

The Need for FOIA Legislation

An informed public is the cornerstone of our democracy. The Freedom of Information Act is the best mechanism for the public to participate in governance. An open and accessible government, backed by FOIA, allows the citizens of this country to examine its government and hold it accountable.

The press uses FOIA to facilitate the flow of information about government to the public. However, it is the general public that submits the most requests under FOIA. In addition, businesses use FOIA extensively to obtain information on governmental decisions affecting the marketplace.

There is a need for legislation to strengthen FOIA and improve the accessibility, accountability and openness of the federal government.

H.R. 867, The Open Government Act of 2005

Representative Lamar Smith has introduced H.R.867, The Open Government Act of 2005 to improve the federal Freedom of Information Act (FOIA). The FOIA is an important tool through which the public can access government information.

The goal of this legislation is to strengthen the FOIA and thereby enhance the accessibility, accountability and openness of the federal government. The legislation will:

- Strengthen FOIA and close loopholes;
- Help FOIA requesters obtain timely responses to their requests through restoring meaningful deadlines for agency action; and
- Make it easier for the public to access government information through the creation of a FOIA ombudsman, agency FOIA hotlines and tracking systems for FOIA requests.

The legislation is supported by a broad coalition of organizations across the ideological spectrum, including:

American Association of Law Libraries
American Civil Liberties Union
American Library Association
American Society of Newspaper Editors
Associated Press Managing Editors
Association of Health Care Journalists
Center for Democracy & Technology
Coalition of Journalists for Open Government
Committee of Concerned Journalists
Education Writers Association
Electronic Privacy Information Center
Federation of American Scientists/Project on Government Secrecy
Free Congress Foundation/Center for Privacy & Technology Policy
Freedom of Information Center, University of Missouri

The Freedom of Information Foundation of Texas
The Heritage Foundation/Center for Media and Public Policy
Information Trust
National Conference of Editorial Writers
National Freedom of Information Coalition
National Newspaper Association
National Security Archive/George Washington University
Newspaper Association of America
People for the American Way
Project on Government Oversight
Radio-Television News Directors Association
The Reporters Committee for Freedom of the Press
Society of Environmental Journalists

Summary of the Bill's Provisions

STRENGTHEN FOIA AND CLOSE LOOPHOLES

- Ensure that FOIA applies when agency recordkeeping functions are outsourced
- Establish a new open government impact statement, by requiring that any future Congressional attempt to create a new FOIA exemption be expressly stated within the text of the legislation
- Impose annual reporting requirement on usage of the DHS disclosure exemption for critical infrastructure information
- Protect access to FOIA fee waivers for legitimate journalists, regardless of institutional association – including bloggers and other Internet-based journalists
- Provide reliable reporting of FOIA performance, by requiring agencies to distinguish between first person requests for personal information and other kinds of requests

HELP FOIA REQUESTORS OBTAIN TIMELY RESPONSES

- Establish FOIA hotline services, either by telephone or on the Internet, to enable requestors to track the status of their requests
- Create a new FOIA ombudsman, located at the Administrative Conference of the United States, to review agency FOIA compliance and provide alternatives to litigation
- Authorize reasonable recovery of attorney fees when litigation is inevitable

ENSURE THAT AGENCIES HAVE STRONG INCENTIVES TO ACT ON FOIA REQUESTS IN TIMELY FASHION

- Restore meaningful deadlines for agency action by ensuring that the 20-day statutory clock runs immediately upon the receipt of the request
- Impose real consequences on federal agencies for missing statutory deadlines
- Enhance authority of the Office of Special Counsel to take disciplinary action against government officials who arbitrarily and capriciously deny disclosure
- Strengthen reporting requirements on FOIA compliance to identify agencies plagued by excessive delay, and to identify excessive delays in fee status determinations

PROVIDE FOIA OFFICIALS WITH THE TOOLS THEY NEED TO ENSURE THAT OUR GOVERNMENT REMAINS OPEN AND ACCESSIBLE

- Improve personnel policies for FOIA officials to enhance agency FOIA performance
- Examine the need for FOIA awareness training for federal employees
- Determine appropriate funding levels needed to ensure agency FOIA compliance