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

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57 percent increase in lawsuits since 2006

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

United States Government Accountability Office