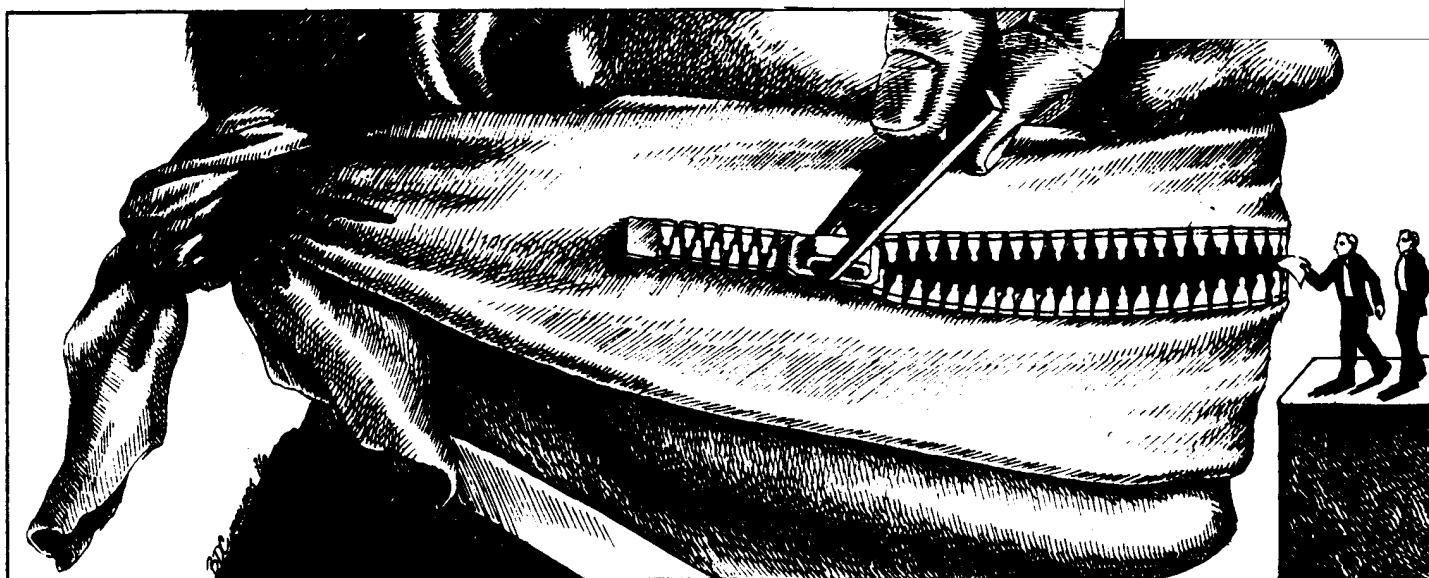


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Information Act Comes Under Siege

By Jack Nelson

WASHINGTON

Ever since its enactment in 1966, the Freedom of Information Act has proved to be a valuable tool for citizens interested in seeking government information they might not otherwise be able to obtain.

Yet as FOIA marks its 20th anniversary this year, it is once again under attack by the Reagan Administration. Not content with having issued several executive orders and rules that effectively limited access under the law, the Administration is proposing that Congress make changes that would further weaken the law.

The House subcommittee on government information is now studying these proposals, as well as several others designed to strengthen the law, in hopes of drafting a compromise that would be acceptable to both the Administration and the law's staunchest defenders. But some of the defenders are concerned that any attempt to amend the law would ultimately weaken it.

Elaine English, an FOIA specialist with the Reporters Committee for Freedom of the Press, has analyzed both sets of proposals being considered by the subcommittee. Her conclusion: Those designed to strengthen the law are mostly cosmetic, while the others would seriously restrict access to information.

The law specifies that all documents must be made available except those involving such subjects as classified information, criminal matters, medical and

other personal records, confidential business information, criminal investigations, personnel matters and advice to agency heads. The Administration's proposals would impose even stricter controls over the release of business and law enforcement information.

All citizens, not just journalists, can invoke FOIA—a point worth underscoring. Too often the general public looks upon the press as a body seeking special privileges under the law. But the law has been widely used by historians, lawyers, politicians and people in business and industry.

Journalists make great use of the law, however. Recently, for example, the Memphis Commercial Appeal used FOIA while looking into circumstances surrounding four inmate deaths during a

14-month period at the federal correctional institute at Memphis. The newspaper uncovered records concerning an inmate who had never been seen by a doctor although he had complained three times of headaches and reported to a physician's assistant he had been coughing up blood for three months. The prisoner had died of a brain abscess.

The act has also been invoked hundreds of times to demonstrate cases of governmental mismanagement, waste and fraud and instances of governmental abuse of power, including illegal surveillance and wiretapping.

In June, 1976, for example, Gaylord Shaw of The Times' Washington Bureau used FOIA to investigate a billion-dollar man-made disaster—the collapse of the Teton Dam in Idaho. The records Shaw got from the Bureau of Reclamation headquarters in Washington formed the

foundation of a series of articles on numerous unsafe private and public dams that resulted in congressional hearings and White House studies and finally a massive federal effort to ensure the safety of dams.

Throughout the country journalists have used FOIA to document, among other things:

—Numerous examples of sloppy and irregular laboratory work by independent companies testing new chemicals on animals to determine whether they can be used without harming people.

—The CIA's use of mind-altering drugs on unwitting subjects.

—A Palestinian terrorist plan for a bombing in Washington in 1982, which officials believed may have been an elaborate plot to assassinate President Reagan and Israeli Prime Minister Menachem Begin.

—Waste and corruption in the government's aid programs to American Indians.

—Illegal FBI surveillance and harassment of special-interest groups and monitoring of the press in the 1950s and 1960s.

A study by a House subcommittee on government information cites those cases and 433 others that were reported in the news media between 1972 and 1984. And the committee pointed out that the study probably fell far short of finding all such cases.

The subcommittee examined how eight major government departments were complying with the law and found that in 1984, excluding procedural denials, 91.9% of the requests were granted in full.

The Health and Human Services Department had by far the best record, granting 98.9% of the requests. The State

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Department, at 29.1%, had by far the worst record. The other departments were Defense (92.4%), Energy (92.1%), Education (88.9%), Treasury (80.6%), Justice (74.4%) and Commerce (72.4%).

The subcommittee's analysis showed that the government in 1984 processed 247,968 requests. It denied all or part of 17,007 of them after finding they were covered by one of the nine legal exemptions, and it turned down another 21,775 requests for a variety of other reasons.

Subcommittee Chairman Glenn English (D-Okla.) said the statistics showed that FOIA was "successfully accomplishing its primary purpose: making government documents available to those who want them."

However, English and others have pointed out that there is considerable room for better government compliance. Government agencies, for example, fail to process many requests within the statutory 10-day limit; the State Department at one time had a backlog of almost 3,500.

Moreover, even in many cases in which the government has responded positively to FOIA requests, serious questions have been raised about whether all disclosable information has been provided.

The FBI, particularly cautious in granting requests, has followed a motto pinned on the wall of its FOIA processing room: "When In Doubt, Cross It Out." As one who has seen FBI responses to a number of FOIA requests, including several of my own, I can attest that the bureau heavily censors its documents and crosses out material that has nothing to do with national security, informants or anything else covered by the law's exemptions.

Both the FBI and the CIA have complained that FOIA encourages the disclosure of sensitive government information. And the CIA has even expressed concern that Soviet spies can use the act to gain access to national security information. But neither agency has been able to cite evidence to back up these concerns.

The law contains an exemption for national security information so long as the information has been validly classified. There have been only a few instances in which a court has ordered disclosure of classified information, and in every case, either disclosure was reversed on appeal or the request was withdrawn. Never has the CIA been forced to disclose classified documents over its objection.

Paul M. Rosa, a lawyer-researcher, used FOIA requests and then a lawsuit to test the notion that Soviet agents could obtain valuable information through FOIA. The results showed U.S. defense and intelligence agencies were unable to cite a single instance of an attempt by the Soviets or their satellites to use the law to collect intelligence.

On the basis of FOIA's record during its first 20 years, a strong case can be made that Congress, instead of compromising with the Administration and in any way weakening the law, should be devoting its efforts to strengthen it, especially the provisions requiring timely compliance and permitting the usual fees to be waived in certain cases.

I agree with William Safire, the New York Times columnist and White House aide under President Richard M. Nixon, who said FOIA "has done more to inhibit the abuse of government power . . . than any legislation in our lifetime." □