

## **FOIA Improvement Act will help keep government accountable**

Since 1966, the Freedom of Information Act (FOIA) has served as a critical tool for government oversight, permitting direct citizen access to federal agency records. The law has produced many important public disclosures, ranging from documents that established the use of Agent Orange in Vietnam, to the Bush administration's 2002 torture memo. Such disclosures have resulted in changes to federal law, and have helped to check the power of the executive branch in many instances.

### **Increasing compliance problems**

In recent years, government FOIA compliance has slipped in important ways, even as the Obama administration has publicly committed itself to making transparency one of its institutional priorities. One can see statistical evidence of this by looking to agency use of FOIA "exemptions" to withhold documents. The FOIA has long included certain legal exemptions that permit the government to withhold specific types of records - such as records relating to ongoing criminal investigations. A current compliance problem stems from the fact that agencies have broadened their use of FOIA exemptions to cover scores of documents that should rightfully be public.

### **Use of FOIA Exemption Five**

For instance, FOIA Exception Five allows for the redaction or withholding of "deliberative process" information that would be exempt under civil discovery rules. Exception Five redactions have increased sharply in recent years, and have been used to cover a wide variety of other records - including, oddly, records that already exist in a public form elsewhere.

Exemption Five has also been used to withhold final legal opinions, despite the fact that the FOIA explicitly requires the disclosure of such documents. For example, the Department of Justice Office of Legal Counsel (OLC) recently used Exemption Five to withhold access to final opinions about the federal government's interpretation of its military detention powers under the 2012 National Defense Authorization Act. There are perhaps few matters of greater public importance than how the government views its own detention powers. However, under OLC's reading of the FOIA, the public is unable to view final legal opinions that guide the implementation of those same powers.

### **FOIA Improvement Act**

Fortunately, a bill moving through the U.S. Senate offers a possible remedy for

such problems. The “FOIA Improvement Act” would help to fix the current Exemption Five impasse by requiring agencies to apply a public interest test to Exemption Five, effectively allowing judges greater latitude to order document releases in the event that redactions are challenged in court. The legislation would also do several other important things, including eliminating the use of Exemption Five to cover records that are more than twenty-five years old.

The FOIA Improvement Act is supported by dozens of government accountability organizations - from Open The Government in Washington DC, to the Minnesota Coalition on Government Information at a local level. If passed into law, federal transparency would be bolstered, and the public interest would be served. The FOIA is central to governmental oversight, and it deserves to be strengthened to meet its newest challenges.

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