

**Statement of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing On
“Open Government and Freedom of Information:
Reinvigorating the Freedom of Information Act for the Digital Age”
March 11, 2014**

Today, the Committee holds an important hearing on the Freedom of Information Act (FOIA), one of the Nation’s most important open government laws. We also commemorate the annual celebration of openness in our democratic society known as “Sunshine Week,” which will take place next week.

For almost a half century, the Freedom of Information Act has translated our American values of government openness and accountability into practice by guaranteeing the public’s right to access information. This hearing is an opportunity to take stock of the progress we have made during the last decade on improving the FOIA process. We will also examine proposals to reform FOIA to address new technologies and the challenges that remain when citizens seek information from their government.

Five years after President Obama issued presidential directives on FOIA and open government, we have seen some progress. Backlogs of FOIA requests are on the decline, a trend that started during the first term of the Obama administration. Online tools such as Data.gov, FOIA.gov and the FOIA portal and the Obama administration's new “FOIA IT Working Group” have modernized the way that citizens can obtain government information. We are moving in the right direction, but stubborn impediments to the FOIA process remain in place and progress has come much too slow.

A new study by the Center for Effective Government - which graded the responsiveness of the 15 Federal agencies that process the most FOIA requests - found that almost half of these agencies failed to earn a passing grade. Another impediment to the FOIA process is the growing use of exemptions to withhold information from the public. According to a 2013 Secrecy Report prepared by OpenTheGovernment.org, Federal agencies used FOIA Exemption 5 to withhold information from the public more than 79,000 times in 2012 — a 41 percent increase from the previous year.

I am concerned that the growing trend towards relying upon FOIA exemptions to withhold large swaths of government information is hindering the public’s right to know. That is why I have long supported adding a public interest balancing test to the FOIA statute, so that Federal agencies consider the public interest in the disclosure of government information before invoking a FOIA exemption.

Seven years ago, Senator Cornyn and I worked together to establish the Office of Government Information Services (OGIS) to help mediate FOIA disputes and to make recommendations to Congress and to the President on how to improve the FOIA process. I am encouraged by the good work that OGIS is doing, but I worry this office does not have the sufficient independence, authority and resources to fully carry-out its work. The work of this office is critical to keeping

our government open and accountable to the American people. That is why I will continue to work to ensure that OGIS has the tools and resources that it needs to fulfill its important mission.

During both Democratic and Republican administrations, this Committee has had a proud tradition of working in a bipartisan manner to protect the public's right to know. Working together, we have enacted several bills to improve FOIA for all Americans. I value the strong partnerships that I have formed with Senator Cornyn and Ranking Member Grassley on open government matters. I hope that this bipartisan spirit will guide our work today. I look forward to a good discussion.

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