

## [OpenTheGovernment.org Priorities – HR 1211](#)

Thank you for the opportunity to weigh in with you on the substance of HR 1211. We appreciate your interest in making sure the public can use the Freedom of Information Act (FOIA) to get timely access to government records. We are particularly appreciative of provisions in the bill that require agencies to update their FOIA regulations, and the inclusion of a FOIAonline pilot project. Below are our recommendations for amending the bill before it is taken to the House floor.

### **Clarifications to current text:**

- ***Deadlines for administrative appeals*** – As drafted, the language creates a ceiling of 90 days for an administrative appeal, rather than a floor. We recommend revising “not later than 90 days” to “not fewer than 90 days” or similar language

### **Other suggested amendments to the text:**

- ***Require online posting of all released records*** – Agencies use a lot of resources reviewing the same record for release under the FOIA multiple times before it is posted publicly. The bill would require agencies to post anything that has been released three or more times, but we know many agencies do not have a reliable system to track how many times a document has been released. We recommend the Committee send a clear message to agencies that a release to one is a release to all by amending the text so that agencies are required to post any document that has been released under the FOIA.
- ***Further Strengthen OGIS*** – We strongly support language in the bill that gives OGIS independence and a direct line of communication to the agency Chief FOIA officers. We recommend the Committee further strengthen OGIS by adding language that: requires agencies to cooperate with OGIS and to provide information if requested; requires agencies to submit FOIA regulations for OGIS’ comment prior to publication in the Federal Register; and requires OGIS to report on dispute resolution activities. We also continue to be concerned, however, about OGIS’ lack of sufficient resources. We are particularly concerned that adding new compliance duties to OGIS’ work load without giving the office enough resources to have staff devoted to compliance work might undermine OGIS’ ability to mediate FOIA disputes. We recommend that the Committee amend the bill to give OGIS sufficient resources to meet its dual mission.

### **Issues not yet addressed by HR 1211:**

- ***Narrowing the allowable application of Exemption 5*** – Agencies use Exemption 5 to withhold a broad swath of material that is crucial to understanding what their government has done and why. We recommend the statute be revised so that agencies are required to consider the public interest in disclosure before withholding, and that the application of the exemption is limited to 12 years after the record was created.

- **Limiting the growth of B(3) Exemptions** – While recent amendments to the FOIA have made it easier to identify proposed B(3) Exemptions, they are often tucked into bills that are moving quickly and are not referred to Committees with expertise in the FOIA. We recommend that the statute be amended so that any new B(3) must be referred to the House Oversight and Government Reform Committee and Senate Judiciary.
- **Create an Advisory Committee on Open Government** – A standing Advisory Committee on Open Government would create an infrastructure to help make sure that open government work continues in spite of the Executive Branch’s loss of enthusiasm or even disdain for transparency. We recommend that the Committee add a new title to the bill that directs the General Services Administration, Office of Management and Budget (OMB), or the National Archives and Records Administration to establish an Advisory Committee on Open Government. The advisory committee should include representatives of the public, the Department of Justice, OGIS, and other agencies.
- **Address the fee system** – Fees continue to be a sticking point for agencies and requesters. In order to gain a greater understanding of the strengths and weaknesses of the current system, we recommend the Committee order a study on the premise of the fee system. Additionally, to improve the situation in the short-term, we recommend the Committee add language to the bill that creates a database of all fee waivers granted that FOIA reviewers could use to inform new fee waiver decisions and that the statute be amended to define any organization recognized by the Internal Revenue Service as a 501(c)3 be defined as an “educational institution.” We also recommend that OMB be directed to update its 1987 guidance on fee waivers.