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FOI in transition: A comparative analysis of the Freedom of Information Act performance between the Obama and Trump administrations

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ABSTRACT

FoIA is an important marker of transparency and the flow of government information in a democracy. Stakeholders such as the news media have been critical of how government policies affect access to that information. In this context, this study systematically analyzed the Freedom of Information Act (FoIA) performances between the Obama and the Trump administrations regarding the efficiency and disposition of requests, appeals processing and success, staff workload, processing fees, and the use of exemptions. Data indicate that the Trump administration underperformed in the processing of requests, the release of records, and it has accelerated the use of exemptions to deny requests. There was also no marked improvement over the previous administration in performance among other parameters. The study affirms prior results that indicate that FoIA performance is explained better by legacy, and some trends transcend administrations. The study also addresses the methodological problems with FoIA data and suggests remedies for scholars.

1. Introduction

"Every bureaucracy seeks to increase the superiority of the professionally informed by keeping their knowledge and intentions secret. Bureaucratic administration always tends to be an administration of 'secret sessions': in so far as it can, it hides its knowledge and action from criticism." (Weber, 1914a, p. 233)

This oft-cited Weberian statement aptly segues into the current study's purpose; to examine transparency within the bureaucratic system, specifically in the United States, regarding the release of government information, and connect that to bureaucratic secrecy in general. Open and transparent government systems are vital to sustaining modern democracies (Brunswicker, Pujol Priego, & Almirall, 2019; Cicatiello, de Simone, & Gaeta, 2018; Porumbescu, 2015). The inevitable antithesis to a transparent government system is government secrecy (Aftergood, 2009; Gibbs, 2011), and the two co-exist in a paradoxical relationship of give-and-take (Lord, 2006; Wasike, 2016). Due to the murky boundaries that demarcate transparency and secrecy, stakeholders have strived to define and portray the two concepts in their favor. A major stakeholder is the news media, and in its their watchdog role, it generally takes an adversarial role towards the government (Hanna & Sanders, 2012; Olson, 1994), and particularly regarding access to public records. This manifests in an unending

adversarial relationship between the two entities.

Every administration enacts unique policies and some of these policies affect public access to government records. This was the case when the Bill Clinton's Department of Justice expanded access to records in 1993¹ and when the incoming George Bush Department of Justice sought to restrict this access in 2001.² Meanwhile, with each successive administration, the news media has only grown more critical of such policies. However, this outcry, no matter how genuine and well-meaning, does not always reflect the true nature of the Freedom of Information Act (FoIA) performance. Wasike (2016) confirmed the disjunction between outcry and real FoIA performance in a comparative analysis of the Bush and Barack Obama administrations. The study concluded that legacy explained FoIA performance much better than specific policy actions. The current study takes a similar approach by systematically comparing FoIA performance between the Obama and Donald Trump administrations.

The current study extends prior literature conceptually, empirically, and methodologically in the following ways. First, not only does the data here provide an accurate and comprehensive picture of the current state of the open records system within the federal government of the United States, it innovates by predicting future FoIA trends. This is important given the apprehension about the future of FoIA under the Trump administration (Brown, 2018; Hirschfeld, 2017, para. 1; Morisy,

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¹ <https://fas.org/sgp/clinton/reno.html>

² John Ashcroft, Memorandum for heads of all federal departments and agencies (2001). Retrieved from <http://www.justice.gov/archive/oip/011012.htm>

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2017, para. 3, para. 4). Second, the study extends two major FoIA-related studies. In the first study, Kim (2007) compared FoIA performance between the Bush and Bill Clinton administrations but only among the 25 agencies mentioned in a 2003 United States Senate-mandated review by the General Accounting Office. The Wasike (2016) study examined 20 cabinet-level departments charged with both administration and enforcement duties. The current study examines the entirety of the United States executive branch, therefore using a census rather than a sample. Data derived from a census is generally more robust and less prone to error than sample data (Kline, 2013). Third, the study considers the FoIA-related fees that information requesters may pay to access records as well as the use of the non-exemption-related reasons to deny records requests. Few, if any studies have examined these variables, whereas the levying of fees has been shown to affect access to public records (Moon, 2018). Even more important is that the current study connects the data to a broader conceptual discussion of transparency within bureaucracies as delineated by Weber and scholars like Alasdair and Piotrowski.

In summary, this study specifically compares the Obama and Trump administrations' FoIA performances regarding the following parameters: The *efficiency* of processing requests and appeals, the *disposition* of requests, the *success* rate of appeals, the FoIA staff *workload*, processing *fees* collected, and the use of *exemptions*.

2. Conceptual framework

2.1. Government transparency and FoIA

Government transparency refers to the openness of the government structure, intentions, and projections. A transparent public system provides a conduit through which the government can make available, data and information about these processes (Kopits & Craig, 1998). Additionally, this transparency process must meet reasonable visibility and inferability standards. This means that pertinent information has to be easily accessible and easy to comprehend once acquired. A visibility-friendly system will, for instance, allow for ready access to records without the need for official petition or request. An inferability-friendly system will ensure that the said records are verified for authenticity and are presented in a manner not confounding to readers, for example, without extensive redaction or the over-aggregation of raw data (Michener & Bersch, 2013).

Transparency has wide-ranging, mostly positive effects on society. For instance, among the public, government transparency improves the perception of social equity, which in turn improves trust in government institutions (Porumbescu, 2015; Porumbescu, 2017; Wu, Ma, & Yu, 2017). In addition to trust in government, research also ties transparency to civic empowerment phenomena such as political efficacy (Cicatiello et al., 2018), while other research indicates that transparency boosts citizen participation in policymaking (Brunswick, Priego, & Almirall, 2019). However, the benefits of government transparency have to be juxtaposed against mitigating factors such as the management practices within the government system (Ingrams, 2018), the motivations and tech-savviness of the public (Wirtz, Weyerer, & Rösch, 2018), and the comprehensiveness of the information disclosed (Garrido-Rodríguez, López-Hernández, & Zafra-Gómez, 2019), among other factors. Additionally, scholars have long discussed the role of government secrecy, the antithesis to transparency, and its adverse effects on transparency and public trust (Gibbs, 2011; Henninger, 2018; Kasymova, Ferreira, & Piotrowski, 2016; Lord, 2006; Relyea, 2003; Weber, 1914a; Weber, 1914b).

FoIA is one conduit through which the government promotes transparency by providing access to public information and records. In the modern sense of the freedom of information (FOI) concept, Sweden is credited with passing the first legislation meant to grant access to information, with the Freedom of the Press Act of 1766 (Rydholm, 2013). Two hundred years later, the United States followed suit with

the Freedom of Information Act of 1966. FoIA was enacted to grant access to public records, a hitherto tenuous process fraught with bureaucratic tactics aimed at limiting access to public records. Before FoIA, agencies relied on the use of arcane legalese and the rephrasing of the language contained in FoIA's precursor, section 3 of the Administrative Procedure Act of 1946, to withhold information. Additionally, the APA did not provide for an appeals process in the event of a denial of an information request (Feinberg, 1996).

Such efforts to limit or prevent access to government records are a form of government secrecy, the antithesis to government transparency. Government secrecy manifests in three forms. First, with genuine secrecy, the government endeavors to withhold material that would compromise national security. With bureaucratic secrecy, government agencies withhold information due to disingenuous reasons. Other reasons for this type of secrecy could be due to the dynamics of bureaucratic politics and/or inter-agency rivalry. Political secrecy is the third type. This refers to the withholding or manipulation of information in the quest of concealing political action or in order to create a misleading political narrative (Aftergood, 2009).

In the United States, government efforts to limit the release of records predate FoIA and have existed alongside FoIA since 1966. For one, when a reluctant President Lyndon B. Johnson signed the bill into law, none of the federal agencies were supportive of the legislation (Relyea, 2009). On several occasions it has behooved the United States Congress to bolster and protect FoIA as one administration after another adopted FoIA-averse stances. Congress has passed several amendments, held hearings, and produced reports regarding FoIA. For instance, the first FoIA amendment, which among other things set time limits for agency to respond to information requests and penalized non-compliance (Peterson, 1980), became law only upon a Congressional override of President Gerald Ford's veto (Lopez, Blanton, Fuchs, & Elias, 2004, para. 3; Editorial, 1974). Other amendments have endeavored to address FoIA shortcomings. The most notable is the Electronic Freedom of Information Act of 1996, which ushered FoIA into the digital age. The Act required, among other things, that agencies create virtual reading rooms holding records that do not need an official FoIA request (Matthews, 2001). Over time, Congress has held numerous FoIA-related hearings, including the July 12, 2016, United States Senate Judiciary Committee hearing on the 50th anniversary of FoIA (FoIA at Fifty, 2016).

Bureaucratic antipathy towards FOI is not a uniquely United States concept. Additionally, scholars worldwide have examined the role of FOI in different regions and countries. For instance, Salford (2014) points out the limitations of the UK Freedom of Information Act of 2000, regarding it extending exemption from information disclosure requirements to most intelligence agencies such as the MI5 and the MI6. Likewise, Liddle and McMenemy (2014) draw upon the 9-year-long fight over the publication of confidential letters by Prince Charles to describe how difficult it is to fully implement this FOI law. In their words, "Freedom of information is an awkward fit in a country, Britain that is, which is considered to govern and conducts its affairs with a cloak of secrecy second-to-no-other among the advanced liberal democracies" (p. 14). Analysis of the performance of this law indicates both positives and negatives (Cherry & McMenemy, 2013; Birkinshaw, 2010). Positively, there was suggestion of gradually reducing government secrecy as well as the release of more information that was both diverse and of good quality. There was also increased enthusiasm for the law among the news media. These positive developments were however mitigated by slow response rates, inconsistencies in disclosure, lack of proper records keeping, and a dismissive characterization of FOI requests are being vexatious.

Research indicates that in emerging South-European democracies such as Albania, Kosovo, and Montenegro, information may only be readily available if such disclosure does not threaten influential figures (Camaj, 2016). Additionally, issues such as lack of FOI personnel, noncompliance, a general adversarial attitude from public officials, and

the centralization of information access points as a means of government control, hamper transparency. Africa's emerging democracies face similar problems with FOI. First, the continent only saw its first FOI law in 2000 when South Africa passed the Promotion of Access to Information Act (Asogwa & Ezema, 2017). However, countries that have made FOI advances since then still face hurdles, especially in the digital age (Thurston, 2015). These hurdles include inaccurate, missing, or incomplete information (in Kenya), records authenticity issues and timely procurement of information (in Botswana), chronically poor records management systems (in Sierra Leone), among others.

In Australia, not only does the Freedom of Information Act of 1982 fees structure hamper access to information, the law includes exemptions where agencies can deny information requests if the process may require an agency to divert resources from other functions (Moon, 2018). At the time of writing, there is fear in Canada about plans to make FOI requests by researchers subject to ethical review boards (Walby & Luscombe, 2018). This could put a strain on FOI scholarship, which relies on such data for analysis. Regardless of the resistance to openness by various bureaucracies, pressure to increase access to information is bound to increase in the digital age with the rise of online openness movements such as Wikileaks, Anonymous, and the International Pirate Party (Beyer & Beyer, 2014).

2.2. The FoIA adversarial relationship

While the media's watchdog role in a vibrant democracy is widely recognized as essential, the government's instinct to withhold information is also a given (Jaeger, 2007; Relyea, 2003). This creates an adversarial relationship between these two entities regarding access to public records and information and this tussle is decades old (Cuillier, 2016; Silver, 2016). In its watchdog role, the media monitors government operations and the conduct of public officials in order to keep the public informed, as well as to hold the government accountable (Chan & Suen, 2009; Francke, 1995; Moore, 2001). For this to happen, government transparency is requisite. Members of the news media have never been shy about calling out government secrecy, or even perceptions of such secrecy. In a scathing editorial in the wake of Ford's veto of the 1974 FoIA amendment, *The Washington Post* summed up this adversarial sentiment: "In the end, it is the public and those who inquire of the government in the public's behalf who can make the [FoIA] law work" (Editorial, 1974, p. A14).

Recent administrations in the United States have continued to face withering attacks for their record on transparency regarding FoIA. An editorial by the *Columbia Journalism Review* described the Bush administration as lusting for power in an effort to strip the public of the right to information (Editorial, 2009). Others in the media called the Bush administration's lack of transparency an aberration (Hendler, 2009, para. 2). Scholars have also attributed the Bush administration's lack of transparency not only to executive anxiety in the post 9/11 environment, but also to deep seated antipathy towards openness by prominent members of the administration (Alasdair, 2006). The turning point in the souring of the news media/White House FoIA relationship was the 2001 memo by then Attorney General John Ashcroft. The Ashcroft memo sought to reduce expanded FoIA access guidelines established during the Clinton era. A telling passage from the memo reads: "Any discretionary decision by your agency to disclose information protected under the FOIA should be made only after full and deliberate consideration of the institutional, commercial, and personal privacy interests that could be implicated by disclosure of the information."³ The few empirical studies that have examined specific trends during the Bush years have validated some of the media

concerns. Kim (2007) found that requests for records were more likely to be granted under Clinton than under Bush, whose administration was less likely to invoke exemptions. Jaeger (2007) also found that the Bush administration systematically removed information from government websites and accelerated the classification of records across agencies. Backlogs also increased dramatically under Bush, with some studies indicating a 138% increase within his first term in office (Fitzgerald, 2007, para. 7).

The news media was unsparing of Obama's transparency efforts despite of the *Open Government Initiative* he launched the day after his inauguration. Here, he proclaimed his commitment to initiate an era of unprecedented openness, which would "ensure the public trust and establish a system of transparency, public participation, and collaboration."⁴ While the Obama administration did not initially receive the scathing criticism that the Bush administration faced, the news media's response to Obama's FoIA efforts was not laudatory either. The softer response could be partly explained by the fact that some efforts to increase transparency were afoot by the time he took office. For instance, The Sunshine in Government Initiative launched in 2005 (Hendler, 2009) had led to the Open Government Act of 2007. Among other things, this legislation created the Office of Government Information Services (OGIS) to act as a FoIA ombudsman. The new agency was tasked with reviewing compliance with FoIA mandates, recommending policy changes, and offering mediation services during FoIA disputes (National Archives, 2009, para. 1).

Still, Obama faced criticism from prominent journalists like Jill Abramson, former *New York Times* executive editor. She proclaimed his to be the most secretive White House in her 22-year career (Al Jazeera, 2014, para. 1). A scathing report by the Committee to Protect Journalists detailed actions such a dogged effort to pursue leakers within the administration and the journalists in receipt of the leaked information. The report also details a general sense of secrecy and unresponsiveness from the administration's spokespeople. Quoted in the report is sentiment similar to Abramson's. Here, *New York Times* chief White House correspondent David E. Sanger states, "This is the most closed, control freak administration I've ever covered" (Downie & Rafsky, 2013, para 1; para 5; para 6).

Even as late in his second term as April 2016, *CNN's* Brian Stelter maintained a similar notion regarding the lack of news media access to the Obama administration (Howard, 2016, para. 3). Notable also was an *Associated Press* report indicating that 2014 was then Obama's worst FoIA-related year. Here, the administration denied the most requests, took longer to provide records, and had a 55% jump in backlogs from the previous year (Bridis, 2015, para. 4). Also, a telling figure is the \$36 million that the Obama administration spent on FoIA-related litigation in defense of withholding records in 2016 alone (Bridis, 2017, para. 1). Some in the news media have also noted positive FoIA advances during the Obama years. These include the May 2009 Open Government Directive (Hopkins, 2015, para. 1), not invoking executive privilege to deny information requested by Congress during his first term (The Economist, 2012, para. 4), and a 2013 executive order that required government data to be made machine-readable (Howard, 2013, para. 7). The latter refers to a mechanism that presents data in formats such as CSV or XML, which compresses large volumes of data and also makes them easier to download and analyze using software.

In his first year in office, little positive news was reported regarding Trump's FoIA record. MuckRock, a not-for-profit organization dedicated to helping people to file FoIA requests, reported that the processing of initial requests slowed during Trump's first 100 days in office. Requests took an average of 164 days to process, a number that rose to 168 days within the first 100 days (Morisy, 2017, para. 3, para. 4).

³ John Ashcroft, Memorandum for heads of all federal departments and agencies (2001). Retrieved from <http://www.justice.gov/archive/oip/011012.htm>

⁴ Barak Obama, Memorandum for the heads of executive departments and agencies (2009). Retrieved from <https://obamaWhiteHouse.archives.gov/the-press-office/transparency-and-open-government>

Currently journalists are increasingly worried about the ever-lengthening request processing times, some which take years to fulfil, and the effect on the availability of records (Bergman, 2018; Fassett, 2019). This sentiment emerged in a recent Knight Foundation survey of over 300 members of the news media, 57% of whom reported fearing restricted access to records from the then incoming Trump administration (Cuillier, 2017).

The FOIA Project, another not-for-profit organization, also reported a dramatic surge in FOIA-related lawsuits during this time period. This trend is a symptom of the perceived secrecy associated with the Trump administration by the news media and various advocacy groups. The 860 FOIA-related lawsuits filed in 2018 alone stand in sharp contrast to the 430 per-year average of similar lawsuits filed during Obama's eight years in office (The FOIA Project, 2018, para. 1), reflecting a 100% increase in litigation. Another point of contention was the administration's decision to stop releasing the White House visitor logs, which had routinely been available during the Obama years (Hirschfeld, 2017, para. 1). It took a lawsuit and a \$35,000 settlement for the current White House to release a limited number of logs for select executive offices: Office of Management and Budget, Office of National Drug Control Policy, Office of Science and Technology, and the Council on Environmental Quality (Gerstein, 2018, para. 1). It is important to note that these are some of the few offices within the White House that are legally bound to release records under FOIA.

The lack of transparency regarding the release of climate science data (Evich, 2019, para. 1; para 5) as well as the longstanding fight over the release of Trump's tax records (Rohrlich, 2019) are yet other points of contention. Lately, the news media's interest in records from the Trump administration has soared to all-time highs (Mooney, 2019, para. 4). The current media/government adversarial relationship is now epitomized by headlines such as: "Don't FOIA Trump's White House" (Brown, 2018), "The war on the Freedom of Information Act" (Cottle, 2017), and "Even Trump's lawyer can't get responses to his FOIA requests" (Levy, 2018). Given the discussion above, this study poses the following research questions regarding the FOIA performances of the Obama and Trump administrations.

3. Research questions

RQ1a. Is there a difference in the overall processing rate of FOIA requests between the Obama and Trump administrations?

RQ1b. Is there a difference in the processing speed for simple, complex, and expedited requests between the Obama and Trump administrations?

RQ2. Is there a difference in the disposition of FOIA requests between the Obama and Trump administrations?

RQ3a. Is there a difference in the processing rate of FOIA appeals between the Obama and Trump administrations?

RQ3b. Is there a difference in the success of FOIA appeals between the Obama and Trump administrations?

RQ4. Is there a difference in the FOIA staff workload between the Obama and Trump administrations?

RQ5a. Is there a difference in the number of exemptions invoked between the Obama and Trump administrations?

RQ5b. Is there a difference in the exemption invocation pattern between the Obama and Trump administrations?

RQ6a. Is there a difference in the amount of processing fees collected between the Obama and Trump administrations?

RQ6b. Is there a difference in the number of fee waivers granted between the Obama and Trump administrations?

Table 1

Number of agencies analyzed per year.

Year	Number of agencies
2010	97
2011	99
2012	99
2013	99
2014	100
2015	100
2016	115
2018	118

4. Method

4.1. Sampling

As mentioned, this study builds on parameters, methods, and variables outlined in prior studies such as Wasike (2016) and Kim (2007). However, the current study departs from the former two by examining a larger scope of the U.S. federal government. The population of interest was the U.S. executive branch and data were collected for the entirety of this branch of government. This includes the White House, all the 15 cabinet offices, all U.S. independent agencies such as NASA and the USPS, and all federal corporations such as the Export-Import Bank and the Tennessee Valley Authority. U.S. law exempts certain offices from FOIA regulations, and these do not accept FOIA requests and therefore, do not provide FOIA performance reports. These offices include the White House Office of Administration (Wilson, 2015, para. 2) and the National Security Council (Gerstein, 2016, para. 2). Therefore, these offices were excluded from data collection. Other White House offices such as the Office of Management Budget and the Office of National Drug Control Policy are not exempt from FOIA law and were included. Table 1 shows the number of agencies analyzed for each year. This number fluctuates because some agencies are temporary and new ones are created over time.

Because presidents are sworn into office nearly midway into a fiscal year, data were collected only for non-overlapping fiscal years for both administrations. This facilitated the demarcated comparisons that exclude mutually inclusive data. For instance, Obama took his first oath of office on January 20, 2009, four months into George W. Bush's last fiscal year. Therefore, data for the fiscal year 2009, which contained four months of the Bush administration were excluded. Similarly, the fiscal year 2017 was excluded for the same reason because Trump took office on January 20, 2017, four months into Obama's last fiscal year. Therefore, data were collected for fiscal years 2010–2016 for the Obama administration and 2018 for the Trump administration's first full fiscal year. Because data comprise the entire executive branch, therefore forming a census, they represent a true population, and this negates the need for inferential statistics.

4.2. Data collection

Secondary data were collected from each agency's annual FOIA reports. Each federal agency or component is required to compile and submit a single annual FOIA performance report to the Attorney General's office by early March of the next fiscal year. The reports are then aggregated and posted in XML and CVS format on [FoIA.gov](https://www.foia.gov), an online repository of FOIA data and related information. Data were collected from this repository in late June 2019.⁵

⁵ Due to the 2019 government shutdown, the fiscal year 2018 data were not posted online until mid June 2019.

4.3. Data normalization

As the author expounds in the method and the limitations sections, FoIA data is prone to outliers. This is because some agencies elicit high demands for documents due to situational factors. For instance, the National Archives reported an inordinately large number of days to process complex requests in 2015 and 2016. This was 1,126 and 1,098 days respectively, meaning that it took several years to process the requests. Such extremes affect the representativeness of data and various methods are requisite for correction. Also, tests of normality indicated that some data categories were highly skewed, either positively or negatively. To correct for the outliers, the author replaced outliers with median scores for each data category. In the occurrence of outliers, correction using median scores is a better solution than using means, which are highly susceptible to outliers. Large outliers inflate the mean, while low outliers deflate the mean.

4.4. Variables

The only independent variable was the type of administration, Obama and Trump. The dependent variables were efficiency, disposition, exemptions, appeals, FoIA processing fees, and FoIA staff workload.

4.4.1. Efficiency

First, this variable measured how many of the requests received in a fiscal year were processed by the year's end. For a more accurate estimation, backlogs from the previous year were added to the new requests received for the year under analysis. This approach solved for a common and misleading practice, where agencies report more requests processed than received. This occurs when agencies fail to mention that the high number of processed requests include backlogs and not just new requests from a particular fiscal year. Using Wasike's (2016) method, efficiency was calculated based on the number of requests processed as compared to the number of requests received (plus backlogs) for each agency. Secondly, this variable examined how long it took to process the requests. This was done based on days needed to process simple, complex, and expedited requests. The Department of Justice "Handbook for Agency Annual Freedom of Information Act Reports" (2019) defines simple requests as those requiring minimal review. Complex requests involve extensive reviews and/or voluminous records requests. Requestors can also ask for the expedited processing of a request, but this requires justification for urgency.

4.4.2. Disposition

The disposition variable augments the *efficiency* variable by examining the specific nature of the response for the requests. Because FoIA requests are not guaranteed to produce the records desired, agencies may respond by giving a *full grant*, a *partial grant*, or a full *denial* of information requested. For a fuller perspective of these three disposition types, data from denials based on non-exemption reasons was also included in the analysis.

4.4.3. Exemptions

Exemptions are statutory mandates that protect the release of certain information – see appendix for definitions. Among other reasons, agencies may invoke any of the nine exemptions when denying granting records, or partially granting records. Given the centrality that exemptions play in the news media/government adversarial relationship (Marquand, 2001; Pack, 2004), it is important to examine how these exemptions were invoked under the two administrations. Therefore, this variable first examined the average number of exemptions invoked annually, and secondly, the pattern of this invocation.

4.4.4. Appeals

FoIA allows for a redress process in the case of a full denial or partial

grant of an information request. This variable examined this parameter dually. First, it examines the efficiency of processing appeals in terms of how quickly agencies responded to an appeal. Similar to the initial request processing efficiency variable, backlogs from the previous year were added to the new appeal requests for the year under analysis. Because an appeal does not guarantee the release of the denied records, the variable also examines the likelihood of the success of appeals during the three administrations. Success was calculated by considering how many denials were overturned or upheld vis-à-vis total appeals with a decision.

4.4.5. FoIA staff workload

The workload variable measures the number of staff dedicated to FoIA activities within the agencies. The reasoning here is that the larger the staff, the faster will be the response, and probably a more detailed response in case of a denial or partial grant because agencies have to explain such actions (Berliner, Ingrams, & Piotrowski, 2019; Wasike, 2016). Agencies report this parameter as a ratio of both full-time and part-time employees based on the time that they dedicated to FoIA activities. As delineated in Wasike (2016), "if four employees spend 100%, 70%, 65%, and 50% of their time on FoIA duties respectively, the staff variable would be reported as $(100 + 70 + 65 + 50) / 100 = 2.85$ " (p. 423).

4.4.6. FoIA processing fees

This variable measured the fees collected by agencies for processing requests, as measured in United States dollar amounts. Agencies are required to report fees levied in relation to searches, duplication, review, and other related costs as outlined in the "Handbook for Agency Annual Freedom of Information Reports" (Department of Justice, 2019). Its inclusion in this study is merited by research that shows that fees can negatively impact access to public records (Moon, 2018).

4.4.7. FoIA processing fee waivers

The DOJ handbook also requires agencies to report the fee waiver requests granted and denied. Therefore, this variable compared the fee waivers granted and denied between the two administrations.

5. Results

RQ1a. Is there a difference in the overall processing rate of FoIA requests between the Obama and Trump administrations?

Overall, 87% of all requests were processed within the fiscal year for the two administrations collectively. In comparison, the Obama administration processed the most FoIA requests (87%) as compared to the Trump administration's 83% rate. Unprocessed requests are mostly reported as backlogs, which are then added to the new requests filed in the new fiscal year. Data indicated that there were more unprocessed requests at the year's end under the Trump administration (1,633 requests per agency). The Obama administration reported a backlog of 1,317 requests per agency.

RQ1b. Is there a difference in the processing speed for simple, complex, and expedited requests between the Obama and Trump administrations?

This research question compared how long it took the two administrations to process the three types of requests; simple, complex and expedited. Data indicated that on average, it took fewer days to process *simple* requests under Obama (23.37 days) and longer under Trump (30.22 days). It also took less time to process *complex* requests under Obama (99.11 days) as compared to the 143.48 days under Trump. This pattern repeated for expedited requests, which were processed faster under Obama (49.48 days) than under Trump (85.97 days). Because the three processing speed parameters contained outliers, a separate analysis was run with the normalized data. As shown in Table 2, data

Table 2
Days needed to process requests.

Administration	With Outliers			Without Outliers		
	Simple	Complex	Expedited	Simple	Complex	Expedited
Obama	23.37	99.11	49.48	22.42	87.85	39.17
Trump	30.22	143.48	85.97	26.70	118.52	64.90

returned shorter processing times for both administrations but with the same pattern as reported above.

RQ2. Is there a difference in the disposition of FoIA requests between the Obama and Trump administrations?

This research question queried the differences in the release of records regarding the *full* or *partial* grant of records, as well as the complete *denial* of records requests. Additionally, the non-exemptions reasons category for records denial was considered. The computation for all disposition types was based only on the number of requests processed rather than total requests received. This allowed for a separate analysis of backlogs (RQ1a), thus providing a clearer picture of the data. The results indicated that agencies released more records *fully* under the Obama administration (Obama = 31%; Trump = 27%). The reverse occurred regarding the partial release of records (Obama = 32%; Trump = 39%). Both administrations mirrored each other regarding the full denial of records requests (Obama = 5%; Trump = 4%). Because agencies can deny records requests for reasons other than those for the three disposition types mentioned above, it is important to include the rate of such denials in the data analysis. On average, the Obama administration denied 2,131 requests over the seven years under analysis for these reasons and the Trump administration denied 2,107 in 2018. This translates to a 32% denial rate of all processed requests under the Obama administration and a denial rate of 30% under the Trump administration. As Table 3 indicates, agencies overwhelmingly claimed the “no records” reason as a basis for these denials.⁶

RQ3a. Is there a difference in the processing rate of FoIA appeals between the Obama and Trump administrations?

RQ3b. Is there a difference in the success of FoIA appeals between the Obama and Trump administrations?

Regarding RQ3a, more appeals requests were processed under Obama (81%) than under Trump (76%). Cumulatively, the two administrations denied 59% of all appeals (RQ3b) while 16% of denials were fully reversed and 25% were reversed partially. In comparison, denial rates were similar under the two administrations (Obama = 59%; Trump = 57%). However, the collective (partial and full) reversal of initial denials differed slightly (Trump = 43%; Obama = 41%). Because the above-mentioned statistics refer only to appeals requests with a decision, it is important to also report the number of appeals that went unprocessed at the end of the fiscal year. The appeals backlog was slightly higher under the Trump administration (48 appeals per agency) than under the Obama administration (44 appeals per agency).

RQ4. Is there a difference in the FoIA staff workload between the Obama and Trump administrations?

First, data indicated no differences between the two administrations regarding the average number of FoIA-dedicated workers per agency (Trump = 42, Obama = 41). However, it was wise to further analyze

⁶ The disposition rates reported here are based on all requests processed, including those denied under the reasons listed in Table 3. When data from these categories are excluded, the disposition rates are as follows. *Full* release of records (Obama = 55%; Trump = 54%). *Partial* release of records (Obama = 37%; Trump = 37%). *Full denial* of records (Obama = 8.9%; Trump = 8.35%).

Table 3
Other reasons to deny records requests^a.

Reason	Obama	Trump
No Records	1,018.91	1,042.76
All records referred	148.82	126.97
Request withdraw	120.05	129.3
Fee-related reason	51.61	28.69
Not reasonably described	73.33	56.09
Improper FOIA request	298.21	338.39
Not agency record	113.46	79.42
Duplicate request	185.52	251.38
Other	121.08	54.14
Total	2,130.99	2107.14

^a Numbers indicate averages

the staff vis-à-vis the number of requests they have to process, thus the workload variable. As mentioned, the workload variable measures the number of FoIA requests each worker is expected to process. The reasoning here is that the fewer requests a staff member has to process, the faster he/she may do it, and probably give a better quality response (Berliner et al., 2019; Wasike, 2016). As mentioned, agencies have to give reasons when denying requests or when releasing information partially. Therefore, the workload variable was computed by dividing the total number of requests received by the total number staff available to process them. Data returned differences, with a larger workload under Obama (155 requests per staff member) as compared to 128 requests per staff member under Trump.

RQ5a. Is there a difference in the number of exemptions invoked between the Obama and Trump administrations?

RQ5b. Is there a difference in the exemption invocation pattern between the Obama and Trump administrations?

There was a marked different in the number of exemptions invoked between the two administrations (RQ5a). On average, the Trump administration invoked more exemptions per agency (7,169) as compared to the Obama administration’s 5,717 exemptions per agency. However, both administrations invoked their exemptions in a nearly uniform pattern (RQ5b). As Table 4 indicates, the two administrations invoked exemptions 6, 7C, 7E, 3, and 5 as their top five options, and exemptions 7B, 8, and 9 as their least invoked options. The only major difference was exemption 2, which was the sixth most invoked under Obama as compared to the eleventh most invoked under Trump. This particular exemption allows agencies to deny the release of information related to internal personnel rules and practices.

RQ6a. Is there a difference in the amount of processing fees collected between the Obama and Trump administrations?

RQ6b. Is there a difference in the number of fee waivers granted between the Obama and Trump administrations?

Data indicted that on average, agencies under the Obama administration’s seven years under analysis collected nearly double the processing fees (\$48,387) collected during the Trump administration’s first year (\$25,265). However, the Trump administration granted only 14% of the fee waivers requests, as opposed to the Obama administration which on average granted 56% of all fee waiver requests, with a peak of 64% waivers granted in 2011. However, even the Obama administration’s granting of fee waivers steadily declined over the years from the high of 64% in 2011 to a low of 49% in 2016.

6. Discussion

This study set out to examine the FoIA performances between the Obama and Trump administrations. As mentioned, this comparative approach is useful in three ways. First, it provides an empirically accurate picture of the FoIA performance of each administration vis-à-vis

Table 4
Exemption invocation patterns between the two administrations.

Obama		Trump	
Exemption	Mean _s	Exemption	Total _{**}
Ex. 6	158,863	Ex. 6	244,390
Ex. 7C	151,288	Ex. 7C	230,458
Ex. 7E	116,529	Ex. 7E	205,625
Ex. 5	69,212	Ex. 3	67,507
Ex. 3	33,930	Ex. 5	61,135
Ex. 2	14,012	Ex. 4	10,952
Ex. 4	11,128	Ex. 7A	9,354
Ex. 7A	8,269	Ex. 7D	6,583
Ex. 7D	6,193	Ex. 1	4,214
Ex. 1	5,229	Ex. 7F	3,145
Ex. 7F	3,357	Ex. 2	1,602
Ex. 7B	646	Ex. 7B	611
Ex. 8	367	Ex. 8	230
Ex. 9	36	Ex. 9	72

* Mean for exemptions evoked during the seven years under review.

** Total for the one year under review.

the other. Secondly, it provides a basis on which we can make predictions about FoIA performances in the near future. Third, it is important to systematically examine the current state of FoIA given the unprecedented fear of the lack of transparency as reported within the media. It is also important to put these findings within the broader discourse about bureaucratic secrecy. Several important findings emerged.

First, data showed that legacy, as reported previously (Wasike, 2016), still plays a major role in FoIA performance. In this case, however, there is an acceleration of factors that might curtail the future release of information. Of the variables analyzed, few indicated that the Trump administration has shown improvement in performance over the Obama administration, and for some key FoIA markers, performance is worse off. For instance, fewer requests have been processed under the Trump administration so far, and these requests were processed at much slower speeds than during the previous administration. These two findings echo results from a prior, but narrowly focused study that examined FoIA performance under the Trump administration (Morisy, 2017). As reported in the current study, it took longer to process all types of FoIA requests under Trump. The differences in processing speeds, between the Trump and Obama administration, for simple, complex, and expedited requests were 7, 44, and 36 days on average respectively. Fewer appeals were also processed under the Trump administration. Additionally, more backlogs for requests and appeals were reported under the Trump administration, portending larger workloads and probably slower response times in the future.

FoIA requests processing speeds mean little if the public cannot receive the information requested. Data showed no improvement for the Trump administration over the Obama administration regarding the release of information fully or partially. Also, both administrations were equally likely to fully deny records requests. The difference, however, was in the invocation of exemptions used to deny these records. The Trump administration by far invoked more exemptions than the Obama administration, even though both generally invoked the same types of exemptions, which yet again suggests legacy. As Fig. 1 indicates, exemption invocation under Obama had largely plateaued, or at the most inched upwards, except for the lone spike in exemptions in 2015. The numbers for 2018 may however herald the acceleration of exemption invocation.

The 7,168 average exemptions invoked in Trump's first fiscal year stand in sharp contrast to the 4,623 invoked in Obama's first or even the 6,320 invoked in his last year. When considering legacy, the 37% increase in the use of exemptions between the first and last Obama years

means that the Trump administration is projected to invoke an average of 9,820 exemptions in 2024, the last year of the Trump administration if he were to serve two terms. See Fig. 1 for details. Likewise, denials jumped 51% between the first and last year of the Obama administration, as shown in Fig. 2. If legacy were to remain constant, denials are projected to increase from an average of 3,038 in 2018 to 4,556 in 2024.

Additionally, the fee collection and fee waiver request variables indicated that even though less fees were collected under the Trump administration, the Obama administration's fee waiver requests rate was four times higher than the Trump administration's (56% vs 14%). Also, the rate of fee waiver granting begun to drop steadily under Obama and fell precipitously under Trump. Based on legacy, future projections seem dire. The 20% drop in fee waiving between 2010–2016 suggests that the Trump administration is projected to grant only 3% of waiver requests by 2024.

The results reported here, while providing clear support for the effect of legacy on the restriction of access to government information, speak to something bigger. This is the innate secrecy of bureaucratic systems, as Weber's quote in this paper's introduction aptly surmises. Weber discusses instances where such secrecy serves practical functions, such as with trade, diplomacy, and military operations (Weber, 1914a). This is similar to the genuine government secrecy discussed earlier, where the government withholds information whose release could jeopardize national security (Aftergood, 2009). However, problems arise when the bureaucracy, by inventing the "official secret" system, goes beyond these practical functions to create a system of near insular bureaucratic power shrouded in secrecy (Weber, 1914a, p. 232, Weber, 1914b, p. 352). Modern scholars have continued to ponder about the viability of transparency in a world of ever-increasing bureaucracy, even among government systems that foster transparency via FoIA and open data initiatives (Alasdair, 2006; Berliner et al., 2019; Fung, Graham, & Weil, 2007; Kasymova et al., 2016).

The major implication of the current study is the confirmation that even in this digital age of unprecedented access to data, the primal nature of the bureaucracy to maintain secrecy continues to hamper attempts at increased transparency. Weber's "official secret" system is alive and well. It is doubtless that practitioners in the news media will continue their watchdog role in the face of this bureaucratic information blockade, and they will continue to call out any perceived injustices. However, given the bureaucracy's ability to morph and adapt its secrecy methods to suit ever changing climes and pressures, this hue and cry may well fall short.

It is urgent that scholars methodically and systematically continue to dissect the bureaucracy's secrecy methods in order to identify these mechanisms, seen or unseen. For instance, not many scholars have examined such FoIA loopholes as the use of the non-exemptions "other reasons" category to deny records as listed in Table 3. The current study found that agencies under both administrations denied more records using this category than they released fully (see RQ2 results). Even then, the quantitative approach and the numerical data used here may not reveal the true nature of this loophole, which could provide a convenient gateway for agencies to deny information requests. Given that this category includes reasons ranging from "no records" to "request withdrawn," a deeper dive into these records is needed. Future scholars could use qualitative methods such as textual analysis to examine the types of records denied this way, and the specific reasons given by agencies to deny these records. This would provide a clear picture of the underlying dynamics and any manifest patterns thereof. Of course, such an undertaking will require a massive FoIA effort just to acquire the records themselves given the size of the bureaucracy, but with proper sampling techniques, this effort is worthwhile.

It is not all gloom and doom. First, appeals were slightly more successful under the Trump administration, and even under both

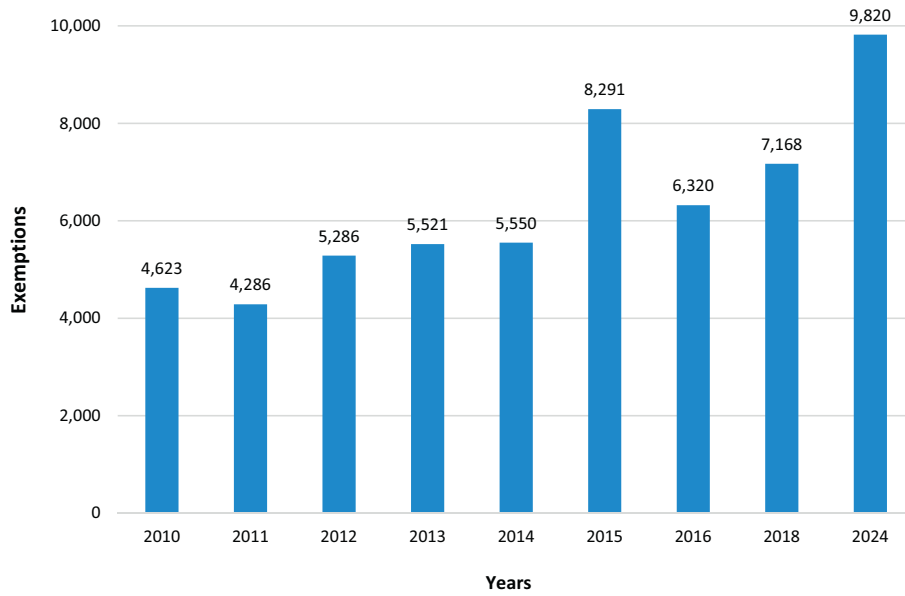


Fig. 1. Average exemptions invoked per year and 2024 projection.

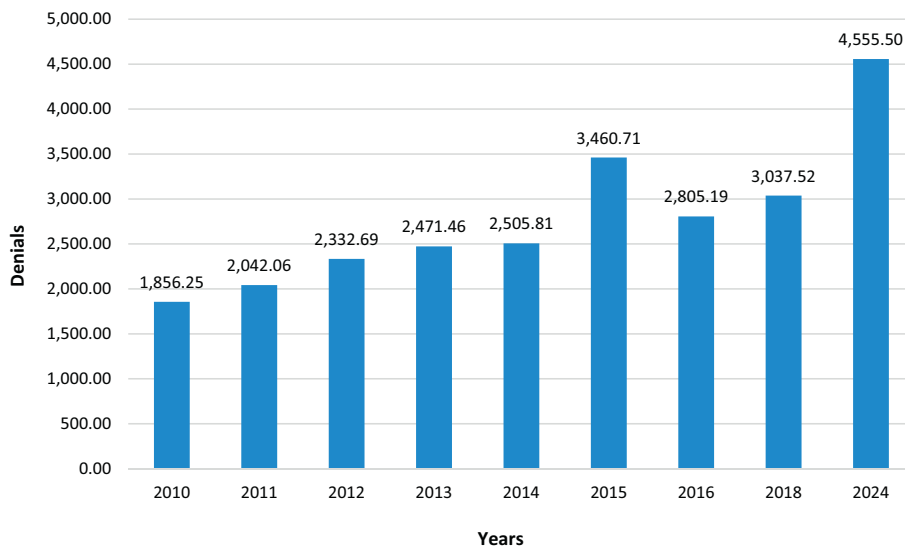


Fig. 2. Average denials per year and 2024 projection.

administrations, 41% of appeals were either partially or fully successful. Second, the workload for FoIA staffers was slightly lower under the Trump administration. Additionally, all the dispositions (full, partial, and denial) of records were similar between the two administrations, and the lower fees charged in 2018 may mark a new trend. Overall, the current FoIA performance is not much of an improvement from past years, and absent a quick uptick in performance, the Trump administration is likely to underperform its predecessor.

Note: The 2024 bar displays a projection based on the rate of exemptions invoked per denial in 2018.

Note: The 2024 bar displays a projection based on denials issued in 2018.

7. Limitations and problems with FoIA data

A major concern has to do with the skew of FoIA data. Some data categories analyzed here were highly skewed. While the normal

distribution of data is traditionally a methodological issue, it becomes a practical issue regarding FoIA data and the interpretation of results. Outliers were common for some of the data categories analyzed here. As mentioned, the National Archives reported 1,126 days to process complex requests in 2015, and 1,098 days for the same in 2016. The CIA reported 1,303 and 1,032 days to process expedited requests in 2014 and 2013 respectively. Additionally, some variables returned large standard deviations for their means. For instance, the Obama administration's average for days needed to process simple requests was 23.37 with a standard deviation of 30.04. Numbers for the Trump administration showed a larger spread with a mean of 30.22 days and a standard deviation of 51.44. This becomes a problem, especially when performing inferential statistics using small samples rather than a census as reported in the current study. One solution is that scholars could normalize the data using medians or even the appropriate logarithmic transformations (Bland, Altman, & Rohlf, 2013; Ferris et al., 2010; Liang, Li, Di, Zhang, & Zhu, 2015). The current study replaced

the outliers with median scores because unlike means, medians are less susceptible to outliers. Another solution is solely using medians rather than means. However, such an approach, as used in the aforementioned Kim study, masks the effects of occasional spikes in numbers such as requests, which will manifest as outliers in the data. In such a situation, only using medians becomes problematic if that spike in numbers is an indicator of a larger policy issue within the agency, for instance, a deluge of requests to the Department of Defense during wartime or increased requests to the Department of Homeland Security during an immigration crisis. The use of medians rather than means could also explain the discrepancy between the Kim study and the current study regarding the partial grant of records. The Kim study reported a range of 11.8%–16.45% for the partial grants of records (between the Clinton and Bush administration based on medians) while the current study reports an average of 32% for the Obama administration and 39% for the Trump administration based on means. Alternatively, scholars could also run statistics for both the skewed and normalized data and report both, as done in the current study.

Other data problems are beyond the researcher's ability to correct for error. Agencies repeatedly reported disparate numbers for backlogs, with different figures for the end-of-year unprocessed requests and official backlog numbers. The Department of Justice's FoIA reporting guidelines require agencies to report both data categories in their annual reports. Ideally, these two figures should match. The current study used the reported end-of-year unprocessed requests numbers because

they fit better with the reported initial requests for each fiscal year. Lastly, the data here does not reflect two non-overlapping fiscal years; 2009 and 2017. All interpretations of the results should be done within the context of these limitations. Regardless, this study makes a significant contribution by comparing FoIA performance across administrations while using multiple performance parameters.

It is also important to mention that the data FoIA data is self-reported and that carries pertinent risks such as data manipulation or obfuscation. Also, agencies have leeway to reject requests for subjective reasons such as when a requester does not properly describe the records desired or when the agency refers the request to another agency if it deems that the request would be better served there. See Table 3. Another limitation is that the dataset used here is fully numerical and does not contain such details as the textual description of the requests themselves, or even which types of records were denied via the invocation of exemptions.

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Data availability

The data is available from the author upon request.

Appendix: FoIA Exemptions

Exemption 1	Those documents properly classified as secret in the interest of national defense or foreign policy;
Exemption 2	Related solely to internal personnel rules and practices;
Exemption 3	Specifically exempted by other statutes;
Exemption 4	A trade secret or privileged or confidential commercial or financial information obtained from a person;
Exemption 5	A privileged inter-agency or intra-agency memorandum or letter;
Exemption 6	A personnel, medical, or similar file the release of which would constitute a clearly unwarranted invasion of personal privacy;
Exemption 7	Compiled for law enforcement purposes, the release of which:
Exemption 7a	Could reasonably be expected to interfere with law enforcement proceedings,
Exemption 7b	Would deprive a person of a right to a fair trial or an impartial adjudication,
Exemption 7c	Could reasonably be expected to constitute an unwarranted invasion of personal privacy,
Exemption 7d	Could reasonably be expected to disclose the identity of a confidential source,
Exemption 7e	Would disclose techniques, procedures, or guidelines for investigations or prosecutions, or
Exemption 7f	could reasonably be expected to endanger an individual's life or physical safety;
Exemption 8	Contained in or related to examination, operating, or condition reports about financial institutions that the SEC regulates or supervises; or
Exemption 9	And those documents containing exempt information about gas or oil wells.

Source: <http://www.sec.gov/FoIA/nFoIA.htm>.

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