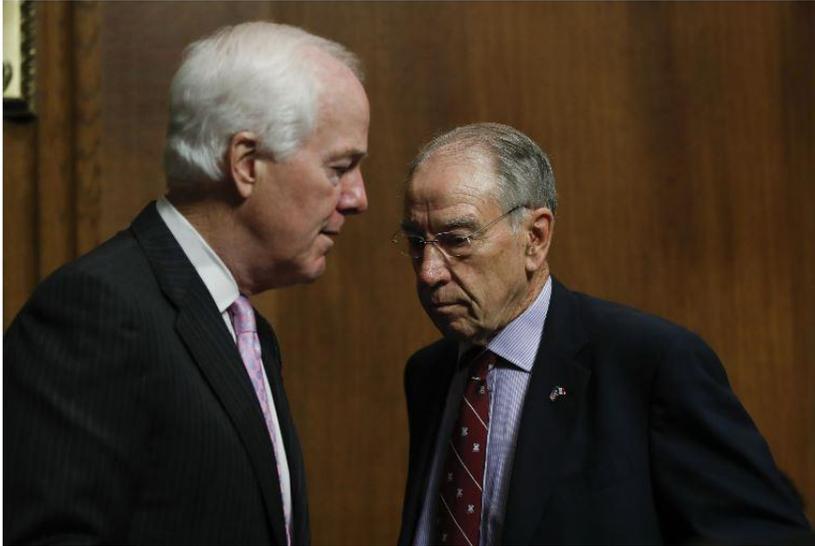


Interior Nomination Emerges as a Proxy Fight Over FOIA Standards

Environmentalists and watchdog groups say solicitor nominee Daniel Jorjani is an architect of administration efforts to weaken FOIA.



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A groundswell of concern over recent executive-branch rules on the Freedom of Information Act is taking shape on both sides of the political aisle on Capitol Hill. And lawmakers may soon have an opportunity to flex their muscles on the issue.

The Senate Energy and Natural Resources Committee approved the nomination of Daniel Jorjani as the Interior Department's top lawyer in late June, teeing up a potential confirmation vote in the coming weeks. Environmental and watchdog groups say Jorjani, currently the department's acting solicitor, is a key architect of the Trump administration's campaign to exert political influence over FOIA and weaken the law. Jorjani signed off in December on an Interior Department [FOIA update](#) to limit requests and disclosures. The agency is still processing more than 65,000 comments before finalizing the proposal, according to a spokesperson.

Now, those groups are calling on lawmakers to torpedo the nomination or, at minimum, demand more information on the impetus for the new FOIA policies.

"He's definitely been the leading figure that has popped up in interfering with the FOIA process," said Yvonne Chi, an attorney with Earthjustice. "We want Congress to know that before they make any kind of decision on confirming him."

Sen. Chuck Grassley, the former chairman of the Judiciary Committee, is crafting legislation to address a recent Supreme Court decision on FOIA. The high court [ruled](#) 6-3 in late June that the Agriculture Department does not have to disclose the names of retailers that offer food stamps under the Supplemental Nutrition Assistance Program, citing a proprietary-information exemption.

Argus Leader Media, a South Dakota news outlet, filed a FOIA request on that information, and the USDA's denial prompted the litigation.

"In a self-governed society, the people ought to know what their government is up to," Grassley said on the Senate floor following the Supreme Court decision. "Americans deserve an accountable government, and transparency leads to accountability." A spokesperson for Grassley said an "update" on FOIA legislation could come "as early as next week."

Grassley is also taking aim at the Interior Department proposal and an Environmental Protection Agency [FOIA rule](#) finalized in June without a proposal or comment period. In an interview with *National Journal*, Grassley lambasted the agency action.

"Why would they want to change something that's worked for 40 years?" he said. "I don't know why you have to change any FOIA rule."

A unified Democratic government enacted the original FOIA law in 1966. A Republican Congress shepherded through the most recent update to the statute at the end of the Obama administration. The [FOIA Improvement Act of 2016](#) limited agencies' authority to withhold documents under the "foreseeable harm standard," among a wide range of other changes [applauded by government-transparency groups](#).

Sen. John Cornyn sponsored the bill. Now, Cornyn says he'll partner with Grassley on the new legislation. Both lawmakers joined Democrats to [voice opposition](#) to the Interior Department FOIA proposal earlier this year.

"I've spent most of my career in the Senate working on those issues," Cornyn said. Asked whether he's eyeing the Jorjani nomination through a FOIA lens, Cornyn replied: "I'll look at it."

Jorjani held positions at Interior during the George W. Bush administration. Since then, he's forged ties with [Freedom Partners](#), a major conservative advocacy group with links to the Koch brothers, the Republican financiers who have been longtime advocates of regulatory rollbacks.

The FOIA proposal inked by Jorjani back in December says the department "will not honor a request that requires an unreasonably burdensome search or requires the bureau to locate, review, redact, or arrange for inspection of a vast quantity of material." The proposal would also impose a monthly limit on requests. "Awareness reviews"—a term used to describe non-FOIA staff reviews of requests—are already taking place at EPA and Interior.

Administration officials say the changes are needed to cope with a dramatic uptick in FOIA requests. But critics say the new policies, as well as existing lag times in responses, are thinly veiled moves to frustrate attempts to retrieve documents.

"I think the average response time we're seeing so far is close to a year. Of course, FOIA requires an agency determination at 20 business days," said Alison Flint, director of litigation and agency policy at The Wilderness Society. "We have one request that's been

pending for 800 days now. ... It's becoming clear that we have to file litigation to shake loose any response, particularly on the hot-button, high priority issues.”

The Trump administration has rolled back or is preparing to roll back dozens of Obama-era environmental regulations, including the Clean Power Plan and fuel-economy standards. A [new report](#) from the conservationist Center for Western Priorities says Trump's Interior Department has already completed 36 regulatory actions in favor of industry interests, including rules to weaken safety requirements for offshore drilling and public-lands fracking, as well as a wide range of wildlife policies.

And watchdog groups are drawing connections between regulatory actions and FOIA policies. “The DOI and EPA have been under numerous scandals in the last few years, so it makes sense that they would go after FOIA as a way of clamping down and reducing the amount of information that the public has a right to know,” said Freddy Martinez, a policy analyst at Open the Government.

Last month, Earthjustice called on Interior's inspector general to investigate Jorjani, alleging that [internal department emails](#)—which the environmental group published—show the nominee misled Congress about his participation in FOIA reviews.

Martinez is now urging Congress to use the nomination to force Interior to provide more information on the motivations behind the FOIA proposal. “Lawmakers should demand answers about what the DOI is doing, why they're setting these rules, because on their face the justifications don't actually add up,” Martinez said.