

Speaker of the House Paul D. Ryan
U.S. House of Representatives
1233 Longworth House Office Building
Washington, DC 20515

Minority Leader Nancy Pelosi
U.S. House of Representatives
233 Cannon House Office Building
Washington, DC 20515

January 15, 2016

Dear Speaker Ryan and Minority Leader Pelosi:

We, the undersigned organizations, are writing with regards to the FOIA Oversight and Implementation Act (H.R. 653) – a bill to amend the Freedom of Information Act (FOIA) to promote greater government transparency and accountability. The bipartisan bill was first introduced by Representatives Issa and Cummings and, on January 11, 2016, Chairman Chaffetz of the House Oversight and Government Reform Committee introduced an amendment and brought the bill to the floor, where it passed on a voice vote. We are grateful for the work that Chairman Chaffetz, Ranking Member Cummings, and the entire Committee have done in the development of the amendment and overall support to reform FOIA.

We strongly support the provisions in H.R. 653 and the efforts to fix FOIA, as discussed below. We object, however, to the last-minute inclusion of specific provisions to the floor amendment, apparently added at the behest of members of the House Permanent Select Committee on Intelligence. On pages 6-7 a provision restates that currently-protected information relating to “sources and methods” would not be subject to disclosure under any of the amendments in the bill. This exemption is both unnecessary and duplicative, as such information is already protected from disclosure by other statutes, notably the National Security Act.¹

The FOIA reforms in the bill are specifically intended to address poor FOIA processing. The provision on consultation is intended to streamline the processing of FOIA requests, and ensure agencies do not abuse the consultation process or use it as an excuse for excessive processing time. Page 16 includes a provision that would exempt the Intelligence Community from the reforms to the consultation process that the bill would put into place. Exempting the Intelligence Community agencies, which most need the reforms, from the consultation process weakens the reforms intended by the Committee.

The inclusions of the above language, added as a result of a last-minute demand of HPSCI, in a pattern that is becoming all too familiar and objectionable, and the efforts to exempt the Intelligence Community from certain provisions of the FOIA amendments in this bill are not acceptable, most particularly in a bill intended to promote openness across the federal government. Allowing the Intelligence Community to differentiate itself from other agencies with its responsibilities to FOIA is a bad precedent.

These concerns notwithstanding, we also would like to highlight the key reforms that the FOIA reform bill addresses, including the overuse and abuse of FOIA’s exemptions. Notably, the bill codifies the current Administration’s directive on the presumption of openness – requiring agencies to disclose

¹ 50 USC 403g: Intelligence Sources and Methods: <http://projects.propublica.org/foia-exemptions/statutes/6.html>

information unless there is a foreseeable harm or legal requirement to withhold the information. Codifying this would force agencies to uniformly apply the guidance and ensure that the next Administration cannot backslide and resort to the culture of secrecy that guided agencies in the past.

Additionally, the bill narrows the use of FOIA's Exemption 5, which covers inter- and intra-agency records. This exemption has broadly expanded and cited to justify withholding important public interest information, including Office of Legal Counsel (OLC) memos with key information on issues such as secret National Security Letters, the Bush-era torture program, targeted killing programs, and expansive NSA communications surveillance programs.

Lastly, the bill also provides the Office of Government Information Services (OGIS) with the ability to submit reports and testimony directly to Congress and the President. This change is critical for making sure OGIS has the ability to alert Congress to potential problems with agencies' implementation of the law, and to suggest reforms to make FOIA work better for the public.

The undersigned organizations support the bicameral, bipartisan movement toward reforming the Freedom of Information Act (FOIA). Congress must continue to act to ensure before the end of this Administration that FOIA stays current with people's need to access government information and resilient in the face of attempts to subvert that access.

To speak further about these issues, please contact Patrice McDermott, Executive Director at OpenTheGovernment.org at 202-332-6736 or pmcdermott@openthegovernment.org.

Sincerely,

Access Now

American-Arab Anti-Discrimination Committee

American Association of Law Libraries

American Booksellers for Free Expression

American Civil Liberties Union

American Library Association

Appeal for Justice

Association of Research Libraries

The American Society of Journalists and Authors
(ASJA)

Bill of Rights Defense Committee

Californians Aware

Constitutional Alliance

Citizens for Responsibility and Ethics in
Washington

Cyber Privacy Project

Data Coalition

Defending Dissent

Demand Progress

Electronic Frontier Foundation

Food & Water Watch

International Justice Network

Government Accountability Project

National Coalition for History

National Security Archive

National Security Counselors

New America's Open Technology Institute

Niskanen Center

OpenTheGovernment.org

People for the American Way

Project On Government Oversight

Restore The Fourth

RootsAction.org

R-Street

Society of Professional Journalists

Sunlight Foundation

Taxpayers Protection Alliance

TechFreedom

Transactional Records Access Clearinghouse
Tully Center for Free Speech at Syracuse

University
X-Lab

CC: Representative Jason Chaffetz, Chairman, House Oversight and Government Reform Committee;
Representative Elijah Cummings, Ranking Member, House Oversight and Government Reform
Committee.