

APR 26 1979

REPORT BY THE

Comptroller General

OF THE UNITED STATES

Data On Privacy Act And Freedom Of Information Act Provided By Federal Law Enforcement Agencies

The Chairman, Senate Committee on the Judiciary, asked GAO to obtain data showing the fiscal impact on some law enforcement agencies resulting from the response to individuals requesting information or access to agency records and files.

Thirteen agencies contacted by GAO either estimated or identified operating and start-up cost associated with the two acts to be \$35.9 million during a 3-year period beginning in 1975 and ended in 1977. Agency operating costs ranged from about \$159,000 to \$13.8 million. About 80 percent of the operating costs of the agencies reporting cost breakdowns went for salaries.

During the period 1975-77, the 13 agencies reported receiving about 147,000 requests. The most dominant category of requesters identified by many of the agencies was individuals who have been or are subjects of Federal investigations by the agencies. Some of these requesters were also identified by agencies as being criminals.





COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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The Honorable James O. Eastland
Chairman, Committee on the Judiciary
United States Senate

Dear Mr. Chairman:

In your letter of July 18, 1977, you asked the General Accounting Office to obtain certain information about agencies' implementation of the Freedom of Information Act and the Privacy Act. Cost and requester identity data was to be obtained from selected Federal law enforcement activities. In particular, you asked that we

- prepare an agency-by-agency breakdown of the cost of implementing the two acts, including the costs and workloads of cases in litigation;
- determine how much these costs increased on a year-by-year basis since the two acts became law;
- project costs over the coming 5-year period; and
- determine whether there are any predominant patterns of requesters, i.e., people under investigation or with criminal records.

As agreed with the Subcommittee on Criminal Laws and Procedures, 13 law enforcement agencies or activities were contacted to obtain and review the requested information. It was also agreed that available data should be provided covering the 3 fiscal years 1975, 1976, and 1977, and projected for a 5-year period through 1982. We also reviewed available Government-wide reports and studies on the two acts, such as the 1976 Office of Management and Budget one-time survey to determine the cost of implementing the Privacy Act, and the various annual reports pertaining to the two acts. (See app. I.) The Department of Justice provided information concerning its double role as lead agency for implementing the Freedom of Information Act and litigating agency for suits under both acts.

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Since few agencies maintained detailed records on the cost of implementing the two acts or the types of requesters, this information was often provided by some combination of facts, estimates, and projections. As a result, we were unable to verify the accuracy of all of the information reported; however, we did attempt to assess the general reasonableness of the information.

Cost and requester data for selected agencies

The 13 agencies or activities contacted in our review either estimated or identified operating costs associated with the two acts. The costs covered, in general, a 3-year period--fiscal years 1975-77--and amounted to about \$35.9 million, including start-up costs relating to the Privacy Act of about \$594,000. Operating costs ranged from approximately \$159,000 incurred by the U.S. Postal Service's Inspection Service to about \$13.8 ¹/_{million} incurred by the Federal Bureau of Investigation. (See app. I.) About 80 percent of the operating costs of the 12 agencies reporting cost breakdowns went for salaries.

During the period 1975-77, the 13 agencies reported receiving about 147,000 Freedom of Information Act and Privacy Act requests. The number of requests ranged from about 1,000 received by the U.S. Postal Service's Inspection Service to about 51,000 requests received by the Immigration and Naturalization Service. The most dominant category of requesters identified by many of the agencies was individuals who have been or are subjects of investigations by the agencies. Some of these requesters were also identified as being criminals. These patterns were found at criminal law enforcement agencies or activities and, consequently, would not be indicative of patterns at other types of Federal agencies.

Almost all of the agencies found it difficult if not impossible to project workload and costs. A comparison of cost and requester data for those eight agencies which did provide 5-year projections showed that they were projecting the number of requests in 1982 to increase by 85 percent over their 1977 workload, while projecting costs to increase by

¹/Includes \$2.8 million in fiscal year 1977 for a one-time (task force) special effort to reduce the Federal Bureau of Investigation's backlog of requests.

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only 24 percent for the same 5-year period. The Bureau of Alcohol, Tobacco and Firearms projected the largest annual workload increase--about 40 percent.

While the agencies we contacted generally did not have detailed records to support the cost and requester data reported, we concluded that the cost and requester categories were not unreasonable in view of the legislative requirements and the agencies' activities. We agree with the viewpoint of many agencies that too many uncertainties exist and, therefore, we express no opinion about the reasonableness of agencies' 5-year projections.

Litigation

The Department of Justice handles litigation of Freedom of Information Act/Privacy Act cases for all Federal agencies. As of September 30, 1977, the Department had 989 ^{1/} cases pending (versus 706 cases pending as of June 30, 1976). In the majority of instances, Justice is defending the Government in suits by individuals who were denied information or access to records at Federal agencies.

According to Justice officials, costs totaled about \$906,000 for Freedom of Information Act/Privacy Act litigation expenses for its Civil and Tax Divisions for fiscal years 1976 and 1977.

Litigation cost and case data for each act or agency was not readily available; however, the Civil Division usually handles litigation for all Federal agencies with the exception of the Internal Revenue Service, whose cases are handled by Justice's Tax Division. Also, cost was not reported for U.S. Attorneys who may be involved from time to time in litigating cases which include information issues. (See app. I.)

The Civil Division has recently agreed to compile more information on litigation case workloads and the outcome of cases closed during calendar years 1976 and 1977. Such information is expected to show workload trends and to what extent the Government or the plaintiff has prevailed in the Freedom of Information Act and Privacy Act litigation. We

^{1/}The number of pending cases had increased further to 1,111 at the end of February 1978.


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believe that a significant number of these cases relate to the records disclosure exemptions for investigative records compiled for law enforcement purposes. Therefore, as agreed with the Subcommittee, a separate report will be provided with our analysis of this data.

As agreed with the Subcommittee, unless you publicly announce its contents earlier, we plan no further distribution of this report until 10 days after the date of this report. We will then send copies to interested parties and make copies available to others upon request.

Details of the information you requested are contained in the three appendixes. We hope the information provided will be useful in your study to evaluate the erosion of law enforcement intelligence gathering capabilities.

Sincerely yours,


ACTING Comptroller General
of the United States

Listing of Appendixes

Appendix I

Summary of Freedom of Information Act and Privacy Act cost and requester data for selected Federal law enforcement activities

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ABBREVIATIONS

CRS	Congressional Research Service
FBI	Federal Bureau of Investigation
FOIA	Freedom of Information Act
GAO	General Accounting Office
INS	Immigration and Naturalization Service
IRS	Internal Revenue Service
OMB	Office of Management and Budget
PA	Privacy Act

SUMMARY OF FREEDOM OF INFORMATIONACT AND PRIVACY ACT COST ANDREQUESTER DATA FOR SELECTEDFEDERAL LAW ENFORCEMENT ACTIVITIES

The Chairman, Senate Committee on the Judiciary, by letter of July 18, 1977, asked the General Accounting Office (GAO) to obtain cost and requester data relating to administering provisions of the Freedom of Information Act (FOIA) and the Privacy Act (PA) for use by the Subcommittee on Criminal Laws and Procedures. We were asked to obtain data on costs and requester identities from 13 selected agencies' Federal law enforcement activities, and cost and workload data on cases being litigated by the Justice Department. (See Scope of Review, p. 10.)

The FOIA was signed into law July 4, 1966 (80 Stat. 250), and was amended by Public Law 93-502, approved November 21, 1974. The FOIA amendments became effective on February 19, 1975. The 1974 PA, Public Law 93-579, was approved December 31, 1974, and became effective on September 27, 1975.

The FOIA enacted in 1966 provided the basic authority and procedures for the public to petition the Government for unreleased documents and records in its possession. The FOIA and the PA were intended to work together to further regulate and assure citizens their rights of access to Government records balanced against the possible harmful effect to the Government or to individuals by releasing the information. (See app. II--Legislative History.)

GOVERNMENT-WIDE COSTS OF
IMPLEMENTING THE ACTS

We examined various sources of information on previous efforts to estimate Government-wide costs for administering the two acts. At the request of the Chairman, House Subcommittee on Foreign Operations and Government Information, Committee on Government Operations, the Office of Management and Budget (OMB) furnished in 1974 various estimates of the probable costs of implementing proposed privacy and fair recordkeeping practices legislation. Similar estimates were not made by OMB for the 1974 FOIA amendments, apparently because these were clarifications of an existing statute and not new requirements.

In September 1974, OMB provided a rough estimate that the cost of implementing H.R. 16373 (which for cost purposes most nearly approximated the PA as finally enacted) would be in the order of (a) \$200-\$300 million per year over the first 4 to 5 years and (b) \$100 million in the first 2 years for additional start-up costs. OMB subsequently concluded that the costs of these operations were substantially less than had been estimated.

OMB surveyed 88 agencies in July 1976 to determine the cost of implementing the PA. OMB reported that one of the factors limiting the agencies in providing precise cost estimates was the existing cost accounting systems, which do not collect costs in a way that permits segregation of costs attributable to the PA. Additionally, many requirements of the act merely reinforce already existing requirements, and the incremental effort attributable to the act is often not measurable.

We believe these considerations limit the validity of agencies' cost estimates for administering the FOIA as well as the PA. Most of the agencies we contacted had to estimate those administrative costs that they felt were attributable to the two acts. One official commented that his agency determined it would cost more to establish and maintain a cost accounting system for the two acts than it would to actually administer the acts.

The 85 agencies responding to the OMB survey reported incurring PA start-up costs of about \$29 million from January 1, 1975, through September 30, 1976, and operating costs of about \$36 million from September 27, 1975, through September 30, 1976.

The 1974 amendments to the FOIA require each agency to file with the Congress on March 1 a detailed annual report covering administration of the FOIA. Instructions for the report include incremental costs related to the amendments during the prior calendar year. The Attorney General's memorandum on the 1974 FOIA amendments recommended that statistical and cost data on administering the act be compiled and included in agencies' annual reports. However, neither the Department of Justice nor OMB has published any guidance to clarify the basis, form, or content of such information. As a result, most agencies report statistics only on denials of FOIA requests, and others report or estimate total requests. Further, there is little or no consistency among agencies in estimating their costs.

In annual reports for calendar year 1975, 35 agencies reported FOIA costs of \$11.8 million, while 37 agencies' annual reports for calendar year 1976 reported costs of \$20.8 million. The Congressional Research Service (CRS), in analyzing agencies' reports, questioned the meaningfulness of the FOIA cost data. Although agencies were requested to report "incremental costs" associated with the FOIA 1974 amendments, CRS observed that the agencies were interpreting the concept in different ways. For example, most simply reported estimates of administrative costs for FOIA operations during 1976. A few agencies combined the 1976 cost with estimates from the previous years. CRS indicated that in all cases, it is unclear what constituted the cost base from which the "incremental costs" arose.

SUMMARY OF COST DATA FOR
SELECTED LAW ENFORCEMENT
AGENCIES

The 13 agencies or activities included in our review reported receiving about 147,000 FOIA and PA requests and either estimated or identified operating costs associated with the two acts. The costs, covering various periods during 1975-77, amounted to about \$35.9 million, including start-up costs related to the PA of approximately \$594,000. (See app. III, sch. A.) The scope of operations and estimated operating costs among the agencies varied widely, ranging from \$13.8 million ¹/ incurred by the Federal Bureau of Investigation (FBI) to \$159,000 incurred by the U.S. Postal Service's Inspection Service. The three Department of Justice agencies accounted for about 45 percent of the total costs reported by the 13 agencies.

Categories of costs

The breakdown of operating costs reported by these agencies (see app. III, sch. B) shows that about 80 percent of the operating costs of the 12 agencies reporting cost breakdown went for salaries. During 1977, 630 personnel (442 professionals and 188 clerical) were identified as being involved

¹/Includes \$2.8 million cost in fiscal year 1977 for a one-time (task force) special effort to reduce the Federal Bureau of Investigation's backlog of requests.

in administering the acts for the 13 agencies. The FBI ^{1/} had the largest number of full-time personnel--359 as of September 30, 1977--about 57 percent of the total personnel reported by all agencies. The majority of the costs seemed directly related to granting individuals access to records pertaining to themselves (PA) or providing information to other requesters (FOIA). Many of the agencies did not estimate separate costs for the two acts or provide a breakdown of costs in terms of the functional categories reported by OMB in its Government-wide Privacy Act survey.

The highest three among several major cost categories reported by OMB's PA survey were

- granting individuals access to records and files pertaining to themselves,
- accounting for disclosures, and
- developing, publishing, and distributing rules, notices, and other publications required under the PA.

Disclosure accounting costs

OMB's Privacy Act survey found that keeping records to account for disclosures (e.g., disclosure of investigative information to State and local law enforcement agencies or other Federal agencies) represented a substantially greater portion of operating costs than had been expected. Some agencies estimated that accounting for disclosures costs almost as much as granting individuals access to files pertaining to themselves.

However, only three agencies we contacted included in their estimates costs of accounting for disclosures. These costs amounted to \$139,000 for the Drug Enforcement Administration, about \$88,000 for the Secret Service, and about \$94,000 for the Bureau of Alcohol, Tobacco and Firearms. Two agencies (Air Force Office of Special Investigations and the U.S. Postal Service's Inspection Service) also identified disclosure accounting costs of about \$21,000 and \$80,000, respectively, but did not include these in their estimates of the costs incurred in implementing the acts. Most of the other agencies considered disclosure costs insignificant and did not provide an estimate.

^{1/}For additional information on the FBI's activities, see our report on "Timeliness and Completeness of FBI Responses to Requests under Freedom of Information and Privacy Acts Have Improved" (GGD-78-51, Apr. 10, 1978).

Costs of increased investigative time

Only one of the 13 agencies we reviewed identified increased investigative time as a particular cost category related to the PA. This cost category includes notifying individuals from whom personal information is collected of the authority for collection, the purpose, and the routine uses of the information; whether disclosure is mandatory or voluntary; and the consequences, if any, of not providing the requested information. The Defense Investigative Service determined that during fiscal year 1977 (for an estimated 140,000 personnel investigations) they incurred additional costs of about \$571,000 for increased investigative time resulting from this PA requirement. The agency estimated the \$571,000 cost figure by using such factors as the number of investigations per year, the number of contacts per case, the time taken to advise individuals, and the cost of personnel time. Its investigators, they estimate, typically require 1.36 additional minutes for each interview to advise individuals in accordance with the PA requirements, and each case averages 20 contacts.

Other costs

There may be some other significant costs associated with the two acts which are not included in the agencies' estimates. For example, many agencies reported that personnel assigned to administer the acts were transferred from other agency activities. The costs associated with such a shift in resources is hard to measure. It may mean some other agency activity is performed inadequately or perhaps not at all.

The Internal Revenue Service (IRS) reported that there are significant but intangible costs of processing FOIA requests which cannot be captured statistically. For example, they said that when a request is made for an open investigatory file, the effort necessary to process that request disrupts that investigation. According to IRS, law enforcement personnel are diverted from their investigatory activities to spend time analyzing the releasability of materials in the investigatory file; the file itself becomes temporarily unavailable for the purpose for which it is maintained. IRS believes that in such instances, the value of the resources withdrawn from the investigatory effort may be far more costly in terms of lost revenue opportunities than the direct costs ascribed to processing the FOIA request.

While the agencies we contacted generally did not have detailed records to support the costs reported, we concluded that the costs identified are not unreasonable in view of the legislative requirements for disclosures.

AGENCIES PROJECTED WORKLOAD
AND COSTS: 1978-82

Eight agencies provided workload and cost projections through 1982; two agencies provided projections through 1979; and three agencies did not provide any projections. Appendix III, Schedule C, contains the agencies' projections.

A comparison of cost and requester data for those eight agencies providing projections through 1982 is shown below.

	<u>1977</u>	<u>1982</u>	<u>Percentage increase</u>
Number of requests	8,903	16,482	85
Costs	\$2,597,977	\$3,230,151	24

Comparing the costs between 1977 and 1982 may not be meaningful because differing assumptions were made. For example, three of the eight agencies' projections show no increase in costs throughout the 5-year period; two agencies added a factor for dollar inflation while estimating a constant workload; and some agencies estimated increases in costs more or less corresponding to estimated workload increases.

In terms of annual projected workload increases, four of the five Department of Defense agencies projected a leveling off of their requests or only modest increases. The fifth Defense agency projected an annual 20-percent increase. The other agencies were projecting that requests would increase in the range of about 5 to 40 percent annually. The Bureau of Alcohol, Tobacco and Firearms projected the largest annual increase--about 40 percent.

Almost all of the agencies found it difficult if not impossible to project meaningful workload and costs. Agency officials pointed out that besides the many uncertainties, they have not had enough experience with the acts to make any reliable projections. One agency commented that it is impossible to project future FOIA/PA workload with more than a very general range of accuracy.

The level of FOIA and PA requests received depends largely on public and individual interest in the activities

of these investigatory agencies. We agree with many agencies that uncertainties exist and, therefore, we express no opinion about the reasonableness of agency projections.

AGENCIES' REQUESTER INFORMATION

During the period 1975-77, the 13 agencies reported receiving 147,039 FOIA and PA requests. (See app. III, sch. A.) The number of requests ranged from about 51,000 received by the Immigration and Naturalization Service (INS) to about 1,000 received by the U.S. Postal Service's Inspection Service. The three Department of Justice agencies accounted for about 66 percent of the requests.

Illustrating the difficulty of obtaining meaningful statistics, an INS official felt that about 90 percent of their requests would have been received and answered even without the existence of the two acts. He stated that these represent requests for information or records which the agency normally processes on a daily basis. The requests are routinely processed by over 100 field offices. The official maintains, however, that the acts require them to do more administrative work to satisfy requests than was previously required, and estimates that the acts have increased their workload by about 50 percent.

Several agencies pointed out that it is difficult to discern why a request is made or what category the requester falls under (e.g., curiosity seeker, press, researcher, etc.). One agency commented on the fact that the acts do not require the requester to state a purpose for the request, nor may anyone ask the requester to do so. In the case of FOIA requests, the agency stated that since few requesters volunteer information about themselves, patterns on the sources of requests remain obscure. The agency did find that PA requesters have a greater tendency to state a reason or area of interest in their request, because their own personnel records are usually involved.

Six of the agencies reviewed or sampled their files on requests to compile data on the types of requesters; another six agencies provided estimates based on their experience; and one agency was unable to provide any information on requesters. The most dominant category of requesters reported by many of the agencies was individuals who have been or are subjects of investigations by the agencies. Some of these requesters were also identified as being criminals. For many agencies, a second most dominant category was present or former employees.

While we did not audit the requester categories identified by the agencies, they generally seemed reasonable in view of the agencies' missions and roles.

LITIGATION

The Department of Justice handles litigation of FOIA/PA cases for all Federal agencies. As of September 30, 1977, the Department had 989 ^{1/} FOIA/PA cases pending (versus 706 cases pending as of June 30, 1976). The majority of these cases relate to agencies' denials of requests for information or access to records.

According to officials, the Department incurred the following amounts of FOIA/PA litigation expenses.

<u>Period</u>	<u>Amount expended</u>	<u>Civil Division</u>	<u>Tax Division</u>
Fiscal year 1976	\$283,000	\$208,000	\$ 75,000
Transitional quarter	72,000	52,000	20,000
Fiscal year 1977	<u>551,000</u>	<u>455,000</u>	<u>96,000</u>
Total	<u>\$906,000</u>	<u>\$715,000</u>	<u>\$191,000</u>

Justice currently has 21 personnel assigned to handle FOIA/PA cases in the Civil Division. Data on litigation cost and cases broken down by agency was not readily available; however, the Civil Division usually handles litigation for all Federal agencies with the exception of IRS, whose cases are handled by Justice's Tax Division. Also, cost was not reported for U.S. Attorneys who may be involved from time to time in litigating cases which include information issues.

Activities of the Civil Division

The personnel complement of the Information and Privacy Litigation Section of the Civil Division, as of June 30, 1977, was 11 attorneys, 1 paralegal, and 9 support staff. A litigation section official said they would need to double the number of attorneys to effectively monitor and process these cases in view of the important and difficult litigation requirements of the FOIA and PA.

^{1/}The number of pending cases had increased further to 1,111 at the end of February 1978.

The section's workload has continually increased since it was established in April 1975. The following table shows the Civil Division's workload and cases pending through September 30, 1977.

<u>Date</u>	<u>Total cases</u>			<u>Types of pending cases</u>		
	<u>Received</u>	<u>Closed</u>	<u>Pending</u>	<u>FOIA</u>	<u>PA</u>	<u>Misc.</u>
December 31, 1975	-	-	463	328	-	135
June 30, 1976	362	134	691	459	29	203
December 31, 1976	255	79	867	582	62	223
June 30, 1977	255	241	881	585	84	212
September 30, 1977	<u>119</u>	<u>71</u>	929	602	87	240
Total	<u>991</u>	<u>525</u>				

We were advised that the section directly handles about 20 percent of the court cases, while U.S. Attorneys handle the rest. The section's attorneys, however, monitor all of the cases and are responsible for checking all affidavits and other documents involved. A section official said their workload is heavy but they have no backlog. The section, however, did have to work considerable overtime to keep up with the caseload.

Through June 1977, the FBI accounted for 218 of the above cases, of which 60 had been closed and 158 pending. Of these 218 cases, 118 represented civil actions initiated after a final appeal determination by the FBI; the remaining 100 were initiated while the requests were in the FBI's backlog.

Attorney General's memorandum
of May 5, 1977

On May 5, 1977, the Attorney General issued a memorandum to heads of Federal agencies and expressed concern over the 600 FOIA cases then pending in Federal courts. He indicated that the Government would only defend cases where releasing information would be demonstrably harmful, even if there were some legal basis for withholding requested records. It would no longer suffice that the documents technically fall within the exemptions of the FOIA; Justice would have to be assured that agencies' determinations not to release specific information would be harmful to the interests protected by the act's exemptions. (See app. II, Legislative History.) The Attorney General also directed the Information and Privacy Litigation Section of the Civil Division to review the pending cases and recommend whether litigation should be continued. As a result of this review, four cases were closed.

The Deputy Assistant Attorney General has said the impact of the file review cannot be fully measured in the number of cases closed. He said that "the true significance of the review lies in the change in approach and attitude of Department attorneys assigned to 'defend' these suits." He said that although in a number of cases the litigation was not terminated, additional information releases were made after the cases had been reviewed. An official from the litigation section confirmed that they are now more liberal in urging information releases by the agencies. In our view, the significance of the Attorney General's May 5 memorandum should be reflected in agency attitude in processing PA and FOIA requests, i.e., less litigation because of denials.

A litigation section attorney said the Government usually prevails in most cases that are tried and judgment pronounced by the courts. However, we found that it was impossible to determine from information readily available how many cases the Government has "won" or "lost," because (1) the major portion of these cases eventually are dismissed without a judgment, i.e., plaintiff and defendant negotiate a settlement and (2) in many cases both the Government and the plaintiff have prevailed in some of their positions when the cases reached a judgment. According to litigation section records the Government had to pay \$104,498 for plaintiffs' attorney fees in 1977. Most of these fees were paid after July 1977.

SCOPE OF REVIEW

The following Federal agencies and law enforcement activities were included in the review:

Department of Justice:

- Civil and Tax Divisions (Government-wide litigation of information cases)
- Federal Bureau of Investigation
- Drug Enforcement Administration
- Immigration and Naturalization Service

Department of the Treasury:

- Secret Service
- Bureau of Alcohol, Tobacco and Firearms
- U.S. Customs Service
- Internal Revenue Service

U.S. Postal Service:

- Inspection Service

Department of Defense:

Defense Investigative Service
Naval Investigative Service
Air Force Office of Special Investigations
Army Criminal Investigations Command
Army Intelligence and Security Command

As agreed with the Subcommittee, the 13 major law enforcement agencies or activities were contacted to obtain information to:

- Prepare an agency-by-agency breakdown of the costs of implementing the two acts.
- Determine how much these costs increased on a year-by-year basis since the two acts became law.
- Project costs over the coming 5-year period.
- Determine whether there are any predominant patterns of requesters, i.e., people under investigation or with criminal records.

In addition, we reviewed available Government-wide reports and studies on the two acts, such as the 1976 OMB one-time survey to determine the initial cost of implementing the PA, the CRS's analysis of agencies' administration of the FOIA, and the various annual FOIA and PA reports published by agencies. We also obtained information on cases being litigated by the Justice Department where agencies denied access to records.

Limitations affecting the usefulness of the data we collected during this review include the following:

- The cost and requester data tabulated in this report was usually based on unverified agency data, i.e., some combination of facts, estimates, and agencies' best efforts to project future workloads and costs.
- None of the agencies were required to maintain consistent, reliable, detailed records identifying and tabulating each FOIA and PA request, and none had accounting systems geared to developing and reporting the full cost of implementing the access to records provisions of the legislation.

APPENDIX I

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It is our understanding that the data requested is for use by the Subcommittee on Criminal Laws and Procedures, Internal Security Division, in its study to evaluate the erosion of law enforcement intelligence gathering capabilities. In that light, we would stress the further limitations on the scope of GAO's task:

- We did not assess possible effects that furnishing information from agencies' files may have had on the agencies' performance of mission responsibilities.
- We did not evaluate the balancing benefits of the legislation, such as increased citizen confidence resulting from providing access to Government information.

As agreed with the Subcommittee, our task was limited to collecting and analyzing data provided by the agencies. No conclusions were drawn and no recommendations were made on the issues being studied by the Subcommittee.

LEGISLATIVE HISTORY
OF THE
FREEDOM OF INFORMATION ACT AND PRIVACY ACT

These laws represent the results of more than two decades of investigative and oversight hearings by various subcommittees of the House Government Operations Committee, the Senate Governmental Affairs Committee, and the Senate Committee on the Judiciary. The Freedom of Information Act (FOIA) was signed into law July 4, 1966 (80 Stat. 250), and was amended by Public Law 93-502, approved November 21, 1974. The 1974 FOIA amendments became effective on February 19, 1975. The Privacy Act (PA) of 1974, Public Law 93-579, was approved December 31, 1974, and became effective on September 27, 1975.

LEGISLATIVE HISTORY

The FOIA provides the basic authority and procedures for the public to petition the Government for unreleased documents and records in its possession. The original FOIA enactment in 1966 was based on the principle that all Government information, other than categories permissively exempted by the statute, should be available to the public. The two statutes, subsequently enacted in 1974, were intended to work together to assure citizens their rights of access to Government records, balanced against the Government's need to maintain confidentiality and prevent harmful effects to the Government by releasing the information. 1/ 2/

The FOIA signed into law in 1966 was the result of 11 years of hearings by the House Government Operations Committee's former Special Government Information Subcommittee

1/Freedom of Information Act and Amendments of 1974 (P.L. 93-502) Source Book: Legislative History, Texts, and other documents. Joint Committee Print: Committee on Government Operations, House of Representatives; and Committee on the Judiciary, United States Senate; U.S. Government Printing Office, Mar. 1975.

2/Source Book on Privacy: Legislative History of the Privacy Act of 1974, S. 3418, P.L. 93-579. Joint Committee Print: Committee on Government Operations, United States Senate; and Committee on Government Operations, House of Representatives; U.S. Government Printing Office; 1976.

and its successor, Foreign Operations and Government Information Subcommittee. It was also based on simultaneous studies and legislative proceedings by subcommittees of the Senate Committee on the Judiciary.

The new FOIA repealed the Public Information Section of the Administrative Procedure Act (last codified at 5 U.S.C. 1002) which had allowed Federal agencies to withhold Government records "for good cause found" and "in the public interest." If no good cause could be found for withholding information, the section allowed agencies to release information selectively to individuals "legitimately and properly concerned." 1/

When the FOIA was enacted, the Attorney General issued a memorandum (June 1967) on its application and interpretation to guide Federal agencies. The memorandum stated that the key concerns of the law are that

- disclosure should be the general rule, not the exception;
- all individuals have equal rights of access;
- the burden should be on the Government to justify withholding a document, not on the person who requests it;
- individuals improperly denied access to documents have the right to seek injunctive relief in the courts; and
- there should be a change in Government policy and attitude.

During the 92nd Congress, the administration and operation of the FOIA came under congressional scrutiny. The House Foreign Operations and Government Information Subcommittee, Committee on Government Operations, heard various Government and private witnesses discuss difficulties with the public access provisions of the statute. The Senate Administrative

1/For legislative history analysis by CRS, see report on Administration of the Freedom of Information Act: A Brief Overview of the Executive Branch Annual Reports for 1976, p. 1. See Congressional Record, V. 123, Oct. 4, 1977: H 10581 - H 10583 for portions of the report.

Practice and Procedure Subcommittee, Committee on the Judiciary, also held hearings on FOIA operations. As a result, Public Law 93-502 was enacted in 1974, amending the 1966 FOIA and strengthening its public access provisions. Although the President vetoed the measure, the Congress adopted it through override action.

Exemptions from disclosure

The FOIA, under 5 U.S.C. 552(b), lists nine categories of data that may be exempted from disclosure by agencies' determinations. These are matters that are

- (1) authorized by Executive order to be kept secret in the interest of national defense or foreign policy and properly classified;
- (2) related to internal rules and practices of an agency;
- (3) exempted from disclosure by statute;
- (4) trade secrets and commercial or financial information;
- (5) inter-agency or intra-agency memorandums or letters;
- (6) personnel and medical files;
- (7) investigatory records compiled for law enforcement purposes (only to the extent set out in subparts);
- (8) data obtained by agencies responsible for regulation or supervision of financial institutions; and
- (9) geological and geophysical information.

Purpose and requirements of the 1974 PA

The FOIA, as amended in November 1974, recognizes that certain disclosures to the public could constitute an unwarranted invasion of personal privacy. Therefore, under FOIA exemptions (b) 6 and (b) 7, unwarranted invasions of personal privacy may be cited by agencies as the basis for denying the public access to records. However, the Congress concurrently determined that broader privacy legislation was needed. Therefore, it enacted a comprehensive privacy act.

In the preamble to the PA of 1974, the Congress described its purpose as follows.

The act is to provide certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies, except as otherwise provided by law, to

- permit an individual to determine what records pertaining to him are collected, maintained, used, or disseminated by such agencies;
- permit an individual to prevent records pertaining to him obtained by such agencies for a particular purpose from being used or made available for another purpose without his consent;
- permit an individual to gain access to information pertaining to him in Federal agency records, to have a copy made of all or any portion thereof, and to correct or amend such records;
- collect, maintain, use, or disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information;
- permit exemptions from the requirements with respect to records provided in this act only in those cases where there is an important public policy need for such exemption as has been determined by specific statutory authority; and
- be subject to civil suit for any damages which occur as a result of willful or intentional action that violates any individual's rights under this act.

FOIA and PA exemptions for
investigative records compiled for
law enforcement purposes

Among several revisions to the FOIA subsection (b) (exemptions) enacted by the 1974 amendments, (b) (7) (investigatory law enforcement records) was one of the major changes.

The Attorney General's memorandum on implementing the 1974 FOIA amendments explains this change as narrowing application of the exemption for investigatory records. It may be used only to the extent that producing such records would (1) interfere with enforcement proceedings; (2) deprive a person of the right to a fair trial; (3) constitute an unwarranted invasion of personal privacy; (4) disclose confidential sources or, in certain circumstances, information provided by such sources; (5) disclose investigative techniques and procedures; or (6) endanger law enforcement personnel.

Relative to this change, the FOIA was also amended to specify that any reasonably segregable portion of a record shall be provided after deletion of the portions that are exempt under any parts of this subsection.

Prior to this amendment, a series of recent court decisions had afforded blanket protection to all records contained in an investigatory file, thus failing to require the Government to demonstrate that disclosures would harm one of the interests protected by the statute. The legislative history shows that the primary purpose of amending exemption 7 was to overturn the results of those decisions and require consideration of the particular document and the need to withhold it. ^{1/} Senator Philip A. Hart, in proposing the amendment, stated that these court decisions were not consistent with the Congress' original intent for passing the basic act in 1966. ^{1/}

The PA of 1974 also permits agencies to exempt law enforcement records. The language allowing agencies to justify exemptions for systems of records is not specific about the need to withhold segregable portions of particular documents, as is the language of the 1974 FOIA amendments. However, the Department of Justice PA regulations, which are based on legislative intent and OMB's implementing guidelines, require the same standards to be applied, i.e., consideration of harm to the interests protected by the statute when justifying withholdings of information contained in a PA system of records.

We were informed that requesters challenging agencies' use of these exemptions for investigatory records continue to account for a significant portion of the total cases in litigation handled by the Department of Justice.

^{1/}See Congressional Record of May 30, 1974, Vol. 120, p. S.17033 for proposal to amend exemption 7, remarks by Senator Philip A. Hart, and colloquy between Senators Edward M. Kennedy and Philip A. Hart.

SCHEDULE A: SUMMARY OF FOIA AND PA REQUESTS AND COST DATA

Agency	Period (note a)	Operating costs			Start-up costs (note b)	Period (note a)	Number of requests		
		PA	FOIA	Total			PA	FOIA	Total
Department of Justice: Federal Bureau of Investigation (note c)	FY 1975	\$ -	\$ -	\$ 455,353	\$ -	10/74-9/75	-	-	10,522
	FY 1976	-	-	3,269,000	-	10/75-9/76	-	-	15,304
	T Qtr.	-	-	906,081	-	FY 1977	-	-	17,540
	FY 1977	-	-	4/9,119,983	-				
		-	-	13,750,417	-			43,366	
Drug Enforcement Administration (note c)	9/75-9/76	-	-	508,452	148,015	CY 1975	146	529	675
	FY 1977	-	-	832,000	-	CY 1976	619	144	763
		-	-	1,340,452	148,015	1/77-9/77	503	124	672
		-	-	1,340,452	148,015		1,268	797	2,065
Immigration and Naturalization Service	FY 1976	101,517	113,999	215,516	141,074	FY 1976	6,898	11,634	18,532
	T Qtr.	102,512	42,000	144,512	-	T Qtr.	3,427	2,754	6,181
	FY 1977	300,000	150,000	450,000	-	FY 1977	15,986	10,500	26,486
		504,029	305,999	810,028	141,074		26,311	24,888	51,199
Department of the Treasury: Secret Service	FY 1975	-	29,142	29,142	3,321	5/75-9/75	-	375	375
	7/75-9/76	165,838	183,863	349,701	24,850	10/75-9/76	222	837	1,059
	FY 1977	154,714	164,368	319,082	-	FY 1977	301	946	1,247
		320,552	377,373	697,925	28,171		523	2,158	2,681
Bureau of Alcohol, Tobacco and Firearms	FY 1975	-	24,000	24,000	-	FY 1975	-	76	76
	7/75-9/76	228,400	106,850	335,250	138,039	7/75-9/76	167	384	751
	FY 1977	195,450	97,550	293,000	-	FY 1977	409	465	874
		423,850	228,400	652,250	138,039		776	925	1,701
U.S. Customs Service	FY 1975	-	-	-	-	FY 1975	-	-	645
	10/75-9/76	500,000	1,300,000	1,800,000	-	7/75-6/76	-	-	1,253
	10/76-9/77	533,000	1,546,000	2,079,000	-	7/76-7/77	-	-	2,205
		1,033,000	2,846,000	3,879,000	-		-	-	4,103
Internal Revenue Service	CY 1975	(b)	2,700,000	2,700,000	-	CY 1975	-	15,540	15,540
	CY 1976	500,000	2,700,000	3,200,000	-	CY 1976	925	9,687	10,612
	CY 1977	900,000	2,900,000	3,800,000	-	CY 1977	-	-	-
		1,400,000	8,300,000	9,700,000	-		925	25,227	26,152
U.S. Postal Service: Inspection Service	10/75-9/76	18,150	60,322	78,472	17,444	10/75-9/76	45	437	482
	10/76-9/77	1,432	78,925	80,357	-	10/76-9/77	27	478	505
		19,582	139,247	158,829	17,444		72	915	987
Department of Defense: Defense Investiga- tive Service	FY 1975	-	14,196	14,196	-	FY 1975	-	143	143
	FY 1976	869,913	15,844	885,757	79,342	FY 1976	964	200	1,164
	T Qtr.	190,864	577	191,443	-	T Qtr.	302	16	318
	FY 1977	778,186	1,552	779,738	-	FY 1977	1,332	55	1,387
		1,838,965	32,169	1,871,134	79,342		2,598	414	3,012
Naval Investiga- tive Service	CY 1975	38,232	69,627	107,859	42,633	CY 1975	156	191	347
	CY 1976	145,000	23,757	168,757	-	CY 1976	656	116	772
	CY 1977	180,514	58,912	239,426	-	CY 1977	798	230	1,028
		363,746	152,296	516,042	42,633		1,610	537	2,147

APPENDIX III

APPENDIX III

Agency	Period (note a)	Operating costs			Start-up costs (note b)	Period (note a)	Number of requests		
		PA	FOIA	Total			PA	FOIA	Total
Department of Defense (continued):									
Air Force Office of Special In- vestigations (note c)	FY 1975	\$ -	\$ -	\$ 39,775	\$ -	FY 1975	-	-	-
	FY 1976	-	-	120,767	-	FY 1976	649	273	922
	T Qtr.	-	-	30,312	-	T Qtr.	34	201	235
	FY 1977	-	-	121,531	-	FY 1977	149	896	1,045
		-	-	312,385	-		832	1,370	2,202
Army Criminal Investigations Command	CY 1975	33,700	180,000	213,700	-	CY 1975	94	374	468
	CY 1976	66,600	159,300	225,900	-	CY 1976	578	242	820
	CY 1977	89,000	149,400	238,400	-	CY 1977	545	255	800
		189,300	488,700	678,000	-		1,217	871	2,088
Army Intelligence Security Command	FY 1975	-	116,793	116,793	-	CY 1975	383	814	1,197
	FY 1976	193,253	106,722	299,975	-	CY 1976	1,687	435	2,122
	FY 1977	369,535	157,181	526,716	-	1/77-10/77	1,413	604	2,017
		\$ 562,788	\$ 380,696	943,484	-		3,483	1,853	5,336
Grand Total				\$35,300,946	\$594,718				147,039

a/Agencies did not always maintain or estimate cost and request data on a fiscal year basis; some used a calendar year or a 12-month period following the September 1975 effective date of the Privacy Act; and some reported data for the fiscal transitional quarter (T Qtr.) July - Sept. 1976.

b/Start-up costs for the two acts were not separately identified by most agencies.

c/The Air Force, Office of Special Investigations and Department of Justice agencies, the FBI, and DEA, generally did not report cost data separately for administering requests under the two acts. Also, the FBI did not segregate requests under the two acts.

d/Includes cost of \$2-8 million in fiscal year 1977 for a one-time special effort (task force) to reduce the FBI's backlog of requests.

SCHEDULE B: BREAKDOWN OF 1977 OPERATING COSTS AND STAFFING

Agency	Period	Total PA/FOIA costs	Cost breakdown (note a)			Number of personnel administering acts (note b)			Comments
			Personnel	Overhead/ sundry office expenses (note c)	Other	Professional	Clerical	Total	
Department of Justice: Federal Bureau of Investigation	PY 1977	d/\$ 9,119,983	\$7,236,991	\$1,072,819	\$810,173	263	96	359	FBI's personnel costs are for the 359 full-time headquarters staff and do not include incremental costs of staff in 59 field offices or headquarters support functions. FBI's overhead items include rent, printing, and supplies; other costs are travel and transportation expenses. The number of FBI personnel varied and was 359 on September 30, 1977. Total cost includes cost of \$2.8 million in FY 1977 for a one-time special effort (task force) to reduce the FBI's backlog of requests.
Drug Enforcement Administration	PY 1977	832,000	676,000		156,000	12	5	17	DEA's estimate does not segregate personnel costs from overhead and sundry office expenses. The following is the agency's breakdown of the normal operating costs: \$440,000 - Freedom of Information Unit (including salaries, rent reproduction, etc.) 139,000 - PA accounting for disclosures. 30,000 - Investigative records section. 30,000 - Chief Counsel. One full-time and one part-time attorney. 20,000 - FOIA/PA appeals service. 17,000 - Field and headquarters support in processing FOIA/PA requests. \$676,000 The other DEA cost of \$156,000 represent the costs of salary and travel for special 1,000 man-day assignment involving about 1) special agents to reduce the agency's backlog of FOIA/PA requests.
Immigration and Naturalization Service	PY 1977	450,000	450,000	(No breakdown of overhead available)		(INS has no staff devoting full time to administering these acts)			INS does not have a central office unit or full-time personnel devoted to administering the acts. The agency's files are decentralized in about 50 offices handling FOIA-related activities and about 86 offices handling PA requests on a routine basis.

Agency	Period	Total PA/FOIA costs	Cost breakdown (note a)			Number of personnel administering acts (note b)			Comments
			Personnel	Overhead/sundry office expenses (note c)	Other	Professional	Clerical	Total	
Department of the Treasury: Secret Service	PY 1977	\$ 319,082	\$ 280,541	\$ 38,541	-	1	2	5	The Service's incremental personnel cost estimate includes \$87,612 for salaries associated with accounting for disclosures.
Bureau of Alcohol, Tobacco and Firearms	PY 1977	293,000	275,500	14,500	3,000	3	2	5	The Bureau's incremental personnel cost estimate includes \$87,000 for headquarters staff who provided assistance on a part-time basis in drafting, reviewing, and supplying materials for initial determinations and denials. Personnel costs also include \$94,000 for field staff assistance on a part-time basis for disclosure accounting requirements and reviewing of records/files. Other costs represent training costs (staff conferences, travel, out of bureau training, etc.) for personnel directly administering acts.
U.S. Customs Service	PY 1977	2,079,000	1,876,000	203,000	-	18	3	21	Customs personnel costs are both direct and incremental; they identified 21 positions assigned full-time at headquarters and estimated 30 positions in the field on a part-time basis processing requests for information.
Internal Revenue Service	CY 1977	3,880,000	2,850,000	950,000	-	115	60	175	IRS estimated personnel costs on the basis of volume of requests and estimated man hours; they estimated overhead by adding 1/3 to this base for supplies, material, rent, and travel.
U.S. Postal Service: Inspection Service	PY 1977	88,357	77,132	2,488	737	3	1	4	The personnel costs were estimated on the basis of numbers of FOIA and PA requests and estimated man hours required to process the requests. The positions identified are full-time.

INCLUDED TO THE BEST OF OUR KNOWLEDGE AND BELIEF IN ACCORDANCE WITH THE PROVISIONS OF THE ACT.

APPROVED AND FORWARDED: [Signature] SPECIAL AGENT IN CHARGE

APPROVED AND FORWARDED: [Signature] ASSISTANT ATTORNEY GENERAL

Agency	Period	Total PA/FOIA costs	Cost breakdown (note a)			Number of personnel administering acts (note b)			Comments
			Personnel	Overhead/ sundry office expenses (note c)	Other	Professional	Clerical	Total	
Department of Defense: Defense Investi- gative Service	FY 1977	\$ 779,738	\$ 764,883	\$ 14,855	\$ -	2	1	3	The Postal Inspection Service also identified the following recurring annual field support costs associated with the Privacy Act which are not included in the cost figures: \$100,900 - Training in PA requirements (8 hrs. per person per year). 80,000 - Accounting for PA disclosures. <u>\$180,900</u>
Naval Investi- gative Service	CY 1977	239,426	187,031	50,487	1,908	3	3	6	DIS personnel costs are incremental and include \$570,609 for increased investigative time mandated by the Privacy Act. Personnel costs were estimated by NIS on the basis of man hours required to administer the two acts.
Air Force Office of Special In- vestigation	FY 1977	121,531	100,224	21,307	-	4	1	5	The Air Force agency identified an additional \$21,060 in personnel costs as being indirectly related to the FOIA/PA and which is not included in the cost figures. These costs resulted from the agency adding two personnel to its agency release branch to maintain and release its files to other agencies in accordance with the FOIA/PA.
Army Criminal Investiga- tion Command	CY 1977	238,400	198,600	39,800	-	4	8	12	Personnel costs estimated on basis of man hours. Positions include personnel assigned duties from 50% to 100% to administering the acts.
Army Intellig- ence and Sec- urity Command	FY 1977	<u>526,716</u>	393,245	133,471	-	<u>12</u>	<u>6</u>	<u>18</u>	Personnel costs are based on man hours required to administer the two acts.
Total		<u>\$18,887,801</u>				<u>442</u>	<u>188</u>	<u>630</u>	

a/Most of the agencies attempted to segregate direct personnel costs from other overhead or indirect costs in their estimates.

b/Agencies identified staffing mostly in terms of position assigned on a full- or part-time basis to functions related to administering the two acts. For some agencies this was limited to full-time headquarters staff. However, in most cases the personnel costs were allocated on the basis that FOIA and PA functions are peripheral to other principal activities and thus the staffing numbers do not correspond to the personnel cost estimates shown in this appendix.

c/Usually overhead/sundry office expenses included such costs as reproduction, computer time, space, office supplies, and printing.

d/As of Mar. 10, 1978, the amount actually expended was adjusted to \$9,153,000.

SCHEDULE C: PROJECTED FOIA AND PA WORKLOADS AND COSTS

Agency	Previous period	Projections (note a)				
		1978	1979	1980	1981	1982
Department of Justice (note b): Federal Bureau of Investigation (note c):						
Number of requests	17,540	20,071 (14%)	22,942 (14%)	(d)	(d)	(d)
Costs	c/\$9,119,983	\$7,112,000	\$7,665,000 (8%)	\$7,665,000	(d)	(d)
Department of the Treasury (note e):						
Secret Service:						
Number of requests	1,247	1,477 (18%)	1,761 (19%)	2,114 (20%)	2,557 (21%)	3,117 (22%)
Costs	\$ 319,082	\$ 350,690 (10%)	\$ 385,760 (10%)	\$ 424,337 (10%)	\$466,771 (10%)	\$ 513,448 (10%)
Bureau of Alcohol, Tobacco and Firearms:						
Number of requests	874	1,228 (40%)	1,720 (40%)	2,410 (40%)	3,200 (33%)	3,800 (19%)
Costs	\$ 293,000	\$ 250,000	\$ 250,000	\$ 250,000	\$250,000	\$ 250,000
U.S. Customs Service (note f):						
Number of requests	2,205	2,435 (10%)	2,476 (2%)	(d)	(d)	(d)
Costs	\$2,079,000	\$2,400,000 (14%)	f/\$3,500,000 (46%)	(d)	(d)	(d)
U.S. Postal Service:						
Inspection Service:						
Number of requests	505	526 (4%)	597 (14%)	637 (7%)	669 (5%)	702 (5%)
Costs	\$ 80,357	\$ 116,719 (45%)	\$ 126,294 (8%)	\$ 136,774 (8%)	\$142,767 (4%)	\$ 149,031 (4%)
Department of Defense:						
Defense Investigative Service:						
Number of requests	1,387		(Annual workload projected between 1,350 to 1,460)			
Costs	\$ 779,738	\$ 826,522 (6%)	\$ 876,114 (6%)	\$ 928,681 (6%)	\$984,402 (6%)	\$1,043,466 (6%)
Naval Investigative Service:						
Number of requests	1,028	1,234 (20%)	1,481 (20%)	1,777 (20%)	2,132 (20%)	2,558 (20%)
Costs	\$ 239,426	\$ 256,454 (7%)	\$ 274,117 (7%)	\$ 293,305 (7%)	\$313,837 (7%)	\$ 335,806 (7%)
Air Force Office of Special Investigations:						
Number of requests	1,045	1,500	1,500	1,500	1,500	1,500
Costs	\$ 121,531	\$ 135,000 (11%)	\$ 142,000 (5%)	\$ 150,000 (6%)	\$159,000 (6%)	\$ 170,000 (7%)
Army Criminal Investigations Command:						
Number of requests	800	800	800	800	800	800
Costs	\$ 238,400	\$ 238,400	\$ 238,400	\$ 238,400	\$238,400	\$ 238,400
Army Intelligence and Security Command (note g):						
Number of requests	g/2,017	2,600	2,600	2,600	2,600	2,600
Costs	\$ 526,716	\$ 530,000	\$ 530,000	\$ 530,000	\$530,000	\$ 530,000

a/Where appropriate, we have shown the approximate percentage increases projected over the previous period.

b/The Drug Enforcement Administration and the Immigration and Naturalization Service were unable to project future workload and costs.

c/Includes costs of \$2.8 million in fiscal year 1977 for a one-time special effort (task force) by the Federal Bureau of Investigation to reduce the backlog of requests.

d/No estimates were made for these years.

e/The Internal Revenue Service was unable to project future workload and costs.

f/Customs Service is projecting 12 additional positions in fiscal year 1979 to help reduce their current and expected backlog.

g/Covers only a 10-month period (1/77-10/77) for Army Intelligence and Security Command.

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