



Statement #12

Statement on Resolution of Freedom of Information Act Disputes

(Adopted June 12, 1987)

The Administrative Conference sponsored a study of the resolution of disputes arising out of Freedom of Information Act ("FOIA") requests that are not handled to the requester's satisfaction at the agency level. Specifically, the study proposed the establishment of an independent administrative tribunal to resolve these disputes, either in formal hearing proceedings or through informal conciliation. Alternatively, the study suggested the appointment of an ombudsman within the Department of Justice to review and report on agency FOIA decisions, mediate FOIA disputes, and/or provide informal assistance to persons requesting information from agencies under FOIA.

Currently available data do not clearly establish the need for either of these specific mechanisms for handling FOIA disputes. The ability of the administrative tribunal in particular to increase the efficiency or effectiveness of FOIA dispute resolution is doubtful, especially given the moderate FOIA caseload (approximately 500 new federal court filings per year) and the high degree of public confidence in the current system of *de novo* judicial review of agency FOIA decisions.

However, the Conference believes that greater reliance on informal approaches to FOIA dispute resolution could result in more effective handling of some FOIA disputes without resort to court litigation; thus these approaches bear further exploration. Accordingly, the Administrative Conference concludes the following:

1. The Conference does not at this time recommend supplanting or changing the currently available remedy of judicial review in federal district courts for requesters denied information under the Freedom of Information Act. However, the Conference does believe that a number of cases filed each year challenging agency denials of information under the Act could be resolved without litigation. Additionally, some disputes involving agency handling of Freedom of Information Act requests (i.e., issues such as processing delay, adequacy of the agency's records search, or availability of fee waivers as distinct from the outcome of the request on the merits) may arise from misunderstandings that could be quickly cleared up



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through informal investigation or discussion. Continuing attention should be given to developing mechanisms to simplify and to speed the process of review.

2. The Department of Justice and other agencies handling FOIA requests should explore the voluntary use of informal alternative dispute resolution techniques, such as informal investigation of complaints, mediation or conciliation, and provision of a neutral government official to aid the parties in reaching settlement,¹ to avoid unnecessary litigation of Freedom of Information Act disputes, and should use these techniques when appropriate.

3. On a limited basis, the Department of Justice already provides informal assistance to requesters that the Conference believes helps them in resolving Freedom of Information Act disputes. However, this function is not generally known to the public. These services would be valuable to a larger number of people than now receive them, and the Conference encourages the Department of Justice to explore means of making them better known and more generally available.

Citations:

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¹ See ACUS Recommendation 86-3, Agencies' Use of Alternative Means of Dispute Resolution, Paragraph 10.