

GAO Highlights

Highlights of [GAO-16-667](#), a report to the Committee on the Judiciary, U.S. Senate

Why GAO Did This Study

FOIA requires federal agencies to provide the public with access to government information and each year, agencies release information. Nevertheless, many FOIA requests are denied or not responded to in a timely manner. The act allows requesters to litigate if the agency does not respond to a request within the statutory time frames. Over the last decade, Justice reported 3,350 FOIA lawsuits filed against agencies, with a 57 percent increase in lawsuits filed since 2006 (see figure).

GAO was asked to determine FOIA litigation-related costs incurred by federal agencies for lawsuits in which the plaintiffs substantially prevailed. To do so, GAO reviewed Justice's data on FOIA-related lawsuits with a decision rendered from 2009 through 2014, and identified 112 lawsuits across 28 federal agencies where the plaintiff substantially prevailed. GAO reviewed cost data from Justice and the selected agencies, and interviewed agency officials to discuss the availability and reliability of these data.

What GAO Recommends

If Congress determines that transparency in the reporting of FOIA litigation costs outweighs increased costs for systems and processes to be developed, then it could consider requiring Justice to provide a cost estimate for collecting and reporting information on costs incurred when defending lawsuits in which the plaintiffs prevailed. In commenting on a draft of this report, Justice stated that it appreciated GAO's recognition of the need to balance the cost and benefit of additional reporting to achieve good FOIA administration.

View [GAO-16-667](#). For more information, contact Valerie Melvin at (202) 512-6304 or melvinv@gao.gov.

FREEDOM OF INFORMATION ACT

Litigation Costs For Justice and Agencies Could Not Be Fully Determined

What GAO Found

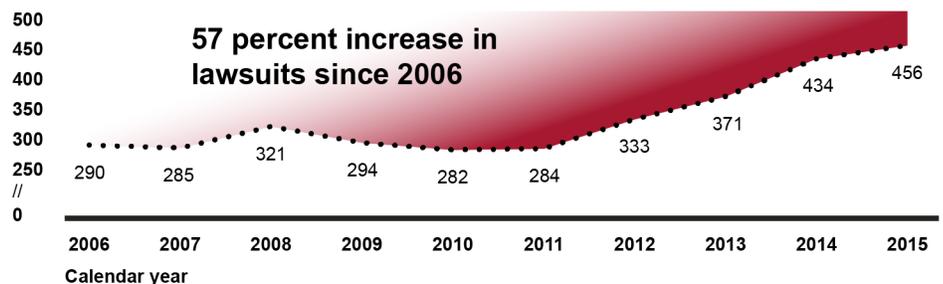
Of the 1,672 Freedom of Information Act (FOIA) lawsuits with a decision rendered between 2009 and 2014, GAO identified 112 lawsuits where the plaintiff substantially prevailed. Litigation-related costs for these 112 lawsuits could not be fully determined. Costs associated with such lawsuits are comprised of (1) the Department of Justice's (Justice) costs for defending the lawsuits on behalf of agencies, (2) the agencies' respective costs for the lawsuits, and (3) any attorneys' fees and costs as assessed by a court or based on settlement agreements awarded to the plaintiffs' attorneys.

Of the 112 lawsuits, Justice provided information on its costs for defending 8 lawsuits totaling about \$97,000. Justice officials stated that the department does not specifically track costs for lawsuits in which the plaintiffs substantially prevailed and that its attorneys are not required to track such costs for individual lawsuits. Regarding individual agencies, 17 of the 28 in GAO's study had a system or process in place that enabled them to provide cost information on 57 of the 112 selected lawsuits. According to this information, the agencies incurred approximately \$1.3 million in FOIA litigation-related costs for these lawsuits during fiscal years 2009 through 2014. The remaining agencies did not have a mechanism in place to track FOIA litigation-related costs where the plaintiffs prevailed. These agencies said costs were not tracked because Justice's guidance does not require agencies to collect and report costs related to specific lawsuits, or if the plaintiff prevailed as a result of a lawsuit.

As required by FOIA, Justice has reported annually on the results of all lawsuits, including any awards of attorneys' fees and costs to the plaintiffs. However, for 11 of the 112 selected lawsuits, Justice reported an amount of attorneys' fees and costs awarded that differed from the amounts reported by the defending agencies. According to Justice, the differences in the award of attorney's fees and costs were due to the appeals process and settlement agreements between the respective agencies and the plaintiffs.

Although requiring Justice and agencies to report actual cost information could lead to better transparency regarding federal operations, costs would be associated with such reporting. Considering these costs, as well as potential benefits, could help Congress in determining whether such a requirement would be cost-effective for enhancing oversight of FOIA litigation-related operations.

Number of Freedom of Information Act Lawsuits Filed from 2006 through 2015



Source: The Department of Justice Freedom of Information Act litigation and compliance reports. | GAO-16-667