

Congress of the United States

House of Representatives

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Opening Statement Ranking Member Elijah E. Cummings

Hearing on "Ensuring Government Transparency Through FOIA Reform" February 27, 2015

The Freedom of Information Act (FOIA) is one of our most important open government laws. I appreciate you holding this hearing today, Mr. Chairman, to examine proposals for reforming that law. I also want to thank Ranking Member Connolly for his continued leadership on FOIA and other transparency issues.

I am happy to be joining Representative Darrell Issa in sponsoring the FOIA Act which, if passed, would be a landmark reform of the law. Last Congress, the FOIA Act passed the House with a unanimous and bipartisan vote of 410 to zero.

I look forward to quick action on the bill this Congress from Chairman Chaffetz and Speaker Boehner.

FOIA reform came very close to becoming reality last Congress. The Senate passed a similar bill by unanimous consent in December, but we did not get the bill over the finish line.

There is widespread support for passing the FOIA Act. Mr. Chairman, I ask unanimous consent to include in the hearing record a letter sent to myself and Representative Issa from 47 open government organizations.

The letter states:

Public oversight is critical to ensuring accountability, and the reforms embodied in both the FOIA Oversight and Implementation Act (H.R. 653), introduced by Representatives Issa and Cummings, and the FOIA Improvement Act of 2015 (S. 337), introduced by Senators Cornyn and Leahy, are necessary to enable that oversight. The undersigned groups therefore strongly support these bipartisan efforts.

There have also been a number of editorials urging Congress to pass FOIA reform. Mr. Chairman, I ask unanimous consent to place in the record a New York Times editorial from February 18, 2015, titled "A Stronger Freedom of Information Act."

That editorial said:

For Republicans, this is a rare chance to log a significant bipartisan accomplishment in the public interest—one that Mitch McConnell, the Senate majority leader, and Mr. Boehner should promptly seize. The availability of information that sheds light on the workings of government is essential for a healthy democracy. Strengthening the law will help ensure that basic principles of transparency are not a matter of executive discretion.

One of the major reforms made by the FOIA Act would be to put into the statute a presumption of openness.

During the Clinton Administration, Attorney General Janet Reno adopted a policy under which the Department of Justice would defend an agency's use of a FOIA exemption only when the agency could reasonably foresee that disclosure would harm an interest protected by that exemption.

In the Bush Administration, Attorney General John Ashcroft reversed this standard and directed the Justice Department to defend agency decisions to withhold records as long as it had a legal basis for doing so.

President Obama, on his first day in office, directed agencies to implement FOIA with a presumption of openness. Attorney General Holder overturned the Ashcroft standard and reinstated the foreseeable harm standard.

The legislation before us today would codify in law this presumption in favor of disclosure no matter who is President. Under this bill, an agency would not be allowed to withhold information in response to a FOIA request unless disclosure is prohibited by law or would cause specific identifiable harm to an interest protected by one of FOIA's exemptions.

The FOIA Act would place a 25-year sunset on exemption 5 of FOIA. This means that an agency would only be able to keep a document secret for 25 years under the rationale that the document would reveal the agency's deliberative process.

The bill would also strengthen the independence of the Office of Government Information Services by allowing it to send testimony and reports directly to Congress.

I look forward to hearing the testimony of Miriam Nisbet, the former director of that office, about her experiences and suggestions for reform. I also look forward to hearing from our other witnesses, Mr. Sadler and Mr. Blum, who both have significant expertise with FOIA.

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