance, there exists disagreement on the ordering and casual paths of these variables (Brewer & Selden, 2000; Garnett, Marlowe, & Pandey, 2008). Because of this disagreement and the use of cross-sectional data in the current study, only direct relationships between the independent variables and the dependent variable will be analyzed, following the empirical study of organizational performance of federal agencies by Brewer and Selden (2000). The hypothesized causal relationship among the variables is described in Figure 1, and detailed information on the definition and operationalization of each variable is presented In following section



〈Figure 1〉 : Factors that Influence the Implementation of FOIA



## 2. Research Method

### 1) Data and Subjects

This research will primarily rely on quantitative methods to examine the causal relationship among variables. The degree of bureaucratic culture will be measured by secondary analyses of data from a nationwide federal employee survey, and the budget allocated to FOIA operations and the performance of FOIA implementation will be measured by secondary analyses of official statistics from the survey year.

Qualitative semi-structured interviews of small number of FOIA officers and freedom of information activists will be administered as an exploratory pilot research to refine the research model and the survey structure by gathering more information on variables which affect the implementation of FOIA. In addition, after the analysis of quantitative data, FOIA officers from selected agencies with important characteristics - for example, agencies with the

highest and lowest score in implementation performance, bureaucratic culture, and annual FOIA funding per request - will be interviewed to obtain further qualitative information for the interpretation of quantitative research findings.

In preliminary qualitative interviews, four FOIA officers in federal government agencies will be interviewed and asked to explain their opinions on the implementation of FOIA in their organizations. Convenience sampling will be used to select participants in order to interview practitioners from diverse agencies with different characteristics. Participants in the follow-up qualitative interviews will be determined based on the result of statistical analysis.

The secondary analysis will cover data from 2006 Federal Human Capital Survey (FHCS), a nationwide survey of 221,479 federal employees conducted in 2006 (OPM, 2007) as well as the official statistics of agencies regarding their FOIA budget and performance of FOIA implementation in FY 2006. Following recent studies on FOIA implementation by U.S. General Accounting Office (GAO, 2008; GAO, 2007), this study will only analyze secondary data from 21 major agencies (13 departments and 8 agencies)<sup>1)</sup> which were considered governmentwide in these studies. These are 24 major agencies that are covered by Chief Financial Officers Act (CFO Act) of 1990<sup>2)</sup> that received 98.1% and processed 97.8% of FOIA requests made to federal agencies in FY2006, minus three agencies (General Services Administration, Department of Agriculture, and Department of Housing and Urban Development). GAO's study in 2008 omitted these agencies from its analysis because they did not provide "evidence of internal controls that would provide reasonable assurance that FOIA data were recorded completely and accurately, or they acknowledged

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1) These are Department of Commerce, Department of Defense, Department of Education, Department of Energy, Department of Health and Human Services, Department of Homeland Security, Department of Interior, Department of Justice, Department of Labor, Department of State, Department of Transportation, Department of the Treasury, Department of Veterans Affairs, Agency for Internal Development, Environmental Protection Agency, National Aeronautics and Space Administration, National Science Foundation, Nuclear Regulatory Commission, Office of Personnel Management, Small Business Administration, and Social Security Administration.

2) The Chief Financial Officers Act 31 U.S.C. Sec. 501; et seq.

material limitations of the data” (GAO, 2008, p.63) for FY2006 or FY2007. Also, data reliability assessment in 2007 GAO study determined the majority of data from USDA was not reliable.

Another reason for choosing data from these 21 major agencies is to address data compatibility issue between FOIA report data and FHCS data. FHCS surveyed employees in 88 federal agencies, 29 major agencies represented on the President’s Management Council (PMC) and 59 small agencies. However, FHCS only provides agency-level survey data for 41 agencies with more than 800 employees and roll up and present the data for remaining 47 agencies as “small agencies”. For the comparison of agency-level data from two different sources, therefore, it is necessary to limit the number of participating agencies in this study.

## 2) Operationalization of Variables

### i) Independent Variables

The first independent variable, “FOIA funding” (FND) measures administrative resources available for a federal agency each year for the purpose of its FOIA operation, and is defined as the amount of annual spending of each agency on their FOIA activities, divided by the number of the FOIA requests the agency received in the fiscal year. The amount of FOIA funding spent by federal agencies and the number of FOIA requests the agencies received in each year are available in their annual FOIA reports. The reports show the total annual funding, including staff and all resources, which was spent for 1) FOIA processing and 2) litigation-related activities. The former funding category, FOIA processing cost, will be used to calculate the variable FUNDING. As shown in the literature review above, many critics attributed problems in implementation of FOIA to inefficient administrative resources of federal agencies (U.S. Congress, 1980; Lewis, 1995; Montana, 1998; Henderson & McDermott, 1999; Parnes, 1999; Roberts, 2000; Halstuk, 2000b).

The second independent variable, “bureaucratic culture,” (CLT) measures the

degree to which certain organizational characteristics in an agency impede the effective disclosure of governmental information to public. Although there exists some disagreement as to whether organizational culture significantly affects quantifiable organizational performance measures (Petty, Beadles, Lowery, Lim, 1995), a number of empirical studies identify relationships between organizational culture and performance of private-sector organizations (Denison, 1984; Argote, 1989; Kotter & Heskett, 1992; Petty et al., 1995) and, recently, performance of public organizations (Brewer & Selden, 2000; Nufrio, 2001; Brewer, 2005). The variable will be quantified by the score of a modified Result-Oriented Performance Culture (ROPC) Index from the Federal Human Capital Survey (FHCS) conducted in 2006.

The third independent variable, "litigation cost" (LTG) is defined as the amount of annual spending of each agency on their activities related to FOIA litigation, divided by the number of the FOIA requests the agency received in the fiscal year. The increase in FOIA litigation is a factor which is often considered to increase the costs and delays in FOIA request processing (Wichmann, 1998; Department of Health and Human Services, 2007). As explained above, the amount of FOIA funding spent each year by federal agencies on their litigation-related activities and the number of FOIA requests agencies received in each year are available in their annual FOIA reports.

The fourth independent variable, "complexity of requests (CMP)" is defined as the number of complex FOIA requests each agency processed in the fiscal year, divided by the number of all FOIA requests the agency received in the year. In annual FOIA reports, complex requests is defined as "a FOIA request that an agency using multi-track processing places in a slower track based on the volume and/or complexity of records requested" (Department of Justice, 1997). Complex requests increase the processing time as they frequently require extensive reviewing, processing, and redacting as well as further communications between the responding agency, requester, and other agencies that have relevant expertise (GAO, 2007). The number of complex requests and the number of all requests agencies received in each year are available in their annual FOIA reports.

## ii) Dependent Variables

Two dependent variables, available from official statistics of FOIA implementation, measure the performance of FOIA implementation. First, “median processing time” (MPT) is the median processing time of simple FOIA requests an agency received in 2006 and measures the amount of delays in FOIA implementation. FOIA reports of many agencies show median processing time data according to request types (single-track requests, simple requests, complex requests, requests accorded expedited processing), but not the median processing time of all three types of requests. Following Department of Justice (2007, September 14), therefore, the variable MPT is defined as the median processing time of single-track requests, which account for the majority of request types, or that of simple requests if single-track request data are not available.

Second, “number of requests pending” (NRP) is the number of FOIA requests pending in an agency as of the end of FY2006 and measures the amount of backlogs of FOIA request processing. As reviewed above, the amount of backlog and the processing time have been adopted by federal government as performance measures of FOIA implementation of agencies (Pitrowski & Rosenbloom, 2002; Executive Order No. 13,392, 2005; GAO, 2006).

## iii) Data Analysis

Research hypotheses will be tested by a multivariate regression analysis using the *Stata* statistical software package. First, the significance of explanatory variable FND will be determined by a two-tailed t test in order to test the research hypothesis RH1-1. Second, the significance of explanatory variable CLT will be also determined by a two-tailed t test to test the hypothesis RH1-2. Third, the significance of explanatory variable LTG will be also determined by a two-tailed t test to test the hypothesis RH1-3.

Third, if the two or more explanatory variables are found significant, the relative importance of the each variable will be compared by comparing the magnitude of their standardized regression coefficients ( $\beta_1$ ,  $\beta_2$ , and  $\beta_3$ ) to test the hypothesis RH2. Specific regression method to be used will be selected

after the statistical characteristics of collected data are examined and methodological issues of the dataset such as heteroskedasticity, multicollinearity, and autocorrelation are identified.

## IV. Results and Discussions

Taken together, the independent variables in the proposed model explain about 45.5% of the variance in the performance measures of FOIA implementation ( $R^2 = .4551$ ). After conducting the proposed statistical analyses, particular technical issues such as heteroskedasticity, multicollinearity, and autocorrelation were not identified in the research dataset. The results of statistical analyses are as follows:

RH1-1: "There is a significant relationship between FOIA funding in federal agencies and the performance of FOIA implementation such that the larger the FOIA budget appropriated to an agency, the better its performance of FOIA implementation." Since the results of analysis shows that the independent variable FND (FOIA funding) significantly affects dependent variables MPT (median processing time) and NRP (number of requests pending), the null hypothesis is rejected in favor of hypothesis RH1-1.

RH1-2: "There is a significant relationship between the bureaucratic culture in federal agencies and the performance of FOIA implementation such that the greater the bureaucratic culture in agencies, the poorer the performance of FOIA implementation." The analysis results shows that there is a significant relationship between independent variable CLT (Bureaucratic culture) and dependent variable NRP, but not between CLT and dependent variable MPT. Therefore the null hypothesis is only partially rejected in favor of hypothesis RH1-2.

RH1-3: "There is a significant relationship between the cost of FOIA litigation to federal agencies and the performance of FOIA implementation such that the greater the litigation cost, the poorer the performance of FOIA implementation." According to the results, there exists a significant

relationship between the variables, and the null hypothesis for RH1-3 is rejected in favor of hypothesis RH1-3.

RH1-4: "There is a significant relationship between the complexity of FOIA requests agencies receive and the performance of FOIA implementation such that the more complex the requests, the poorer the performance of FOIA implementation." According to the results, there exists a significant relationship between the variables, and the null hypothesis for RH1-4 is rejected in favor of hypothesis RH1-4.

RH2: "The FOIA funding of federal agencies has more influence on the performance of FOIA implementation than does the bureaucratic culture in the agencies." According to the test results, the standardized regression coefficient for FND ( $\beta_1 = .3204$ ) is greater than that for CLT ( $\beta_2 = .1296$ ). Therefore the null hypothesis for RH2 is rejected in favor of RH2. These results are consistent with the argument of Garnett, Marlowe, and Pandey (2008) concerning the ordering and casual paths of these variables when explaining their influence on the performance measure of public services implementation.

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>3)</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

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3) 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.

as the establishment of Department of Homeland Security (DHS) and insufficient reliability of implementation data from some agencies,<sup>4)</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 are from the FOIA activities reports of fifteen cabinet-level federal departments.<sup>5)</sup> Section 10 of the E-FOIA 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>6)</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>7)</sup>

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4) 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).

5) 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 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.

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

7) See U.S Department of Justice Web site



<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	-	-0.51	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).

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 FY 2003<sup>8)</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

8) 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.

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).

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. Conclusion and Suggestions

The results of statistical analysis were consistent with recent studies discussed above which emphasize the role of organizational culture in the public sector organization in general (Brewer & Selden, 2000; Nufrio, 2001; Brewer, 2005; Garnett et al., 2008) and FOIA implementation (Gibbs, 1995; Podesta, 2002; Roberts, 2002; Piotrowski & Rosenbloom, 2002) as well as the role of administrative resources (U.S. Congress, 1980; Lewis, 1995; Montana, 1998; Henderson & McDermott, 1999; Parnes, 1999; Roberts, 2000; Halstuk, 2000b).

Moreover, the examination of the legislative and executive changes in FOIA

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>9)</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. 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

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9) 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.

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>10)</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>11)</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 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

10) 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).

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

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. 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.

There has been substantial criticism of such restrictions on public access, and various congressional efforts have been made to increase freedom of information. On December 31, 2007, the Openness Promote Effectiveness on our National (OPEN) Government Act of 2007, another minor revision to the FOIA that addresses a range of procedural issues involving FOIA implementation, was signed into law by President George W. Bush.<sup>12)</sup> Sponsored by Senators Patrick Leahy (D-VT) and John Cornyn (R-TX), the amendment expanded the scope of definition of “a representative of the news media” who

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12) Openness Promotes Effectiveness in Our National Government Act of 2007. S. 2488, 110th Cong. (2007).

is exempt from search fees to include Web sites and Bloggers, and of “records” under FOIA to include information maintained by private entities under government contract. Also, the law prohibited an agency from collecting searching and duplication fees if it fails to comply with FOIA deadlines in order to provide an incentive for timely response and established an Office of Government Information Services within National Archives and Records Administration (NARA) in order to act as an ombudsman and review agency compliance with FOIA.

The regime change in the U.S. from the Bush Administration to Obama Administration in 2009 further accelerated this movement. President Obama, a pronounced proponent of government transparency and right of access, issued two memoranda on January 21, 2009 that aimed to enhance public access to government information (Obama, 2001a: 2001b). In the first memo, Obama instructs federal agencies to adopt “a presumption in favor” of FOIA requests - a guideline much less restrictive than that of 2001 Ashcroft memo discussed above. The second memo orders the director of Office of Management and Budget (OMB) to issue recommendations to make the federal government more transparent.

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.

The implementation of freedom of information policies and the effects of organizational factors on it as discussed in this paper also have important implications and in South Korea, which has had a sharp confrontation with North Korea for more than 50 years. To maintain a balance between people's right to know and national security, for example, efforts should be made to prepare legal and institutional mechanism including revisions of the Act of Disclosure of Information by Public Agencies. Studies of legal and political cases of other countries would be of important help for such efforts.



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## Appendix :

## FOIA Legislative Time line

Year	Events
1964	<ul style="list-style-type: none"> <li>• Sen. Edward Long (D-MO) introduced a barebones FOI bill (S. 1666, 1964). The bill passed in the Senate, but was not in the House.</li> </ul>
1965	<ul style="list-style-type: none"> <li>• The FOI bill was reintroduced and passed by the Senate (S. 812, 1965).</li> </ul>
1966	<ul style="list-style-type: none"> <li>• The FOI bill was also approved by the House (H.R. 1497, 1966) and signed into law by President Lyndon B. Johnson on July 4 (<b>the Freedom of Information Act of 1966</b>).</li> </ul>
1973	<ul style="list-style-type: none"> <li>• A FOIA amendment bill was introduced in the House by Rep. William Moorhead (D-PA) and Sen. Edmund Muskie (D-ME) in March.</li> <li>• A similar bill was introduced in the Senate by Sen. Edward Kennedy (D-MA) in October.</li> </ul>
1974	<ul style="list-style-type: none"> <li>• The Moorhead-Muskie bill was passed in the House in March (H.R. 12471, 1974).</li> <li>• The Kennedy bill was passed in the Senate in May (S. 2543, 1974).</li> <li>• A conference committee met to reconcile the differences between two amendment bills in August. The conference report was adopted and passed by both houses in October (S. Rep. No. 93-1380, 1974; H.R. Rep. No. 93-1200, 1974).</li> <li>• President Ford vetoed the amendments on November 18. The veto was overridden in the House and the Senate on November 20 and 21, making the amendments law (<b>the 1974 amendments</b>).</li> </ul>
1976	<ul style="list-style-type: none"> <li>• FOIA was amended to include stricter standards for Exemption 3 in conjunction with the enactment of the Sunshine Act (The Government in the Sunshine Act of 1976, 5 U.S.C. § 552b).</li> </ul>
1978	<ul style="list-style-type: none"> <li>• FOIA was amended to update its provision for disciplinary proceedings (5 U.S.C. § 552(a)(4)(F)).</li> </ul>
1984	<ul style="list-style-type: none"> <li>• FOIA was amended to enable easier expedited judicial review (Pub. L. No. 98-620, § 402).</li> </ul>
1986	<ul style="list-style-type: none"> <li>• FOIA was amended to broaden the coverage of the law enforcement exemption while expanding fee waivers for requesters (the Freedom of Information Reform Act of 1986).</li> </ul>
1991	<ul style="list-style-type: none"> <li>• Sen. Patrick Leahy (D-VT) introduced a FOIA amendment bill to clarify the application of FOIA to electronic records (S. 1040, 1991), but the bill did not pass in the Senate.</li> </ul>
1994-1995	<ul style="list-style-type: none"> <li>• Staff of the Subcommittee on Technology and the Law conferred with representatives of the Office of Management and Budget, the Department of Justice, federal FOIA officers, and FOIA interest groups during 1994 and 1995 (H.R. Rep. No. 104-795, 1996).</li> </ul>
1996	<ul style="list-style-type: none"> <li>• The modified version of Leahy bill was passed in the Senate in April and in the House in September after minor revision and signed into law by President Bill Clinton on October, 2 (<b>the Electronic Freedom of Information Act Amendments of 1996</b>).</li> </ul>
2002	<ul style="list-style-type: none"> <li>• The Homeland Security Act of 2002 added a new exemption on critical infrastructure information.</li> </ul>
2003	<ul style="list-style-type: none"> <li>• The Intelligence Authorization Act for Fiscal Year 2003 prohibited intelligence agencies from responding to FOIA requests made by foreign governments and their representatives.</li> </ul>
2007	<ul style="list-style-type: none"> <li>• The OPEN Government Act of 2007 expanded the scope of “news media” and “agency records” and established the Office of Government Information Services.</li> </ul>

## 국문요약

# 국가 안보를 위한 미국 정보 자유법 시행의 결과에 미치는 조직적 요인의 분석

권혁빈

본 논문은 미국 연방정부에 있어서 정보 자유법의 시행이 정부 기구의 재정, 집행자의 자질 및 관료 문화를 포함한 제반 조직적 요인들에 미치는 정책 효과를 경험적으로 검증하는데 그 목적이 있다. 실상 정보자유법의 기본 취지는 정부의 정보에 접근할 수 있는 국민의 알 권리를 보호하는 동시에 국가안보를 위한 민주적 책임을 신장하기 위하여 제정되어졌지만, 실제로 시행과정상에 있어서 각 정부 기구들의 불복종과 잦은 정보 누설 등의 다양한 요인들에 의해 본래의 목적이 훼손되면서 많은 문제점을 야기하고 있는 실정이다. 더욱이 9/11 테러를 비롯한 심각한 테러 위협에 대처할 수 있는 정보 자유법의 지속적 수정은 많은 논란을 불러 오고 있지만 이 법의 시행변수와 조직적 변수간의 인과관계를 밝히는 연구들은 소수에 그치고 있다. 따라서 본 논문은 정보자유법 시행의 주요 결정요인, 그 효과의 실태, 그리고 정책적 효과의 상대적 강점을 규명함으로써 공공조직의 정책 집행에 대한 이론적 발전에 기여함은 물론 정보 자유법의 효율성을 높이는 실천적 방안을 모색하고자 한다. 특히 본 논문은 최근 핵 문제를 둘러싼 남·북한의 첨예한 군사적, 외교적 대립속에서 국민의 알권리와 국가안보라는 상반된 가치 사이에 국·내외적으로 분열된 대립과 갈등을 빚고 있는 현 상황을 미국 정보자유법의 고찰을 통해 조명해 봄으로서 앞으로 발생할 수 있는 더욱 심각한 사태에 대처할 수 있는 시사점을 제공할 것이다.

**주제어** : 정보자유법, 알 권리, 국가 안보, 조직적 요인, 관료 문화

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