149364

GAO

United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-253513

June 10, 1993

The Honorable Patrick J. Leahy
Chairman, Subcommittee on Technology
and the Law
Committee on the Judiciary
United States Senate

Dear Mr. Chairman:

This letter responds to your inquiry about the Food and Drug Administration's (FDA) retention of fees charged for processing information requested under the Freedom of Information Act (FOIA)[1]. You asked if FDA has shortened its processing time for FOIA requests since 1990, when it was allowed to retain fees charged for responding to requests. To answer this, we discussed FDA's experience with FDA officials and obtained request processing workload data for 2 years before and 2 years after the fee retention authorization was granted.

BACKGROUND

Under the FOIA, federal agencies can charge reasonable fees for responding to requests for information. Based on the requester, agencies are allowed to charge for some, but not all, of the research, review, and reproduction costs associated with requests. However, collected fees must be deposited in the U.S. Treasury and are not available for discretionary use by the collecting agency. The objective is to recover some of the cost to the federal government but not allow agencies to use fees to discourage information requesters.

Starting in December 1990, Public Law 101-635 authorized FDA to retain the FOIA fees. The intent was that fee retention would improve FDA's responsiveness to FOIA requests. According to FDA, in 1990, it had one of the highest FOIA request workloads among federal agencies, accounting for about 10 percent of an annual 490,000 total federal requests.

[1] 5 U.S.C. 552.

057396 / 149364

FDA'S EXPERIENCE SINCE RETAINING REQUEST FEES

FDA provided us (see Table 1) the performance information for operating years before and after fee retention authorization. FDA's average processing time per request has increased about 19 percent since 1988, from an average 15.5 days to 18.5 days in 1992. However, the average processing time per request has increased only about 9 percent since 1990, from 17 days to 18.5 days in 1992, the period during which the FOIA fee retention was effective. The number of FDA staff years dedicated to FOIA work increased from 123 in 1990 to 130 in 1992, while the number of FOIA requests increased from 40,550 to about 46,500.

Table 1: FDA FOIA Request Information, 1988 to 1992

Year	Average processing days	Staff years	No. of FOIA requests	FOIA fees collected	FOIA processing cost[a/]
1988	15.5	125	39,954	$450,947	$5.6
1989	15.8	117	40,167	658,994	5.5
1990	17.0	124	40,550	780,355	6.3
1991	16.2	121	41,714	761,120	6.3
1992	18.5	130	46,501	834,227	7.3

[a/] Dollars in millions.

Source: FDA.

In general, FDA officials said that results are inconclusive regarding the influence fee retention has had on FOIA request processing. However, they explained that a number of factors could affect the average time taken to process requests from year to year, such as changes in the complexity of requests, staff inexperience and turnover, and changing policies and procedures used by FDA to process FOIA requests. In addition, they said personnel resources did not keep pace with a large request workload increase between 1990 and 1992. FDA officials also said that the fees they are allowed to charge account for only a small portion -- about 10 percent over the last 4 years -- of actual FOIA processing costs.

FDA officials said that their response time has always been reasonable compared to other agencies. We did not compare FDA's response times to all other agencies because these data are not readily available. However, we reported in January 1989 that the Department of State took longer than 6 months to complete three-fourths of its FOIA requests.[2]

- - - - -

I hope this information is helpful to you in assessing the impact of Public Law 101-635. If you have any questions, please call me on (202) 512-8387. We are sending copies of this letter to the FDA and to other interested parties. We will make copies available to others upon request.

Sincerely yours,

J. William Gadsby
Director, Government Business
Operations Issues

(240126)

---

[2] Freedom of Information Act: State Department Request Processing, (GAO/GGD-89-23, Jan. 23, 1989).