

November 19, 2014

Dear Judiciary Committee Member,

On behalf of the undersigned organizations, we urge you to support improvements to the landmark right-to-know law, the Freedom of Information Act (FOIA), that are included in the manager's amendment of the FOIA Improvement Act of 2014 (S. 2520.)

Non-governmental organizations play a key role in ensuring our air and water stay clean, our food supply remains safe, and that the needs of the general public are properly taken into account by government agencies. But, our groups must have adequate information about government operations in order to fulfill our missions of standing up for the rights of the public.

The bipartisan FOIA Improvement Act (which includes many reforms similar to a bill passed unanimously by the U.S. House of Representatives earlier this year) strengthens existing law in a number of ways that will significantly improve requestors' ability to obtain information about government actions and decision-making by amending the FOIA with positive changes such as:

- Making more information available to the public by encouraging agencies to post records that have been released under FOIA in easy-to-use electronic formats and clarifying when frequently requested documents must be automatically publicly posted;
- Listing the instances when fees may not be charged to requestors because of agencies' missed deadlines to respond to requests; and
- Ensuring the increased effectiveness of the FOIA by giving greater independence to the Office of Government Information Services (OGIS); requiring notification to requestors regarding the availability of alternative dispute resolution options; creating a Chief FOIA Officer Council for better inter-agency coordination; and codifying certain reporting.

Additionally, and perhaps more importantly, the FOIA Improvement Act codifies the Obama Administration's presumption of openness for agencies determining whether to release information under a FOIA request, which requires agencies to process all requests under the assumption that the records must be released unless there is a foreseeable harm or specific legal or statutory prohibitions on its release.

This language will spur vital changes to agencies' use of FOIA's exemptions such as Exemption 5 (also called the b(5) exemption) which has been referred to as the "withhold it because you want to" exemption by some requestors because of the rampant overuse of this particular provision. The undersigned groups are extremely concerned with this exemption as they have seen multiple FOIA requests denied under this exemption when an agency unwarrantedly cites the "deliberative process privilege."

The current language of the law's b(5) exemption allows agencies to indefinitely withhold memos or letters shared within an agency or between agencies if it would be considered privileged under litigation standards. The FOIA Improvement Act puts in place a 25 year sunset on the use of the b(5) exemption. The sunset helps ensure agencies cannot abuse b(5) to withhold historical records that will help the public better understand how a policy was developed. A similar sunset in the Presidential Records Act

allows the public to obtain records covered by the deliberative process privilege 12 years after the President has left office.

For these and other reasons, we urge you to support the FOIA Improvement Act and take this opportunity to enact these essential changes while there is still time during this Congress.

Sincerely,

American Association of Law Libraries

American Booksellers Foundation for Free Expression

American Civil Liberties Union – ACLU

American Library Association

American Society of News Editors

Appeal for Justice

Article 19

Association of Alternative Newsmedia

Association of Research Libraries

Brechner Center for Freedom of Information

Californians Aware

Cause of Action

Center for Effective Government

Center for Food Safety

Center for Justice & Democracy at New York Law School

Center for Media and Democracy

Center for Science and Democracy at the Union of Concerned Scientists

Citizen Works

The Coalition For Change, Inc. (C4C)

Constitutional Alliance

Consumer Action

Council on American-Islamic Relations – CAIR

Defending Dissent Foundation

Don't Waste Arizona

Earthjustice

Empire Justice Center

Essential Information

Food & Water Watch

Freedom of Information Foundation of Texas

Friends of the Earth U.S.

Government Accountability Project – GAP

Greenpeace

The Home Defenders League

Institute for Agriculture and Trade Policy

In the Public Interest

iSolon.org

James Madison Project

Knowledge Ecology International – KEI

Liberty Coalition

Mine Safety and Health News

Minnesota Coalition on Government Information

Mississippi Center for Freedom of Information

MuckRock

National Coalition for History

National Freedom of Information Coalition

National Priorities Project

National Security Archive

National Security Counselors

National Sustainable Agriculture Coalition

NETWORK, A National Catholic Social Justice Lobby

New Jersey Citizen Action

New Media Rights

Oceana

OpenTheGovernment.org

PEN American Center

Pesticide Action Network

People For the American Way – PFAW
Project Censored
Project On Government Oversight – POGO
Public Citizen
Reporters Committee for Freedom of the Press
Rural Coalition
Savannah River Site Watch
Society of American Archivists
Society of Professional Journalists
Special Libraries Association
The Sunlight Foundation
Transactional Records Access Clearinghouse – TRAC
Tully Center for Free Speech at Syracuse University
United Steelworkers (USW)
U.S. Public Interest Research Group – USPIRG
Washington Coalition for Open Government
Whistlewatch.org