

Sunshine in Government Initiative

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Freedom of Information Act (FOIA) Reform Legislation Summary of S. 849, the OPEN Government Act

Background & Status of S. 849

The Openness Promotes Effectiveness in our National Government Act, or OPEN Government Act (S. 849), was reported out of Senate Judiciary Committee by voice vote. The House of Representatives already approved similar legislation (H.R. 1309) by an overwhelming vote of 308-117. The legislation does not amend any of the exemptions already in FOIA, which prohibits disclosures that could harm national security, individual privacy, and trade secrets. The reforms are designed to make FOIA operations in the agencies work more effectively for citizens and the media.

Bipartisan Support for S. 849

The legislation has bipartisan support. It is sponsored by Sen. Patrick Leahy (D-VT) and Sen. John Cornyn (R-TX) and co-sponsored by Sen. Sherrod Brown (D-OH), Sen. Ben Cardin (D-MD), Sen. Richard Durbin (D-IL), Sen. Russell Feingold (D-WI), Sen. Johnny Isakson (R-GA), Sen. John Kerry (D-MA), Sen. Mary Landrieu (D-LA), Sen. Bernard Sanders (I-VT) and Sen. Arlen Specter (R-PA).

Why FOIA Reform is Needed

FOIA is critical for citizens and the media to monitor government's performance and to access government information, but it needs to be strengthened. Too often, agencies fail to meet statutory deadlines; there is no tracking system for requests, and no real help for requesters who are stymied by delays or unfairly denied information, other than by going to court. Additionally, the Government is making it difficult for requesters to recover attorneys' fees that they properly should receive.

Summary of S. 849, the OPEN Government Act

The legislation would accomplish some of the following:

- Create a tracking system and hotline allowing agencies to better manage their workload and requesters to follow their request through the system
- Create an ombudsman to help requesters navigate the FOIA process
- Ensure that requesters forced to sue to get records, get attorneys fees when the government finally decides to hand over records right before a court decision
- Allow bloggers and others who inform the public for non-commercial purposes the same waiver of fees that other news media currently receive
- Improve agency reporting requirements to identify strengths and challenges

The legislation builds on FOIA's strengths, creates common sense reforms now and lays the groundwork for future improvements. Ultimately, the bill will enhance the accessibility, accountability and openness of the federal government.

American Society of Newspaper Editors · The Associated Press · Association of Alternative Newsweeklies ·
Coalition of Journalists for Open Government · National Association of Broadcasters ·
National Newspaper Association · Newspaper Association of America ·
Radio-Television News Directors Association ·
The Reporters Committee for Freedom of the Press · Society of Professional Journalists

Examples of FOIA Delays

Too often requesters meet long delays when agencies process FOIA requests. Agencies can take years to deliver routine documents. FOIA lacks tools to create real consequences for agency delays. Short of costly litigation, requesters have little recourse. Following is just an example of common experiences.

Backlogs for Even Routine Information

- Joan Claybrook, the president of Public Citizen, told the Senate Appropriations Committee's Subcommittee on Transportation, Housing and Urban Development, and Related Agencies on March 8 that there had been no response after four months to a request to the Department of Transportation for records on its pilot border crossing program.
- On March 18, 2002, Rick Blum, then a researcher at a public interest group, requested from the Food and Drug Administration background information on advisory panel members. The agency provided several of the requested documents four years later.

Long Delays in Accessing Timely Information

- Mark Schleifstein of the New Orleans Times Picayune asked the Federal Emergency Management Agency on Oct. 5, 2005 for records identifying FEMA's immediate and short-term needs for responding to Hurricane Katrina. Two days later, his request for expedited processing was granted. A year later, he was still waiting for the records.
- AP reporter Martha Mendoza requested documents to back up claims that lead found in school lunch boxes were safe. Yet it took an entire year to get the 1,500 pages of lab reports and other documents that contradicted the government's official statements, "a year in which many parents continued to buy those popular soft vinyl lunch carriers and hand them to their children without any reason to wonder if they might not be safe," noted Associated Press President Tom Curley. (Testimony before the Senate Judiciary Committee, March 14, 2007)

Delays and Denials for Information on Issues of Significant Public Interest

- Lisa Stiffler and Robert McClure, reporters for the Seattle Post-Intelligencer, waited nine months to receive a response from the U.S. Fish and Wildlife Service to their request for pending habitat conservation plans. Even then the agency refused to disclose the identities of 182 applicants in 74 proposed locations for protections under a controversial federal resource conservation program. (See "Are under habitat conservation plans could soar," Seattle Post-Intelligencer, 9/26/05; available at http://seattlepi.nwsourc.com/local/242272_habitat26.html)

Problems Accessing Potentially Embarrassing Information

- Knight Ridder waited months to document how veterans nationwide are being shortchanged by a benefits system prone to long delays, wrongful denials and inconsistent rulings. (See details, Sec. 11, below.)
- On Dec. 6, 2005, the Office of Thrift Supervision received a letter from the Coalition of Journalists for Open Government requesting copies of the FOIA logs for September of that year. On Feb. 28, 2007, a FOIA officer for that office responded by e-mail, apologizing for the delay and asking if the Coalition was still interested in pursuing the request.