

**CASE STUDY: IMPLEMENTATION OF THE TOP FIVE FREEDOM OF
INFORMATION ACT CASES INTO MEDIA LAW OF THE REPUBLIC OF
TAJKISTAN**

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Title

CASE STUDY: IMPLEMENTATION OF THE TOP FIVE FREEDOM OF

INFORMATION ACT CASES INTO MEDIA LAW OF THE REPUBLIC TAJIKISTAN

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ABSTRACT

Yakubova, Muhabbat, Department of Communication, College of Arts, Humanities and Social Sciences, North Dakota State University, July 2009. Case Study: Implementation of the Top Five Freedom of Information Act Cases into Media Law of the Republic of Tajikistan. Major Professor: Dr. Paul Nelson.

The purpose of this study is to explore and study the Freedom of Information Act (FOIA) in five cases. The study will analyze the importance of FOIA for the growth of media for developing countries like Tajikistan.

The study conducts a comparative analysis of the FOIA cases. The study will examine FOIA adoption history in the United States of America's legislative system; the reasons, purposes, and the implementation of FOIA by media personnel; and current media law of the Republic of Tajikistan. Also the study will discuss where certain aspects of FOIA could fit in Media Law of Tajikistan that would lead to the development of media field's and journalists' access to information for a Tajik audience.

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CHAPTER ONE. DEFINING THE PROBLEM

Introduction and the Research Context

The Republic of Tajikistan had been one of the fifteen former Soviet Union republics since 1924. The country gained its independence after the collapse of the Soviet Union on September 9, 1991. During its existence under the Soviet rule, the country got all its governmental and civil systems of governing and functioning as a country based on the Soviet Union's form of government. Media law was first enacted and passed on December 14, 1990, when Tajikistan was a part of Soviet Union. The passed law consisted of three sections (press, television, and radio broadcasting) combined into two big groups. The press section consists of 40 and television and radio broadcasting section consists of 36 articles and sub-articles.

After the collapse of the Soviet Union this law was still functioning although the status of Tajikistan has changed and the country entered a new arena of politics and economics. The Media Law enacted during the soviet period still functions and is used by media and press personnel in Tajikistan. Since 1990, from the time of its adoption, the Media Law of Tajikistan had amendments in 1992, 1996, 1997, 1999, and 2002.

For the last couple of years, the Media Law has been under the critique of media in Tajikistan. Various authors envisioned changes in the law. In her article Gulchehra Mansurova (2002) pointed out various arguments of Tajik journalists regarding the revision of Media Law in Tajikistan, and she called this process "a difficult reform." She added: "Journalists in Tajikistan are not ecstatic about the government's latest media law passed by the lower house of the Tajik parliament. Many feel that to improve the country's media's law requires a complete overhaul of legislation"(p. 1). She states that to improve Tajik's media situation Tajikistan needs a brand new start as we live in a time of advanced technology information and communication technologies.

The idea of revising the Media Law of Tajikistan is widely welcomed by many media lawyers. Tajikistan Media Law indeed needs serious revision states Farukhsho Junaidov (2008), a lawyer who is working in the media organization “Khoma.” According to him, not only the time and location of the law directs us to make the revisions to the law, but also the big events such as Tajikistan’s becoming a member of the UN and signing several international treaties and agreements including those in mass media. The Global declaration of human rights and the International treaty on civil and political rights, including its article 19 which is dedicated to the freedom of expression, are some of them. According to the lawyer Junaidov, “upon joining international legal acts, a government undertakes to implement their provisions in the national (domestic) legislation. Unfortunately, not all the norms contained in those acts have been reflected in Tajik legislation” (p.1). As mentioned earlier, in the last few years the parliament has added numerous amendments and additions to the media law. In fact, these changes did not improve the law; instead, they just made it more complicated, followed by many shortcomings, says Farukhsho Junaidov. According to him the current laws contain some provisions that in fact contradict the norms of other current laws of the country. He says: “The entire law has many contradictions which lead to confusion among the lawyers, create obstacles to the work of journalists, and block the development of the media in a developing country” (p.1).

Significance of the Problem

This study is significant due to the specific focus on the development of media laws that will allow journalists, reporters, and media professionals to have more access to various types of information and provide that information to the audience in

Tajikistan. The study will show the importance of implementation of Freedom of Information Act aspects into media laws of Tajikistan that are very crucial for the development of media in the newly gained independent and developing country.

The successful study of this project will determine which aspects of FOIA will fit into articles 27 (The right for access to information) and article 27-1 (The request for information). Analyzing and revising these two articles are important as they are core articles in the law allowing journalists to have an access to information and gain the right of requesting for the information and providing it to the audience.

Purpose of the Project

The purpose of this study is to explore and compare the FOIA and current Media Law of the Republic of Tajikistan and find out which aspects of FOIA will fit into Media Law of Tajikistan. The implementation of FOIA would change media's access to information. FOIA passed in 1966 provides an access to governmental information or records. This law allows any person to request an agency record, including not only a member of the general public or the press, but also a foreign national, corporation, university researcher, or a member of state or local government. The results of this study could be used to make changes in future media law reforms in Tajikistan and will serve as reference material for conducting such reform in future.

Method and Procedures

The study will be conducted through FOIA case studies in two phases. In the first phase the researcher will study and analyze FOIA resources via the United States Department of Justice, the Reporters' Committee for Freedom of the Press, the Freedom of Information Clearing House, American Civil Liberties Union, and the cases where

the FOIA was applied. During this process the researcher will gather all necessary data regarding the history, the process of implementation, and cases in which of FOIA was applied. The goal of the case study is to gather information regarding how American Media use the FIOA in actual practice and which certain aspects of FOIA will mostly fit to the Media Law of the Republic of Tajikistan.

The second phase of the study will be analyzing the Media Law of the Republic of Tajikistan. The researcher will study the Media Law of Tajikistan and analyze where the FOIA aspects would go and where the lack of information access primarily exists. This part of the research will cover the information regarding Media Law of the Republic of Tajikistan analyzing and finding which article of the current law needs more revising and how the changes in a certain article of the law will influence to the development of media in Tajikistan and assist journalists to get an access to information.

Definition of Terms

Tajikistan- is a landlocked country located in Central Asia bordering with Afghanistan in the south, Uzbekistan in the west, Kyrgyzstan in the north, and China in the east.

Law - “A binding custom or practice of a community: a rule of conduct or an action prescribed or formally recognized as binding or enforcement by a controlling authority” (*Merriam Webster’s Collegiate Dictionary*, 1993).

Freedom of Information Act - “Federal law requiring that, with specified exemptions, documents and materials generated or held by federal agencies be made available to the public and establishing guidelines for their disclosure. Exemptions include issues relating to national security”.

Review of the Literature

I was not able to find much literature regarding my project topic which makes the topic more interesting and challenging. And finding works related to media and law was difficult. But I was lucky to find some valuable research that touched my area of interest. Schramm (1964) clearly defined the profession of journalist and the role of journalist in the society. He states that the profession of journalist is based, first of all, on informing the population about the events and the facts. The role of the journalist is also important because journalists provide people with information. From the received information people in the society come to conclusions, and the information gaining process makes people think. Schramm (1964) further concluded that the information plays an essential role in national economic development and leads to the development of productivity. Moreover, the power of information is so great that it “regulates the level of social tension” (p. 37).

Now imagine all this purpose without information due to some obstacles that do not allow journalists to provide information to the audience. First, when the journalists are not able to function as they should, their work seems incomplete. Society and people are not getting what they want and need to know. They have many questions but no answers. In fact, answers exist and people could get them, but they have no access to those answers. Of course this process creates social tension and misunderstanding, and tension and misunderstanding in society slows down or sometimes stops the development.

Mermin (1973) considers the role of law as a dispute solver. According to him, a proper law can solve disputes, maintain order, and set a structure to follow “within which certain common expectations about the transactions, relationships, planned happenings, and accidents of daily life can be met” (p.6). Other functions of law are to

provide balance and harmony in the functioning government, to guarantee efficacy and harmony, and to protect citizens from unfair government and private power.

The role of proper laws is essential in solving enormous issues in the society, and media professionals are the key people in moving the issue solving process. To investigate the role of proper media laws in the developing countries the study asks the following research questions:

Research Questions

RQ1: What will journalism professionals gain with the adoption of FOIA aspects in the media law of the Republic of Tajikistan?

RQ2: What will the Tajik audience gain with the adoption of FOIA aspects in the Media Law of the Republic of Tajikistan?

CHAPTER TWO. HISTORY OF INFORMATION ACT

Early History of the Act

“The right of the public to know what its government is doing has been an issue since the foundation of the Republic” (Moorhead, 1973, p. v.) and this right was not fulfilled until 1966 when Congress passed a statute that required government agencies to disclose their records or information to public. This statute was named “The Freedom of Information Act (FOIA).” The Freedom of Information Act was enacted by Congress and signed into law by President Lyndon B. Johnson on July 4, 1966, and went into effect on July 4, 1967. In the beginning, the FOIA was enacted as an amendment to section 3 of the Administrative Procedure Act of 1946 which provided the first general statutory provision for public disclosure of executive branch rules, opinions, orders, and public records (Moorhead, 1973).

Under the FOIA, any person has the right to request access to US federal government agencies’ records and information. The obtainable information under the FOIA includes all agency records such as print documents, photographs, videos, maps, e-mails, and electronic records created by a Federal agency. These records must be filed and under the agency’s possession and control during the requested time (The National Security Archive, 1995). The request for information may be made by any person. Both U.S citizens and foreign nationals can obtain federal records under the FOIA. A request can also be made in the name of a corporation, partnership, or other entity, such as a public interest group or news organization. However, the FOIA does not provide access to information held by state or local agencies. All states have their own statutes regarding access to state and local government information. The information requesters should consult with state agencies about state and local government information and records (Henry, 2003).

Congress amended the federal Freedom of Information Act in 1996 to cover electronic information. According to the 1996 version “Electronic Freedom of Information Act (EFOIA) agencies are required to create electronic reading rooms” and have a FOIA section on their website where agencies post online copies of frequently requested records. Also EFOIA required the agencies to post administrative opinions, policy statement, and staff manuals on their websites. The 1996 EFOIA extended the responding time of FOIA requests from 10 days to a 20 day period (The Reporters Committee for Freedom of the Press).

The government has a special department to process the FOIA requests for all federal agencies. Each federal agency is responsible and is required to provide information to requesters from its own records upon receiving a written request, unless the requested record is lawfully withheld from disclosure. This right of access to exempted information is enforceable in court (Henry, 2003). The exemptions apply to information or records which have national defense, security, or foreign policy character (CIA, 2007).

Journalists and other media professionals have no more and no fewer rights to request records under the FOIA than other requesters, although the law gives them some rights to free benefits and expedited review of their requests. The requester does not need to tell the agency about the reason for making a request except to advise the FOIA officer that he/she is “a journalist, author or researcher and intends to publish some or all of the requested information may encourage prompt consideration of [his/her] request and entitle you to f[r]ee benefits” (Daugherty, 2004, p.5).

Marwick (1985) states that “the FOIA has had a great impact on the flow of information. It is the strongest, most used, most litigated, most effective, and most important of the federal access statutes” (p. xvi). The FOIA has played an important

role in obtaining and releasing of information, and, therefore, is the subject of more discussions than other access statutes.

Agencies Covered by FOIA

Government offices and agencies within the executive branch of the government-including the Executive Office of the President and independent regulatory agencies- are subject to information disclosure and are covered by the FOIA. According to Henry (2003) "each agency should have its own FOIA reference guide" (p. 2) that will allow the requester to request a copy of needed record from its FOIA office or view it on the agency's FOIA web site. However, FOIA does not apply to agencies that are not controlled by the federal government, such as municipal corporations, the court, and the Congress. Also, the FOIA does not cover private citizens, private organizations, and private businesses or companies. Some agencies that do provide records under the FOIA include:

Federal Departments:

- Department of Agriculture
- Department of Commerce
- National Oceanic and Atmospheric Administration
- Department of Defense
- Air Force
- Defense Contract Audit Agency
- Defense Contract Management Agency
- Defense Finance and Accounting Service
- Defense Information Systems Agency
- Defense Intelligence Agency

- Defense Logistics Agency
- Defense Security Service
- Defense Technical Information Center
- Defense Threat Reduction Agency
- Department of Defense Education Activity
- Navy

Federal Agencies:

- Agency for International Development
- Amtrak
- Broadcasting Board of Governors
- Central Intelligence Agency
- Commission on Civil Rights Committee for Purchase from People who are Blind or Severely Disabled
- Commodity Futures Trading Commission
- Consumer Product Safety Commission
- Corporation for National Service
- Environmental Protection Agency

Executive Office of President:

- Council on Environmental Quality
- Office of Administration
- Office of Management and Budget
- Office of National Drug Control Policy
- Office of Science and Technology Policy
- Office of the United States Trade Representative

- Export-Import Bank
- Farm Credit Administration
- Federal Communication Commissions

How to Make a FOIA Request

Any agency records can be requested under the FOIA unless the information is kept from disclosure under nine FOIA exemptions (Appendix B). Only information of sensitive nature will be withheld from disclosure. The requester needs to make a handwritten or typed request (Henry, 2003). The advantage of a written request is that it allows the requester to “document” the dates and contents of the request and the replies received from agencies.

This method of requesting a document will be useful for the requester to solve the disputes, if any (Sherick, 1978). Under the FOIA, only federal agencies’ records can be requested, not “information” that requires them to do research or analyze data for the requester.

First, the requester needs to make sure that the agency has the desired record. The requester can find the necessary record or a document through viewing the agency’s FOIA guide, the web site, or the directories such as the *United States Government Manual* which contains all government agencies, their addresses, and major functions. Sherick (1978) suggests to make sure to send the FOIA requests to the right address but “If the request arrives at the wrong office it will be forwarded and the agency’s time limit does not begin until it reaches the proper office” (p. 21).

Second, the request should be addressed to the agency’s FOIA officer or the head of the agency. Third, the envelope should be marked “Freedom of Information Act Request” and should include the name and address of the requester. Finally, the request

should clearly state and explain the record needed. Also, the letter has to include the phone number of the requester and the amount of money he/she is willing to pay for the requested record (Foerstel, 1999).

In addition, many agencies may require proof of identity before releasing any documents or records. For example, the CIA demands the requester's date of birth, place of birth, and a notarized statement of identity. Depending on the sensitivity of the document, some other agencies may require a signature and a photograph with the requester's documents (Sherick, 1978).

The agency can deny the FOIA request under the FOIA for a variety of reasons. One of the reasons can be inadequate description of the requested document/record. If the agency confirms that the requester provided insufficient description of the document/record, the requester needs to rewrite the request he/she seeks with more detailed description and resubmit it to the agency. Another reason of a FOIA request denial can be agency's assertion that the requested document/record does not exist within the agency's files. Also the agency may deny the FOIA request if the requester is not willing to pay the cost of the request (The Freedom of information Clearing House).

The FOIA Request Fees

FOIA requesters can pay some or all the costs of their processing request. Fees will vary with the status or the purposes of the requester under the 1986 amendment to the FOIA. Requesters representing news media, educational, and non-commercial scientific institutions who are requesting the records for non-commercial use will be billed only reasonable fees for document duplication costs. The commercial requests will be billed for document duplication, search, and review. Requests made by public interest groups and nonprofit organizations are charged only for the duplication and the

search for the records (Foerstel, 1999). The requesters can “save money by asking to see the document instead of having copies made” (Sherick, 1978, p. 21).

Freedom of Information Act Cases

Case One: Department of Justice v. Reporters' Committee for Freedom of the Press

Argued December 7, 1988

Decided March 22, 1989

Facts: The Federal Bureau of Investigation (FBI) compiles criminal identification records sometimes called "rap-sheets" on persons who committed crimes. The rap-sheets contain descriptive information as well as a history of arrests, charges, convictions, and incarcerations. CBS requested the criminal identification records of Charles Medico from the FBI. In its turn, the FBI refused the request and a CBS news correspondent and the Reporters Committee for Freedom (RCFP) of the Press (RCFP) sued the FBI for violation of the FOIA.

Procedure: RCFP claimed that Medico's criminal record was a matter of "public record" and "interest."

Issue: Should the FBI release the rap-sheet of Charles Medico to RCFP under the FOIA? Is a refusal to disclose an individual's personal FBI crime record to a third party justifiable under the "personal privacy" invasion exemption of the Freedom of Information Act?

Holding: No

Reasoning: The Court of Appeals found that the FBI rap-sheet disclosure to RCFP would constitute an unwarranted invasion of personal privacy within the FOIA Exemption 7(C) and it is prohibited by that Exemption. The Court also stated that public interest in criminal record information is not increased simply because the

requesting party is a news agency (Department of Justice v. Reporters Committee for Freedom of the Press, 1989).

Case Two: Public Citizen Health Research Group v. FDA

Argued May 11, 1999

Decided August 6, 1999

Facts – The Public Health Research Group (HRG) has sued the Food and Drug Administration (FDA) because the FDA denied the HRG request to release the records relating the ongoing clinical studies of the safety and efficacy of intraocular lenses (IOLs). The Schering Corporation was intervened as a defendant as by that time the corporation submitted five investigations of new drug applications (INDs), the sort of documents that the HRG requested from FDA.

Procedure: The lower court held that the requested records are immune from disclosure under Exemptions 3 and 4 of the FOIA. The records are withheld from disclosure by the statute because the withheld documents contained confidential commercial information.

Issue: Should the FDA release records regarding the intraocular lenses (IOLs) latest studies and testing to HGR?

Holding: Yes

Reasoning: The district court ordered that FDA must disclose the information contained in IND No. 18113 requested by HRG because the agency did not meet its burden under Exemption 4. However, the court rules that FDA must not disclose the confidential information in IND Nos. 35757, 34465, 31911, and 30647 due to agency's meeting its burden under Exemption 4 of FOIA. FDA and Schering Company both appealed to this court (Public Citizen Health Research Group v. FDA, 1999).

Case Three: William Jordan v. United States Department of Justice

Argued Dec. 4, 1981.

Decided Oct. 5, 1982.

Facts: William Jordan, a student at Georgetown University Law Center, had requested an access to all charging manuals, rules, and guidelines setting forth standards for the exercise of prosecutorial discretion in criminal matters from the United States Attorney for the District of Columbia. The Department of Justice refused this request contending that the requested documents were shielded by Exemption 5. Jordan sued in the District Court invoking FOIA.

Procedure: The Department contended that the requested documents were withheld from disclosure under the Exemption 5. After pursuing discovery, Jordan moved for partial summary judgment and argued that the withholding of the documents from disclosure violated FOIA's disclosure mandate. In response, the Department released all but ten paragraphs of the manual, and subsequently moved-on the basis of Exemptions 2 and 5- alternatively for dismissal or partial summary judgment as to the excised manual paragraphs and the guidelines.

Issue: Should the Department of Justice provide an access to all charging manuals, rules, and guidelines setting forth standards for the exercise of prosecutorial discretion in criminal matters from the United States Attorney for the District of Columbia?

Holding: Yes

Reasoning: The District Court rejected the Department's Exemptions 2 and 5 defenses, and granted Jordan partial-summary-judgment motion on the ground that release of the requested documents were required by FOIA. The Department appealed,

and this court, sitting *en banc*, similarly found unacceptable the Department's Exemptions 2 and 5 arguments and held that the withheld material was subject to mandatory disclosure (*William Jordan v. United States Department of Justice*, 1982).

Case Four: Forsham v. Harris

Argued October 31, 1979

Decided March 3, 1980

Facts: The University Group Diabetes Program (UGDP), a group of private physicians and scientists, conducted a long-term study of the effectiveness of certain diabetes treatment regimens under federal grants awarded by the National Institute of Arthritis, Metabolism, and Digestive Diseases (NIAMDD- federal agency). In the beginning NIAMDD received authorization to have an access to the raw data generated by UGDP from relevant federal regulations. However, day by day the grant-supported activities were in UGDP's hands, and NIAMDD could not exercise its right to review or get custody of the raw data. The right remained in UGDP's possession and under its ownership.

After both UGDP and HEW denied petitioners NIAMDD's request to have an access to the UGDP raw data, the petitioner filed suit to require HEW to release the raw data materials under the FOIA.

Procedure: The lower court decided that HEW properly denied the request on the ground that the data did not constitute "agency records" under the FOIA.

Issue: Should the UGDP provide NIAMDD access to its raw data generated by UGDP?

Holding: No

Reasoning: The Supreme Court upheld the decision of the lower court and found UGDP records to be “private records.” The court rejected NIAMDD’s claim to have an access to UGDP’s generated raw data. Since the “agency record” is not defined in the FOIA, Congress excluded private grantees from FOIA disclosure (Forsham v. Harris, 1980).

Case Five: Schmerler v. FBI

Argued Jan. 12, 1990

Decided April 6, 1990

Facts: Gilbert Schmerler had requested documents relating to the death of his aunt who was murdered in 1931. The documents were from an FBI investigation. The FBI released the document but withheld names and identifying information of three witnesses. Schmerler proceeded to take them to court to release the names.

Procedure: The lower court found that the FBI should release the names because they were of no historical relevance, they would not put the witnesses at risk, they were not part of an ongoing investigation, and 57 years had passed since then.

Issue: Should the FBI be made to release the names of 3 sources?

Holding: No

Reasoning: The names of confidential sources are exempt under exemption 7(D) of the FOIA. This exemption has no expiration or no requirement to be weighed it against the agencies interest and the person’s request. Thus the FBI only need prove that the source was promised confidentiality for their names to fall under this exemption. The FBI has proved that these sources were confidential and thus does not need to release their names (Schmerler v. FBI, 1990).

CHAPTER THREE. OVERVIEW OF TAJIK LEGISLATION AND MEDIA

LAW

Tajik Legal System

The Republic of Tajikistan is a sovereign, democratic, legal, secular, and unitary country with a presidential form of state government (Constitution of Tajikistan). President Emomali Rahmon is the head of the country and the executive power (Chairman of Government). The legal system of Tajikistan covers the principles of foreign laws that go back to the origins of the Romano-Germanic legal system. In addition, the legal system of the country has preserved some norms of traditional socialist laws, especially in the state property and land ownership areas. According to Tajikistan legislation, the law sources are: the Constitution, laws, legal acts, and international legislation (Bozorova, 2002).

The Constitution of Tajikistan

The government of Tajikistan adopted the Constitution of the Republic of Tajikistan on November 6, 1994, and consists of ten chapters and one hundred articles. The Constitution is the highest legal power, and its norms have direct action. During its existence, the Constitution was amended twice by national referendums on September 26, 1999, and on June 22, 2003, in accordance to the Supreme Law of the Republic of Tajikistan. Amendments to the Constitution in 1999 established the extension of the President's term of office from five to seven years (Official website of the President of Tajikistan, n.d.).

Types of Laws

Tajikistan laws are divided into constitutional laws, laws, and codes.

Constitutional laws are the laws that are stated in the Constitution of the country and regulate the most important sides of vital activities of the country. The constitutional laws are adopted through a special procedure of adoption. They must be passed and proved by the majority of deputies of Majlisi Namoyandagon (Lower Chamber, Parliament) and approved by two-thirds of the members of Majlisi Milli (Upper Chamber, Parliament).

Legal Acts

Legal acts are the laws and decrees of the president of the country. Also the orders and instructions of other government and executive bodies can be considered as legal acts including-acts of local authorities, rules, and regulations of organizations.

International Legislation

Only the international legal acts recognized by Tajikistan are considered to be the component part of the legal system of Tajikistan's legal system (Bozorova, 2002). The international legal acts or International legislation will be applied in case of discrepancy of laws of the Republic of Tajikistan. International laws recognized by Tajikistan come into force after their official publication (Constitution of Tajikistan, n.d).

Tajik Government Structure

According to Tajikistan's Constitution the state power is divided among three branches of government:

- The Legislative Branch (Parliament)
- The Executive Branch (President, Prime Minister)
- The Judiciary Branch (Courts: Supreme Court)

These powers act independently within their authorities. These functions are performed by the Majlisi Oli (Parliament), Government, and the Court. However, in his research, Aliev (1997) clearly states some cases of duplication of functions between one branch of power and another. In particular he states that:

According to the Constitution [of Tajikistan], [t]he Constitutional Court is authorized to supervise the coordination of laws adopted to the Constitution of the country. At the same time, the President of the country is eligible "to abolish or suspend the resolutions of the organs of state government in the case of their contradictions to the laws and the Constitution of the country." (p. 8)

The Legislative Branch (*Majlisi Oli - Parliament*)

Majlisi Oli (Parliament) is the supreme representative and legislative body of the Republic of Tajikistan. It replaced the Supreme Soviet of the old Soviet system. Majlisi Oli (Parliament) is elected for the duration of five years. The main form of activity of the Parliament is "Session," which is called on by its Presidium two times a year. The Presidium of the Parliament organizes the work of the Parliament during the breaks. The Presidium of the Parliament consists of the Chairman of the Parliament, the deputies, and chairmen of the committees and commissions of the Parliament. Part-time deputies are invited only during the sessions, and they are engaged in their own business in the period between sessions.

According to the Constitution of Tajikistan the right of the legislative initiative belongs to a member of Majlisi Milli (Upper Chamber), to the deputy of Majlisi

Namoyandagon (Lower Chamber), to the President of Republic Tajikistan, the Government of Tajikistan, and to the Majlis of People's Deputies of Mountain-Badakhshan autonomous region which constitute the Legislative branch (Majlisi Oli-Parliament) of the Republic of Tajikistan. According to Aliev (1997) “The Parliament (Majlisi Oli) also has the right to interpret the Constitution and laws” (p.8) and consists of two Majlises (Chambers):

- Majlisi Milli (Upper Chamber)
- Majlisi Namoyandagon (Lower Chamber)

Majlisi Milli (Upper Chamber) consists of 33 members/persons plus each former president – for life (if he/she will not refuse this right). Currently, there are 34 members in Majlisi Milli which includes former first president of the Republic of Tajikistan, Kahhor Mahkamov. Seventy five percent of members of Majlisi Milli (25 persons) are elected by deputies of local representative bodies of the power according to the following schedule: 5 persons/members from Mountain- Badakhshan Autonomous Oblast, 5 persons/members from Sogd Oblast, 5 persons/ members from Khatlon Oblast, 5 persons/members from Dushanbe city and areas of republican submission. Twenty five percent (8 persons/members) are appointed by the decree of the president of the Republic of Tajikistan. The Constitution of Tajikistan provides an opportunity for each citizen of the Republic Tajikistan who received higher education and is 35 years old to be selected or appointed as a member for Majlisi Milli (Upper Chamber).

Majlisi Namoyandagon (Lower Chamber) consists of 63 persons/members. Fourty one persons/members of Majlisi Namoyandagon (Lower Chamber) are selected on one-mandatory districts, and 22 – under party lists. The members or deputies for Majlisi Namoyandagon (Lower Chamber) are selected on the basis of general, equal and a direct suffrage at ballot operating on a constant and professional basis. The

Constitution of Tajikistan states that each citizen of the Republic of Tajikistan (not younger than 25 years old) who received higher education can be selected as the deputy/member for Majlisi Namoyandagon (Lower Chamber).

Members of the Government, the judges, law enforcement officers, and military men cannot be members of Majlisi Milli (Upper Chamber) and deputies of Majlisi Namoyandagon (lower Chamber) according to the constitutional law of the Republic of Tajikistan. Also the citizen cannot be simultaneously a member of Majlisi Milli (Upper Chamber) and the deputy of Majlisi Namoyandagon (Lower Chamber). The member of Majlisi Milli (Upper Chamber) cannot serve more than two terms of service and the member of Majlisi Namoyandagon (Lower Chamber) cannot be the deputy of other representative body, hold other post, or to be engaged in enterprise activity, with the exception of scientific and creative activities. The duration of terms of appointment of both chambers of the Tajik Parliament is defined for 5 years.

The Executive Branch (*President, Prime Minister*)

The Executive branch of the Republic of Tajikistan consists of the President of the country (the Chair of Government), the Prime Minister, and the Government ministries: the Ministry of Foreign Affairs, Security, Defense, Interior, Emergency and Civil Defense, Justice, Economy and Trade, Finance, Power Engineering, Communications, Agriculture, Irrigation, Environment Protection, Labor and Social Protection, Health, Transportation, Culture, and Education. The Executive Branch of Tajikistan Government also includes the Security Council and the Council of Justice of the Republic of Tajikistan. According to the Constitution of Tajikistan, the Executive Branch of Tajikistan which is the Government of Tajikistan possesses the right of legislative initiative.

The President of the country (the Chair of the Government) is the head of state and the Commander-in Chief of all the Armed Forces. The President of the country is elected every seven years (after amendments made into the Constitution in 1999), for a maximum of two terms. The President of the country forms the Government (the Prime Minister, the First Deputy Prime Minister, Deputy Prime Ministers, Ministers and Chairmen of various state committees and agencies) which is headed by the Prime Minister.

Also the President appoints and dismisses the Chairman of the National Bank; Procurator General; judges of the Constitutional, Supreme, Supreme Economic Courts as well as the judges of martial, regional, city and district courts including the heads of regional, city and district administrations (Embassy of Tajikistan to the USA).

The Judiciary Branch (*Courts: Supreme Court*)

The Constitutional Court, the Supreme Court, the Supreme Economic Court, the Military Court, the Court of the Mountain -Badakhshan Autonomous Region/Oblast, the Dushanbe City Court represents the judicial system of the Republic of Tajikistan. The court has local, district, regional, and national levels. The higher court level serves as an appellate court for the lower level courts (Stalbovskiy & Stalbovskaya, 2007). The Supreme Court is the highest court and its decisions are final. The president appoints the judges for all courts for 10 year terms. The constitutional court consists of 7 persons, one of which is the representative of Mountain-Badakhshan Autonomous region/oblast. Judges of the Constitutional court are selected from among lawyers between 30 years and 65 years old with 10 years professional experience in court system. Trials are held openly in all courts with the exception of some that are restricted

by the law. Legal proceedings are conducted in a state language (Tajik), but proceedings will be translated if necessary (Constitution of Tajikistan, n.d).

According to the Library of Congress' countries' profiles (2007) in judicial system of Tajikistan "appeals of court decisions are rare because the populace generally does not trust the judicial system. Constitutional guarantees to the right to an attorney and to a prompt and public trial often are ignored. The Soviet-era presumption of the guilt of the defendant remains in force. The procurator's office conducts all criminal investigations. Trials are heard by juries except in cases of national security" (p. 14). The court judge cannot hold other posts or to be the deputy of representative bodies, or a member of political parties and associations, or to be engaged in enterprise activity, but with the exception of working in scientific, creative, and pedagogical activities (Constitution of Tajikistan, n.d).

Media Law of Tajikistan

Media Law of the Republic of Tajikistan consists of three separate laws on various branches of Media: the Law on Information, the Law on Press and other means of Mass Information, and the Law on TV and Radio Broadcasting.

The Law of the Republic of Tajikistan on Information

Majlisi Oli (Parliament) adopted the Law on Information in 2002. The following law consists of five chapters and forty four articles. The present law enforces the right of citizens of the Republic Tajikistan to information and determines the legal bases of information work.

Article two of the law states that the present law establishes the general legal rules of reception, use, distribution, and the information storage. The law fixes the

rights of the subject to the information relations in all spheres of public and state life of Republic Tajikistan. Also the present law defines the status of information relations' participants, regulates access to the information, provides its protection, and protects the person and the society from false information (Media Law of Central Asian countries, 2007).

The Law of the Republic of Tajikistan on Press and other means of Mass Information

The Law of the Republic of Tajikistan on the Press and other means of Mass Information was adopted on December 14, 1990. Since that time, several amendments have been added in 1992, 1996, 1997, 1999, and in 2002. The following law consists of six chapters and forty articles. The mass media are represented by periodicals, television and radio broadcasting, news agencies, other establishments which are carrying out the distribution of the mass information.

According to the present law, *mass media* is considered to be the newspapers, magazines, bulletins and other periodicals intended for public distribution and publishing not less often than one time in three months. Also, television and radio broadcasts, newsreels, messages of news agencies, audio- and audiovisual records and programs are considered to be mass media (Media Law of Central Asian countries, 2007). Article eight of the law states that the right to mass media establishment belongs to local authorities, to governmental branches, political parties, public organizations, mass movements, the creative unions, religious and other citizens created associations according to the law, labor unions, and also the separate individuals who have reached eighteen-years of age. The monopolization of the press and other means of mass media is prohibited in the Republic of Tajikistan.

The Law of the Republic of Tajikistan on TV and Radio Broadcasting

The Law of the Republic of Tajikistan on TV and Radio Broadcasting was adopted in 1996 by Majlisi Oli of Tajikistan and also had several amendments in 1998, 1999, 2004, and in 2006. The following law consists of six chapters and thirty six articles. According to the article four of the following law, the Law of the Republic of Tajikistan on the TV and Radio Broadcasting is based on the Constitution of the Republic of Tajikistan and consists of the Republic Tajikistan Law on "press and other mass information," the standard-legal certificates of the Republic of Tajikistan, and the international legal certificates recognized by the Republic of Tajikistan. The present law regulates activity of the television and broadcasting organizations (TV and Radio organizations) in the territory of the Republic of Tajikistan. The following law defines the legal, economic, social, and organizational conditions of TV and Radio broadcasting organizations' functioning. The law also leads to realization of the freedom of speech, the citizens' rights to receive the full, authentic, and operative information (Media Law of Central Asian countries, 2007). The Government of Tajikistan regulates and controls the field of TV and Radio broadcasting through Committee on TV and Broadcasting which carries out the following functions:

- Working out and maintenance of realization of a state policy in the field of TV and broadcasting.
- The control and observance over the TV and Radio organizations to follow the present Law.
- The control of the gone on the air TV and Radio programs, information and their technical quality of broadcasting.
- Other functions provided by the law (article five of the law).

According to the Law on TV and Radio Broadcasting of the Republic of Tajikistan (article nine), the primary goals of state TV and Radio organizations are:

- Operative informing of radio listeners and TV viewers about political and other events in the Republics Tajikistan and abroad, distribution of communiqués, decisions of the legislative, executive, and judicial branches of the Government which are subject to official distribution.
- Creation and distribution economic, cultural-educational, educational, entertaining, sports programs.
- Illumination of the state symbols of the Republic of Tajikistan.
- Assistance to strengthening of international contacts of Republic of Tajikistan.

Article ten of the Law on TV and Radio Broadcasting of the Republic of Tajikistan states that non-governmental TV and Radio organizations are registered and operate on the basis of the license and self-financing.

Adoption Procedure of New Laws

Laws are enacted or introduced in various ways in Tajikistan. First, special legal parties/ groups initiate a new law to enact. This group includes: Government authorities such as governmental ministries and agencies, members of Majlisi Milli (Upper Chamber) of Parliament, and deputies of Majlisi Namoyandagon (Lower Chamber) of Parliament, and members of Local and District' Majlises (Example: District Majlis of Mountain Badakhshan Region/Oblast).

The members of the mentioned above groups propose a new legal act to Majlisi Namoyandagon (Lower Chamber) which is a Legislative Branch of the Republic of Tajikistan Government for reviewing. According to the Constitution of Tajikistan,

(article 60) the Majlisi Namoyandagon (Lower Chamber) of the Tajik Parliament can propose laws.

Majlisi Namoyandagon discusses and analyzes a newly proposed act and makes changes if necessary. If a proposed act is supported by the majority members of Majlisi Namoyandagon, the new act will be sent to Majlisi Milli for review and discussion. The law is considered approved if majority members of Majlisi Milli have voted for enactment of the new law. If the Majlisi Milli (Upper Chamber) decides to turn down the law, Majlisi Namoyandagon has a right to repeated consideration of the law. But the law approved by Majlisi Milli is sent to the president of the country for signature. The president may sign or may not sign a new law and send it back.

According to the Constitution of Tajikistan, if the President returns the law, Majlisi Milli and Majlisi Namoyandagon will repeatedly consider the given law in the order established by the Constitution. If by repeated consideration the constitutional law is approved, meaning that a quarter of members of Majlisi Milli and deputies of Majlisi Namoyandagon have voted for it, the president signs the constitutional law within ten days.

When the president signs the law it will be published in official newspapers: Jumhuriyat (The Republic), Sadoi Mardum (the Voice of the People), Narodnaya Gazeta (The People's Newspaper), and Akhbori Majlisi Oli (Parliament Gazette). Newly enacted laws are published in three languages (Tajik, Russian, and Uzbek). According to the Constitution the laws come into force after official publication. The same structure exists for making amendments and revisions on already existed laws of the Republic of Tajikistan.

Tajikistan People's Involvement in Adoption and Enactment of New Laws

People of Tajikistan have a right to propose a new law or make an amendment to the already existing laws. The Constitution of the Republic of Tajikistan (article 27) states that "each citizen has the right, directly or through representatives, to participate in political life and in the governing of the state." Each citizen of Tajikistan upon reaching 18 years old can participate in political life of the country and in political events like elections or referendums. One of such people's participation and proposing a new law in the country took place on May 24, 2007, during the enactment of a new law on reregulating national customs and religious rituals

The new law was adopted on the basis of people's proposals to put the national traditions and customs in a certain order. People sent their proposals to their deputies and members of Majlisi Oli (Upper Chamber of Parliament) and Majlisi Namoyandagon (Lower Chamber of Parliament). The law enactment process took place with joint collaboration of local population and the entire process was broadcasted on national TV and radio channels within the entire country. People actively participated during the proposal process and provided their visions on what type of law they prefer to have.

The law on "Regulating National Customs and Religious Rituals" was approved by both members and deputies of Majlisi Oli and Majlisi Namoyandagon and finally was approved and signed by the President of the country Emomali Rahmon on May 24, 2007. The following law was adopted as the majority of Tajikistan population expressed their concerns on wasting the finances on locally existed traditions while majority of Tajik families have big families and face financial hardships these days. People explained their concerns and wishes on having certain strategic plans like enactment of a law that required everyone to follow it equally and legally. The law also was adopted

and enacted to support government's strategic plan to reduce poverty in the country, and develop sustainable economic growth, and raise the living standards of the people of Tajikistan.

The newly enacted law allows celebrating national traditions and religious rituals such as weddings, funerals, big people's gatherings and many small and big customs and traditions within certain limits. The new law set limits on the number of people attending and participating in these traditional events, expenditure of resources for these events, and also bans some of the rituals and customs (President of Tajikistan official website, nd).

CHAPTER FOUR. DATA ANALYSIS

Discussion

In chapter four I will discuss what aspects of the FOIA are relevant to the current situation in Tajikistan and what elements the FOIA has that can fit to be implemented into the Media Law of Tajikistan. I will also discuss what implementation of key aspects of the FOIA would give to Tajik journalists, Tajik citizens, and the country in general.

First, the historical background of the FOIA enactment in the United States has similarities with the Republic of Tajikistan's current situation. As mentioned by Moorhead (1973), people in the United States have wanted to know what their government was doing from the day the nation was founded. People in the U.S. believe they have the right to know the activities carried out by their government. The same situation is currently taking place in the newly established independent nation of Tajikistan. People want to know what the Tajik government is doing, and people want to have access to governmental records, government projects, and government decision-making processes. Tajikistan is moving through the early stages of existence as a free and independent country. People of independent Tajikistan want to be aware of what is happening in the governing body of the country. They want to know more than they are currently told and shown now by the government. Many citizens in Tajikistan perceive a government misinformation process is taking place. People show distrust regarding government activities, and at the same time, the government tries to persuade people about the rightness of governmental activities, justifying the correctness of governmental actions and policies. Here, President Abraham Lincoln's words seem appropriate to heed: "Let the people know the facts and the country will be saved." Tajik people believe the government is theirs, and they rely on it, vote for it, and believe

that together the people are building Tajikistan. If the government wants harmony and more trust from people, it needs to be open and sincere. Moorhead (1973) also considers openness of the government one of the necessary steps in building the harmony between people and government. He states in particular: "If government is to be truly of, by, and for the people, the people must know in detail the activities of government" (p. 5). People in Tajikistan assume that they now live in different times than they did under Soviet autocratic rule, and they want all the rights and openness of a truly democratic country. They believe the notion of democracy gives them the right to freely express their thoughts and gives them free access to information avenues, including the government's activities. But democracy without openness is not democracy. In this regard, Sherick (1978) quotes John E. Moss: "A democracy without the truthful flow of information from government to its people is nothing more than an elected dictatorship" (p. 5).

Second, chaos taking place in the implementation of media law in Tajikistan cannot be allowed to isolate journalists and media professionals. Journalists demand to be a part of shaping media law definitions, inclusions, and exclusions and to represent the citizens' rights in having access to all that a democracy allows. Inoyatov and Junaidov (2008) discuss the issue of making amendments to the Media Law of the Republic of Tajikistan, and in particular they ask the legislative branch of the county to explain the term "the source of information" and propose to define what the term means in the law. Also Inoyatov and Junaidov raise the issue in the media law of Tajikistan regarding lack of clear definition for the term "necessary information" and ask the legislative branch of the government to define what information needs to be provided to journalists and what information can legally be withheld.

Third, the Constitution of Tajikistan (Article 10) allows implementation of international laws – laws of other nations -- into the overall laws of the Republic of Tajikistan. The Constitution allows for certain international laws to come into force in Tajikistan after official publication of the proposed laws. So, constitutionally the implementation of FOIA is legally possible if it is debated in the both Majlisi Namoyandagon and Majlisi Oli of the Republic of Tajikistan.

Finally, the Media Law of the Republic of Tajikistan doubtless has many positive and workable terms for the work of media professionals and for the flow of information to the public. But at the same time, the following law has many negative aspects that block or create obstacles to the work of journalists and reporters. The monumental changes in the status of Tajikistan to a new, independent country ushered the nation's government, media, and people into a new era, requiring free flow of information that meets international standards applied in robust democracies. Tajikistan's people and media professionals are demanding that authorities cooperate with media and cooperate in informing the people. When the government falls short in this regard – and it often does –the media law of Tajikistan clearly needs refreshment in content and in the flexibility of its application. As Numonov (2009) says: “Practically, a new law should be enacted if 50% of the old law was amended.”

Findings

Methodology and Participants

Within the framework of the project I interviewed ten local and international journalists and media professionals. Among the interviewees were journalists who work or have worked in Tajik media and knew the strengths and weaknesses of the work in this field. Nine local and one American journalist and media professionals participated

in the study and agreed to fill in the e-mail interview prepared by the researcher. The interviewees were informed of the purpose of the study and reminded that their participation was voluntary. The e-mail interview consisted of open-ended questions that were asked in a consistent order. The purpose of asking the open-ended questions was to receive rich data. The participants' age ranged from 30 to 55, and they all were familiar with the Tajik media situation, Tajik media law and the country in general. The purpose of the study was to find out what journalists and media professionals who are working or have worked in Tajik media or media-developing organizations think about the implementation of the FOIA into the Media Law of the Republic of Tajikistan. Further, the study aimed to explore what implementation of the FOIA might provide to international journalists, Tajik citizens, and the media of the Republic of Tajikistan. All participants filled in the e-mail interview which consisted of open-ended and semi-structured questions. The participants' responses were coded and analyzed and from the results the study researcher elicited six major themes from several categories such as: media development, access to information, media law reforms, informed audience, order in the Media Law, and the democracy in the country.

Data Analysis Procedures

All participants filled in e-mail interviews that were transcribed using open coding, axial coding, and categorical coding systems. Coding of the e-mail interviews allowed the researcher to read the completed interviews and put each word into an appropriate category. The open coding produced an extensive list of conceptual categories. The researcher eliminated irrelevant categories emerged during the various steps of analysis.

Results

The information culled from analysis of all interviewees' responses revealed that the implementation of the FOIA into the Media Law of the Republic of Tajikistan would give many advantages to media professionals and Tajik citizens. Collectively, implementation of the FOIA was seen as leading to an ability to obtain access to governmental documents and more newsworthy information. Interviewees' responses showed that they believe Tajik citizens will be able to get news about burning issues that bother them and Tajik journalists will derive access to governmental information that in most cases is now hidden from the public. From the interviewees' responses, the researcher discovered six major themes from the twenty emergent categories. First, the researcher revealed all possible themes from participants e-mail interviews. Second, the themes were categorized according to their similar characteristics and meaning. Finally, the categorized themes were narrowed to six major themes which are:

- Media development
- Access to information
- Media law reforms
- Informed audience
- Order in the media law
- Democracy in the country

Media Development

Interviewees cited media development in almost all interviews. According to Interviewee Five: "with the implantation of the FOIA into media law of Tajikistan the work on mass media will change qualitatively in the entire country; when the information is accessible to everyone, then journalists will have more objectivity, the

approach to giving and searching of new foreshortenings of the information.” Proper laws allowing access to more information will definitely lead to the development of the media field, said Interviewee Two. The journalists will have more news and information that their audience is expecting from them. Interviewee One said the FOIA has definitely allowed media to be able to do its job more effectively in the United States. Interviewee One said that if FOIA is implemented in Tajikistan, Tajik media specialists will benefit from it, too, and the work journalists do will be more effective.

Access to Information

Access to information was the second theme that emerged from the coded categories. Most of interviewees stated that implementation of the FOIA will end cases of “information giving refusal” by governmental officials. According to Interviewee Four, the implementation of the FOIA would return to journalists’ those professional rights that they have regarding access to various types of information but are currently denied because of the way existing way is interpreted and applied. A law requiring more open access to information would make the job of media professionals different and more meaningful from current media practice. Interviewee Six wrote that “Tajikistan will gain from the implementation of the FOIA into the Media Law and more information will be open and accessible to its citizens.” Interviewee Two believes that the implementation of the FOIA will give the Tajik audience more information and journalists will gain the freedom to report.

Media Law Reforms

One of the most mentioned terms by the interviewees was “changes into the media law” and “media law reforms.” According to interviewees three, four and five,

the implementation of the FOIA into the Media Law of Tajikistan will clarify terms and create meanings for each term regarding media law. According to Interviewee Five, Tajik media law is not so bad, but it needs changes. Interviewee Three said that sometimes it seems necessary to undergo a complex revision of the existing media law of the Republic of Tajikistan, and sometimes it seems better for a new law to be passed that would meet international democratic standards regarding freedom of speech and expression.

Informed Audience

“Informed audience” was another theme that emerged from the interviews. Two interviewees said adoption of FOIA will make more information available to citizens and keep them informed. Tajik citizens want to know a lot of governmental information that Tajik citizens want to know and clarify many facts. The FOIA would allow journalists to find the answers to the audience’s questions, adding that finding the answers will help resolve issues that are creating disputes in the society. In short, two interviewees asserted that FOIA could allow for a freer flow of information that could clear up misunderstandings about public and governmental business. Interviewee One said that FOIA will provide citizens with information free from bias because journalists will be able to get information from the necessary sources if FOIA is adopted.

Order in the Media Law

The interviewees expressed that the implementation of the FOIA would fulfill gaps that exist in the Media Law of the Republic of Tajikistan. Interviewee One believes that to implement some key elements of the FOIA into the Media Law of Tajikistan is possible because the current law and FOIA have so many same or similar

features. Interviewee Seven considers that Tajikistan law regarding the flow of information will be complete if the FOIA is implemented into law.

Democracy in the Country

Some of the interviewees stated that the implementation of the FOIA into the Media law of Tajikistan would make the country more democratic. Interviewee # 4 considers that by only declaring that we are a democratic country we cannot become one, but we would become a real democratic country if we enacted laws like the FOIA that make the government accountable to people.

Discussion

The results of interviews were very surprising because most categories supported information from the literature review regarding the notion of law and information. The analysis of all interviews showed the important role of information in solving disputes in Tajik society. Schramm (1964) asserted the role of journalists as information providers, which was mentioned by interviewees in the study. Most of the interviewees touched on Schramm's points of view regarding the role of information in economic and societal issues. The interviewees also echoed Schramm's (1964) point regarding regulation of social tension through information.

A second surprising result was the common mention of the "role of law as structure-setting means." The majority of interviewees echoed Mermin's (1973) statements regarding the function of law and its influence on setting a structure for people to follow. The results of the interview analyses indicated that interviewees believe adoption of FOIA would be a proper step to provide balance and harmony in the functioning of Tajikistan's government structure. Interviewees stated that adoption of

FOIA would guarantee efficacy, harmony, and protect citizens from unfair government actions, limitations, and power, similar to Mermin's (1973) study.

Limitations and Areas for Future Research

This type of interview-based study has certain limitations. One of the obvious limitations of the study is the number of participants. Ten interviewees are too few to make generalized conclusions. Future research might be continued through studying the opinions of more Tajik media professionals and journalists to better understand the media issues and to obtain reliable and rich data. The participants should be chosen from among media professional and media lawyers who actually deal with both the media and the legislative system in Tajikistan.

CHAPTER FIVE. CONCLUSIONS AND RECOMMENDATIONS

Conclusion

The objective of this study was to investigate whether the FOIA could be implemented into the Media Law of the Republic of Tajikistan and what the Tajik journalists/reporters and audience will gain from the implementation of the FOIA into the Media Law of Tajikistan. The results of the study and analyses of Tajikistan's legal system have shown that the Constitution of Tajikistan allows the application of the international laws in case if Tajikistan laws are inconsistent or disagree with recognized international legal acts.

Also the people of Tajikistan have a right to propose new laws or changes to already existing laws of the country. Changes to laws or enacting new laws is possible through making proposals to Majlisi Namoyandagon (Lower Chamber of the Parliament) which it in turn sends the approved proposal to Majlisi Milli (Upper Chamber of the Parliament) for approval. Finally, the new law can be enacted after the President's signing and being published in official newspapers of the country.

The results of interviews conducted with 11 journalists and media professionals revealed that Tajik journalists/reporters need such a law as the FOIA in the media field. The study participants opined that the implementation of the FOIA will allow them to do a better job with providing information to their audience. The implementation of the FOIA would fulfill and make the media law of Tajikistan complete.

The findings of the study showed that the implementation of the law such as the FOIA into media law will develop the media field and provide more access to governmental information. In its turn, the development of Tajik media field and journalist/reporters access to information will lead to informed audience and proving Tajikistan to be a really democratic country.

The finding of this study is similar to Schramm's (1964) study in which he noted the essential role of information in national development, productivity, and regulating social tension. The study's participants also consider that the implementation of the FOIA in to media law of Tajikistan could contribute to the development of country in general and fix moderate people's tension caused by their unanswered questions. The openness of government could lead to more people's trust.

Current media law needs changing was the majority's response regarding the status of Tajik Media Law. Many aspects of the FOIA (if not the entire act) fit into Tajikistan's Media Law will help to clarify the terms and will complete Tajikistan's Law on Information that would be relevant to today's situation and the country's status. Study participants expressed that the implementation of the FOIA would make Tajik media law meet the international standards regarding obtaining information. Tajikistan is a democratic country, but current media law does not meet the country's status as a democratic society.

To make the Tajik audience aware of what is happening, the media and reporters need permission by law to keep people informed. Apparently, the work that journalist/reporters perform is tightly connected with countries' laws and regulations regarding the gathering information from various sources. The more freedom journalists/reporters get legally, the more varied information will be covered and provided to the audience.

People want to know everything and the governmental information in particular. The FOIA could satisfy many such curiosities. At the same time Tajik journalists/reporters could do more varied reporting than they do now. Tajikistan is country that has many big projects and foreign investment. Also, Tajikistan is a country that is already listed among the corrupted countries (world audit, 2007). So more

transparency would be an asset. The people of Tajikistan want to know what the government is doing, what is actually happening in the executive body of the country, and if all what they hear is reality.

Recommended Future Research

Implementation and adoption of new laws indeed requires considerable investigation and deep analyses. More research needs to be completed in this area to make more specific conclusions and to analyze media lawyers' points of view regarding the implementation of the FOIA into the country's law. Future research could analyze not only ten journalists/reporters' points of view but also more representatives of this field and Tajik lawyers regarding the Tajikistan's Media Law and the implementation of a foreign country's law.

Future research should also include examining the Tajik legislature deeply with Tajik media lawyers who work in this field and know all the strength and weaknesses of the current law. Also future research should analyze media lawyers' points of view regarding the implementation of the FOIA into the country's law and what procedures needed to be followed according to laws and regulations.

Once a new law is implemented, media professionals need to explore the effects of the FOIA in their work, both its positive and negative effects, progress or difficulties they encounter, and whether it meets their own and their audience demands. New studies need to be conducted to show to what extent the work of media improved and how much of previously hidden information become available to public. The following process will allow journalists and lawmakers in reality to analyze and try a new law making changes as necessary. Media needs to practice FOIA actively to ensure that government is really open with them and cooperate with them. Openness of government

and professional work of media will lead to more democratization of the country in general.

REFERENCES

- Aliev, H. (1997). Forming of Political system of Tajikistan: Political and Juridical Aspects. Retrieved February 25, 2009 from: <http://www.nato.int/acad/fellow/95-97/aliev.pdf>
- Bozorova, N. (2002). *Features - Researching Tajik Law: A Guide to the Tajik Legal System*. Retrieved February 25, 2009 from: <http://www.llrx.com/features/tajik.htm>
- Central Intelligence Agency (2007). *Freedom of Information Act: How to File a FOIA Request*. Retrieved February 3, 2009, from: <http://www.foia.cia.gov/exemptions.asp>
- Daugherty, R., Gregg P. L., & Lemberg, J. (2004). *How to use the federal FOI Act*. (9th ed.). Sigma Delta Chi Foundation of the Society of Professional Journalists, Newsday, Inc.
- Department of Justice v. Reporters Committee for Freedom of the Press., 489 U.S. 749 (1989).
- Embassy of Tajikistan to the United States of America (2009). *Tajikistan Government*. Retrieved March 2, 2009 from: <http://tjus.org/Government.htm>
- Foerstel, H.N. (1999). *Freedom of information and the right to know: the origins and applications of the freedom of Information Act*. London: Greenwood Press.
- Forsham v. Harris., 445 U.S. 169 (1980).
- Jordan v. United States Department of Justice, 591 F.2d 753 (D.C.Cir.1982).
- Henry, C. L. (2003). *Freedom of Information Act*. New York: Novinka Books.
- Junaidov, F. (2008). Necessity of revision of the Law of Republic of Tajikistan on press and other mass media. Retrieved October 29, 2008 from: http://www.khoma.tj/eng/index.php?option=com_content&task=view&id=20&Itemid

Library of Congress (2007). *Federal Research Division: Country Profile: Tajikistan*.

Retrieved February 28, 2009 from:

<http://lcweb2.loc.gov/frd/cs/profiles/Tajikistan.pdf>

Mansurova, G. (2002). The difficult reform of media law in Tajikistan. *Media Insight*

Central Asia, 24. Retrieved October 29, 2008 from:

<http://www.cimera.org/files/camel/en/24e/MICA24E-Mansurova2.pdf>

Marwick, C.H. (1985). *Your right to government information*. New York: Bantam

Books Inc.

Merriam Webster's Collegiate Dictionary (10th ed.). (1993). Springfield, MA:

Merriam–Webster.

Media Laws of Central Asian Countries. (2007). *The Law of the Republic of Tajikistan*

on the Press and other Mass Media. Retrieved March 3, 2009 from:

<http://www.medialawca.org/document/-52>

Mermin, S. (1973). *Law and the Legal System: An Introduction*. Boston: Little Brown

and Company.

President of Tajikistan official website. (n.d). *Speech of the President of the Republic of*

Tajikistan or Regulating the National Traditions and Customs. Retrieved March

1, 2009 from: <http://www.prezident.tj/rus/pravitelstvo.htm>

Public Citizen Health Research Group v. FDA, 704 F.2d 1280, 1291 (D.C. Cir. 1983).

Schramm, W. (1964). *Mass media and national development; the role of information in*

the developing countries. Stanford: California Stanford University Press.

Sherick, L.G. (1978). *How to use Freedom of Information Act*. New York: Arco

Publishing Company.

Stalbovskiy, O & Stalbovskaya, M. (2007). *Law of the Republic of Tajikistan: A Guide*

to Web Based Resources. Retrieved February 28, 2009 from:

<http://www.nyulawglobal.org/Globalex/Tajikistan.htm#TheLegalsystemofTajikistan>

The Freedom of Information Act, 5 U.S.C. § 552 (2002).

The National Security Archive. (1995). Retrieved February, 11, 2009 from:

<http://www.gwu.edu/~nsarchiv/nsa/foia/guide.html>

The Reporters Committee for Freedom of the Press. (n.d). *The promise of EFOIA*.

Retrieved, March 8, 2009 from: <http://www.rcfp.org/electaccess/>

The Freedom of information Clearing House. (n.d). How to File a FOIA Request: A Guide. Retrieved April 1, 2009 from:

http://www.citizen.org/litigation/foia_clinic/articles.cfm?ID=18221

Crone, T., Alberstat, P., Cassels, T., & Overs, E. (2002). *Law and the Media: An Everyday Guide for Professionals (4th ed.)*. Oxford: Focal Press.

U.S. Department of Justice. (DOJ). (2004). Freedom of information Act Guide.

Retrieved February 8, 2009, from:

http://www.usdoj.gov/oip/procereq.htm#N_4

World Audit. (2001). Retrieved July 1, 2009 from:

<http://www.worldaudit.org/corruption.htm>

APPENDIX A. IRB APPROVAL FORM

NDSU**NORTH DAKOTA STATE UNIVERSITY***Institutional Review Board*

*Office of the Vice President for Research, Creative Activities and Technology Transfer
NDSU Dept. 4000
1735 NDSU Research Park Drive
Research 1, P.O. Box 6050
Fargo, ND 58108-6050*

701.231.8995

Fax 701.231.8098

Federalwide Assurance #FWA00002439
Expires April 24, 2011

April 22, 2009

Dr. Paul Nelson
Dept. of Communication
Minard 321

Re: IRB Certification of Human Research Project:

**“Implementation of Top Five Freedom of Information Act Cases into Media Law of the
Republic of Tajikistan”**

Protocol #: **HS09221**Co-investigator(s) and research team: **Muhabbat Yakubova**Study site(s): **Tajikistan** Funding: **n/a**

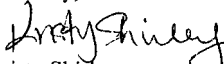
It has been determined that this human subjects research project qualifies for exempt status (category # **2b**) in accordance with federal regulations (Code of Federal Regulations, Title 45, Part 46, *Protection of Human Subjects*). This determination is based on the protocol form received 4/17/2009 and consent/information sheet received 4/9/2009.

Please also note the following:

- This determination of exemption expires 3 years from this date. If you wish to continue the research after 4/21/2012, submit a new protocol several weeks prior to this date.
- The project must be conducted as described in the approved protocol. If you wish to make changes, pre-approval is to be obtained from the IRB, unless the changes are necessary to eliminate an apparent immediate hazard to subjects. A *Protocol Amendment Request Form* is available on the IRB website.
- Prompt, written notification must be made to the IRB of any adverse events, complaints, or unanticipated problems involving risks to subjects or others related to this project.
- Any significant new findings that may affect the risks and benefits to participation will be reported in writing to the participants and the IRB.
- Research records may be subject to a random or directed audit at any time to verify compliance with IRB policies.

Thank you for complying with NDSU IRB procedures; best wishes for success with your project.

Sincerely,


Kristy Shirley
Research Compliance Administrator

APPENDIX B. NINE EXEMPTIONS IN FOIA

Under the FOIA, certain information is withheld from disclosure by the government. The withheld information must be justified on the basis of nine specific exemptions in the FOIA:

Exemption 1: Matters specifically authorized by executive order to be kept secret in the interest of national defense or foreign policy and are properly classified pursuant to such an order.

Exemption 2: Matters related solely to the internal personnel rules and practices of an agency.

Exemption 3: Matters specifically exempted from disclosure by statute, providing that such statute leaves no discretion on the issue or establishes particular criteria or types of material for withholding.

Exemption 4: Trade secrets and commercial or financial information that is privileged or confidential.

Exemption 5: Inter-agency or intra-agency communications which would not be available by law in litigation with the agency.

Exemption 6: Personnel and medical files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Exemption 7: Records or information compiled for law enforcement purposes, when the revelation of such records could: a) interfere with enforcement proceedings, b) deprive a person of a right to fair trial or impartial adjudication, c) constitute an unwarranted invasion of personal privacy, d) disclose the identity of a confidential source or confidential information furnished by the confidential source, e) disclose investigatory techniques or procedures for law enforcement investigations or prosecutions, and f) endanger the life or physical safety of law enforcement personnel.

Exemption 8: Matters related to reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

Exemption 9: Geological and geophysical information and data, including maps, concerning wells (Foerstel, 1999, pp. 61-62).

APPENDIX C. FREEDOM OF INFORMATION ACT

5 U.S.C. § 552

As Amended in 2002

§ 552. Public information; agency rules, opinions, orders, records, and proceedings

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public--

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so

published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying--

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register;

(C) administrative staff manuals and instructions to staff that affect a member of the public;

(D) copies of all records, regardless of form or format, which have been released to any person under paragraph (3) and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records; and

(E) a general index of the records referred to under subparagraph (D);

unless the materials are promptly published and copies offered for sale. For records created on or after November 1, 1996, within one year after such date, each agency shall make such records available, including by computer telecommunications or, if computer telecommunications means have not been established by the agency, by other electronic means. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, staff manual, instruction, or copies of records referred to in subparagraph (D). However, in each case the justification for the deletion shall be explained fully in writing, and the extent of such

deletion shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by the exemption in subsection (b) under which the deletion is made. If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made. Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of an index on request at a cost not to exceed the direct cost of duplication. Each agency shall make the index referred to in subparagraph (E) available by computer telecommunications by December 31, 1999. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if--

(i) it has been indexed and either made available or published as provided by this paragraph; or

(ii) the party has actual and timely notice of the terms thereof.

(3)(A) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, and except as provided in subparagraph (E), each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

(B) In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format. Each agency shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of this section.

(C) In responding under this paragraph to a request for records, an agency shall make reasonable efforts to search for the records in electronic form or format, except when such efforts would significantly interfere with the operation of the agency's automated information system.

(D) For purposes of this paragraph, the term "search" means to review, manually or by automated means, agency records for the purpose of locating those records which are responsive to a request.

(E) An agency, or part of an agency, that is an element of the intelligence community (as that term is defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))) shall not make any record available under this paragraph to--

(i) any government entity, other than a State, territory, commonwealth, or district of the United States, or any subdivision thereof; or

(ii) a representative of a government entity described in clause (i).

(4)(A)(i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the

Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.

(ii) Such agency regulations shall provide that--

(I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

(II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

(III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. Review costs shall include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed under this section and for the purposes of withholding any portions exempt from disclosure under this section. Review costs may not include any costs incurred in resolving issues of law or policy that may be raised in the course of processing a request under this section. No fee may be charged by any agency under this section--

(I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

(II) for any request described in clause (ii)(II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

(v) No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed \$250.

(vi) Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

(vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo, provided that the court's review of the matter shall be limited to the record before the agency.

(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action. In addition to any other matters to which a court accords substantial weight, a court shall accord substantial weight to an affidavit of an agency concerning the agency's determination as to technical feasibility under paragraph (2)(C) and subsection (b) and reproducibility under paragraph (3)(B).

(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause is shown.

(D) Repealed by Pub. L. 98-620, Title IV, 402(2), Nov. 8, 1984, 98 Stat. 3335, 3357.

(E) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

(5) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

(6)(A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall--

(i) determine within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and

(ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.

(B)(i) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days, except as provided in clause (ii) of this subparagraph.

(ii) With respect to a request for which a written notice under clause (i) extends the time limits prescribed under clause (i) of subparagraph (A), the agency shall notify the person making the request if the request cannot be processed within the time limit specified in that clause and shall provide the person an opportunity to limit the scope of

the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. Refusal by the person to reasonably modify the request or arrange such an alternative time frame shall be considered as a factor in determining whether exceptional circumstances exist for purposes of subparagraph (C).

(iii) As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular requests--

(I) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(II) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(III) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(iv) Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for the aggregation of certain requests by the same requestor, or by a group of requestors acting in concert, if the agency reasonably believes that such requests actually constitute a single request, which would otherwise satisfy the unusual circumstances specified in this subparagraph, and the requests involve clearly related matters. Multiple requests involving unrelated matters shall not be aggregated.

(C)(i) Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable

time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.

(ii) For purposes of this subparagraph, the term "exceptional circumstances" does not include a delay that results from a predictable agency workload of requests under this section, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests.

(iii) Refusal by a person to reasonably modify the scope of a request or arrange an alternative time frame for processing the request (or a modified request) under clause (ii) after being given an opportunity to do so by the agency to whom the person made the request shall be considered as a factor in determining whether exceptional circumstances exist for purposes of this subparagraph.

(D)(i) Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for multitrack processing of requests for records based on the amount of work or time (or both) involved in processing requests.

(ii) Regulations under this subparagraph may provide a person making a request that does not qualify for the fastest multitrack processing an opportunity to limit the scope of the request in order to qualify for faster processing.

(iii) This subparagraph shall not be considered to affect the requirement under subparagraph (C) to exercise due diligence.

(E)(i) Each agency shall promulgate regulations, pursuant to notice and receipt of public comment, providing for expedited processing of requests for records--

(I) in cases in which the person requesting the records demonstrates a compelling need; and

(II) in other cases determined by the agency.

(ii) Notwithstanding clause (i), regulations under this subparagraph must ensure--

(I) that a determination of whether to provide expedited processing shall be made, and notice of the determination shall be provided to the person making the request, within 10 days after the date of the request; and

(II) expeditious consideration of administrative appeals of such determinations of whether to provide expedited processing.

(iii) An agency shall process as soon as practicable any request for records to which the agency has granted expedited processing under this subparagraph. Agency action to deny or affirm denial of a request for expedited processing pursuant to this subparagraph, and failure by an agency to respond in a timely manner to such a request shall be subject to judicial review under paragraph (4), except that the judicial review shall be based on the record before the agency at the time of the determination.

(iv) A district court of the United States shall not have jurisdiction to review an agency denial of expedited processing of a request for records after the agency has provided a complete response to the request.

(v) For purposes of this subparagraph, the term "compelling need" means--

(I) that a failure to obtain requested records on an expedited basis under this paragraph could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(II) with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

(vi) A demonstration of a compelling need by a person making a request for expedited processing shall be made by a statement certified by such person to be true and correct to the best of such person's knowledge and belief.

(F) In denying a request for records, in whole or in part, an agency shall make a reasonable effort to estimate the volume of any requested matter the provision of which is denied, and shall provide any such estimate to the person making the request, unless providing such estimate would harm an interest protected by the exemption in subsection (b) pursuant to which the denial is made.

(b) This section does not apply to matters that are--

(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) geological and geophysical information and data, including maps, concerning wells.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection. The amount of information deleted shall be indicated on the released portion

of the record, unless including that indication would harm an interest protected by the exemption in this subsection under which the deletion is made. If technically feasible, the amount of the information deleted shall be indicated at the place in the record where such deletion is made.

(c)(1) Whenever a request is made which involves access to records described in subsection (b)(7)(A) and--

(A) the investigation or proceeding involves a possible violation of criminal law; and

(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(3) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.

(d) This section does not authorize the withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

(e)(1) On or before February 1 of each year, each agency shall submit to the Attorney General of the United States a report which shall cover the preceding fiscal year and which shall include--

(A) the number of determinations made by the agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;

(B)(i) the number of appeals made by persons under subsection (a)(6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information; and

(ii) a complete list of all statutes that the agency relies upon to authorize the agency to withhold information under subsection (b)(3), a description of whether a court has upheld the decision of the agency to withhold information under each such statute, and a concise description of the scope of any information withheld;

(C) the number of requests for records pending before the agency as of September 30 of the preceding year, and the median number of days that such requests had been pending before the agency as of that date;

(D) the number of requests for records received by the agency and the number of requests which the agency processed;

(E) the median number of days taken by the agency to process different types of requests;

(F) the total amount of fees collected by the agency for processing requests; and

(G) the number of full-time staff of the agency devoted to processing requests for records under this section, and the total amount expended by the agency for processing such requests.

(2) Each agency shall make each such report available to the public including by computer telecommunications, or if computer telecommunications means have not been established by the agency, by other electronic means.

(3) The Attorney General of the United States shall make each report which has been made available by electronic means available at a single electronic access point. The Attorney General of the United States shall notify the Chairman and ranking minority member of the Committee on Government Reform and Oversight of the House of Representatives and the Chairman and ranking minority member of the Committees on Governmental Affairs and the Judiciary of the Senate, no later than April 1 of the year in which each such report is issued, that such reports are available by electronic means.

(4) The Attorney General of the United States, in consultation with the Director of the Office of Management and Budget, shall develop reporting and performance guidelines in connection with reports required by this subsection by October 1, 1997, and may establish additional requirements for such reports as the Attorney General determines may be useful.

(5) The Attorney General of the United States shall submit an annual report on or before April 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subparagraphs (E), (F), and (G) of subsection (a)(4). Such report shall also include a

description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

(f) For purposes of this section, the term--

(1) "agency" as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency; and

(2) "record" and any other term used in this section in reference to information includes any information that would be an agency record subject to the requirements of this section when maintained by an agency in any format, including an electronic format.

(g) The head of each agency shall prepare and make publicly available upon request, reference material or a guide for requesting records or information from the agency, subject to the exemptions in subsection (b), including--

(1) an index of all major information systems of the agency;

(2) a description of major information and record locator systems maintained by the agency; and

(3) a handbook for obtaining various types and categories of public information from the agency pursuant to chapter 35 of title 44, and under this section.