

Statement of

The Honorable Russ Feingold

United States Senator
Wisconsin
March 15, 2005

STATEMENT OF SENATOR RUSSELL D. FEINGOLD

Hearing on
"Openness in Government and Freedom of Information:
Examining the OPEN Government Act of 2005"
Subcommittee on Terrorism, Technology and Homeland Security
March 15, 2005

I want to thank Senator Cornyn for holding this hearing on an extremely important issue - one of vital importance to our democratic nation. It is a hallmark of democracy when a government operates openly, and citizens are permitted access to the records that document the day-to-day decisions of their government. Accordingly, the Freedom of Information Act is in many respects an essential piece of legislation, enabling researchers, journalists and interested citizens to obtain Executive Branch documents, taking account of the need to protect certain documents from disclosure to protect national security, privacy, trade secrets, and certain other applicable privileges.

Our constitutional scheme depends on Congress and the Judicial Branch serving as a check on the Executive Branch. The public's right to know provides another layer of oversight, and helps ensure that our Executive Branch agencies act in the public interest because they know their actions are subject to public scrutiny. Over the years, FOIA requests and litigation have led to important revelations about government actions, and in some cases, abuses. Most recently, in late 2004, important details about interrogation procedures at Guantanamo Bay were made public as a result of a FOIA lawsuit.

Unfortunately, I fear that the important value of government openness has taken a back seat in the years since the terrible events of September 11. Protecting our citizens from terrorist attacks must be the top priority of government. But I believe we can do that while also respecting civil liberties and the public's right to know. That has not been the Administration's prevailing attitude in the past four years. From the excessive secrecy surrounding the post-9/11 detainees, to the lack of information provided about implementation of the controversial provisions of the USA PATRIOT Act, to new agency instructions from Attorney General Ashcroft tightening the standards for granting a FOIA request, this Administration has too often tried to operate behind a veil of secrecy.

That is why I am proud to be an original cosponsor of a bill that Senator Leahy introduced this morning that would address at least one aspect of this problem. The Restore FOIA Act would tighten some of the substantial FOIA loopholes created by the Homeland Security Act in a misguided attempt to protect critical infrastructure information. The Homeland Security Act not only exempts from FOIA an astonishingly broad category of information that is voluntarily disclosed to the Department of Homeland Security, but also grants companies immunity from civil suits based on the information they voluntarily disclosed. The Restore FOIA Act would protect records containing truly sensitive information pertaining to critical infrastructure safety, but would ensure that industries could not use the loophole to immunize themselves from liability by voluntarily revealing harmful information to the Department of Homeland Security.

Senators Cornyn and Leahy, thank you again for being such strong leaders on this issue and for holding this hearing today. I am guessing that it is no coincidence that this hearing is being held just a day before Freedom of Information Day, March 16, and I look forward to working with you in the future on these issues.