

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074  
MINORITY (202) 225-5051

<http://oversight.house.gov>

### Statement of Ranking Member Elijah E. Cummings H.R. 653, FOIA Oversight and Implementation Act March 25, 2015

The Freedom of Information Act is one of our most important open government laws.

I am happy to be joining Representative Darrell Issa in sponsoring the FOIA Oversight and Implementation Act again this Congress. This bill, 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.

Mr. Chairman, I appreciate you bringing this bill up so quickly this Congress.

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 a bill over the finish line.

There is widespread support for passing the FOIA Act.

Mr. Chairman, I ask unanimous consent to include in the record a letter sent to myself and Representative Issa from 47 open government organizations in support of this bill.

I also would like to include in the record a New York Times editorial from February 18, 2015, titled "A Stronger Freedom of Information Act."

That editorial said, quote:

"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 (OGIS), which serves as the government's FOIA ombudsman, by allowing it to send testimony and reports directly to Congress.

These are just a few of the ways the FOIA Act will strengthen the law. Mr. Chairman, I also want to express support for the substitute amendment. I appreciate the bipartisan work that has been done to make further improvements to the underlying bill.

Earlier this month, Committee staff received an update from a General Services Administration team that has been working on a prototype for a consolidated FOIA request portal. In the course of their research, GSA's team found that not all agencies currently accept FOIA requests by email.

This amendment would require every federal agency to accept requests for records under FOIA through an email address and to publish that email address on the agency website.

This provision would make the process of submitting a FOIA request easier.

The substitute amendment also makes technical corrections to the language in the bill that outlines the responsibilities of the Office of Government and Information Services.

These corrections would give OGIS the discretion to issue advisory opinions upon request of any party utilizing that office's mediation services.

H.R. 653 provides long overdue and necessary reforms to strengthen FOIA. This amendment improves the bill, and I strongly support it.

---

Contact: Jennifer Hoffman, Communications Director, (202) 226-5181.