



FAN ALERT

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EXECUTIVE ORDER IMPROVES FOIA OUTLOOK, BUT LEGISLATION IS STILL NEEDED

NFPW members who seek information on federal government agencies have complained for months about increasing secrecy across the board, but particularly since the 9/11 attacks. A memo early in the Bush administration by former Attorney General John Ashcroft promising to defend agencies if they withheld records for any plausible legal reason helped to chill openness that has gradually warmed in earlier years.

Legislation by Sens. John Cornyn and Patrick Leahy, S. 394, and Rep. Lamar Smith, HR 867, the OPEN Government Act, would require the federal government to streamline FOIA requests, create an ombudsman to help the public, and possibly lose the ability to claim exemptions from disclosure if they do not obey deadlines for responding to requests.

Last month, the Bush Administration responded with a new Executive Order. In it, the President required agencies to designate a Chief FOIA officer within 30 days to help improve FOIA performance in that agency. Agencies are required to set up FOIA Service Centers to assist requesters in resolving disputes, reduce delays and increase transparency. By June 30, agencies are required to file a status report on their progress, and to review operations for certain problems--such as lengthy backlogs, failures to respond to requests and the use of information technology to respond to a request.

The Sunshine in Government Initiative, a lobbying group comprising media organizations concerned about public access issues, said the Executive Order was a step forward, but

legislation was still needed. The order leaves many elements to agency discretion, while S. 394/HR 867 requires an ombudsman, a tracking number and various oversight reports. The Order requires agencies to use existing resources to meet FOIA obligations, while the legislation authorizes expenditures to improve performance. The Executive Order provides no penalties for failure to meet FOIA obligations, while the legislation provides penalties. Finally, the Order does nothing to change the underlying status of open versus closed records, while the legislation sets up a process for catching and reviewing new laws that provide for agency secrecy.

NFPW members are urged to monitor these bills, and to remind their members of Congress of their importance. Expectations for passage in the 109th Congress are limited, given the Congressional calendar. So work on these bills can continue throughout the year, with continued momentum into the beginning of the new Congress in January 2007.

Journalists, researchers and others interested in testing out the new Executive Order may monitor agencies progress on <http://www.firstgov.gov/> websites. A list of the new FOIA officers named to date is provided at <http://www.nfpw.org/newslinks.htm>.

Please let us know if we can assist you with specifics on this matter.

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