

## Senate Passes FOIA Improvement Bill

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In today's political climate, it is a rare topic that enjoys unanimous support in Congress. Yet that is exactly the case, at least in the Senate, when it comes to the "FOIA Improvement Act of 2016," a bill amending the federal Freedom of Information Act and which the United States Senate passed by unanimous consent on March 15, 2016. The White House announced the same day that President Obama would sign the bill if it reaches his desk in the form which passed the Senate.

Co-sponsored by a bipartisan group of senators led by Republican John Cornyn of Texas and Democrat Patrick Leahy of Vermont, the bill, S. 337, contains a number of important changes to the law. Perhaps most importantly, it codifies a presumption of openness and requires federal agencies seeking to withhold information to show not only that an exception to disclosure might apply, but also that "the agency reasonably foresees that disclosure would harm an interest protected by an exemption...." This standard has been the policy of the Obama administration Justice Department, but not all administrations in the past have followed such a policy. For example, during the George W. Bush administration, the Justice Department would generally defend any FOIA case in which there was a legitimate basis to claim an exemption, without regard to whether disclosure of the requested information would actually harm the agency involved.

Other key features of the bill include a 25-year "sunset" on an agency's ability to invoke the deliberative process exemption provided at 5 U.S.C. §552(b)(5), so that agencies could not claim that exemption to disclosure for records more than 25 years old. The bill also strengthens the Office of Government Information Services, the FOIA ombudsman office, and makes clear that frequently requested public records must be provided in electronic format.

Supporters of the bill are optimistic about its chances in the House of Representatives, and some key supporters of the bill, including Senate Judiciary Committee Chairman Charles Grassley, are hoping it can be passed and signed into law by this July 4th, which will be the 50th anniversary of President Johnson's signing of the original FOIA bill.