

November 6, 2007

Dear Senator:

We are writing to express opposition to the non-disclosure provisions (Sec. 10305 of the Livestock Title) in the 2007 Farm Bill approved by the Senate Agriculture, Nutrition and Forestry Committee on October 25, 2007. This language would create an unnecessary bar to public disclosure and use or publication of information related to the National Animal Identification System (NAIS). This secrecy provision is not in the House-passed bill and should be removed from the Senate bill.

Section 10305 creates a Freedom of Information Act exemption, without explicitly stating so, by prohibiting disclosure of information including "animal identification" information and information gathered in the USDA's NAIS. That prohibition violates the letter and spirit of a bill (S 849, the "OPEN Government Act of 2007") the Senate passed just this year on August 3 -- in which the Senate expressed its intent to transparently declare new exemptions to FOIA in legislation creating them. Under the exemption, only the Agriculture Secretary would be allowed to disclose NAIS information to the owner of the animal in question, a state agriculture department, the Attorney General, the Secretary of Homeland Security, the Secretary of Health and Human Services, foreign governments, or to other parties when ordered to do so by a court. It would preempt state and local disclosure laws. As a result, the public would remain in the dark.

The bill also forbids any "use" (beyond those listed above) by "any individual or entity" of NAIS information. Members of the public and the press could face criminal or civil penalties for publishing information from the NAIS. By criminalizing the publication, broadcast, or disclosure of information that may have been legally obtained, Section 10305 goes way beyond most existing law in imposing disproportionately harsh penalties for press activities protected by the First Amendment of the U.S. Constitution.

Since at least 2005, the USDA's Animal and Plant Health Inspection Service (APHIS) has been gathering contact information for livestock owners and storing it in a National Premises Information Repository. It appears that the new bar to disclosure in the Senate Farm Bill would remove this information from public access, even though the USDA itself has referred to these records as no more than the information in a "phone book." Moreover, the Agriculture Department has long assured the public in its fact sheets on NAIS that federal law *already* "protects individuals' private information and confidential business information from disclosure." The existing Privacy Act ( 5 U.S.C. § 552a) and Freedom of Information Act (FOIA, 5 U.S.C. § 552 ) provide an adequate legal framework for doing the job.

We urge you to support and vote for any and all efforts to strike Section 10305, which prohibits disclosure of information under a National Animal Identification System, from the 2007 Farm Bill currently before the Senate for consideration, or to do so in conference. If you have any questions, please do not hesitate to call Patrice McDermott,

Director, OpenTheGovernment.org, 202 332 6736.

Thank you.

Sincerely,

American Association of Law Libraries  
American Booksellers Foundation for Free Expression  
American Civil Liberties Union  
American Library Association  
American Policy Center  
Bill of Rights Defense Committee  
Californians Aware  
Citizens for Responsibility and Ethics in Washington (CREW)  
DownsizeDC.org, Inc.  
EnviroJustice  
Essential Information  
Federation of American Scientists  
Florida First Amendment Foundation  
Fund for Constitutional Government  
Government Accountability Project  
James Madison Project  
Minnesota Coalition on Government Information  
National Freedom of Information Coalition  
The National Security Archive  
Northeast Organic Farming Association/Massachusetts Chapter, Inc. (NOFA/Mass)  
OMB Watch  
OpenTheGovernment.org  
Physicians Committee for Responsible Medicine  
Reporters Committee for Freedom of the Press  
Society of Professional Journalists  
Special Libraries Association  
U.S. Bill of Rights Foundation  
United Food & Commercial Workers International Union