

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Missouri (Mr. CLAY) that the House suspend the rules and pass the bill, H.R. 1255, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the yeas have it.

Mr. CLAY. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this question will be postponed.

FREEDOM OF INFORMATION ACT AMENDMENTS OF 2007

Mr. CLAY. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1309) to promote openness in Government by strengthening section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act), and for other purposes, as amended.

The Clerk read as follows:

H.R. 1309

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Freedom of Information Act Amendments of 2007”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Protection of fee status for news media.
- Sec. 4. Recovery of attorney fees and litigation costs.
- Sec. 5. Disciplinary actions for arbitrary and capricious rejections of requests.
- Sec. 6. Time limits for agencies to act on requests.
- Sec. 7. Individualized tracking numbers for requests and status information.
- Sec. 8. Specific citations in exemptions.
- Sec. 9. Reporting requirements.
- Sec. 10. Openness of agency records maintained by a private entity.
- Sec. 11. Office of Government Information Services.
- Sec. 12. Accessibility of critical infrastructure information.
- Sec. 13. Report on personnel policies related to FOIA.
- Sec. 14. Promotion of public disclosure.
- Sec. 15. Requirement to describe exemptions authorizing deletions of material provided under FOIA.

SEC. 2. FINDINGS.

Congress finds that—

(1) the Freedom of Information Act was signed into law on July 4, 1966, because the American people believe that—

(A) our constitutional democracy, our system of self-government, and our commitment to popular sovereignty depends upon the consent of the governed;

(B) such consent is not meaningful unless it is informed consent; and

(C) as Justice Black noted in his concurring opinion in *Barr v. Matteo* (360 U.S. 564

(1959)), “The effective functioning of a free government like ours depends largely on the force of an informed public opinion. This calls for the widest possible understanding of the quality of government service rendered by all elective or appointed public officials or employees.”;

(2) the American people firmly believe that our system of government must itself be governed by a presumption of openness;

(3) the Freedom of Information Act establishes a “strong presumption in favor of disclosure” as noted by the United States Supreme Court in *United States Department of State v. Ray* (502 U.S. 164 (1991)), a presumption that applies to all agencies governed by that Act;

(4) “disclosure, not secrecy, is the dominant objective of the Act,” as noted by the United States Supreme Court in *Department of Air Force v. Rose* (425 U.S. 352 (1976));

(5) in practice, the Freedom of Information Act has not always lived up to the ideals of that Act; and

(6) Congress should regularly review section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act), in order to determine whether further changes and improvements are necessary to ensure that the Government remains open and accessible to the American people and is always based not upon the “need to know” but upon the fundamental “right to know”.

SEC. 3. PROTECTION OF FEE STATUS FOR NEWS MEDIA.

Section 552(a)(4)(A)(ii) of title 5, United States Code, is amended by adding at the end the following:

“In making a determination of a representative of the news media under subclause (II), an agency may not deny that status solely on the basis of the absence of institutional associations of the requester, but shall consider the prior publication history of the requester. Prior publication history shall include books, magazine and newspaper articles, newsletters, television and radio broadcasts, and Internet publications. If the requester has no prior publication history or current affiliation, the agency shall consider the requestor's stated intent at the time the request is made to distribute information to a reasonably broad audience.”

SEC. 4. RECOVERY OF ATTORNEY FEES AND LITIGATION COSTS.

(a) IN GENERAL.—Section 552(a)(4)(E) of title 5, United States Code, is amended by adding at the end the following: “For purposes of this section only, a complainant has substantially prevailed if the complainant has obtained relief through either—

“(i) a judicial order, administrative action, or an enforceable written agreement or consent decree; or

“(ii) a voluntary or unilateral change in position by the opposing party, in a case in which the complainant's claim or defense was not frivolous.”

(b) LIMITATION.—Notwithstanding section 1304 of title 31, United States Code, no amounts may be obligated or expended from the Claims and Judgment Fund of the United States Treasury to pay the costs resulting from the amendments made by this section. Any such amounts shall be paid only from funds annually appropriated for the Federal agency against which a claim or judgment has been rendered.

SEC. 5. DISCIPLINARY ACTIONS FOR ARBITRARY AND CAPRICIOUS REJECTIONS OF REQUESTS.

Section 552(a)(4)(F) of title 5, United States Code, is amended—

(1) by inserting “(i)” after “(F)”; and

(2) by adding at the end the following:

“(ii) The Attorney General shall—

“(I) notify the Special Counsel of each civil action described under the first sentence of clause (i); and

“(II) annually submit a report to Congress on the number of such civil actions in the preceding year.

“(iii) The Special Counsel shall annually submit a report to Congress on the actions taken by the Special Counsel under clause (i).”

SEC. 6. TIME LIMITS FOR AGENCIES TO ACT ON REQUESTS.

(a) TIME LIMITS.—

(1) IN GENERAL.—Section 552(a)(6)(A)(i) of title 5, United States Code, is amended by striking “determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request” and inserting “within the 20-day period commencing on the date on which the request is first received by the agency (excepting Saturdays, Sundays, and legal public holidays), which shall not be tolled without the consent of the party filing the request, determine”.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect 1 year after the date of enactment of this Act.

(b) APPLICABILITY OF AGENCY FEES.—

(1) LIMITATION.—Section 552(a)(4)(A) of title 5, United States Code, is amended by adding at the end the following:

“(viii) An agency shall refund any fees collected under this subparagraph if the agency fails to comply with any time limit that applies under paragraph (6). Such refunds shall be paid from annual appropriations provided to that agency.”

(2) EFFECTIVE DATE AND APPLICATION.—The amendment made by this subsection shall take effect 1 year after the date of enactment of this Act and shall apply to requests for information under section 552 of title 5, United States Code, filed on or after that effective date.

SEC. 7. INDIVIDUALIZED TRACKING NUMBERS FOR REQUESTS AND STATUS INFORMATION.

(a) IN GENERAL.—Section 552(a) of title 5, United States Code, is amended by adding at the end the following:

“(7) Each agency shall—

“(A) establish a system to assign an individualized tracking number for each request for information under this section;

“(B) not later than 10 days after receiving a request, provide each person making a request with the tracking number assigned to the request; and

“(C) establish a telephone line or Internet service that provides information about the status of a request to the person making the request using the assigned tracking number, including—

“(i) the date on which the agency originally received the request; and

“(ii) an estimated date on which the agency will complete action on the request.”

(b) EFFECTIVE DATE AND APPLICATION.—The amendment made by this section shall take effect 1 year after the date of enactment of this Act and apply to requests for information under section 552 of title 5, United States Code, filed on or after that effective date.

SEC. 8. SPECIFIC CITATIONS IN EXEMPTIONS.

Section 552(b) of title 5, United States Code, is amended by striking paragraph (3) and inserting the following:

“(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute—

“(A) if enacted after the date of enactment of the Freedom of Information Act Amendments of 2007, specifically cites to this section; and

“(B)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

“(ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;”.

SEC. 9. REPORTING REQUIREMENTS.

(a) ANNUAL REPORT REQUIREMENTS.—Section 552(e)(1) of title 5, United States Code, is amended—

(1) in the matter preceding subparagraph (A) by striking “fiscal year and which” and inserting “fiscal year. Information in the report shall be expressed in terms of each principal component of the agency and for the agency overall, and”;

(2) in subparagraph (B)(ii), by inserting after the first comma the following, “the number of occasions on which each statute was relied upon.”;

(3) in subparagraph (C), by inserting after “median” the following: “and average”;

(4) in subparagraph (E), by inserting before the semicolon the following: “, based on the date on which each request was initially received by the agency”; and

(5) by redesignating subparagraphs (F) and (G) as subparagraphs (N) and (O), respectively, and inserting after subparagraph (E) the following new subparagraphs:

“(F) the average number of days for the agency to respond to requests beginning on the date on which each request was initially received by the agency, the median number of days for the agency to respond to such requests, and the range in number of days for the agency to respond to such requests;

“(G) based on the number of business days that have elapsed since each request was initially received by the agency—

“(i) the number of requests for records to which the agency has responded with a determination within a period greater than 1 day and less than 201 days, stated in 20-day increments;

“(ii) the number of requests for records to which the agency has responded with a determination within a period greater than 200 days and less than 301 days;

“(iii) the number of requests for records to which the agency has responded with a determination within a period greater than 300 days and less than 401 days; and

“(iv) the number of requests for records to which the agency has responded with a determination within a period greater than 400 days;

“(H) the average number of days for the agency to provide the granted information beginning on the date on which each request was initially received by the agency, the median number of days for the agency to provide the granted information, and the range in number of days for the agency to provide the granted information;

“(I) the median and average number of days for the agency to respond with a determination to administrative appeals based on the date on which each appeal was initially received by the agency; the highest number of business days taken by the agency to respond to an administrative appeal; and the lowest number of business days taken by the agency to respond to an administrative appeal;

“(J) data on the 10 active requests with the earliest filing dates pending at the agency, including the amount of time that has elapsed since each request was initially received by the agency;

“(K) data on the 10 active administrative appeals with the earliest filing dates pending at the agency as of September 30 of the preceding year, including the number of business days that have elapsed since each request was initially received by the agency;

“(L) the number of expedited review requests received by the agency, the number that were granted and the number that were denied, the average and median number of

days for adjudicating expedited review requests, and the number of requests that adjudicated within the required 10 days;

“(M) the number of fee waiver requests that were granted and the number that were denied, and the average and median number of days for adjudicating fee waiver determinations;”.

(b) AVAILABILITY OF RAW STATISTICAL DATA.—Section 552(e)(2) of title 5, United States Code, is amended by adding after the period the following: “In addition, each agency shall make the raw statistical data used in its reports available electronically to the public upon request.”.

SEC. 10. OPENNESS OF AGENCY RECORDS MAINTAINED BY A PRIVATE ENTITY.

Section 552(f) of title 5, United States Code, is amended by striking paragraph (2) and inserting the following:

“(2) ‘record’ and any other term used in this section in reference to information includes—

“(A) any information that would be an agency record subject to the requirements of this section when maintained by an agency in any format, including an electronic format; and

“(B) any information described under subparagraph (A) that is maintained for an agency by an entity under a contract between the agency and the entity.”.

SEC. 11. OFFICE OF GOVERNMENT INFORMATION SERVICES.

(a) IN GENERAL.—Chapter 21 of title 44, United States Code, is amended by inserting after section 2119 the following new section:

“§2120. Office of Government Information Services

“(a) IN GENERAL.—There is established in the National Archives an office to be known as the ‘Office of Government Information Services’.

“(b) NATIONAL INFORMATION ADVOCATE.—

“(1) IN GENERAL.—The Office of Government Information Services shall be under the supervision and direction of an official to be known as the ‘National Information Advocate’ who shall report directly to the Archivist of the United States.

“(2) FUNCTIONS OF OFFICE.—

“(A) GUIDANCE FOR REQUESTERS.—

“(i) IN GENERAL.—The Office of Government Information Services shall provide, as a non-exclusive alternative to litigation, guidance to FOIA requesters.

“(ii) TYPES OF GUIDANCE.—In providing such guidance, the Office shall provide informal guidance to requesters and may provide fact-finding reviews and opinions to requesters. All reviews and opinions shall be non-binding and shall be initiated only on the request of FOIA requesters.

“(iii) AVAILABILITY.—Any written opinion issued pursuant to this section shall be available on the Internet in an indexed, readily accessible format.

“(iv) FOIA REQUESTERS.—In this paragraph, the term ‘FOIA requester’ or ‘requester’ means a person who has made a request under section 552 of this title and who has been denied records or has not received a timely response to the request or to an administrative appeal.

“(B) ANALYSES OF AGENCY OPERATIONS.—The Office of Government Information Services shall—

“(i) review policies and procedures of administrative agencies under section 552 of this title and compliance with that section by administrative agencies; and

“(ii) recommend policy changes to Congress and the President to improve the administration of section 552 of this title, including whether agencies are receiving and expending adequate funds to ensure compliance with that section.

“(3) IMPACT ON REQUESTER ACCESS TO LITIGATION.—Nothing in this section shall affect the right of requesters to seek judicial review as described in section 552 of this title.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 21 of title 44, United States Code, is amended by inserting after the item relating to section 2119 the following:

“2120. Office of Government Information Services.”.

SEC. 12. ACCESSIBILITY OF CRITICAL INFRASTRUCTURE INFORMATION.

(a) IN GENERAL.—Not later than January 1 of each of the 3 years following the date of the enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on the implementation and use of section 214 of the Homeland Security Act of 2002 (6 U.S.C. 133), including—

(1) the number of persons in the private sector, and the number of State and local agencies, that voluntarily furnished records to the Department under this section;

(2) the number of requests for access to records granted or denied under this section;

(3) such recommendations as the Comptroller General considers appropriate regarding improvements in the collection and analysis of sensitive information held by persons in the private sector, or by State and local agencies, relating to vulnerabilities of and threats to critical infrastructure, including the response to such vulnerabilities and threats; and

(4) an examination of whether the non-disclosure of such information has led to the increased protection of critical infrastructure.

(b) FORM.—The report shall be submitted in unclassified form, but may include a classified annex.

SEC. 13. REPORT ON PERSONNEL POLICIES RELATED TO FOIA.

Not later than 1 year after the date of enactment of this Act, the Office of Personnel Management shall submit to Congress a report that examines—

(1) whether changes to executive branch personnel policies could be made that would—

(A) provide greater encouragement to all Federal employees to fulfill their duties under section 552 of title 5, United States Code; and

(B) enhance the stature of officials administering that section within the executive branch;

(2) whether performance of compliance with section 552 of title 5, United States Code, should be included as a factor in personnel performance evaluations for any or all categories of Federal employees and officers;

(3) whether an employment classification series specific to compliance with sections 552 and 552a of title 5, United States Code, should be established;

(4) whether the highest level officials in particular agencies administering such sections should be paid at a rate of pay equal to or greater than a particular minimum rate;

(5) whether other changes to personnel policies can be made to ensure that there is a clear career advancement track for individuals interested in devoting themselves to a career in compliance with such sections; and

(6) whether the executive branch should require any or all categories of Federal employees to undertake awareness training of such sections.

SEC. 14. PROMOTION OF PUBLIC DISCLOSURE.

Section 552 of title 5, United States Code, is amended by adding at the end the following:

“(h)(1) The policy of the Federal Government is to release information to the public in response to a request under this section—

“(A) if such release is required by law; or
“(B) if such release is allowed by law and the agency concerned does not reasonably foresee that disclosure would be harmful to an interest protected by an applicable exemption.

“(2) All guidance provided to Federal Government employees responsible for carrying out this section shall be consistent with the policy set forth in paragraph (1).”

SEC. 15. REQUIREMENT TO DESCRIBE EXEMPTIONS AUTHORIZING DELETIONS OF MATERIAL PROVIDED UNDER FOIA.

Section 552(b) of title 5, United States Code, is amended in the matter appearing after paragraph (9)—

(1) in the second sentence, by inserting after “amount of information deleted” the following: “, and the exemption under which the deletion is made,”; and

(2) in the third sentence, by inserting after “amount of the information deleted” the following: “, and the exemption under which the deletion is made.”

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Missouri (Mr. CLAY) and the gentleman from Ohio (Mr. TURNER) each will control 20 minutes.

The Chair recognizes the gentleman from Missouri.

GENERAL LEAVE

Mr. CLAY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

There was no objection.

Mr. CLAY. Mr. Speaker, as chairman of the Oversight Subcommittee on Information Policy, Census and National Archives, and lead sponsor of the Freedom of Information Act Amendments of 2007, I strongly urge my colleagues to support H.R. 1309.

H.R. 1309 champions the values of transparency and open government that we celebrate during Sunshine Week and that are embodied in the Freedom of Information Act, or FOIA, as it is referred to.

Introduced with my colleagues Representative WAXMAN, chairman of the full Committee on Oversight and Government Reform, and Representative PLATTS, this bipartisan legislation is necessary to strengthen FOIA as a tool for enabling public access to government records.

During a hearing in February, the subcommittee heard extensive testimony concerning long delays and bureaucratic obstacles experienced by requesters when trying to obtain government records under FOIA.

According to testimony from GAO, most agencies throughout the government are failing to keep pace with the volume of requests they are receiving, the number of pending requests carried over from year to year has been steadily increasing, and the rate of increase is growing.

A report released on Monday by the nonprofit National Security Archive further highlights the failure of agen-

cies to make information available to the public in a timely way. According to the report, just 22 percent of agencies are complying with the 1996 “e-FOIA law,” which requires agencies to post frequently requested information on their Web sites.

An insufficient level of resources available for FOIA processing is one reason requesters are being forced to wait long periods of time for responses from agency FOIA offices. Another factor is the current administration’s policy of withholding government information that would have been released under previous administrations. Government secrecy has increased as the volume of requests has gone up dramatically.

Building on the OPEN Government Act introduced in the last Congress by Senators CORNYN and LEAHY and Representative LAMAR SMITH, H.R. 1309 contains 13 substantive provisions aimed at removing obstacles to complete and timely government responses to FOIA requests.

The bill would re-establish the policy of the Clinton administration, under which agencies were directed to disclose requested information unless the disclosure would result in some harm. The current administration has encouraged agencies to be more aggressive in asserting statutory exemptions to deny FOIA requests.

In addition, the bill proposes a government-wide ombudsman to mediate disputes between agencies and requesters. This would help to reduce the number of disputes resolved through costly and time consuming litigation.

Other key provisions include: A requirement that agencies respond to FOIA requests within 20 business days or face meaningful administrative penalties; the establishment of a publicly accessible tracking system for pending FOIA requests; and new reporting requirements to allow Congress to evaluate agency compliance with FOIA laws and regulation.

In conclusion, Mr. Speaker, H.R. 1309 provides a strong, reasonable and bipartisan approach to streamlining the FOIA process and increasing transparency in government. It has the vigorous support of every major organization representing the media industry, journalists, historians, archivists and the public interest in government openness and accountability.

We owe it to our constituents to pass this legislation and ensure that the Freedom of Information Act provides actual access to government information to which the American people are entitled.

I urge all of my colleagues to support the bill.

Mr. Speaker, I reserve the balance of my time.

Mr. TURNER. Mr. Speaker, I yield myself as much as I may consume.

Mr. Speaker, we have a bit of irony in play here on the House floor. This week the Democratic leadership has declared it Open Government Week,

Open Government Week as we take up amendments to the Freedom of Information Act, an act that is incredibly important as a tool for us to hold our government accountable because it gives people the opportunity to access information that can be reviewed by people to determine what action needs to be taken.

But, unfortunately, in the middle of this Open Government Week we have a bill that is coming to the floor, not the bill that went to the committee, not the bill that went through the subcommittee hearings, but an amended bill that has not been reviewed, and was handed to us 10 minutes ago.

Now, the reason why bills come on the Suspension Calendar where we agree to suspend the rules is because they are bills that have been fully vetted, that have openness to them, and that people are aware of what they are and have the opportunity to review them when we have an understanding that more than a majority of this House supports what is in that bill.

But today, without prior notice, and 10-minute amendments to the bill, we have a bill that we are currently reviewing to determine what changes have been made and what the implications would be.

Some of the speakers on the other side of the aisle talked about in Open Government Week that we wanted to make certain that there weren’t backroom deals that were being made. Well, clearly the bill, unfortunately, that comes before us on the Freedom of Information Act is the product of a backroom deal where the majority of this House is going to be left with reviewing it to determine what is in it after it had come through our committee and subcommittee.

So my comments about this bill will be about the one that came from the committee and the subcommittee that the subcommittee Chair and the chairman worked so hard in a bipartisan way to bring to this floor.

I know others on this side of the aisle will be reserving their comments for the areas of the bill where it has been modified, where the backroom deals have been made. And we are all unaware of its impact.

The Freedom of Information Act is a popular tool for inquiry for the press, researchers, business, attorneys, activists. But most importantly, it remains a tool for the citizen. Improving the procedural aspects of the act is certainly a worthy goal.

Legislation designed to streamline and improve the Freedom of Information Act process was introduced last Congress by the gentleman from Texas (Mr. SMITH). His bill, H.R. 867, has moved through subcommittee to the full committee. This was a solid bipartisan bill that Republicans introduced and guided through the legislative process. This year the majority took that bipartisanship bill and made a few changes.

Republicans offered two amendments that were not included in the reported

bill. First, the attorneys' fee provision appears to significantly lower the bar for the recovery of fees, making it easier for those seeking information from the Federal Government to recover legal fees.

The language in this bill differs from that in H.R. 867. The Supreme Court has ruled on this matter in the *Buckhannon* case, and now some fear the effect of this decision, what it might have on their ability to get attorneys' fees.

The language of section 4 of this bill would make plaintiffs eligible for attorneys' fees in almost any case, so long as they can show that the defending government agency somehow changed its position once the case had commenced. I hope we can closely consider the rationale behind this provision, and its implications for the numerous Federal statutes providing for attorneys' fee awards where the United States or a Federal agency or official is a party. You have to assume that if this is the provision that passes, everyone litigating under any private right of action will clamor for the same favorable legislative treatment.

An amendment was offered in committee to strike section 4 to preserve settled judicial precedent regarding attorneys' fees and highlight this issue. I hope my colleagues in the House and the other body will take a close look at this section as the legislation moves forward.

Second, the majority has taken to heart various groups' concerns about the so-called Ashcroft memo. During President Clinton's administration, Attorney General Janet Reno issued a memorandum establishing a presumption of disclosure if no foreseeable harm would result from the release of information.

Shortly after 9/11, and recognizing the challenges of the standard and the challenges that we face in the global war on terror, Attorney General Ashcroft issued a memorandum that encouraged agencies to carefully consider the protection of the values of interest embodied in the statutory exemptions to FOIA when making disclosure determinations.

I understand that there are serious concerns with this section, and I understand the gentleman from Texas (Mr. SMITH) will speak on this bill and this provision.

Nevertheless, I hope that we continue to balance the need for open government with the need to protect information vital to national security and homeland security, and I hope we keep in mind the importance of individual privacy throughout this debate.

Mr. Speaker, I reserve the balance of my time.

Mr. CLAY. Mr. Speaker, at this time I yield 5 minutes to the distinguished chairman from California, Mr. WAXMAN.

Mr. WAXMAN. Thank you very much, Mr. CLAY, the chairman of the subcommittee, and I thank the gen-

tleman from Ohio, the ranking member of the subcommittee.

Mr. Speaker, I first of all have to express my regret in response to the complaint that, while we have openness in government, we had an amendment to this bill suddenly presented to the minority.

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And let me explain why that happened. The legislation before us was completely bipartisan in committee. I don't think anybody voted against the bill passing out of our committee, for all the reasons that both the Chair of the subcommittee and the ranking member described, and I would like to get into those substantive issues as well, because this is the best known and most important of the freedom of information that people look to when they want to be able to find out what government is doing. It is called the Freedom of Information Act for that reason.

But we did not have presented to us in committee any objection to the fact that there is a score on this bill of \$7 million. But because there is a score, we found out last night that there might be an objection to the bill; and we didn't want to have an objection to the bill, possibly cause people to come to the floor and vote against something as important as the Freedom of Information Act. So we added an amendment to the bill that simply provided that the \$7 million, which, by the way, is only expended if the government is sued and loses and has to pay the penalty owed to people for withholding the information. But because there is a \$7 million score, we added to this bill that there would be nothing paid unless there is an appropriation of that money. So the bill would not be scored as costing any money at all.

I wish we had more time to bring this to everyone's attention, but no one brought to our attention in the committee that there was concern about this score.

Nevertheless, this bill goes to the heart of the public's access to find out information about what its government is doing. And as we look at what we have designated "Sunshine Week," we are considering this legislation to improve and strengthen this vital law.

H.R. 1309 has been in effect for 40 years, but yet we have a dozen provisions that will increase public access to information under FOIA. These provisions will help FOIA requesters obtain timely responses to their requests, reduce the backlogs at agencies, increase transparency in agency compliance, and provide an alternative to litigation for requesters who are facing delays or denials.

In addition, this bill will restore an important element of the Freedom of Information Act, the presumption of disclosure. Through memoranda issued in 2001 and 2002, the Bush administration discouraged agencies from releasing any document if they could find a

technical reason for withholding it. This bill before us today reverses this policy by codifying the presumption of disclosure. Under this bill, agencies will revert to their former policies that emphasized public disclosure and supported the withholding of information only when the agency could foresee a harm from disclosure. This is an important change that will ensure continued public access to government information.

The bill is a bipartisan bill, it is an important bill for openness in government, and I urge my colleagues to support the legislation.

Mr. TURNER. Mr. Speaker, I appreciate the chairman's description of that. I do want to note that my understanding of the applicable dates are that the markup of our bill occurred on March 8 and the CBO cost estimate I believe is dated March 12, which would explain perhaps why there were no objections in the committee.

Mr. Speaker, I yield 4 minutes to the gentleman from Wisconsin (Mr. RYAN).

Mr. RYAN of Wisconsin. Mr. Speaker, I came to the floor to oppose the bill not on the merits of the FOIA policy, but on the grounds that this bill had a budget section 303 point of order against it and that it violated the new PAYGO rules we have before us.

This bill that we just now got 10 minutes ago, as we read it, we believe does not violate section 303 of the Budget Act or the PAYGO rules. But I think the point I would like to make is this: 10 minutes ago this bill did have a section 303 violation against it; 10 minutes ago this bill did violate the majority's own PAYGO rules they put in place less than 10 months ago. And it scores not just a \$7 million, but a \$63 million increase over 10 years. So \$63 million over 10 years is a lot of money. And given the fact that this new amended bill, as it appears as we read it, does have the required language, subject to appropriations, that it is not out of order, it doesn't waive the PAYGO rules because it does pay for itself subject to appropriations.

I will withhold my objection, but I simply want to say to the majority this place would run a lot better if, when we put bills on the calendar and bring them to the floor, that they comply with the rules that the majority themselves put in place just 2 months ago with respect to PAYGO and with respect to the Budget Act. I just think the whole place would work a lot better if we do that. Then we get on to debating the merits of this legislation.

I think FOIA is an important tool. It needs to work better. I think there is a lot of merit to that point. But let's make sure that as we take a look at our budget problems, and they are enormous, our budget problems, if we can't make sure that bills that spend \$63 million over 10 years can't comply with the Budget Act, can't comply with PAYGO, who is to say that bills that spend \$2.9 trillion like our Federal budget can comply with it? So if we

can't get the rules right on small bills, who is to say we are going to get the budget discipline rules right on the big bills?

Fiscal discipline starts one step at a time, starts one bill at a time. We have got to get fiscal discipline rules in place and right on small business, especially if this Congress is going to get our arms around our larger fiscal problems.

That is simply the point I want to make to the chairman.

Mr. WAXMAN. Mr. Speaker, will the gentleman yield?

Mr. RYAN of Wisconsin. I yield to the gentleman from California.

Mr. WAXMAN. I thank the gentleman for yielding to me, and I just want to say what is seldom said on the House floor, that I agree with you. And we tried to correct the problems so that we didn't make the error that would have violated our PAYGO principles. And I thank the gentleman for pointing it out, and I think you have raised a very good point and we should all be mindful of it, including the points about the deficit, which I strongly think we need to deal with. So we will have differences about that, but I do want to show my agreement with your basic statement.

Mr. RYAN of Wisconsin. I appreciate the gentleman.

Mr. CLAY. Mr. Speaker, I reserve the balance of my time.

Mr. TURNER. Mr. Speaker, I yield 4 minutes to the gentleman from Texas (Mr. SMITH).

Mr. SMITH of Texas. Mr. Speaker, I appreciate my colleague from Ohio yielding me time, and I also want to thank Ranking Member TOM DAVIS and Chairman HENRY WAXMAN for their hard work on this issue. I know how strongly they feel about the need for more open government, and I and many others appreciate their efforts.

The process for obtaining government information is overly burdensome, and Federal agencies have become less and less responsive to requests for information. This deters citizens from obtaining information to which they are entitled.

H.R. 1309, the Freedom of Information Act Amendments of 2007, has much to recommend it, but it contains at least one fatal flaw, the statutory presumption of disclosure. For that reason, I oppose this legislation.

The presumption of disclosure would reverse the FOIA guidelines set out by former Attorney General John Ashcroft. Shortly after September 11, 2001, then-Attorney General John Ashcroft directed that FOIA be used to ensure an open and accountable system of government while at the same time protecting national security and personal privacy.

The directive encouraged agencies, when making a decision on discretionary disclosure, to carefully consider whether national security, privacy, and government's interest would be jeopardized.

Unfortunately, this bill only exacerbates national security and personal privacy concerns. Instead of allowing agency discretion regarding national security concerns, this statutory language would mandate the release of information if the information does not blatantly fall under an existing exemption.

For instance, under the bill's language there is no discretion to determine whether the information requested will invade personal privacy. Also, if information requested is required by FOIA to be released, under this language it could tip off a terrorist to an investigation that is being conducted. So the bill could set in motion events that could compromise our national security.

Last year, neither the House nor Senate bipartisan legislation included this questionable presumption of disclosure language. It is my understanding that this year's bipartisan Senate version also will not include this questionable language. And, furthermore, Mr. Speaker, the administration opposes this provision, too.

There is no good reason to support a flawed bill, and I encourage my colleagues to oppose it.

Mr. Speaker, I would ask unanimous consent to have the statement of opposition by the administration be made a part of the RECORD.

STATEMENT OF ADMINISTRATION POLICY—H.R. 1309—FREEDOM OF INFORMATION ACT AMENDMENTS OF 2007—(REP. CLAY (D) MISSOURI AND TWO COSPONSORS)

The Administration shares the goals of H.R. 1309 of increasing the timeliness of Freedom of Information Act, FOIA, responses and ensuring a customer-oriented approach to FOIA processing. The Administration has been pursuing these goals, and will be continuing to pursue them, through the strong management review and reforms that the President directed 15 months ago in the first-ever Executive Order on FOIA—Executive Order 13392, "Improving Agency Disclosure of Information"—which he signed on December 14, 2005.

However, the Administration cannot support H.R. 1309. The Administration believes it would be premature and counterproductive to the goals of increasing timeliness and improving customer service to amend FOIA before agencies have had sufficient time to implement the FOIA improvements that the President directed them to develop, put into place, monitor, and report on during FYs 2006 and 2007. For example, as explained below, several of the bill's provisions would impose substantial administrative and financial burdens on the Executive Branch. These provisions could result in slower, not faster, agency processing of FOIA requests, and the personnel and funds needed to implement them would have to come from existing agency resources. Moreover, the agency reports that were issued last summer, and the improvement plans that are being implemented, illustrate that the challenges that agencies face in responding to FOIA requests are often unique to each agency and, therefore, require agency-tailored reforms, not a government-wide, one-size-fits-all legislative approach.

The Administration's specific concerns with the bill include the following.

The Administration strongly opposes expanding the definition of "representative of

the news media." The bill would exempt a larger class of requesters from the obligation to pay fees assessed for searching for responsive documents. Expanding the definition would have serious fiscal consequences for the Executive Branch. Moreover, with no requirement that requesters pay search fees, they have no incentive to tailor their requests and will likely make overly broad requests, which, in turn, will stretch agency resources and increase the time it takes to process all requests. Further, under current law, agencies have authority to waive or reduce fees upon a determination that disclosure of information will contribute significantly to public understanding.

The Administration also strongly opposes reinstating the so-called "catalyst theory" for the reimbursement of FOIA litigation fees. The Administration is concerned that its reinstatement would serve as a disincentive to an agency's voluntarily revisiting decisions and improving procedures with respect to FOIA requests, because doing so could make the agency liable for a complainant's legal fees. Furthermore, the bill could be interpreted to include an "administrative action" through the FOIA appeals process as a possible means by which a requester can obtain "relief" that would justify attorneys fees. Such an interpretation would be a major departure from long-standing administrative law practice and would severely undercut the traditional function of the administrative appeal process, which is designed to provide the requester with an avenue of further review at the agency, thereby reducing the likelihood of a lawsuit. If this provision covers relief provided at the administrative appeal stage, this could increase the FOIA program costs dramatically and would serve as a disincentive to release records at the administrative appeal stage.

The Administration strongly opposes commencing the 20-day time limit for processing FOIA requests on the date that the request "is first received by the agency," and preventing the collection of search fees if the timeline is not met. This provision represents a very significant change from current practice in which the 20-day clock begins once the appropriate element of an agency has received the request in accordance with the agency's FOIA regulations. The provision fails to take into account the complexity of many requests, the need to consult with other Executive Branch entities, or the need to search for records in multiple locations, including at Federal records centers. As noted above, the Executive Order requires agencies to implement improvement plans specifically focused on eliminating or reducing any backlog of FOIA requests, and the Justice Department's preliminary review of the agencies' annual reports indicates that some agencies have already realized meaningful backlog reductions.

The Administration is opposed to the creation of an "Office of Government Information Services" within the National Archives and any intent that the proposed Office would be given any sort of policymaking role with respect to FOIA compliance. The FOIA compliance function remains appropriately placed with the Department of Justice, the lead agency in implementing Executive Order 13392.

Finally, the Administration strongly opposes the provision in the bill that appears to be an attempt to repeal Attorney General Ashcroft's FOIA Memorandum and return to Attorney General Reno's pre-9/11 FOIA guidance. The Administration believes that the structure of the FOIA reflects the appropriate balance between the public's right to know how the government is operating and the equally important need to safeguard certain information, such as that pertaining to personal privacy or homeland security.

Mr. CLAY. Mr. Speaker, at this time I yield 4 minutes to my distinguished colleague from New York (Mrs. MALONEY).

Mrs. MALONEY of New York. I thank the gentleman for yielding and for his leadership, along with Mr. WAXMAN, on working on so many sunshine bills to make government more open and accountable to the citizens, to our taxpayers, to the American public. And an important part of sunshine is the Freedom of Information Act Amendments, it is a tremendously important bill, H.R. 1309, of 2007.

Since coming to Congress, I have been working on this committee, and improved FOIA processes which are critical to an open government and making our government more transparent is very fundamental to our democracy.

We have made improvement over the years, and I am pleased to have been one of the authors of the Electronic Freedom of Information Act of 1996. This important law was intended to make FOIA more efficient by providing public access to information, including in an electronic format.

The Oversight and Government Reform Committee, of which I am a member, has held many hearings on FOIA over the past few years, and we have learned that it has not progressed as well as we had hoped. Some agencies and Departments are doing a better job of fulfilling freedom of information requests, while some continue to have terrible records and lag far, far behind. Requesters often wait months or years to find out the status of their requests or to obtain the information. And I am pleased that we have report language that clarifies that they have to get back quickly on requests and at least let them know where they are.

As a result, the backlogs at agencies and Departments continue to grow, and frequently the only recourse for the denial of requested information is to file lawsuits. But many people, many Americans cannot afford the high costs associated with court costs. So by not moving in a timely manner, you are depriving them of this information.

H.R. 1309 includes many important provisions that my colleagues have spoken about and that I hope will improve the process and eliminate the problems that exist in today's system, including an amendment that I offered in committee that would provide for greater disclosure to the FOIA requester about the exemption under which a deletion has been made from requested material.

I often hear from constituents, they come to my office with piles of FOIA requests and like the whole thing is redacted and there is absolutely no explanation why. This is really not fair, and we hope that this amendment will improve the process.

I am pleased that it was accepted in a bipartisan way by Ranking Member DAVIS and Ranking Member TURNER. I really feel this legislation is long over-

due, and I commend Chairman WAXMAN and Ranking Member DAVIS and Chairman CLAY and Ranking Member TURNER for bringing this bipartisan legislation to the floor with the many other very important sunshine bills to make our government more open and accountable to the American public.

Mr. TURNER. Mr. Speaker, I yield 3 minutes to the gentleman from Pennsylvania (Mr. PLATTS).

Mr. PLATTS. Mr. Speaker, I rise in support of H.R. 1309, the Freedom of Information Act Amendments of 2007.

Open and accountable government make up the cornerstones of good government. This legislation before us today seeks to strengthen these cornerstones.

The Freedom of Information Act was signed into law over 40 years ago, in July 1966, enacted after 11 years of debate. FOIA established a statutory right of public access to executive branch information.

FOIA provides that any person has the right to obtain Federal agency records. Originally, the act included nine categories of information protected from disclosure, and Congress has added additional exemptions over time.

Balancing the need for open government with the needs to protect information vital to national security and personal privacy is a constant struggle. Federal Departments and agencies are operating in the post-9/11 information age and face 21st century security, information management, and resource challenges.

As we seek to achieve this balance we must remember the words of Thomas Jefferson who said, "Information is the currency of democracy." FOIA is an essential tool to ensure that the citizens of our great Nation have access to information in the way that Thomas Jefferson envisioned.

Over the past several years, the Government Reform Subcommittee on Government Management, Finance, and Accountability, on which I had the privilege to serve as Chair, conducted multiple hearings on FOIA implementation.

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In response to legislative proposals introduced last session in the House and Senate, as well as the oversight conducted by the subcommittee, President Bush issued Executive Order 13392, entitled Improving Agency Disclosure of Information, on December 14, 2005. This document sought to improve the overall processing of FOIA requests, creating a more citizen-centered and results-oriented approach to information policy. And I certainly commend the administration for their efforts.

In response to that effort, though, we believed further work was needed. On September 27, 2006, the subcommittee marked up legislation very similar to that legislation before us here today. Specifically, the OPEN Government Act, introduced by my colleague from

Texas, LAMAR SMITH, like the bill before us today, would close loopholes in FOIA, help requesters obtain more timely response, and provide FOIA officials with the tools they need to ensure that the Federal Government remains open and accessible.

While the legislation before us today includes provisions not included in Representative SMITH's legislation from last session and to which he is currently opposed, I certainly want to commend Representative SMITH for his leadership and dedicated efforts to improve the Freedom of Information Act and to make government more open and accountable.

I also want to thank Chairman WAXMAN of the full committee and subcommittee Chairman CLAY for their efforts in moving this legislation forward quickly and, as well, recognize Ranking Member DAVIS of the full committee and Ranking Member TURNER at the subcommittee for their efforts.

This legislation is about open and accountable government. I urge a "yes" vote.

Mr. CLAY. Mr. Speaker, I yield myself such time as I may consume.

In closing, I would like to thank my colleagues on both sides of the aisle for working together on this bill to open up our government to the people of the United States. And I also want to thank Mr. SMITH, who has reservations about the bill, but I want to thank him for his leadership in championing the cause of freedom of information in this country.

I want to also thank my friend from Wisconsin for agreeing with us that the bill was modified since it came out of committee, and that modification was in order to eliminate the costs associated with the bill.

Let me say that H.R. 1309 champions the values of transparency and open government that we celebrate during Sunshine Week and that are embodied in the Freedom of Information Act. The bill does several things: It would reestablish the policy of previous administrations under which agencies were directed to disclose requested information unless the disclosure could result in harm. In addition, the bill proposes a government-wide ombudsman to mediate disputes between agencies and requesters. This would help to reduce the number of disputes resolved through costly and time-consuming litigation.

It does several other things: There is a requirement that agencies respond to FOIA requests within 20 business days or face meaningful administrative penalties. It establishes a publicly accessible tracking system for pending FOIA requests.

Mr. Speaker, in conclusion, H.R. 1309 provides a strong, reasonable, and bipartisan approach to streamlining FOIA and increasing transparency in government. I urge all of my colleagues to support this bill.

Mr. Speaker, I yield back the balance of my time.

Mr. TURNER. Mr. Speaker, I yield 3 minutes to the gentleman from Idaho and a member of our subcommittee (Mr. SALI).

Mr. SALI. Mr. Speaker, I rise today because of my serious concerns with section 4 of H.R. 1309.

As I begin, let me emphasize that I support the intent of H.R. 1309. Transparency in government is an important priority. I campaigned on it and voted for the new ethics package that came before this House in early January with the hope that Congress might be more openly accountable to those who elected us.

This is a government of, by, and for the people, and the people deserve to know what their government is doing. Except for critical issues of national security policy, there must be a much better level of openness in the conduct of the Federal Government and the access of the American people to information about it.

However, section 4 of the bill before us, as it is currently drafted, appears to authorize Federal courts to award attorneys' fees to a plaintiff even when the opposing parties mutually reach and execute a settlement agreement.

The policy of FOIA is, and should be, to expedite and streamline production of documents falling within the statute. My concern is that when a Federal statute provides attorneys' fees after the parties mutually reach a voluntary settlement, it runs contrary to that very goal. Resolution short of protracted litigation should be encouraged, not discouraged. The current proposed language of section 4 of H.R. 1309 may have a devastating, perverse effect.

Second, the statute may further allow plaintiffs to receive attorneys' fees in almost any case they file so long as they can show that the defending government agency, for any reason, changed its position once the case had been commenced.

While it is true that FOIA complainants often face an uphill battle when they deal with a Federal agency, the language, as proposed, invites litigation instead of resolving it. Additionally, the legislation, as drafted, may actually undermine the stated "dominant objective" of the act by giving an incentive by Federal Departments to avoid disclosure.

The question this raises in my mind, Mr. Speaker, is that given the provisions of section 4 of the bill, why would any agency settle? As I read the bill, once a lawsuit is commenced, any change in position by a Federal Department or agency would be tantamount to an admission of liability for attorneys' fees. This would only encourage the filing of a myriad of lawsuits. If lawyers know they will make money no matter what the outcome, they will see this as a great opportunity to file, file, and file again. We will likely see a cottage industry for litigants who may not even care about the underlying documents.

Because of the concerns I have that the current proposal provides incentives to prolong litigation, I cannot support this measure in its current form. I regret that because I want to vote for any bill that prudently opens the door of government to those whom government represents, our fellow citizens. But the law of unintended consequences is at play here, and unless we strike section 4, we will see massive new litigation that will only clog the Federal docket, hamstringing legitimate functions of government, and cost taxpayers potentially untold millions of dollars.

Mr. TURNER. Mr. Speaker, I yield myself such time as I may consume.

I want to commend the Chair of our subcommittee, Mr. CLAY, for his thoughtful approach to hearings on this matter and his leadership in shepherding this bill. I want to thank Chairman WAXMAN for his efforts in having a very bipartisan discussion in the committee on the bill. He was very welcoming of the input from all of the committee members.

Unfortunately, though, here, right in the middle of Open Government Week, we have the irony that this is not the bill that both of these gentlemen worked so diligently on a bipartisan basis for in the committee and subcommittee. It has been amended, unfortunately, as the other side of the aisle decried, in a back room by Democratic leadership in order to make the bill conform to the rules of the House for it to be able to move forward.

In the middle of Open Government Week, what does that mean? Well, it means that while we all stand up here and talk about the importance of freedom of information, and freedom of information is important because it gives people the ability to hold their government accountable; but as we all discuss that, we have a bill that is going to be moving forward and come before this House that the members of the committee did not see, the members of the subcommittee did not see, that each of them is going to have to review and have to have their staff review, that members of the public at large who may have been following this bill in the professional community or average citizens who had an interest in it will go to a Web site and look at a bill that was approved by the committee and approved by the subcommittee, but unfortunately, is not the bill that is before us.

And it is not before us because in the middle of Open Government Week, the bill that was placed before us was amended without the participation of the committee, without the participation of the subcommittee, and without the participation of this body. We will all come to vote on a bill that has been amended in a back room by Democratic leadership.

You have heard that there are a number of concerns that people on this side of the aisle have about the bill. As you are aware, this bill began as a Repub-

lican bill offered by Mr. SMITH of Texas, H.R. 867. It has been modified in several ways about which individuals do have concern. But the underlying principle, freedom of information, that encourages effective government and encourages government to be responsive, is one that we all support and hold dear and certainly we should continue to support the Freedom of Information Act.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise today in strong support of H.R. 1309, the "Freedom of Information Act Amendments of 2007." This legislation contains a dozen substantive provisions that will increase public access to Government information by strengthening the Freedom of Information Act (FOIA).

Mr. Speaker, the principles embodied by FOIA are intended to make the Government, in President Lyndon B. Johnson's words, "as open as the security of the Nation permits." But in recent years, Federal agencies have come to look on FOIA requests as something to be prevented and obstructed, rather than welcomed and facilitated. The bill before us will help end that way of doing business.

Mr. Speaker, H.R. 1309 restores the presumption of disclosure to FOIA by making it clear that records should be released to the public if disclosure is allowable under law and the agency cannot reasonably foresee any harm from such a disclosure.

Mr. Speaker, under current law, agencies are required to respond to a request for information filed under the FOIA within 20 days but as we all know, delays and backlogs are all too common. H.R. 1309 makes this deadline meaningful by ensuring that the 20-day statutory clock runs immediately upon an agency's receipt of a request. The bill imposes consequences on Federal agencies for missing the deadline. For example, agencies are prevented from charging processing fees whenever they failed to meet the 20-working day response deadline.

The bill also requires agencies to provide requesters individualized tracking numbers for each request and access to a telephone or internet hotline with information about the status of requests.

Another important feature of the bill is that it strengthens agency reporting requirements to identify excessive delays and requires each agency to make the raw data used to compile its annual reports publicly available. Also, the bill requires the Government Accountability Office to report annually on the Department of Homeland Security's use of the broad disclosure exemption for "critical infrastructure information."

I also commend to Members another feature of H.R. 1309 that should reduce the need to resort to litigation. The bill creates the new position of FOIA Ombudsman to help FOIA requesters resolve problems without having to turn to the courts. The FOIA ombudsman will be located at the National Archives and will help requesters by providing informal guidance and nonbinding opinions regarding rejected or delayed FOIA requests. The FOIA ombudsman will also review agency compliance with FOIA.

Last, Mr. Speaker, H.R. 1309 makes it more feasible for citizen groups to challenge the improper withholding of Government information by expanding access to attorneys' fees for FOIA requesters who successfully challenge

an agency's denial of information. The bill also holds agencies accountable for their decisions by enhancing the authority of the Office of Special Counsel to take disciplinary action against Government officials who arbitrarily and capriciously deny disclosure.

Mr. Speaker, I strongly support H.R. 1309 and urge all my colleagues to join me in supporting this legislation that will restore public confidence in the administration of the executive branch of the Federal Government.

Mr. UDALL of Colorado. Mr. Speaker, I strongly support this bill, which will increase the transparency and accountability of the Federal Government by making a number of long-overdue revisions to the Freedom of Information Act, or FOIA.

The bill will reemphasize that disclosure is to be the rule, secrecy the exception. It will help people seeking documents to get timely responses, and improve transparency in agency compliance. It will reduce the need for people seeking documents to go to court, and provide accountability for agency decisions on whether to release requested information.

Mr. Speaker, the enactment of FOIA in 1966 was a watershed. It established as fundamental policy the principle that information within the government's control should be available and established a presumptive right for the public to obtain identifiable, existing records of Federal agencies. Anyone can use FOIA to request access to Government information. Requesters do not have to show a need or reason for seeking information, and the burden of proof for withholding requested material rests with the department or agency that seeks to deny the request. Agencies may deny access only to records, or portions of records, that fall within certain specific categories.

FOIA has been used effectively by journalists, public interest organizations, corporations, and individuals to access Government information. But the process could be better—because of delays and backlogs, requesters often have found it hard to learn about the status of their requests, and a recent Supreme Court decision has hampered requesters' ability to litigate their claims.

H.R. 1309 would address these and other concerns about the implementation of FOIA. It is a modest measure, but an important one that deserves the approval of the House.

That's especially true because, as the Rocky Mountain News noted in a recent editorial, "The Bush administration may have been the most openly contemptuous of FOIA's mission since the act first passed. . . . President Bush will leave office in 2009, but it's not enough to trust that future administrations will abide by the promise of openness that FOIA represents. The law needs specific measures to ensure accountability, and the amendments within H.R. 1309 mark a large stride forward."

For the information of our colleagues, I attach the complete text of that editorial:

[From the Rocky Mountain News, Mar. 13, 2007]

OPEN RECORDS UPGRADE

CONGRESS HAS CHANCE TO IMPROVE CRITICAL LAW

We welcome bipartisan efforts in Congress to beef up the Freedom of Information Act—the four-decade-old law that affords citizens access to the inner workings of the executive branch.

FOIA could certainly stand a little love, as open Government has been attacked many times since Lyndon Johnson signed the act into law July 4, 1966.

The revisions to FOIA in H.R. 1309, which could come before the full House as early as today, would both shine more light on the nooks and crannies of federal bureaucracies and force agencies to better respect the spirit of the law.

Here are a few of the improvements:

The Government would have to act on FOIA requests more quickly. Agencies that did not respond to a request within 20 business days would forfeit any copying and research fees; agencies are now supposed to respond within that period, but there are no penalties.

Federal departments would have to set up FOIA hotlines and individual tracking numbers so that people and organizations that file FOIA requests can easily follow the process.

Citizen journalists and freelancers would gain new credibility. An agency could no longer summarily deny FOIA requests from journalists who are not employed or under contract with established media organizations or watchdog groups. Such requests from unaffiliated individuals can now be rejected.

The amended law would force agencies to consider any request to disseminate information to a broad audience as legitimate, particularly if the party making the request has any record of publication (including bloggers).

The Government would have to reimburse the legal fees of more parties that sue under FOIA. Currently, there's only one way a party that has filed suit to enforce a FOIA request can get repaid: The Government has to lose in court. The amendments would force agencies to repay attorney fees if the government turns over records before a final ruling is issued. This would prevent agencies from sticking media groups with attorney fees by surrendering records just before a judge rules.

The Bush administration may have been the most openly contemptuous of FOIA's mission since the act first passed. Former Attorney General John Ashcroft urged Federal agencies to fight FOIA requests and not presume that the public has a right to know what goes on inside the executive branch. The administration also placed gratuitous limits on requests to the Department of Homeland Security.

President Bush will leave office in 2009, but it's not enough to trust that future administrations will abide by the promise of openness that FOIA represents. The law needs specific measures to ensure accountability, and the amendments within H.R. 1309 mark a large stride forward.

Mr. TURNER. Mr. Speaker, I yield back the balance of my time

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Missouri (Mr. CLAY) that the House suspend the rules and pass the bill, H.R. 1309, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. TURNER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the

Chair's prior announcement, further proceedings on this question will be postponed.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, proceedings will resume on motions to suspend the rules previously postponed.

Votes will be taken in the following order:

H.R. 1254, by the yeas and nays;

H.R. 1255, by the yeas and nays;

H.R. 1309, by the yeas and nays.

The first electronic vote will be conducted as a 15-minute vote. Remaining electronic votes will be conducted as 5-minute votes.

PRESIDENTIAL LIBRARY DONATION REFORM ACT OF 2007

The SPEAKER pro tempore. The pending business is the question of suspending the rules and passing the bill, H.R. 1254.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Connecticut (Mr. MURPHY) that the House suspend the rules and pass the bill, H.R. 1254, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 390, nays 34, not voting 9, as follows:

[Roll No. 142]

YEAS—390

Abercrombie	Boyda (KS)	Cuellar
Ackerman	Brady (PA)	Cummings
Aderholt	Brady (TX)	Davis (AL)
Akin	Braley (IA)	Davis (CA)
Alexander	Brown, Corrine	Davis (IL)
Allen	Brown-Waite,	Davis, David
Altmire	Ginny	Davis, Lincoln
Andrews	Buchanan	Davis, Tom
Arcuri	Burton (IN)	Deal (GA)
Baca	Butterfield	DeFazio
Bachmann	Buyer	DeGette
Bachus	Calvert	Delahunt
Baird	Camp (MI)	DeLauro
Baker	Cantor	Dent
Baldwin	Capito	Diaz-Balart, L.
Barrett (SC)	Capps	Diaz-Balart, M.
Barrow	Capuano	Dicks
Bean	Cardoza	Dingell
Becerra	Carnahan	Doggett
Berkley	Carney	Donnelly
Berman	Carson	Doyle
Berry	Carter	Drake
Biggert	Castle	Dreier
Bilbray	Castor	Duncan
Bilirakis	Chabot	Edwards
Bishop (GA)	Chandler	Ehlers
Bishop (NY)	Clarke	Ellison
Bishop (UT)	Clay	Ellsworth
Blackburn	Cleaver	Emanuel
Blumenauer	Clyburn	Emerson
Blunt	Cohen	Engel
Boehner	Cole (OK)	Etheridge
Bonner	Conyers	Everett
Bono	Cooper	Fallin
Boozman	Costa	Farr
Boren	Costello	Fattah
Boswell	Courtney	Feeney
Boucher	Cramer	Ferguson
Boustany	Crenshaw	Finer
Boyd (FL)	Crowley	Forbes