

Judiciary Panel Approves

Cornyn-Leahy OPEN Government Bill

...Bipartisan Legislation Improves, Strengthens FOIA

WASHINGTON (Thursday, Sept. 21) – The Senate Judiciary Committee Thursday unanimously approved a bill aimed at substantially enhancing and expanding the accessibility, accountability, and openness of the federal government.

The “Openness Promotes Effectiveness in our National Government Act of 2005,” or the OPEN Government Act (S. 394), was authored by Senators Patrick Leahy (D-Vt.), the ranking Democratic member of the Judiciary Committee, and John Cornyn (R-Texas), a member of the panel. The bill, introduced in 2005, would make meaningful reforms to federal government information laws, most notably the Freedom of Information Act of 1966 (FOIA).

“This bill advances one of the most fundamental rights of Americans, the public’s right to know what its government is doing,” said Leahy, who has been a longtime champion of FOIA in Congress. Leahy sponsored the Electronic Freedom of Information Act Amendments, which updated FOIA for the Internet age, and in 1996 he was installed in the Freedom of Information Act Hall of Fame.

Leahy said the bill “is more than just pro-openness, pro-accountability, and pro-accessibility -- it’s also pro-Internet.” It includes a hotline enabling citizens to track their requests, including Internet tracking, and extends the waiver of FOIA search fees for the media to bloggers and writers for Internet outlets, providing the same status as traditional media.

Senators Leahy and Cornyn have also teamed up on the Faster FOIA Act, (S.589). The bill would create an advisory commission to recommend steps to reduce processing delays in response to the Freedom of Information Act. That bill was favorably reported out of the Judiciary Committee last year.

The last time Congress approved major reforms to FOIA was nearly a decade ago, and the Senate Judiciary Committee has not convened an oversight hearing on compliance issues since April 30, 1992. The Senate Homeland Security and Governmental Affairs Committee, which shares jurisdiction over federal government information, has not held a FOIA oversight hearing since 1980.

(Below is Senator Leahy's statement from the Committee's meeting, earlier today, as well as a summary of what the bill does.)

**Statement of Senator Patrick Leahy,
Ranking Member, Judiciary Committee,
On OPEN Government Act of 2005
September 21, 2006**

Mr. Chairman, I am pleased that today the Committee is taking up the OPEN Government Act. I want to commend Senator Cornyn for his leadership on strengthening our open government laws.

I have devoted a considerable portion of my work in the Senate to improving government openness, to make our government work better for the American people. At times, this has been a lonely battle and I am delighted to have Senator Cornyn as a partner on this issue.

This bill is a collection of commonsense modifications designed to update FOIA and to improve the timely processing of FOIA requests by Federal agencies. The bill also clarifies that FOIA applies to agency records that are held by outside private contractors, no matter where these records are located.

This bill was drafted after a long and thoughtful process of consultation with individuals and organizations that rely on FOIA to obtain information and share it with the public, including the news media, librarians, and public interest organizations representing all facets of the political spectrum. I believe that it reaffirms the fundamental premise of FOIA – government information belongs to all Americans.

As we celebrate the 40th anniversary of the Freedom of Information Act this year, I hope that this Committee will do its part to reinvigorate this important law and favorably report the OPEN Government Act by unanimous consent.

Again, I thank Senator Cornyn for the time and effort he has devoted to protecting the public's right to know, and I urge all members of the Committee join us in supporting this important legislation.

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The OPEN Government Act contains more than a dozen substantive provisions, designed to achieve the following FOUR objectives:

- (1) Strengthen FOIA and close loopholes
- (2) Help FOIA requestors obtain timely responses to their requests
- (3) Ensure that agencies have strong incentives to act on FOIA requests in a timely manner

(4) Provide FOIA officials with all of the tools they need to ensure that our government remains open and accessible

STRENGTHEN FOIA AND CLOSE LOOPHOLES

- Ensure that FOIA applies when agency recordkeeping functions are outsourced
- Establish a new open government impact statement, by requiring any future Congressional attempt to create new FOIA exemptions be expressly stated within text of bill
- Impose annual reporting requirement on usage of the DHS disclosure exemption for critical infrastructure information
- Protect access to FOIA fee waivers for legitimate journalists, regardless of institutional association – including bloggers and other Internet-based journalists
- Provide reliable reporting of FOIA performance, by requiring agencies to distinguish between first person requests for personal information and other kinds of requests

HELP FOIA REQUESTORS OBTAIN TIMELY RESPONSES

- Establish FOIA hotline services, either by telephone or on the Internet, to enable requestors to track the status of their requests
- Create a new FOIA ombudsman, located at the Administrative Conference of the United States, to review agency FOIA compliance and provide alternatives to litigation
- Authorize reasonable recovery of attorney fees when litigation is inevitable

ENSURE THAT AGENCIES HAVE STRONG INCENTIVES TO ACT ON FOIA REQUESTS IN TIMELY FASHION

- Restore meaningful deadlines for agency action by ensuring that the 20-day statutory clock runs immediately upon the receipt of the request
- Impose real consequences on federal agencies for missing statutory deadlines
- Enhance authority of the Office of Special Counsel to take disciplinary action against government officials who arbitrarily and capriciously deny disclosure

- Strengthen reporting requirements on FOIA compliance to identify agencies plagued by excessive delay, and to identify excessive delays in fee status determinations

PROVIDE FOIA OFFICIALS WITH THE TOOLS THEY NEED TO ENSURE THAT OUR GOVERNMENT REMAINS OPEN AND ACCESSIBLE

- Improve personnel policies for FOIA officials to enhance agency FOIA performance
- Examine the need for FOIA awareness training for federal employees
- Determine appropriate funding levels needed to ensure agency FOIA compliance

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