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Executive Order Must Not Slow FOIA Reform Efforts

The Bush administration has not been one of the most transparent in recent memory. Nor has it gone out of its way to make information paid for by taxpayer dollars readily accessible to taxpayers.

This was partly why U.S. Sens. John Cornyn, R-Texas, and Patrick Leahy, D-Vt., introduced the OPEN Government Act of 2005 to strengthen the federal Freedom of Information Act of 1966. President Bush may have gotten the message. At least he has taken action to increase public accountability by his administration - although it remains to be seen just how effective the steps he has ordered taken will prove to be.

The president signed an executive order Wednesday that "directed federal agencies to ease access to government records following years of criticism for withholding public information," Cox News Service reported.

The goal of the executive order is to create a "citizen-centered and results-oriented approach" to requests taxpayers file under the Freedom of Information Act.

"What it will actually do is get information in the hands of the public more quickly," said Cornyn, who attended the White House signing of the executive order. "This moves us forward toward strengthening our open government laws."

Each federal agency will have to name a high-ranking official at the level of assistant secretary or above to be its public information officer, who will "preside over FOIA requests and come up with a plan to speed up the release of records and reduce chronic backlogs," according to Cox.

The order goes on to call on each agency "to establish a FOIA Requester Service Center, a place where individuals can check on the status of their request. And the order creates a public liaison officer who has the authority to resolve disputes between the government and requesters to 'ensure a service-oriented response,'" Cox reported.

That goes part way - but only part way - toward implementing what Cornyn and Leahy had sought to do legislatively. Their bill would require agencies to improve the system for tracking Freedom of Information Act requests, including using the telephone and Internet. Also, any agency not responding to a request within 20 days would forfeit any claim to be exempt from the law's provisions.

The Cornyn-Leahy bill would create a federal ombudsperson to monitor the new system and compliance with the law and would broaden the 1966 act to include information that government contractors handle as part of the taxpayer-funded contracts they hold. That is broader than what the president's executive order would do.

And executive orders can be changed or completely revoked all too easily.

"The executive order is a constructive step, but it is not the comprehensive reforms we need," Leahy told Cox News Service. "For example, it does not impose penalties for agencies that miss deadlines. We can do better." "This administration seems to be admitting something it has denied for the last five years - there has been tremendous hostility toward people who try to understand what the government is doing through the Freedom of Information Act," Meredith Fuchs, the general counsel at the National Security Archive at George Washington University, a nonpartisan research organization that routinely files FOIA requests, told Cox. "Perhaps, if the new FOIA officers are given some authority and a line of communication to high-level officials, then there will be some change. One can only hope," Fuchs added.

The president's executive orders should not lead Congress to end consideration of updating and upgrading the Freedom of Information Act as it approaches the 40th anniversary of its passage.

But Congress should not stop there. Although we are reluctant to call for amending the U.S. Constitution, we believe that adding language borrowed from the opening portion of the Texas Public Information Act to the

nation's basic law would be a very good thing to do: "Under the fundamental philosophy of the American constitutional form of representative government that adheres to the principle that government is the servant and not the master of the people, it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees.

"The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

The provisions of this chapter shall be liberally construed to implement this policy." Adding "constitutionally guaranteed" to "citizen-centered and results-oriented" would do more to ensure governmental transparency and accountability than either