

**Written Statement**

**of**

**Jay Smith**

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**on the**

**Implementation of the Freedom of Information Act**

**Before the**

**United States House of Representatives**

**Committee on Government Reform**

**Subcommittee on Government Management, Finance and Accountability**

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As a young reporter I learned the value of documents, especially those that were public. Unlike some people, they didn't shade the truth. While a balky photocopier could turn them gray, they were almost always black and white. They were there to see when the reporting was done. Others could determine if the work was solid and would stand the test of time. Nothing inspired greater journalistic confidence than the words, "according to public records," when attached to an important story.

And I am hard-pressed to think of anything that has advanced the accessibility and usability of public records the way the Freedom of Information Act has.

Chairman Platts, Ranking Member Towns and Members of the Subcommittee on Government Management, Finance and Accountability, I am honored to appear before you today as you review the Freedom of Information Act, a vital tool for the informed citizenry so essential to a vibrant democracy.

I testify as a citizen and as someone who has worked at newspapers since he was 17-years-old. That was 38 years ago.

I also testify as president of Cox Newspapers, Inc., publisher of 17 daily and 25 non-daily newspapers. They are part of Cox Enterprises, Inc., an Atlanta, Ga., company with cable, radio and television properties and more than 77,000 employees. I am chair of the Newspaper Association of America (NAA), a national trade association representing over 2,000 newspapers in the U.S. and Canada, including 90 percent of the daily circulation in this country and I am also representing them today, as well as the Sunshine in Government

Initiative, a coalition of eight media and journalistic organizations formed to promote policies to insure government is accessible, accountable and open to the public.

Please note that I listed "citizen" first. While newspapers and other media have championed the cause of FOIA, it is the every day citizen, not the journalist, who submits the most requests for information. According to a new review of FOIA requests by The Associated Press, military veterans and citizens interested in genealogical information, by far, make the greatest number of requests. For example, the Department of Veterans Affairs received 1.8 million requests, more than any other department or agency last year. Most of these requests involved military personnel and medical records. Moreover, the number of requests at the Social Security Administration doubled from 2003 to 2004 and, according to Social Security officials, people seeking genealogical information made most of these requests.

Businesses also make extensive use of FOIA. A 2003 Heritage Foundation survey of four agencies – General Services Administration, Environmental Protection Agency, Department of Education and the Department of Transportation – found that 40 percent of FOIA requests to those agencies made over a six month period came from corporations. Lawyers ranked second with 25 percent, individuals third with 16 percent and non-profits fourth with 8 percent. The media filed 5 percent of the requests.

Our Freedom of Information Act has provided a model for the rest of the world, and it is heartening to see so many countries following our lead as they embrace democracy and open their societies. It is also important to note that FOIA has served as a framework upon which so many states have built their public records laws. Created in the 1966, this law has

touched and changed lives at home and abroad. It has fostered public knowledge, public participation and a very way of life we hold so dear --- a life of openness and honesty.

Permit me to provide a few real-life examples on the significance of FOIA from stories in newspapers or news organizations with which I am involved and familiar.

The Associated Press, on whose board I serve, found that researchers at the National Institutes of Health (NIH) were collecting royalties on drugs and devices they were testing on patients who did not know of their financial interests in the products. That breached an NIH promise to Congress in 2000, and the practice ended under a new policy announced when the story hit the wire.

Relying heavily on FOIA-obtained material, The Dayton Daily News, a Cox newspaper, reported on the surprisingly large number of deaths of Peace Corps volunteers overseas. Several families learned crucial details about the deaths of their loved ones. Some of the information conflicted with what they had been told by Peace Corps officials. A newspaper series led to congressional hearings and also prompted the Peace Corps to revise its procedures in educating volunteers on safety and security issues.

My colleagues at other distinguished newspapers have also shown the spotlight on government waste and abuse with articles made possible through FOIA.

As result of a Knight Ridder investigation published in March 2005, the Department of Veterans Affairs (VA) is now examining whether veterans groups are providing their claims helpers, known as veterans service officers, with adequate training and oversight to competently help veterans apply for VA benefits. This Knight Ridder investigation revealed

that the VA basically “rubberstamped” names of claims officers submitted by veterans groups without any evidence of training or testing, and the documents obtained by Knight Ridder through a FOIA lawsuit against the VA showed that the agency revoked the accreditation of only two claims officers since 1999.

The South Florida Sentinel filed a federal lawsuit to force the release of government records on the distribution of millions in disaster aid following last year’s four hurricanes. The suit charges that the Federal Emergency Management Agency (FEMA) has failed to produce records requested through FOIA. FEMA has been under fire since the newspaper reported in October that the government had approved thousands of Hurricane Frances claims in Miami Dade, a county barely touched by the storm. Fourteen Miami-Dade residents were indicted on federal fraud charges.

While the Freedom of Information Act has allowed the public to better understand the operations of its government, it is in need of important revisions to make sure the Act is implemented more effectively. That it needs bolstering nearly 40 years into its life is worrisome, but not surprising, given the increased size and complexity of our society and our government. Along the way, there has been shift away from a presumption of openness which has been at the core of FOIA. In addition, there is a fixed culture within government that the information belongs to the agencies, not American citizens. Some resist transparency at all costs, even though transparency in government will help it become more efficient and more accountable.

Too often, FOIA doesn't work properly, and delays are a common problem. Some requesters have waited more than a decade for inquiries to be processed. According to a 2003 audit of 35 agencies conducted by the National Security Archives at George Washington University, some backlogs went back 16 years. According to this audit, the average response time of the Commerce Department is 55 days and it had pending requests as old as 2,400 days. FOIA processing times at the Department of Agriculture are as high as 905 business days and processing times at the Environmental Protection Agency are as high as 1,113 business days.

Then there are the FOIA roadblocks – unwarranted denials of FOIA requests – that prevent important information from reaching the public.

Consider this request, now in litigation, by our Cox Newspapers Washington bureau. Federal law requires illegal aliens convicted in our country of such crimes as rape, murder and child molestation to be deported once they have served their prison terms. Thousands of these aliens remain in the U.S. because federal immigration officials failed to show up when the criminals were released from prison. Despite numerous requests, the Justice Department will not release the government database that could help journalists and the public to know if aliens, who should have been deported, were released into their community.

Whining is not the purpose of this testimony. I'd prefer to conclude by answering two questions posed in your invitation. What are the strengths and weakness of FOIA, and what opportunities does Congress have to better serve an informed citizenry?

At its best, FOIA builds credibility in government. Honest people get honest answers from honest public servants. It is that pure, that simple.

But the system has flaws. Agencies do not have strong incentives to act on requests in timely fashion or to avoid unnecessary and costly litigation with requesters. Lack of accountability leads to lost requests or an inability to track their progress. In too many instances, officials lack the tools or the resources to respond.

Here are five ways Congress could improve FOIA:

- 1.) Create an FOIA ombudsman to review compliance, identify public agencies plagued by excessive delays, and assist the public in resolving disputes with agencies as an alternative to litigation;
- 2.) Clarify that reasonable recovery of attorney fees is authorized when the pursuit of a claim was the catalyst for agencies to release information;
- 3.) Examine and ensure compliance of federal agencies with the Electronic Freedom of Information Act of 1996 to increase the amount of government information provided online. Ever-improving technology may do more to cut the knot that entangles public information than any other tool at our disposal. We need to ensure agencies are proactive in complying with EFOIA;
- 4.) Help FOIA requesters get timely responses by restoring meaningful deadlines for agency action; and

5.) Establish hotline and/or electronic tracking services to enable the public to follow the status of requests.

Again, please note that the benefit of these proposed remedies are not limited to the media and government. Rather, they are about a common audience the media and the government serve, and serve well, when they perform at their best --- the American public.