

The Honorable Patrick Leahy
Senate Judiciary Committee
U.S. Senate
Washington, DC 20515

November 19, 2014

Dear Chairman Leahy,

On behalf of the undersigned organizations, we thank you for your advocacy of 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 are urging your colleagues 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