

The Paradox of Agency Responsiveness: A Federal FOIA Experiment

David E. Lewis
Abby K. Wood

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David E. Lewis
Vanderbilt University

Abby K. Wood
U.C. Berkeley

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Responsiveness defines democratic governance. For governments to be democratic they must carry out the will of citizens, either indirectly through elected officials or directly in response to citizen requests. A significant amount of work in political science and law examines why some administrative agencies are responsive or democratically accountable and some are not and why this might vary over time. In this research, agency responsiveness has generally been conceived of as responsiveness to political principals, the executive and (to a lesser extent) the legislature. The courts have also adopted the assumption that responsiveness to political principals helps to enable democratic accountability of agencies, using agencies' greater democratic accountability as a reason for judicial deference to agency decisions (*Chevron U.S.A Inc. v. National Resources Defense Council*).¹

Central to this research and jurisprudence are questions of agency design. From the moment they are created, agencies have different levels of political insulation that determine their level of responsiveness to elected officials (see, e.g., Lewis 2003; Moe 1989; Seidman 1998; Wood and Bohte 2004; Zegart 1999). Independent regulatory commissions like the Federal Trade Commission or Nuclear Regulatory Commission, for example, are designed to be insulated from political control. Other agencies, such as cabinet departments, are not designed with insulation from public pressures as a primary goal. These agencies are therefore much less insulated from elected politicians and arguably more democratically accountable.

In recent years, policymakers have become increasingly interested in another kind of agency responsiveness – responsiveness directly to the people through the various open government laws. The White House Open Government Initiative has a specific focus on

¹ 467 U.S. 837 (1984).

information availability directly to the public.² From creating centralized government websites such as data.gov and foia.gov to ease citizen information searches to de-classifying documents and ramping up Freedom of Information Act responsiveness, the Obama Administration reports that it has made progress in opening up government and encouraging agencies to be more directly responsive to citizens. Congress has also allocated substantial time and attention to increasing public access to information. For example, one of Rep. Darrell Issa's (R-CA) first priorities after taking over the chairmanship of the House Committee on Oversight and Government Reform was making sure that agencies respond in a timely fashion to Freedom of Information Act Requests.³ Senators Charles Grassley (R-IA) and Patrick Leahy (D-VT) similarly have publicly sought changes in the Department of Justice's rules on FOIA requests.⁴

There are good reasons to believe, however, that responsiveness to elected officials does not equate with responsiveness to the public. Indeed, more "political" agencies can be less responsive because electoral or political motivations may be inconsistent with the demands of public accountability. For example, agencies acting at the behest of elected officials may want to keep certain information hidden if this information is potentially embarrassing for elected officials. Added layers of political review can reduce openness by preventing the release of embarrassing information and generating delay on eventually-released information. In addition, agencies designed to be responsive to elected officials can be less responsive to the public

² See Hansell, Saul. 2009. "Ideas Online, Yes, but Some Not So Presidential." *New York Times*, June 22, 2009 (<http://www.nytimes.com/2009/06/23/technology/internet/23records.html>, last accessed March 16, 2012) and the White House's own description of the project (www.whitehouse.gov/open, last accessed March 16, 2012);

³ Lipton, Eric. 2011. "Republican Congressman Proposes Tracking Freedom of Information Act Requests." *New York Times*, January 28, 2011 (<http://www.nytimes.com/2011/01/29/us/politics/29issa.html>, last accessed March 8, 2012). See also O'Keefe, Ed. 2012. "Agencies Poorly Tracking FOIA Requests, Report Says." *Washington Post*, March 15, 2012 (http://www.washingtonpost.com/blogs/federal-eye/post/agencies-poorly-track-foia-requests-report-says/2012/03/14/gIQANneaCS_blog.html, last accessed March 16, 2012).

⁴ Gerstein, Josh. 2012. "Patrick Leahy, Chuck Grassley on Warpath Over Stalled FOIA Recommendations." *Politico*, March 13, 2012 (<http://www.politico.com/blogs/under-the-radar/2012/03/patrick-leahy-chuck-grassley-on-warpath-over-stalled-117303.html>, last accessed March 16, 2012).

because agency efforts to respond to elected officials can take valuable time and resources away from other agency activities, which include responding to the public. Finally, agencies designed to be responsive to political principals may experience generic management difficulties that affect performance in multiple areas, including citizen requests for information.

In this paper we address the question of whether there is a tradeoff between designing agencies to be responsive to elected officials and designing them to be responsive to citizens by looking at the case of agency responsiveness to Freedom of Information Act (FOIA) requests. Under FOIA individual citizens may request any record and the agency is obligated to reply with the record within 20 working days.⁵ We submitted a series of identical control and treatment FOIA requests to federal agencies.⁶ Since the entire federal executive branch is subject to the same FOIA requirements, we create a measure of responsiveness by recording features of agency responses such as response times, the number of exemptions claimed, and whether fees were erroneously charged. We find that the agencies designed to be the most responsive to elected officials are the most conservative in releasing information, the least likely to respond to our requests and the slowest when they do respond. There is no evidence that they are more likely to otherwise respond adversely to the requester (charge fees, misunderstand request, or harass the requester). Our findings have important implications for the our understanding of democratic governance, the way courts should make decisions about whether to defer to agency judgments, and federal agency performance more generally.

⁵ We provide more details about the FOIA process below.

⁶ The data requested through the Freedom of Information Act is information relevant to other research projects at Vanderbilt and Berkeley but requested in such a way that the process of responding to these requests also provides useful information in its own right.

AGENCIES AND RESPONSIVENESS

Scholars of political science and law have theorized about the responsiveness of government agencies. From the moment they are created, agencies have different levels of political insulation that determine their level of responsiveness to elected officials (see, e.g., Lewis 2003; Moe 1989; Seidman 1998; Wood and Bohte 2004; Zegart 1999). Responsiveness to the president has been emphasized by legal scholars who argue for a unitary executive (Calabresi 1995) and those who champion the power of the president and executive branch in policymaking (Kagan 2001; Lessig and Sunstein 1994; Pierce 1989), as well as by political scientists explaining what causes variation in political accountability (see, e.g., Lewis 2008; Moe 1985, 1989; Wood and Waterman 1994). The president has the power of removal, and in response to public outrage at lapses in accountability, presidents can remove agency heads or accept their resignations. The president can also change the direction of policy in an agency through the use of various types of presidential directives (e.g., executive orders, national security directives), which can indirectly correct for accountability lapses (Howell 2003; Mayer 2001). The president can also influence agency decisions through spending decisions, the broad power of regulatory review, control over federal litigation, and day-to-day decisions about how to prioritize the energies and resources of the federal government in the administration of law (Devins and Herz 1998; Fisher 2000; Nathan 1975; Waterman 1989). Ultimately, the president is accountable to the people, and the logic of that accountability is that if the people disapprove of agency performance, they can change the party in control of the agencies by changing the chief executive – every four years, the people have the ability to exercise this sort of indirect accountability.

Agencies are also responsive to political principals in the legislature, who create and oversee most agencies (see e.g., Aberbach 1990; Dodd and Schott 1979; McCubbins and Schwartz 1984; Weingast and Moran 1983). Legislative committees, responding to public opinion, can hold agencies accountable by conducting oversight hearings that communicate public disapproval of agency activities. The legislature controls the power of the purse and thereby appropriations (Article I), which allows it to reduce agency funding in response to public dissatisfaction with agency performance. The legislature can also threaten to grant or withhold authorization or appropriations and otherwise creatively sanction executive officials with a variety of tactics ranging from public sanction to the elimination of agencies or programs valued by executives (Aberbach 1990; Dodd and Schott 1979; McCubbins and Schwartz 1984). This provides the legislature tremendous leverage to influence the behavior of agency appointees, another avenue for political accountability of agencies.

But are agencies really accountable to the people via the president and Congress? Certainly, some are more accountable than others. Independent central banks like the Federal Reserve, for example, are designed to be insulated from political control so that the government can resist public pressures to manipulate monetary policy (e.g., inflate the currency to ease the payment of debts). Members named to the Board of Governors of the Federal Reserve serve for fourteen-year terms and cannot be removed except for cause. The creators of this structure feared that electorally-motivated politicians would interfere in monetary policy in ways that would be harmful for economic growth and stability in the long run. Other agencies, like cabinet departments, are not designed with insulation from public pressures as a primary goal. These agencies are headed by political appointees who are removable at will by the president, and the number of appointees has increased over time (Hecl 1977; Light 1995; National Commission

on the Public Service 1989, 2003; Lewis 2008; Suleiman 2003). They are therefore much less insulated from politicians, which leaves them more open to interference from political actors.⁷ There is substantial variation across the federal executive establishment in the depth and penetration of political appointees (Lewis 2008).

Agencies' democratic accountability is offered as a rationale to justify judicial deference to agency decisions. In *Chevron v. NRDC*, the Supreme Court rationalized its prescription of broad deference to agencies as follows:

“Judges are not experts in the field, and are not part of either political branch of the Government.... While agencies are not directly accountable to the people, the Chief Executive is, and it is entirely appropriate for this political branch of the Government to make such policy choices -- resolving the competing interests which Congress itself either inadvertently did not resolve, or intentionally left to be resolved by the agency charged with the administration of the statute in light of everyday realities.

When a challenge to an agency construction of a statutory provision, fairly conceptualized, really centers on the wisdom of the agency's policy, rather than whether it is a reasonable choice within a gap left open by Congress, the challenge must fail. In such a case, federal judges -- who have no constituency -- have a duty to respect legitimate policy choices made by those who do.”⁸

⁷ Justice Stevens recently recognized this distinction, in his *Fox v. FCC* dissent about “fleeting expletives”. Justice Stevens argued that the FCC should get less judicial deference because it is less tied to the executive branch than executive agencies. (*Fox v. FCC*, 556 U. S. ____ (2009). Stevens, dissenting.) *See also* May (2010).

⁸ *Chevron* at 865-866.

The *Chevron* majority claims that agencies are not “directly accountable to the people”. This is true in the sense of accountability enabling the people to directly remove an official from office. However, people make direct claims on agencies all the time, from FOIA requests to proposing regulations and participating in the notice and comment process. In that sense, agencies can indeed be directly *responsive* to the people. That responsiveness is the key component of accountability, and when that responsiveness is lacking, democratic accountability suffers.

Agencies and Direct Responsiveness

There are a number of reasons why designing agencies to be responsive to political direction can decrease responsiveness to the public. The relationship between citizens and government agencies is a series of principal-agent relationships, first between citizens and their elected officials, second between elected officials and agency appointees, and then between appointees and the government agencies they manage. Generic sources of agency loss in principal-agent relationships stem from the inability of principals to write specific contracts outlining a schedule of rewards and punishments for the delivery of specific outputs. Divergent preferences between principals and agents and information asymmetries between these actors induce agents to take actions that deviate from those preferred by the principal. There can be agency loss in each portion of this delegation chain, leading to substantial divergence between what citizens want and agencies produce. Intuitively, one might think that removing links in the chain by making public interaction with agencies direct would reduce agency losses. Direct citizen involvement with agencies unmediated creates agency losses of its own, however.

To begin, it is difficult for agencies to determine how to be responsive to the public since the public is comprised of millions of persons who disagree about what agencies should be

doing. Elected officials are better positioned by democratic legitimacy and skill to interpret the meaning of elections and translate electoral outcomes into directions for administrative agencies, particularly since elected officials also have significantly more information about agency activities than citizens do. Citizen requests for agency activity – such as the provision of government information – may not reflect the preferences of a majority of citizens. While an overwhelming majority of citizens may agree with the goal of agency transparency and responsiveness to citizens, they disagree about how much emphasis to place on citizen requests relative to other agency tasks. Citizens also disagree about which citizen requests have merit and if, how, and when agencies should respond to such requests.⁹

Not only is it difficult for persons to communicate majority interests to agencies effectively, citizen instruments of sanction are blunt and not very credible. Citizens that are unhappy with agency activity cannot threaten to withhold appropriations, hold hearings, or attach riders to appropriations bills. They can only complain and ask their elected representatives to do these things or, in rare circumstances, they may bring suit against the agency in federal court.¹⁰ When persons go directly to agencies to change policy, they lack the ability to credibly reflect a majority opinion and the tools to reward or sanction agencies. Agencies, therefore, are naturally more responsive to elected officials whose views are easier to divine and whose ability to sanction is significantly more credible.

⁹ The limited empirical evidence on agency effectiveness and responsiveness to direct democratic control suggests that agencies that are directly under the direction of voters perform worse than other agencies. The inability of citizens to communicate their preferences effectively may be one reason.

¹⁰ The legal personhood of groups of people, like corporations and associations, is related and interesting. However, because they are aggregations of the persons already contemplated in this model, we do not complicate our discussion here with such considerations. Associations and corporations can make many of these direct claims on agencies, and they are able to make FOIA requests as well. One difference could be that threats to ask the legislature to intervene in a dispute with an agency's policies might carry more weight when coming from a group of people organized into a corporation or association than a similar threat from an individual person.

Understandably, agency responsiveness to elected officials and their appointees is usually good news for democratic accountability. Citizens can elect officials who direct agencies according to majority preferences. Elected officials can synthesize public opinion and use their superior information and tools of sanction to direct agencies to produce the right types of policy outputs.

Problems emerge, however, when elected officials and the public have significantly different views about agency activities. In the case of citizen requests for information, for example, the president and his appointees may prefer to keep certain information hidden from the public if this information is potentially embarrassing for the administration. This can make more “political” agencies less responsive to citizen requests for information than other agencies. Agencies will refuse more requests for information and be less forthcoming in the information they do produce. Concern about the release of politically embarrassing information leads appointees to introduce additional layers of political review. This generates delay and more conservative decisions on the release of information.

The relationship between principals and agents is also complicated in this context by the fact that voters ask elected officials to deal with multiple different issues. Given constraints in time, attention, and resources, agencies cannot prioritize all agency activities at the same time. The stronger the tie between the agency and elected officials – e.g., through an increase in the number of appointees – the more effort and resources the agency will allocate toward being responsive to elected officials. Agency attention to the issues of concern to politicians, particularly in smaller agencies, can crowd out effort and attention allocated to being responsive directly to citizens.

Finally, aggressive micromanagement by principals that comes in more “political” agencies can reduce incentives for agents to spend time and effort developing expertise, processes, and procedures that will benefit the agency and the public more generally (Gailmard and Patty 2007; Huber and McCarty 2004; Stephenson 2007, 2008, 2011). When appointees cannot credibly commit to not intervening in agency decision making, agency performance can suffer across the board, not only in the FOIA process but in other areas as well. Employees are reluctant to go the extra mile to improve processes like FOIA since doing so may not be rewarded. Appointees are reluctant to reward civil service employees with the top jobs in agencies by replacing other appointees, and agency managers are restricted in their ability to reward civil servants with higher pay or benefits by federal pay guidelines. This makes it hard for the agency to recruit and retain the most expert career employees. While some agencies are structurally designed to limit political influence, others allow significant political influence. These differences across agencies have systematic effects on agency competence (Gallo and Lewis 2012; Gilmour and Lewis 2006; Heclo 1977; Lewis 2008).

In total, agencies designed to be most responsive to political principals may not be directly democratically accountable to the people. Most social science literature to date on this topic has lumped the two kinds of responsiveness into an umbrella of “democratic accountability”, but we argue here that they are distinct, and indeed that the institutional design of agencies creates a tradeoff between responsiveness to political or democratic principals. Divergent preferences between appointees and citizens, the crowding out that comes from responsiveness to elected officials, and generic management problems stemming from too much political intervention suggest a tradeoff between accountability to political officials and the public.

DATA AND ANALYTIC STRATEGY

To evaluate the responsiveness of agencies to citizens we examine citizen requests for information. We employ a within subjects experiment involving identical control and treatment Freedom of Information Act requests to 132 agencies. We analyze data about whether or not agencies confirm and respond to requests, confirmation and response times, and the quality of responses with bivariate analyses, simple regression, and differences-in-differences analysis. We conclude the data analysis by comparing responses to our requests with responses to similar requests by the Chair of the House Government Oversight and Reform Committee, Darrell Issa, months before our request.

Freedom of Information Act Requests

Evaluating the relationship between structural features—like the number of political appointments—and responsiveness is difficult because few comparable measures of agency responsiveness (or performance more generally) exist. An examination of the timing and quality of responses to identical FOIA requests provides a unique measure of agencies’ direct democratic accountability.¹¹ Under the Freedom of Information Act (1966) any person can request any agency record not covered by one of 9 exemptions.¹² Once the agency receives a request, the FOIA requires that it confirm receipt within 10 business days and issue a

¹¹ The measure in the time domain is particularly interesting, as most inter-agency comparisons focus on policy-related outputs, which are hard to generalize across the entire bureaucracy (for the outputs frequently used, *see generally* Van Thiel and Leeuw, 2002). Here we analyze a managerial task, rather than a political one, and we are able to time to complete identical tasks across agencies.

¹² These exemptions are: (b)(1) EXEMPTION - Protects Classified Matters of National Defense or Foreign Policy; (b)(2) EXEMPTION - Internal Personnel Rules and Practices; (b)(3) EXEMPTION - Information Specifically Exempted by Other Statutes; (b)(4) EXEMPTION - Trade Secrets, Commercial or Financial Information; (b)(5) EXEMPTION - Privileged Interagency or Intra-Agency Memoranda or Letters; (b)(6) EXEMPTION - Personal Information Affecting an Individual's Privacy; (b)(7) EXEMPTION - Investigatory Records Compiled for Law Enforcement Purposes; (b)(8) EXEMPTION - Records of Financial Institutions; (b)(9) EXEMPTION - Geographical and Geophysical Information Concerning Wells. This list provided by the Department of Commerce (<http://www.osec.doc.gov/omo/foia/exemptions.htm>, last accessed June 12, 2011).

determination within 20 business days of receiving a request, excluding weekends and holidays.¹³ This determination can be to fill the request, fill it in part, decline the request, or indicate that the agency has no records responsive to the request. Agencies may ask for extensions to this time frame or stop working on a request until the requester provides fees or clarifying information. After the agency responds to the request, if the requestor disagrees with any exemptions or non-response, she may file an appeal within the agency. If she remains unsatisfied after appeals within the executive branch, the requestor's next remedy is in the courts.

Internal agency FOIA processes undoubtedly vary to some degree between agencies. Indeed, one of our proposed mechanisms is that general management challenges and time and resource constraints among agencies built for political responsiveness will have weaker FOIA processes in some ways. Based on interviews conducted with current or former FOIA officers at the Department of the Interior, General Services Administration, and Pension Benefit Guaranty Corporation we understand that agency FOIA processes often have features in common. The FOIA officer receives the request and enters it into an internal spreadsheet. That person then sends it to the appropriate internal office or employee, recording the transfer in the internal spreadsheet as well. When the officer receives it back, that too goes in the internal tracking document. We also know from our interviews that the job of receiving, cataloging, and filling FOIA requests is not particularly sought after by bureaucrats. One interviewee told us that the FOIA officer is in many ways "the low man on the totem pole."

On May 9, 2011, we submitted FOIA requests to almost all agencies in the federal government.¹⁴ These totaled 264 requests targeting only the FOIA office (132 of each type). Our

¹³ In order to make a FOIA request, one must only send a request to the agency stating the records requested, willingness to pay for searching time and photocopies, the fee category of the request, and contact information.

¹⁴ If two agencies shared a FOIA office or officer, we only sent the request to the "parent" agency that hosted the FOIA office. This design choice resulted in our excluding all military commands (like Africa Command and

requests, sent by different people on the same day, are located in Appendix B. Each agency received a baseline (control) and sensitive (treatment) request and we measure whether the agency responds (confirm, final response), their response time if they respond, the number of exemptions claimed, and the quality of the response for each request. The baseline request asks agencies to provide “the agency’s FOIA log from 2010 or equivalent listing the FOIA request number, name of requester, and a description of the records being requested.” The politically sensitive request asks for “A list of FOIA requests from 2010 about which a political appointee (persons appointed under Schedule C, a non-career member of the Senior Executive Service, or a Senate-confirmed appointee) personally made an inquiry, personally reviewed, or personally had a hand in the disposition of the request.” Each request was mailed with a return address of a private citizen but the letter notes that the request for information is for educational purposes. We analyze these measures of responsiveness to determine whether agencies designed to be responsive to elected officials are less responsive to our FOIA requests than other agencies and particularly less responsive to politically sensitive requests.

FOIA Responses by Agency Type

The normal procedure for agencies is to send a confirmation by letter or email that they have received a request and they assign the request a unique case identifier. In some cases the confirmation and determination arrive in the same communication (i.e., we received your request and here is the determination). The first agency confirmations and determinations arrived on May 12, 2011. For the analysis in this paper the last data collected in response to these requests was received May 9, 2012, one year from the date we sent the letters, which is comfortably

Northern Command) and a few other DoD sub-agencies, as well as a few other agencies in similar situations. For the complete list of cases and those we excluded, see Appendix A.

longer than 20 working days from the time a request would reasonably be expected to reach an agency FOIA office. Out of 264 requests, we received *confirmation* of 218 by May 9, 2012 (82.6%). The average time to confirmation, if we give all of the outstanding requests the maximum time observed to date, is 79 days. Out of 264 agencies, 190 *filled* the request by May 9 (72%), and the average time was 126 days, giving non-responses the maximum time observed to date. Table 1 provides the list of agencies that had not filled either the baseline or treatment request sent to them after 365 days.

[Insert Table 1 Here]

Filling the request does not mean that agencies gave us the information we were seeking. Rather, this implies that they made a determination about the release of records. For agencies that made a determination, we collected data on the number of exemptions claimed and the quality of the response (did they inappropriately charge a fee, did they misunderstand the request, did they harass the requester, etc.).¹⁵ Among the 124 cases in which an agency provided us some form of records, 41 (33%) agencies claimed exemptions. Of the 192 responses, 33 (17.2%) agencies had responses that we classified as a poor response.¹⁶ Some examples of poor responses include:

- Charging exorbitant fees
- Asking for notarized proof of identity
- Claiming agency has no appointees when letterhead includes list of appointees

¹⁵ Since the persons sending the requests were educational requesters, no fee should be charged under FOIA.

¹⁶ Two responses were classified as poor responses even though no official response was provided. Each contact for clarification pauses the agency's statutorily-mandated 20 days to respond, and the pause is ended by the requestor's clarification. Most calls seemed to be made in good faith, rather than as an attempt to delay. One message we received, however, was rather overt. The FOIA officer stated that she would be out of town, and that we should return the call after she returned, but we (emphatically) *should not leave a voicemail*, presumably because our voicemail would "re-start the clock" on the agency's response time. This was coded as a poor response. Another poor response that was not a response was from an agency complaining that what we were asking was a lot of work but not actually ever filling the request. For the analyses that follow we look only at the cases where a response was provided by the agency where the agency had records responsive to our request.

- Changing the grounds on which a request is rejected.

Table 2 provides examples of agencies that provided low-quality responses and exceeded the 20 working day threshold for a response.

[Insert Table 2 Here]

Do structural features that enhance political responsiveness undermine democratic responsiveness? A number of different agency features are related to the degree of influence exerted by elected officials. One obvious measure is the number of appointees relative to the number of employees. To measure the degree of politicization we use the percentage of agency employees that are appointed $\times 100$.¹⁷ We also examine general differences in agency design. Agencies can be loosely grouped into agencies in the Executive Office of the President (0,1), the Cabinet (0,1), independent administrations (0,1), and independent commissions (0,1).¹⁸ Agencies in the cabinet should be more responsive to political appointees and elected officials than agencies designed to be insulated from their influence such as independent regulatory commissions. Using these different features of agency design should give us a nice picture since neither politicization nor the general categorization of agencies is a perfect measure of responsiveness to elected officials. For example, the number of appointees is not a perfect measure of responsiveness since commissions have numerous appointees but their party balancing requirements and fixed and staggered terms are intended to insulate them from political influence.

¹⁷ More specifically, in the full models we use $\ln((\# \text{Senate confirmed positions} + \# \text{non-career SES} + \# \text{Schedule C}) / \# \text{employees March 2011}) \times 100$. We collected the number of Senate-confirmed positions from the 2008 Plum Book and the other data from March 2011 data from OPM's Fedscope website (<http://www.fedscope.opm.gov/>, last accessed June 11, 2011). The mean is 2.5 and the standard deviation is 5.9 (min 0, max 41). Since this variable is skewed significantly toward 0 we include the natural log of this number.

¹⁸ Independent commissions include all agencies outside the EOP or cabinet that are commissions. This differs from the group of independent regulatory commissions, a group which commonly includes the Commodity Futures Trading Commission, Consumer Product Safety Commission, Equal Employment Opportunity Commission, Federal Communications Commission, Federal Trade Commission, National Labor Relations Board, Nuclear Regulatory Commission, and Securities and Exchange Commission.

The location of FOIA officers varies across agencies and is unrelated to the number of appointees in an agency.¹⁹ FOIA officers are found in political offices, like the office of the secretary; legal offices, like the general counsel; and more public-oriented offices, like the office of information or the office of communication. FOIA officers are also found in management offices. Including an indicator for location of the FOIA office in the executive secretariat provides a means of evaluating how proximity to appointees influences FOIA office performance. If locating a FOIA office in the secretariat politicizes the FOIA process, then mechanisms like generic management challenges, caused in part by micromanagement and increased layers of review, could be at play.

In Figure 1 we graph the average response times by type of request and by high (top 25%) and low politicization (bottom 75%) agencies. As expected, agencies took longer to fill our politically sensitive requests. The slower response time for the sensitive request may be due to increased search time required to find out whether appointees were involved in reviewing different requests or because of the mechanisms we propose, such as increased review and scrutiny from public officials of the sensitive requests, though as we demonstrate through regression analysis, the location of the FOIA office seems to be at play as well.²⁰ The figure also shows that high politicization agencies were slightly slower to respond to our politically-sensitive requests than low politicization agencies. Interestingly, however, they were quicker to respond to the baseline request. The different treatment of baseline and sensitive requests by high

¹⁹ Additionally, some FOIA officers fill FOIA requests all day, while others have other roles they perform within the agency. Extensive research into the history of FOIA offices and fulfillment revealed longstanding variation in responsiveness across agencies since the early days of FOIA (Gianella, 1971; Nader, 1970), but we have found no evidence that the location of FOIA was consciously chosen for political reasons or in response to good or bad performance early on (Clark, 1967; Wozencraft, 1967; Gianella, 1970).

²⁰ The number of appointees has almost no correlation with the politicization score (corr = -0.0675), so we find this threat to be unlikely. This is especially true because our accelerated failure time model, presented below, shows the biggest effect for FOIA offices located in the secretariat. In the interest of being thorough, we have conducted a robustness check at the level of the bureaus that will further adjudicate between these two possibilities.

politicization agencies suggests a systematically different treatment of the politically sensitive requests.

[Insert Figure 1 here.]

We also graph the average confirmation and response times by differences in agency design. The figure indicates that agencies in the Executive Office of the President (EOP) and Cabinet were the slowest to confirm our requests and independent administrations were the quickest, though the differences are not large for a simple confirmation. Agencies that are the most politicized were the slowest to confirm that they received our FOIA requests. Cabinet and EOP agencies were again the slowest responding to our requests, followed by independent commissions and other independent agencies.²¹ Agencies designed to be most responsive to political principals, those in the EOP and cabinet, were the slowest in responding to citizen requests for information.

[Insert Figure 2 here.]

In Figure 3 we focus not on agency design but FOIA offices themselves. Figure 3 graphs confirmation and response times by the location of the FOIA office. Interestingly, agencies with FOIA offices in the Office of the Secretary or commission secretariat were quicker to confirm receipt of our request but slightly slower to respond to it. There are a number of possible explanations for this pattern. FOIA offices in the secretariat may receive the most requests and therefore best at automating responses but could also have the most political review of requests.

²¹ The pattern is slightly different if we break up EOP and Cabinet agencies. Agencies in the EOP appear to have filled our requests the *quickest*. Caution is necessary in interpreting the response times from EOP agencies, however, since there are only five EOP agencies subject to FOIA. Four responded to our request and in most of the cases, their response indicated that they had no records responsive to our request. When there are no records responses tend to be quicker. If we exclude the “no records” responses, the pattern looks more similar to the pattern of agency confirmation times.

Of course, there are other differences among agencies that may explain differences in confirmation and response times which account for in fuller models of FOIA response times.

[Insert Figure 3 here.]

In total, the simple descriptive data on FOIA responses suggests that agencies designed to be the most responsive to political principals are slower at responding to citizen requests for information.

Models of FOIA Response

To account for potential confounders we begin by estimating different variations of the following simple model:

$$Y_a = \alpha + \beta X_a + \phi p_a + \gamma R_a + \delta(R_a * p_a) + \varepsilon \quad (1)$$

for agency a , where Y_a is the number of days it takes an agency to fill a FOIA request, X_a includes agency specific controls (FOIA workload/FOIA office staff size, etc.), p_a is agency politicization, R_a is request type (baseline or sensitive), and ε is random error. Specifically, the models include controls for the log of the number of agency employees (mean 7.52; SD 2.63)²² and FOIA office workload. We measure the latter as the number of requests per FOIA staff person or, more specifically the # FY 2010 agency FOIA requests/# staff working in the FOIA office (153; min 0, max 844).²³ We also control for request type (baseline or sensitive).

Differences-in-differences

A common problem that emerges is that it is difficult to control for all relevant potential confounders in a simple regression. In other words, there is omitted variable bias so that ε is

²² The number of agency employees varies from 10 to 314,066. Given the skew and the possibility of influence by the extreme values, we include the log. The main results are robust to the way we control for agency employment.

²³ Source: <http://www.foia.gov/>, last accessed June 11, 2011.

better represented by $\varepsilon + \theta z_a$, where z_a is a confounding variable that captures differences in FOIA processes or other agency-level factors. For example, it may be that the covariates included above really do not capture the differences in FOIA processes for the Office of the Director of National Intelligence when compared to the Equal Employment Opportunity Commission. More generally, we may not be able to effectively account for variation in agency-specific factors such as agency structure, workload, capacity, and other aspects of agency work, culture, and design. This may jeopardize inference. To account for θz_a we can estimate a differences-in-differences regression. If we begin with:

$$Y_{\text{sens},a} = \alpha + \beta X_a + \phi p_a + \gamma R_a + \delta(R_a * p_a) + \varepsilon + \theta z_a \quad (2)$$

$$Y_{\text{base},a} = \alpha + \beta X_a + \phi p_a + \gamma R_a + \delta(R_a * p_a) + \varepsilon + \theta z_a$$

and if we assign R a 1 for a sensitive request and 0 for a baseline request, we can subtract one from the other, giving:

$$Y_{\text{sens},a} - Y_{\text{base},a} = (\alpha - \alpha) + \beta(X_a - X_a) + \phi(p_a - p_a) + \gamma(R_a - 0) + \quad (3)$$

$$\delta(R_a * p_a - 0) + [(\varepsilon + \theta z_a) - (\varepsilon + \theta z_a)].$$

When solved this gives:

$$Y_{\text{sens},a} - Y_{\text{base},a} = \gamma R_a + \delta(R_a * p_a) \quad (4)$$

where γ is the average difference in time between the baseline and sensitive requests and δ is the average effect of politicization on sensitive requests. Our expectation is that agencies designed to be responsive to elected officials will be less likely to respond to requests, slower when they do respond, and provide responses with lower quality information than other agencies. The more politicized agencies should be particularly unresponsive to the sensitive requests.

RESULTS

Do structural features that enhance political accountability undermine democratic accountability? In Table 3 we include estimates of simple logit models of whether or not agencies confirmed and eventually filled our requests. We include three models of both confirmation and filling. The first and fourth models include very conservative specifications without measures of politicization or FOIA office workload. We do this because it was impossible for us to get data on politicization and FOIA office details for some of the agencies in our dataset and these agencies were systematically different from those where the data were easy to obtain.²⁴

In the models that measure the number of appointees in the agency, increasing numbers of appointees is correlated with lower probabilities of confirming or filling requests. The coefficients are reasonably large and estimated precisely. Substantively, the estimates indicate that increasing the percentage of appointees by one percentage point, say from 0.5% (which is the percentage in the Office of Personnel Management) to 1.5% (which is the percentage in the Small Business Administration) decreases the probability that the agency sent a confirmation by 6-7 percentage points. It decreases the probability that an agency actually filled the response by 8-9 percentage points. This is important evidence that agencies with the features of political accountability (i.e., greater number and penetration of appointees) are actually less responsive to the public when it comes to requests for information. Features of administrative agencies that enhance political accountability may decrease direct democratic accountability. There is some modest evidence in the models that agencies with a higher percentage of appointees are

²⁴ The agencies for which we do not have politicization data were systematically more likely to be outside the cabinet and also quicker than cabinet agencies in responding to requests on average. Some excluded agencies include Amtrak, the Central Intelligence Agency, US Postal Service, the Tennessee Valley Authority, National Indian Gaming Commission, and Legal Services Corporation, and Special Inspector General for Iraq Reconstruction.

particularly less likely to respond to the politically sensitive requests as suggested by the coefficient estimates on the interaction between politicization and the type of request. We take this to be modest evidence that institutional designs that create increased layers of review could be a mechanism by which politicized agencies are less responsive.

[Insert Table 3 here.]

Interestingly, agencies in the Executive Office of the President (EOP) and Cabinet are not estimated to be consistently more or less likely to confirm or fill requests than other agencies. As the figures above suggested, the coefficient for EOP agencies is generally positive but we could not reject the null that EOP agencies were no more likely to respond to citizen requests for information. The coefficient estimates for cabinet agencies are similarly imprecisely estimated. In this model FOIA offices in the executive secretariat are estimated to be more likely to confirm requests but no more likely to respond to requests. In fact, the coefficient estimates are negative for the models of FOIA response, indicating that FOIA offices in the secretariat are less likely to respond to requests than those in other parts of the agency. However, we cannot reject the null that FOIA office location makes no difference in the probability that an agency responded to our FOIA request.

Agencies were also less likely to confirm or fill *politically sensitive* requests, 10 percentage points less likely than baseline requests. It should be noted, however, that in a large proportion of cases where agencies made a determination on a politically sensitive request, many were made because the agency determined that they had “no records responsive” to the request. This means that the politically sensitive requests that were filled came from agencies that found them easy to fill. There are very few cases, by contrast, where agencies have responded to a baseline requests with a “no records” response. The fact that agencies were slower to fill

politically sensitive requests could indicate that such requests get more review by agency officials before they are released. It is also possible, however, that these requests require more work than other requests.

These results help us evaluate one possible mechanism: that of a crowding-out effect. The coefficients on the number of FOIA requests per FOIA employee are zero. This evidence suggests that this is not a story about resource constraints, at least as far FOIA workloads are concerned. The agency could still face time and resource constraints in responding to either political principals or public requests, but those are unrelated to historic FOIA workloads. Of course, crowding out could influence the quality of responses even if it appears uncorrelated with the timing of responses, something we describe below.

Whether or not a FOIA office responded to a request is only one measure of responsiveness since some offices respond more quickly than others. Table 4 includes estimates from Accelerated Failure Time (AFT) models of the time it took for agencies to confirm or fill FOIA requests.²⁵ A positive coefficient indicates that it took agencies a longer time to respond to the FOIA requests. The coefficients indicate that more politicized agencies and FOIA offices take longer to respond to requests. The higher the percentage of appointees, the longer the time it takes to fill requests. Substantively, increasing the percentage of agency employees that are appointed from the bottom quartile to the top quartile is estimated to increase the median FOIA confirmation and response times by 7-8 days. This is further evidence that those agencies with features that presumably create political accountability may make agencies less responsive to the public and therefore less democratically accountable. Figure 4 graphs the estimated cumulative probability of FOIA requests being outstanding based upon agency politicization. The more

²⁵ We estimate a generalized gamma model since this allows for a flexible hazard rate and had the best fit according to the Akaike Information Criterion. We have also estimated Cox proportional hazards models and the results are similar.

politicized agencies are significantly more likely to still be outstanding over time. Interestingly, the interaction between request type and politicization suggests that the effect of politicization on FOIA response times is smaller for sensitive requests. When we remove “no records” responses, however, politicization is estimated to have the same effect on responsiveness to both baseline and politically sensitive requests.

[Insert Table 4 here.]

[Insert Figure 4 here.]

Notably, agencies in the EOP and, to a lesser extent, the Cabinet are estimated to be slower on average once controlling for a host of other agency and FOIA office characteristics, although this effect is not robust for the Cabinet across specifications. When FOIA offices are placed in the Office of the Secretary rather than management offices, general counsels’ offices, or public affairs offices, agencies are estimated to respond 16 to 57 days more slowly to citizen requests for information, respectively. Figure 5 illustrates the effect of FOIA office location by graphing the estimated cumulative probability that a request sent to a FOIA office is outstanding by the location of the FOIA office to which the request has been sent. There is a significantly higher probability that a request will be outstanding if the FOIA office is located in the office of the secretary, director, or chair of the commissions. That this is the case helps us to believe that it was not the logistical complication of having to track down appointees who might have intervened in FOIA requests that we introduced with our sensitive request, but instead the actual politicization of the FOIA office in the agencies that put the FOIA office in the secretariat.

[Insert Figure 5 here.]

Other model estimates indicate that large agencies are estimated to take longer to fill their requests while independent administrations are estimated to confirm and fill requests more

quickly than independent commissions. The FOIA workload per FOIA employee is again not correlated with the time required to respond.

Finally, Table 5 includes estimates of response quality, whether or not an agency claimed exemptions in filling the request or otherwise produced an inferior response to the request. These estimates are based upon fewer cases since they include only those cases that have generated a response (exemptions) or for which we are certain the agency received the request (poor response). The results here are inconclusive. The coefficients are less precise but generally suggest that more politicized offices are modestly more likely to claim exemptions. This is particularly the case for sensitive requests. Increasing politicization one percentage point from 0.5 to 1.5% increases the expected number of exemptions by 0.05. Interestingly, FOIA requests from cabinet agencies and FOIA offices in agency secretariats are estimated to be slightly *less* likely to claim exemptions to FOIA requests than independent commissions with FOIA offices in other locations. Substantively, cabinet agencies are estimated to produce one quarter of one exemption less per request than independent commissions and FOIA offices in the secretariat one quarter of one exemption less per request than FOIA offices in other locations. Larger agencies are estimated to claim more exemptions. A one standard deviation increase in employment is estimate to increase the number of exemptions per request by 0.22 exemptions per request filled.

Similarly, the results are suggestive but inconclusive with regard to the quality of response. We cannot reject the null that agencies with higher percentages of appointees are no more likely to produce a poor response. And, whereas locating FOIA operations in the political liaison's office correlates with fewer exemptions from FOIA officers, we see evidence that they are more likely to provide a poor response when they do respond. Coefficient estimates on FOIA

office in the secretariat are marginally significant in the two models of response quality. Agencies with FOIA offices in the secretariat are estimated to be 11 percentage points more likely to produce a poor response.

Interestingly, larger agencies and agencies with heavier workloads are slightly more likely to produce poor responses. Model estimates suggest that a one standard deviation increase in employment increases the chances of a bad response by 8 percentage points and a one standard deviation increase in the ratio of requests to FOIA employees increases it by 5 percentage points. Agencies that are overwhelmed with requests and under staffed are more likely to produce poor responses, to charge fees inappropriately or otherwise provide an unsatisfactory response. While larger agencies with overworked FOIA staffs were able to confirm and respond to requests as well as other agencies, they are estimated to produce inferior responses. This suggests, contrary to the results above that resource constraints do have an influence on FOIA response quality.

[Insert Table 3 here.]

In total, the simple analysis with controls suggests a robust relationship between whether or not the agency has the features we associate with political accountability and a lack of responsiveness to FOIA requests. Agencies designed to be responsive to political principals are less likely to confirm or fill requests and they respond more slowly. There is little evidence that these agencies are more likely to claim exemptions or respond poorly when they do respond. What evidence there is, however, suggests that quality of responses from the more politicized agencies is poorer.

Differences-in-differences

One difficulty with the simple analysis is that there is a significant amount of variation among agencies that can explain variation in FOIA responses that has little to do with political accountability. In the previous section, we sought to account for these confounding factors by including controls in model estimation. Another means of accounting for this variation is to analyze the difference in response times between baseline and politically sensitive requests. Specifically, is the difference in the time to confirmation between baseline and politically sensitive requests larger for more politicized agencies?

In Figure 6 we graph the differences in differences by whether or not the agency is politicized (defined as whether the agency is at or above the 75th percentile in its percentage of employees that are appointees). Regression estimates are included in Table 4.²⁶ The results in Figure 6 indicate that agencies in the top quartile in the percentage of appointees are particularly slower at responding to politically sensitive requests. Estimates suggest they are less likely to respond and slower to respond to such requests. More politicized agencies are no more likely to claim exemptions or respond poorly to politically sensitive requests. It is interesting that more politicized agencies take proportionately longer with politically sensitive requests and these are precisely the kinds of requests that are most important for democratic accountability. If citizens want to hold their government accountable, they need to know what their appointees have been doing. Yet agencies designed with a lot of appointees are reluctant to give out this kind of information. This is interesting evidence that agencies designed to be responsive to political principals are not the most responsive to the public.

²⁶ We have also estimated models using different cutoffs for the percentage of appointees. Models estimated with agencies in the top 10% in percentage of appointees show similar results but the estimates are less precise. Only those for confirmation and confirmation time remain significant. Models estimated with agencies in the top 33% in percentage of appointees show similar results but the estimates are also less precise. Only those for confirmation remain significant.

[Insert Figure 6 here.]

Table 6 also includes analyses of differences in sensitive and baseline requests by whether the FOIA office is in the secretariat. In the latter case, agencies with FOIA offices in the secretariat are estimated to be quicker to confirm sensitive requests but slower to respond to such requests and more likely to produce a response claiming exemptions or a poor response. In all cases, however, the estimates are imprecise and so we cannot reject the null that there are no differences between sensitive and baseline requests based upon the location of the FOIA office. Agencies that are politicized and have FOIA offices in the secretariat are less likely to be responsive to all types of citizen requests for information and there is some evidence to suggest that they are particularly unresponsive to politically sensitive requests although the evidence is inconclusive in the case of locating the FOIA office in the secretariat.

[Insert Table 6 here.]

RESPONSIVENESS TO DIFFERENT PRINCIPALS

In the above analysis, we test differences in responsiveness to the public between high and low politicization agencies. Our expectation, derived from the existing literature, is that high politicization agencies will be more responsive to political principals than they are to the public. An excellent opportunity to test our theory presented itself as we received responses to FOIA requests we made for a different project.

Since gaining the chairmanship of the House Committee on Oversight and Government Reform, Rep. Darrell Issa (R-CA) has emphasized his interest in ensuring agency responsiveness to Freedom of Information Act Requests. The most visible of his efforts in this regard was a request sent to 107 agencies about FOIA in January 2011. Specifically, Rep. Issa asked agencies for copies of agency FOIA logs from 2006 to 2011. This request is identical to the baseline

request we sent agencies four months later except that Rep. Issa was asking for significantly more data than we did. This means that by the time we sent our requests on May 9, 2011, Rep. Issa had already requested the same material from each agency.

The House Committee on Oversight and Government Reform recorded the responses to these requests and generously provided us the data. First, we note that all agencies were more responsive to Rep. Issa than to us. We received FOIA logs from 78% of agencies after 365 days and Rep. Issa received responses from 93% of agencies within 80 days. As is expected and appropriate in a democracy that designs agencies to be responsive to political principals, the agencies were more responsive to Rep. Issa's request. However, they were less responsive to an identical request from private citizens (us). This is particularly interesting because almost all of the agencies had received a request that encompassed the information we requested a few months previous.

Further, we examine (1) whether the agency responded to Rep. Issa and (2) whether the response was what *we* would consider poor, based on our coding of the responses to our baseline data.²⁷ Were more "political" agencies and FOIA offices more responsive to Rep. Issa's request than less "political" agencies? The answer, weakly, is yes. We are limited by the small number of cases and the fact that most agencies responded to Issa and did so within the time frame Rep. Issa specified.

To begin, it is important to note that all agencies in the EOP and all agencies with FOIA offices in the Office of the Secretary or Chair provided the committee the requested information. Among agencies in the top quartile in the percentage of appointees, 95% provided responses compared to 91% for the remainder. The agencies that did not provide a response are:

²⁷ The committee had a much more restrictive definition of "poor", including not providing the log in a sortable spreadsheet, or not having precise subject matter categorization. These were not things we requested in our initial request, and so unless a response like this was otherwise "poor" in nature, we did not code it as such.

- The Department of Commerce
- Export-Import Bank
- Legal Services Corporation
- National Archives and Records Administration
- National Science Foundation
- Office of Personnel Management
- Pension Benefit Guaranty Corporation
- Railroad Retirement Board

Among these agencies, only the Department of Commerce and the Office of Personnel Management would clearly classify as particularly responsive to the president. All but one of these agencies are located outside the Cabinet. Few of these agencies are designed specifically to be responsive to political direction and, given their lack of response to Issa, they are not. Not only did the less political agencies respond at lower rates but they appear to be slower as well. Of the 107 agencies, we were able to obtain response times for 50. The average response time for independent agencies was 28 days, compared to 21 days for agencies in the EOP or Cabinet. The agencies in the top quartile in the percentage of appointees responded, on average, in 20 days, compared to 23 days for other agencies. Neither of these differences is statistically distinguishable but they are suggestive.

The quality of these responses, however, tells a different story. While the more political agencies responded more quickly, they were more likely to give the committee logs from the wrong years or logs for only some portions of the agency. Of the 99 responses, 6 were clearly poor. These came from:

- Air Force

- Department of Health and Human Services
- Department of Justice
- Department of Veterans Affairs
- Federal Financial Institutions Examining Council
- Overseas Private Investment Corporation

Four of these agencies are in the Cabinet and the last of them is a notorious appointee-heavy agency. These agencies may have wanted to respond well but the quality of their FOIA operations limited their ability not only to respond to citizen requests but requests from political principals as well. This suggests that agencies with significant appointee penetration may perform poorly in general.

DISCUSSION AND CONCLUSION

In this paper we have called into question the assumption that responsiveness to political principals equates to democratic accountability. We also question the one-size-fits-all deference from the judiciary to agencies, at least to the extent that it is justified by agencies' greater democratic accountability as compared to the courts. We have further shown that, counterintuitively, the structures designed to increase agencies' political accountability correlate with decreased direct democratic accountability. While generic differences in agency location (EOP, cabinet, independent) had some influence on agency response times, agencies with more appointees as a percentage of all employees are less likely to respond and slower to respond than their counterparts with fewer appointees as a percentage of all employees. And agencies with the FOIA office in the secretariat, rather than general counsel, management, or public affairs branches of the agency, were much slower to both confirm and respond to our FOIA requests.

While distinguishing between the mechanisms at play is difficult, our results do indicate that extra layers of review might be at work, particularly when the FOIA office is located in the secretariat of the agency. Politicized agencies were particularly slow at responding to politically sensitive requests suggesting that the presence of appointees leads to “heads up” contacts from FOIA offices to political appointees.²⁸ This leads to increased review and delay in responses. We could not rule out that the attention agencies pay to political principals crowds out attention to activities such as FOIA. While workload per FOIA employee was not a predictor of the likelihood of responding or length of time to response, agencies with a significant number of requests per FOIA employee were more likely to produce poor responses. More generally, based on the nature of some of the slow responses even to confirm requests, it seems that general management challenges could impede the FOIA process. These results are consistent with past work that finds that increases in appointees damage agency management performance (Gallo and Lewis 2012; Gilmour and Lewis 2006; Hecl 1977; Lewis 2008).

Our argument is limited. We recognize that the agency role in providing information is only one type of agency role, fitting in a broader context of agency activities, primary of which are rulemaking and adjudication. Our measure imperfectly captures the accountability of agencies when acting in the roles of rulemaking and adjudication. Our findings show that there is variation in direct agency accountability to the people, and it should not be ignored, or assumed not to transfer to the agency roles more often examined by courts. If an agency is unaccountable in the role that is most directly associated with citizen contact, might it also be

²⁸ This is consistent with emails obtained by the Associated Press indicating that one reason for the delay in response to some FOIA requests was screening by political appointees. Wald, Matthew L. 2012. “Slow Responses Cloud Window Into Washington.” *New York Times*, January 28, 2012 (<http://www.nytimes.com/2012/01/29/us/slow-freedom-of-information-responses-cloud-a-window-into-washington.html?pagewanted=all>, last accessed May 23, 2012).

unaccountable in rulemaking or adjudication? The possibility remains, and it is highlighted by our findings.

But what does the empirical relationship between politicization and agency responsiveness to FOIA requests imply for democratic accountability? Is it possible that FOIA offices are being *more* democratically accountable by not responding generously to FOIA requests? Indeed, there is a long literature that describes how non-democratic institutions (e.g., courts, professional civil service) are necessary for democracy to flourish (see, e.g., Stephenson 2008). Agencies may be more democratically accountable, for example, by being more careful with requests that involve national security or raise privacy concerns. However, our requests had no connection to national security nor presented real privacy concerns (although this is clearly a subject of disagreement given the exemptions claimed by some agencies). We submitted requests that were either innocuous or politically sensitive but generally not a danger to national security or privacy. They were the kinds of requests that generate information useful to citizens trying to figure out how agencies are making decisions. This is particularly the case for politically sensitive requests. They are those most important for democratic accountability since information about what elected officials are monitoring within agencies and what they are telling agencies to do is precisely the kind of information voters need to hold government accountable. Yet, in more politicized agencies this information was released less often, more slowly, and with more exemptions.

More generally, it is hard to understand how agencies can be more democratically accountable, in the form courts understand it, by being less responsive to citizen requests for simple and uncontroversial information. Agencies are less democratically accountable when they refuse to fill requests, are slower to fill requests, provide less information, and make more

mistakes in filling requests. The presumption in the Freedom of Information Act is toward the release of information, yet the agencies designed to be *politically* accountable appear to deviate most from this presumption, failing to live up to the *democratic* accountability that provides an important rationale for judicial deference.

President Obama pledged to provide a more open government and pledged to make FOIA policies more open. Yet this study shows that the structures that any president relies upon for political responsiveness correlate with less openness in government, and weaker FOIA responsiveness in particular. More politicized offices are not more open and transparent, they are less open and transparent.

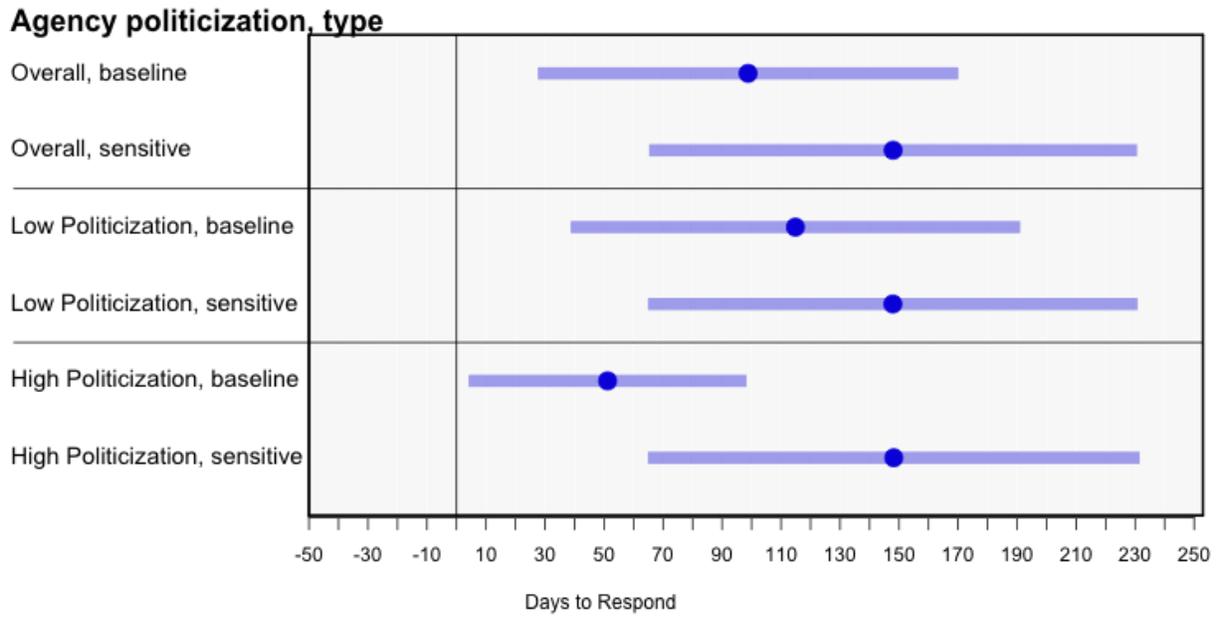
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Figure 1. Average Days to Fill Baseline and Sensitive Requests by Politicization

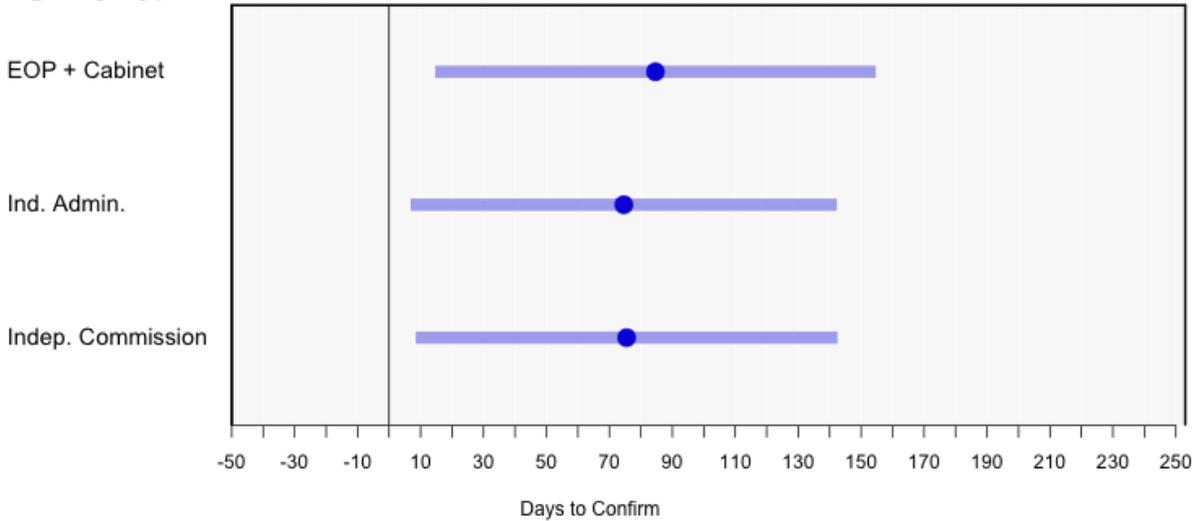


Note: High politicization agencies in top 25% of agencies in terms of percentage of appointees vs. employees. The points are the means among each group, and the purple lines are one standard deviation around the mean.

Figure 2. Average Days to Confirm Receipt and Fill FOIA Requests by Agency Type

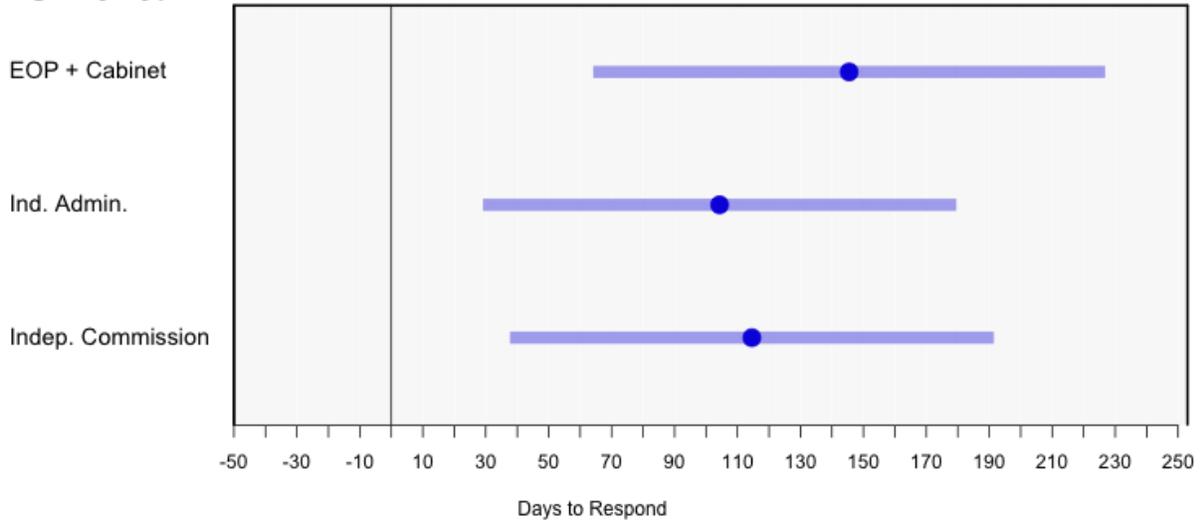
Time to *Confirm* Receipt of FOIA Request

Agency Type



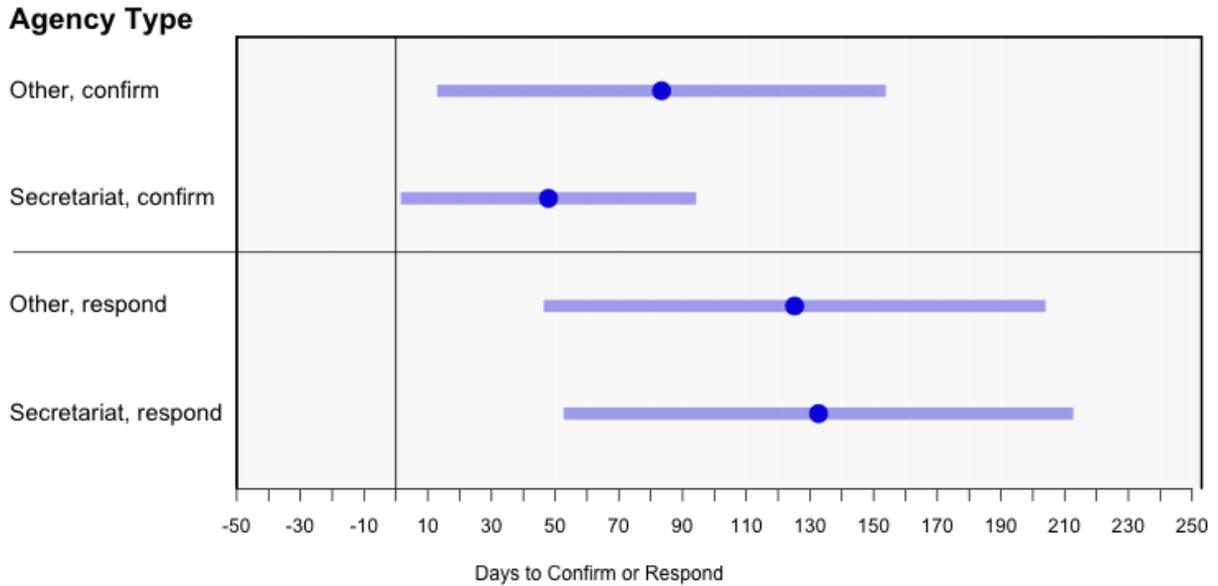
Time to *Fill* FOIA Request

Agency Type



Note: The points are the means among each group, and the purple lines are one standard deviation around the mean. Independent Commissions include independent regulatory commissions.

Figure 3. Average Days to Confirm Receipt and Fill FOIA Requests by FOIA Office Location



Note: The “Other” category includes the management office, general counsel’s office, office of public affairs, office of policy coordination and information, office of special counsel, chief financial officer, and office of hearings and appeals. The points are the means among each group, and the purple lines are one standard deviation around the mean.

Figure 4. Estimated Impact of Politicization on Survival Probability

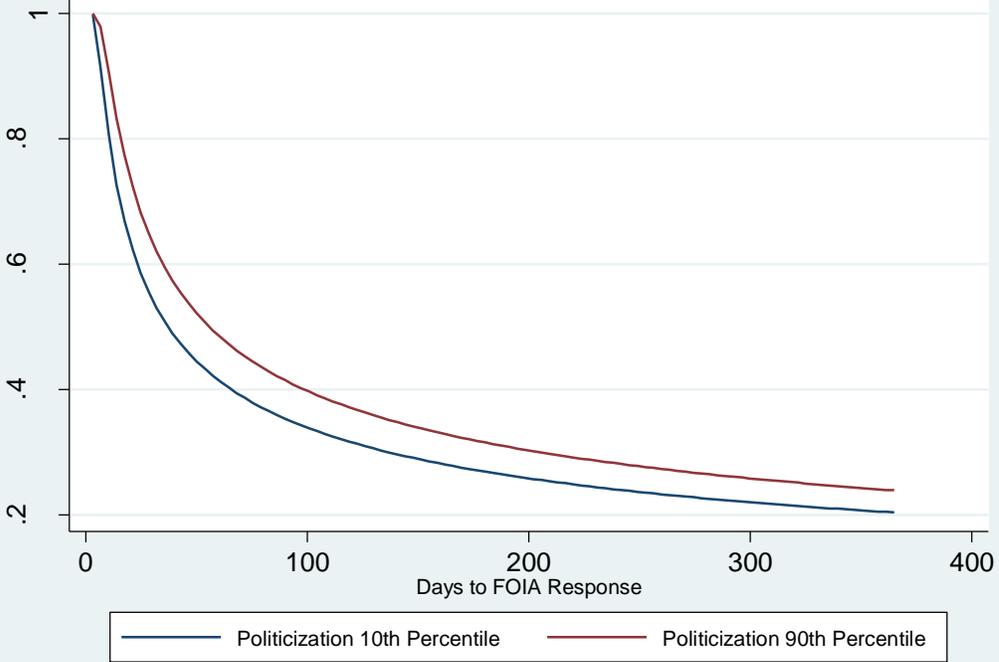


Figure 5. Estimated Influence of FOIA Office Location on Survival Probability

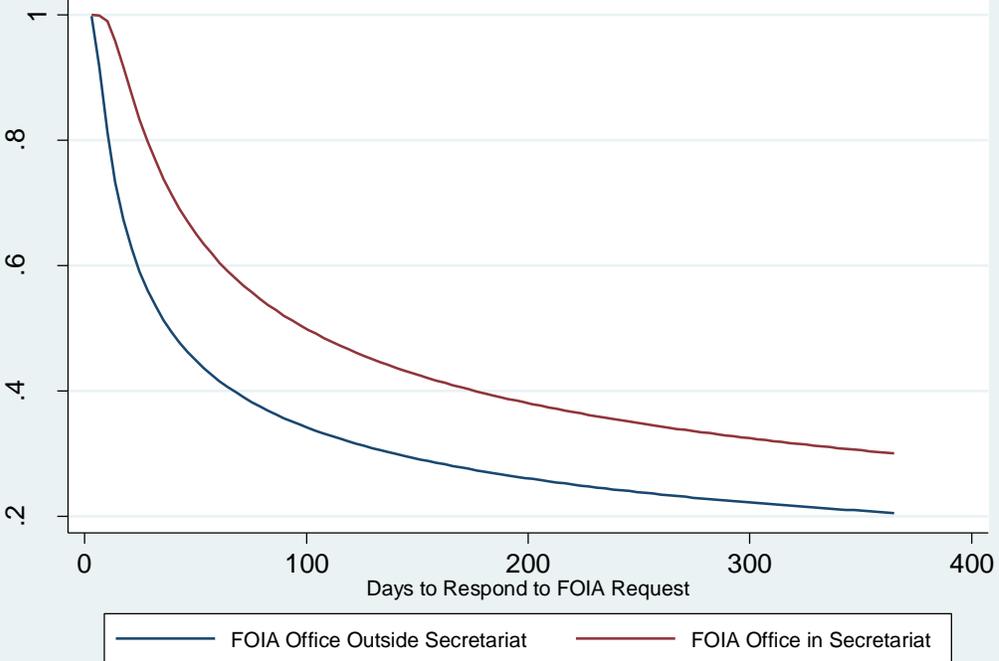
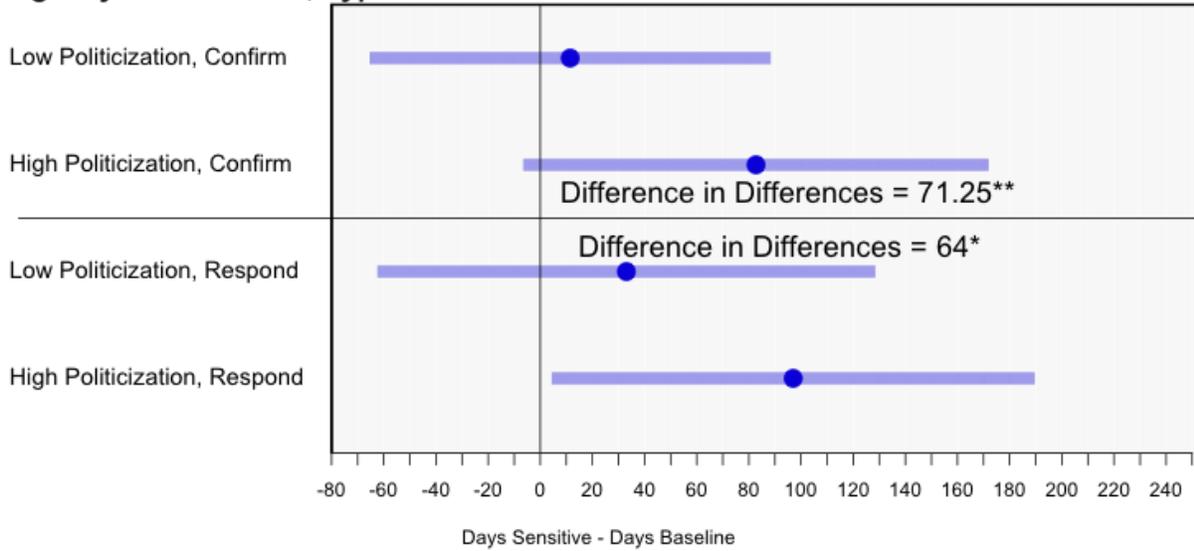


Figure 6. Difference in Differences Analysis. Difference in Average Days to Confirm Receipt and Fill FOIA Requests by Percentage of Appointees in Agency.

Agency Politicization, Type



Note: Points are mean differences between time to confirm (respond to) a sensitive request and time to confirm (respond to) a baseline request. Lines are one standard deviation from the mean for each subset of data. Difference in differences estimates from regression models reported in Table 4. High politicization agencies are those in top quartile in appointees. Low politicization agencies are those in both three quartiles in the percentage of appointees.

Table 1. Agencies that Never Responded to Either Baseline or Sensitive Request

Agency	Agency Confirmed Receipt of Our Request	Cabinet	Total Appointees
Bureau of Customs and Border Protection	NO	YES	9
Court Services and Offender Supervision Agency	NO	NO	0
Department of Energy	NO	YES	116
Department of Justice	NO	YES	346
Federal Energy Regulatory Commission	NO	YES/ NO	9
Federal Housing Finance Agency	NO	NO	4
Federal Maritime Commission	YES	NO	8
Federal Mine Safety and Health Review Commission	NO	NO	9
Internal Revenue Service	YES	YES	2
Missile Defense Agency	NO	YES	0
National Geospatial-Intelligence Agency	YES	YES	*
Office of Personnel Management	YES	NO	29
Public Health Service	YES	YES	*
Transportation Security Administration	YES	YES	1

Table 2. Poor Performing Agencies: Agencies that Produced Poor Responses and Exceed Statutory Time to Respond

Agency	Request Type	Days to Respond	Description of Response
Federal Maritime Commission	Baseline	365	Called and said needed to talk about all requests, asked us not to call back because she would be out of the office, refused to say when she was returning.
Centers for Medicare & Medicaid Services	Baseline	365	Only response was letter suggesting it was a lot of work.
Commodity Futures Trading Commission	Sensitive	190	Multiple duplicate responses mailed
Department of Labor	Baseline	140	Charged fees
Department of the Interior	Baseline	128	Charged fees
National Reconnaissance Office	Baseline	81	Only part of 2010, fees charged
Comptroller of the Currency	Baseline	77	Fiscal year rather than calendar year.
Agency for International Development	Baseline	73	Fiscal year rather than calendar year.
Corporation for National Service	Baseline	51	Only part of 2010 included in response.
Merit Systems Protection Board	Sensitive	51	Only part of agency (OIG)
Equal Employment Opportunity Commission	Baseline	48	Summary statistics only
Chemical Safety and Hazard Investigation Board	Baseline	31	Does not keep a log because got so few requests, did not feel compelled to provide one.

Note: Every agency is required to keep a FOIA log and agencies are obligated to fill educational requests without fees.

Table 3. Logit Models of FOIA Responses: Influence of Politicization on Whether Agencies Confirm or Fill Requests

	Confirm (Coef.) (S.E.)	Confirm (Coef.) (S.E.)	Confirm (Coef.) (S.E.)	Respond (Coef.) (S.E.)	Respond (Coef.) (S.E.)	Respond (Coef.) (S.E.)
<i>Politicization</i>						
ln(Appointees/Employees)*100		-0.57** (0.33)	-0.30 (0.42)		-0.46* (0.28)	-0.22 (0.40)
ln(Appointees/Employees)*100 * Politically sensitive request			-0.44 (0.41)			-0.40 (0.39)
FOIA office in Secretariat (0,1)	1.19* (0.75)	1.66* (1.05)	1.66* (1.05)	-0.09 (0.43)	-0.29 (0.47)	-0.29 (0.47)
<i>Agency Characteristics</i>						
EOP (0,1)	-0.12 (0.77)	0.61 (0.72)	0.65 (0.75)	0.31 (0.75)	0.63 (0.79)	0.68 (0.81)
Cabinet (0,1)	-0.11 (0.42)	-0.49 (0.61)	-0.49 (0.62)	-0.39 (0.34)	0.05 (0.47)	0.06 (0.47)
Ind. Admin. (0,1)	0.05 (0.52)	-0.20 (0.63)	-0.21 (0.63)	0.12 (0.43)	-0.11 (0.52)	-0.11 (0.52)
ln(Agency Employment)		-0.05 (0.12)	-0.05 (0.12)		-0.21** (0.10)	-0.21** (0.09)
<i>FOIA Office Details</i>						
Number of FOIA Requests FY 2010 /# FOIA Employees FY 2010		-0.00 (0.00)	-0.00 (0.00)		0.00 (0.00)	0.00 (0.00)
Politically Sensitive Request (0,1)	-0.65** (0.30)	-0.76** (0.35)	-0.39 (0.46)	-0.69** (0.26)	-0.82** (0.30)	-0.55 (0.39)
Constant	1.86** (0.37)	3.01** (1.11)	2.79** (1.10)	1.46** (0.29)	3.42** (0.89)	3.24** (0.88)
N	264	224	224	264	224	224
LR Test (7df)	6.95	9.36	11.26	10.21**	14.91**	15.59**

Note: **significant at the 0.05 level; *significant at the 0.10 level in one-tailed tests. Robust standard errors, clustered at agency level, reported in parentheses. Base category is an independent commission receiving a baseline request with an office outside the office of the secretary, administrator, director, or commission chief.

Table 4. Accelerated Failure Time Models of FOIA Responses: Politicization and Time to Confirm or Fill FOIA Requests

	Confirm (Coef.) (S.E.)	Confirm (Coef.) (S.E.)	Confirm (Coef.) (S.E.)	Respond (Coef.) (S.E.)	Respond (Coef.) (S.E.)	Respond (Coef.) (S.E.)
<i>Politicization</i>						
ln(Appointees/Employees)*100		0.20** (0.11)	0.36** (0.14)		0.21* (0.14)	0.36** (0.17)
ln(Appointees/Employees)*100 * Politically sensitive request			-0.22* (0.13)			-0.24* (0.17)
FOIA office in Secretariat (0,1)	0.74** (0.16)	0.72** (0.17)	0.72** (0.16)	0.96** (0.23)	0.97** (0.23)	0.97** (0.22)
<i>Agency Characteristics</i>						
EOP (0,1)	1.08** (0.27)	0.74** (0.28)	0.59** (0.28)	0.91** (0.37)	0.53* (0.39)	0.48 (0.39)
Cabinet (0,1)	0.21** (0.11)	0.08 (0.18)	0.08 (0.17)	0.26** (0.15)	-0.24 (0.25)	-0.23 (0.24)
Ind. Admin. (0,1)	-0.11 (0.13)	-0.21* (0.16)	-0.23* (0.15)	-0.14 (0.18)	-0.31* (0.21)	-0.33* (0.21)
ln(Agency Employment)		0.04 (0.04)	0.04 (0.04)		0.13** (0.05)	0.13** (0.05)
<i>FOIA Office Details</i>						
Number of FOIA Requests FY 2010 / # FOIA Employees FY 2010		-0.00 (0.00)	-0.00 (0.00)		-0.00 (0.00)	-0.00 (0.00)
Politically Sensitive Request (0,1)	0.04 (0.10)	-0.04 (0.10)	0.10 (0.13)	0.07 (0.13)	0.11 (0.15)	0.27* (0.18)
Constant	1.90** (0.14)	1.67** (0.38)	1.45** (0.41)	2.17** (0.21)	1.45** (0.47)	1.32** (0.48)
κ	-2.48 (0.29)	-2.39 (0.29)	-2.61** (0.38)	-2.69 (0.37)	-2.41 (0.33)	-2.55 (0.38)
σ	0.76 (0.07)	0.74 (0.06)	0.70 (0.07)	1.06 (0.11)	1.06 (0.10)	1.01 (0.11)
N	264	224	224	264	224	224
# Confirming or filling	218	187	187	190	165	165
LR Test (5, 8, 9df)	23.60**	29.02**	31.70**	18.33**	26.95**	28.82**

Note: Dependent variable is ln(days to confirmation or filling of FOIA request). **significant at the 0.05 level; *significant at the 0.10 level in two-tailed tests. Robust standard errors, clustered at agency level, reported in parentheses. LR Test of nested models for Model 3 and Model 6 (1 df) are 2.68** and 1.88*, respectively.

Table 5. Models of FOIA Response Quality

	Exemptions (Coef.) (S.E.)	Exemptions (Coef.) (S.E.)	Poor Response (Coef.) (S.E.)	Poor Response (Coef.) (S.E.)
<i>Politicization</i>				
ln(Appointees/Employees)*100	0.22 (0.29)	0.15 (0.28)	-0.01 (0.36)	-0.13 (0.39)
ln(Appointees/Employees)*100 * Politically sensitive request		0.94* (0.69)		0.32 (0.56)
FOIA office in Secretariat (0,1)	-1.06* (0.69)	-1.05* (0.70)	0.60* (0.43)	0.61* (0.44)
<i>Agency Characteristics</i>				
EOP (0,1)	-0.05 (0.80)	-0.03 (0.75)	-0.39 (1.13)	-0.36 (1.11)
Cabinet (0,1)	-0.89** (0.45)	-0.90** (0.45)	-0.83* (0.57)	-0.82* (0.58)
Ind. Admin. (0,1)	-0.71* (0.47)	-0.70* (0.47)	-0.30 (0.55)	-0.29 (0.55)
ln(Agency Employment)	0.27** (0.11)	0.27** (0.11)	0.19** (0.11)	0.20** (0.11)
<i>FOIA Office Details</i>				
Number of FOIA Requests FY 2010 / # FOIA Employees FY 2010	0.00 (0.00)	0.00 (0.00)	0.002** (0.001)	0.002** (0.001)
Politically Sensitive Request (0,1)	-1.46** (0.55)	-2.57** (1.35)	-0.27 (0.41)	-0.48** (0.56)
Constant	-2.45** (0.95)	-2.41** (0.94)	-2.52** (0.96)	-2.47* (0.96)
N	115	115	165	165
LR Test (8, 9 df)	19.04**	17.93**	9.73	10.28

Note: **significant at the 0.05 level; *significant at the 0.10 level in one-tailed tests. Robust standard errors, clustered at agency level, reported in parentheses.

Table 6. Differences-in-differences Regression Estimates

	Sensitive – Baseline differences (Δ)					
	Δ Confirm	Δ Respond	Δ Time to Confirm	Δ Time to Respond	Δ Exemptions	Δ Bad Responses
High Politicization Agencies (0,1)	-0.21** (0.10)	-0.18* (0.12)	71.25** (33.41)	63.99* (39.70)	-0.14 (0.37)	-0.33* (0.22)
Constant	-0.03 (0.05)	-0.09* (0.06)	11.48 (16.78)	33.01* (19.93)	-0.36* (0.22)	0.44** (0.13)
N	115	115	115	115	17	27
F (1 df)	4.32**	2.21*	4.55**	2.60*	0.13	2.27*

Note: *significant at the 0.10 level; **significant at the 0.05 level in one-tailed tests. High politicization agencies are those in the top quartile of politicization.

	Sensitive – Baseline differences (Δ)					
	Δ Confirm	Δ Respond	Δ Time to Confirm	Δ Time to Respond	Δ Exemptions	Δ Bad Responses
FOIA Secretariat (0,1)	0.10 (0.13)	-0.07 (0.16)	-41.70 (43.57)	24.43 (51.69)	0.44 (0.36)	0.33 (0.27)
Constant	-0.10** (0.04)	-0.13** (0.05)	35.63** (14.69)	44.44** (17.43)	-0.44** (0.15)	0.27** (0.12)
N	132	132	132	132	22	27
F (1 df)	0.63	0.20	0.92	0.22	1.53**	1.44

Note: *significant at the 0.10 level; **significant at the 0.05 level in one-tailed tests. High politicization agencies are those in the top quartile of politicization.

Appendix A

Below is a list of all the agencies we included in our initial list, which we obtained from the Department of Justice. Agencies with a double asterisk (**) were excluded from all requests.

Department of Agriculture	United States Strategic Command FOIA Requester Service Center**
Department of Commerce	United States Transportation Command FOIA Requester Service Center**
National Oceanic and Atmospheric Administration	Department of Education
Department of Defense	Department of Energy
Air Force	Department of Health and Human Services
Army	Centers for Medicare & Medicaid Services
Defense Commissary Agency (DeCA)	Food and Drug Administration
Defense Contract Audit Agency	National Institutes of Health
Defense Contract Management Agency	Public Health Service
Defense Finance and Accounting Service	Department of Homeland Security
Defense Information Systems Agency	Bureau of Customs and Border Protection
Defense Intelligence Agency	United States Citizenship and Immigration Services
Defense Logistics Agency	United States Coast Guard
Defense Security Service	Federal Emergency Management Agency
Defense Technical Information Center	Federal Law Enforcement Training Center
Defense Threat Reduction Agency	United States Immigration and Customs Enforcement
Department of Defense Education Activity	DHS Office of Inspector General**
Marine Corps	United States Secret Service
Missile Defense Agency	Transportation Security Administration
National Geospatial-Intelligence Agency	US-VISIT**
National Guard Bureau/JA-FOIA	Department of Housing and Urban Development
National Reconnaissance Office	Department of the Interior
National Security Agency	Department of Justice
Navy	Department of Labor
Department of Defense Office of the Inspector General**	Department of State
Office of the Secretary of Defense and Joint Staff	Department of Transportation
TRICARE Management Activity	Federal Aviation Administration
United States Africa Command FOIA Requester Service Center**	Department of the Treasury
United States Central Command FOIA Requester Service Center**	Comptroller of the Currency
United States European Command FOIA Requester Service Center**	Internal Revenue Service
United States Joint Forces Command FOIA Requester Service Center**	Office of Thrift Supervision
United States Northern Command FOIA Requester Service Center**	Department of Veterans Affairs
United States Pacific Command FOIA Requester Service Center**	Agency for International Development
United States Special Operations Command FOIA Requester Service Center**	American Battle Monuments Commission
United States Southern Command FOIA Requester Service Center**	Amtrak (National Railroad Passenger Corporation)
	Broadcasting Board of Governors
	Central Intelligence Agency
	Chemical Safety and Hazard Investigation Board
	Commission on Civil Rights
	Committee for Purchase from People who Are Blind or Severely Disabled

Commodity Futures Trading Commission	Office of the Director of National Intelligence
Consumer Product Safety Commission	Office of Government Ethics
Corporation for National Service	Office of Navajo and Hopi Indian Relocation
Court Services and Offender Supervision Agency	Office of Personnel Management
Defense Nuclear Facilities Safety Board	Office of Special Counsel
Environmental Protection Agency	Overseas Private Investment Corporation
Equal Employment Opportunity Commission	Peace Corps
Council on Environmental Quality	Pension Benefit Guaranty Corporation
Office of Management and Budget	Postal Regulatory Commission
Office of National Drug Control Policy	Railroad Retirement Board
Office of Science and Technology Policy	Securities and Exchange Commission
Office of the United States Trade Representative	Selective Service System
Export-Import Bank	Small Business Administration
Farm Credit Administration	Social Security Administration
Farm Credit System Insurance Corporation	Special Inspector General for Iraq Reconstruction
Federal Communications Commission	Surface Transportation Board
Federal Deposit Insurance Corporation	Tennessee Valley Authority
Federal Election Commission	United States African Development Foundation
Federal Energy Regulatory Commission	United States Copyright Office
Federal Financial Institutions Examination Council	United States International Boundary and Water Commission
Federal Housing Finance Agency	United States International Trade Commission
Federal Labor Relations Authority	United States Postal Service
Federal Maritime Commission	United States Trade and Development Agency*
Federal Mediation and Conciliation Service	
Federal Mine Safety and Health Review Commission	
Federal Open Market Committee**	
Federal Reserve System	
Federal Retirement Thrift Investment Board	
Federal Trade Commission	
General Services Administration	
Institute of Museum and Library Services	
Inter-American Foundation	
Legal Services Corporation	
Merit Systems Protection Board	
Millennium Challenge Corporation	
National Aeronautics and Space Administration	
National Archives and Records Administration	
National Capital Planning Commission	
National Credit Union Administration	
National Endowment for the Arts	
National Endowment for the Humanities	
National Indian Gaming Commission	
National Labor Relations Board	
National Mediation Board	
National Science Foundation	
National Transportation Safety Board	
Nuclear Regulatory Commission	
Occupational Safety and Health Review Commission	

Appendix B. Form of FOIA Requests Sent to Federal Agencies, May 9, 2010

[BASELINE]

To Whom It May Concern:

Under the Freedom of Information Act, 5 U.S.C. § 552, I am requesting copies of the following sets of records from the Department of Agriculture:

- *The agency's FOIA log from 2010 or equivalent listing the FOIA request number, name of requester, and a description of the records being requested.*

If there are any fees for searching or copying the records, please let me know before you fill my request. Or, please supply the records without informing me of the cost if the fees do not exceed \$200, which I agree to pay. This request is for educational purposes.

If you deny all or any part of this request, please cite each specific exemption you think justifies your withholding of information. Notify me of appeal procedures available under the law.

If you have any questions about handling this request, you may reach me by email at xxxx, or by telephone at xxxx.

Sincerely,

xxxx

xxxx

xxxx

[POLITICALLY SENSITIVE]

To Whom It May Concern:

Under the Freedom of Information Act, 5 U.S.C. § 552, I am requesting copies of the below-listed sets of records from Department of Agriculture. If there are any fees for searching or copying the records, please let me know before you fill my request. Or, please supply the records without informing me of the cost if the fees do not exceed \$200, which I agree to pay. This request is for educational purposes.

If you deny all or any part of this request, please cite each specific exemption you think justifies your withholding of information. Notify me of appeal procedures available under the law.

If you have any questions about handling this request, you may telephone me at xxxx. I can also be reached via email at xxxx.

Sincerely,

xxxx

xxxx

xxxx

Requested Records: *A list of the FOIA requests from 2010 about which a political appointee (persons appointed under schedule C, a non-career member of the Senior Executive Service, or Senate-confirmed appointee) personally made an inquiry, personally reviewed, or personally had a hand in the disposition of the request.*