

**Statement Of Senator Patrick Leahy (D-Vt.),
Ranking Member, Senate Judiciary Committee,
Hearing On “Ensuring an Informed Citizenry: Examining the Administration’s Efforts to
Improve Open Government”
May 6, 2015**

Today, the Committee holds an important hearing on one of our most cherished open government laws, the Freedom of Information Act (FOIA). For nearly half a century, FOIA has translated our great American values of openness and accountability into practice by guaranteeing access to government information.

This Committee has a long tradition of working across the aisle when acting to protect the public’s right to know, during both Democratic and Republican administrations. Senator Grassley and Senator Cornyn have been important partners in these efforts, and our collaboration has resulted in the enactment of several improvements to FOIA including the OPEN Government Act, the first major reform to FOIA in more than a decade, and the OPEN FOIA Act, which increased the transparency of legislative exemptions to FOIA.

We are moving in the right direction, but obstacles to the FOIA process remain in place and progress has come much too slow. The growing use of exemptions and inadequate communication with FOIA requesters remain key impediments to obtaining information under FOIA. For the second year in a row the Center for Effective Government graded the responsiveness of 15 Federal agencies that process most FOIA requests. While some agencies showed improvement from last year, the results are once again disappointing. Not a single agency received an A grade, only two agencies received a B grade, and the rest fell below a C. We can and we must do better than this.

Two agencies, including the State Department testifying before us today, received a failing grade for their handling of FOIA requests. According to the report, only 7 percent of FOIA requests the State Department received were responded to within the 20 days required. The State Department denied FOIA requests in their entirety almost 50 percent of the time. And administrative appeals take on average 540 days, or over a year and a half, to process. This is unacceptable. While I recognize that the number of FOIA requests has increased over the years and that the requests can be complex, this is not a reason to fall down on the job. If more resources are needed to keep up with the workload, agencies must ask for them.

But this problem cannot be solved by money alone. We need to fundamentally change the way we think about FOIA and our approach to this law. Our very democracy is built on the idea that our government should not operate in secret, and we should embrace that. Transparency allows the American people to hold its government accountable. And while it is not always popular, it is fundamental to the values on which our country was founded. That is why I worked with Senator Cornyn to craft the FOIA Improvement Act of 2015, a comprehensive bill that will codify what President Obama laid out in his historic 2009 memorandum requiring Federal agencies to adopt a “Presumption of Openness” when considering the release of government information under FOIA. This policy was first put into place by President Clinton but then repealed by President Bush. President Obama reinstated it as one of his first acts in office. By codifying the Presumption of Openness, Congress can establish a transparency standard that will remain for future administrations and agencies to follow. This policy embodies the very spirit of

FOIA, and if fully complied with would do more to improve the effectiveness of FOIA than any other reform.

I hope we can pass the FOIA Improvement Act without further delay. It is supported by more than 70 public interest groups that advocate for government transparency, it had the unanimous support of the Judiciary Committee in February, and it is nearly identical to legislation passed by the full Senate last year. There are no objections on the Democratic side to moving forward with this legislation and I hope we can bring it before the full Senate for consideration and pass this important bill.

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