

Overhaul of Freedom of Information Act stalled

*By Rebecca Carr in The Austin American-Statesman
6 August 2006*

Despite growing bipartisan support, efforts to overhaul legislation that gives the public greater access to federal government records appear to be stalled by political maneuvering and a heavy legislative schedule.

Texas Sen. John Cornyn, the Republican sponsor of the legislation to improve the Freedom of Information Act, chalks up the delay to a heavy agenda on the Senate Judiciary Committee where he and the panel's leading Democrat have tried to get a vote on the measure for more than a year. Cornyn said he would try to prevail before Congress recesses this fall, but he knows it's a tough sell. "I have to be honest, it's not easy," Cornyn said. "Congress could do a lot to improve its image among the public by saying its actions ought to be more transparent to public scrutiny. Unfortunately, I don't think people see it as that sort of opportunity."

The bill in question would penalize federal agencies for delaying their responses to requests for information, create an ombudsman to review denials and give people better ways to track requests. A growing number of lawmakers from both parties support the measure, said Cornyn and his co-sponsor Sen. Patrick Leahy, D-Vt. For example, Rep. Todd Russell Platts, R-Pa., chairman of the House Government Reform Committee's panel on government accountability, held a recent hearing on the measure and plans to seek a vote when Congress returns from its August recess. "Balancing the need for open government with the need to protect information vital to national security and personal privacy is a constant struggle," Platts said. But the Freedom of Information Act is "an essential tool to ensure that the public has access to government information," he said.

Still, there isn't enough support in either chamber to pass the measure this year. Some lawmakers are resistant because they see it as a way to help the news media, not the public, Cornyn said. Improving the act doesn't have the same urgency as measures dealing with immigration and efforts to provide oversight to the president's eavesdropping program to catch terrorists, staffers from both parties say. But Leahy is just as determined as Cornyn to get the bill out of the Senate Judiciary Committee. "The public's right to know has suffered," Leahy said. "The Bush-Cheney administration has systematically ushered in a new era of government secrecy through policies and directives that weaken transparency laws and avoid accountability."

Open government advocates and Democratic congressional staffers say the bill's real problem is the White House's reluctance to embrace the bill - despite it being a Republican-led measure. The administration hasn't publicly endorsed the legislation because the president issued an executive order in December that attempts to improve freedom of information compliance, said Eryn Witcher, a spokeswoman. The order addresses many of the same concerns as the bill, she said. Bush directed agencies to become "citizen-centered and results-oriented" to reduce chronic backlogs. The executive order was seen as "a preemptive strike," a strong indication that the White House did not want to embrace the Cornyn-Leahy measure, said Tom Blanton, director of the National Security Archive, a nonpartisan research center at George Washington University. Why would the White House object? The Bush administration seeks to expand its executive power, Blanton said. The

Cornyn-Leahy bill would reduce that power because it would give the public better access and diminish the role of the executive branch to determine what information is disclosed, Blanton said.

The Cornyn-Leahy bill would enforce more strictly a 20-day deadline for disclosing records, set up hot-line services to help people track requests, allow courts to overturn agencies' denials more easily if their decisions took more than the time limit, and make it easier to recover attorneys' fees. The bill also would bring oversight to a little known provision in the Homeland Security Act that gives companies protection from civil lawsuits and information disclosure in exchange for volunteering information about their vulnerabilities to a terrorist strike. The Critical Infrastructure Information provision pits the government's need to know sensitive corporate information to thwart future attacks against a wide array of public interest groups that fear the business sector will stamp anything it can as "CII" to avoid an embarrassing disclosure or a lawsuit.

The Justice Department, which oversees the implementation of the Freedom of Information Act, believes that the executive order is working well. "This first-of-its kind FOIA Executive Order already has had a considerable positive impact on FOIA administration across the executive branch and has elevated it to new, very constructive heights," said Daniel Metcalfe, director of the Justice Department's office of information and privacy.

A new report by the Government Accountability Office finds that federal agencies are taking longer to disclose information under the Freedom of Information Act. The number of requests carried over from year to year has risen by 43 percent since 2002. But the oversight arm of Congress also found that federal agencies under Bush are providing full responses nearly nine times out of 10.

Also see <http://www.statesman.com/news/content/news/stories/nation/08/6foia.html>