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## Restoring freedom to information in the Freedom of Information Act



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Published Thursday, Sep. 11, 8:36 pm  
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**Column by Amy Bennett**

Over time **federal** agencies have flipped the Freedom of Information Act (ACT) on its head. **Congress** clearly intended the **FOIA** to be a tool for the public to pry information out of **federal** agencies. In recent years, however, agencies have blatantly abused opaque language in the law to keep records that might be embarrassing out of the public's hands forever.

One of the clearest examples of this problem has been playing itself out in court rooms over the last few years as the **Central Intelligence Agency** (CIA) has successfully argued against the release of a 30 year old "draft" volume of the official **history** of the 1961 Bay of Pigs Disaster. There are few records in the **federal government** that are seen to merit such secrecy. This draft **CIA history** is afforded stronger protections than the President's records, or even classified **national security** information. Members of the public are able to access similar records generated by the **White House** as early as twelve years after the President leaves office. Even most classified **national security** information is automatically declassified after 25 years. Yet, the **CIA** continues to insist that releasing a draft volume of a **history** of events that occurred more than 50 years ago, and are already generally understood by the public, must be kept secret.



How is this possible? The record can continue to be withheld because it fits under the rubric of the FOIA's exemption for "inter- and intra-agency records." While this exemption was originally intended in part in allow agency officials to give candid advice before an agency has made an official decision, agencies have stretched its use to cover practically anything that is not a "final" version of a document. As long as a record meets the technical definition of an "inter- or intra-agency record," there is nothing the public – or courts—can do to make an agency release it.

Thankfully, **Congress** has recognized this black hole in the public's right to know, and has stepped in with a bill that promises to close the loophole and make other changes that would improve the **FOIA** process. Longtime **FOIA** champions Senator Patrick Leahy (D-VT) and **Senator John Cornyn** (R-TX) have reached across the aisle to develop and introduce S. 2520, the **FOIA Improvement Act**. The bill takes the common sense step of requiring agencies to weigh the public interest in the release of an inter- or intra- agency record when considering whether to withhold it, and also puts a time limit of 25 years on the use of the exemption. Far from radically changing how requests are currently processed, this narrowly tailored change to the law would help make sure historical records are available on a timely basis and **stem** the worst abuses by allowing a court to weigh-in where necessary to make sure records that would show waste, fraud, abuse, or illegality are released.

With trust in government at an all-time low, the public clearly has an appetite for laws that would make it easier to understand what the government is doing and why, and to hold government officials accountable for their actions. The public would also benefit from seeing that **Congress** can still work in a **bipartisan** fashion to address issues. Time is running out to make S. 2520 the law during this session of Congress, though.

While the House unanimously passed a bill that included many reforms that are similar to S. 2520 earlier this year, the House bill does not address the problem with inter- and intra-agency records. **Once Congress** comes back in September, members will have to work across the aisle and across the **Capitol Dome** to make sure they reach a compromise that can be put on the President's desk before the session ends on January 3, 2015. This is work **Congress** can, and must, do to help restore freedom to information in the **FOIA**.

*Amy Bennett is assistant director of OpenTheGovernment.org.*



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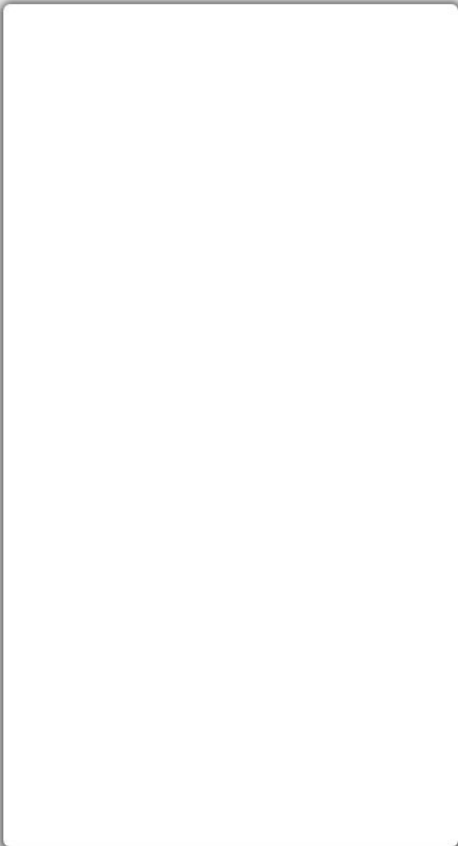
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