

Statement of

The Honorable Patrick Leahy

United States Senator
United States Senate
March 13, 2012

Today, the Committee holds an important hearing on one of our most cherished open government laws, the Freedom of Information Act (FOIA). We also commemorate Sunshine Week - an annual celebration of transparency in our democratic society - which is being celebrated across the Nation this week.

In the decade since September 11, Congress has wrestled with how best to maintain the careful balance between Government secrecy and the public's right to know as new threats to national security emerge. Of course, Government secrecy has its place. But, Government officials will always be tempted to overuse the secrecy stamp. And when that happens, excessive Government secrecy can come at an unacceptable price - harm to the American public's interests in safety, healthy living and a clean environment.

Sunshine Week is a timely reminder that, as the Congress considers how best to safeguard critical infrastructure information in cyberspace, we must also safeguard the American public's right to know about threats to their health and safety. Last year, the Supreme Court held in *Milner v. Navy* that the Government could not rely upon exemption 2 under FOIA to withhold explosives maps from the public. The *Milner* decision was an important victory for open government. But, in its wake, Congress is considering several new legislative exemptions to FOIA for critical infrastructure information. We should do so carefully.

In January, President Obama signed into law a carefully-balanced, narrow exemption to FOIA for Department of Defense critical infrastructure information. I helped craft this provision as part of the National Defense Authorization Act (NDAA). That measure requires Government officials to affirmatively determine that withholding critical infrastructure information from the public outweighs other interests - such as ensuring that citizens have access to health and safety information. This measure will allow the Government to safeguard truly sensitive information, while also safeguarding the public's right to know about health and safety dangers.

As Congress considers other proposed legislative exemptions to FOIA for critical infrastructure information, I intend to work with Members on both sides of the aisle to ensure that the public's interest in accessing essential health and safety information is protected.

President Obama has made an historic commitment to restoring the presumption of openness to our Government. I commend the Obama administration for taking many important steps to improve transparency, such as the "ethics.gov portal" that the administration launched last week to provide greater public access to ethics and campaign finance reports. But, more progress is needed to fulfill the commitment to open government that I share with the President.

I am pleased that representatives from the Department of Justice and the National Archives and Records Administration are here to discuss how the Obama administration is handling critical infrastructure information under FOIA in the wake of the Milner decision. We also have a distinguished panel of expert witnesses.

Securing our Nation's critical infrastructure information is without question a pressing national priority. But, unless we also safeguard the public's right to know about threats to health and safety, the American people will be kept in the dark about dangers that directly affect their lives. This Committee has long recognized that ensuring the public's right to know is neither a Democratic nor a Republican issue, but an issue of importance to all Americans. I hope that this bipartisan tradition will continue as the Congress considers new exemptions to the Freedom of Information Act for critical infrastructure information.

#