

Senator Patrick Leahy
U.S. Senate
Washington, D.C.

7627 Old Receiver Road
Frederick, Md. 21701
7/14/83

Dear Senator Leahy,

If the proposed FOIA amendment passes, it will do precisely what your oped piece in today's Post states may not be done.

The proposal will immunize those components that did all these terrible things, including spying on Americans.

The past is far from cleansed or exposed. I know of some operations not exposed and a form of spying on what Americans say and think.

That the CIA has conned the Senate is clear in your article, where you say it has a two-year backlog. I have requests of 1971 and 1975 that have not been complied with. They do not act on appeals and they want to force unnecessary litigation - and they do. I have not inconsiderable experience with these practises.

Once in court, there is no such thing as perjury for them and the FBI, and it never ends. I have yet to find a court, among many, willing to confront this.

Their claim to "national security" is not uncommonly worse than frivolous, and again I speak from much experience.

Certainly FOIA involves costs, as do all worthwhile things in our national and personal lives. From my experience, most of the agencies' costs in FOIA matters are artificially and deliberately escalated for the purpose you confront, seeking changes in the Act. And, of course, frustrating it and requesters, particularly those who request what can be embarrassing. Of whom I am one.

To a large degree the FBI and CIA have already rewritten the Act in court and by means of what, in plain English, is nonstop mendacity. Right now I am liable for a contempt citation for refusing to accept court-ordered shouldering of the FBI's burden of proof.

I'm reasonably confident they will not dare seek a contempt citation against an unwell 70-year old and they do seek another sanction, dismissal, which I'm opposing. But with any sanction, for practical purposes, the Act is wiped out and the agencies will forever be demanding "discovery" pertaining to searches. In my litigation, filed in 1978, the initial searches are not yet made - and they don't even bother to deny it. In 1983 they demand discovery instead, without any attestation to need or briefing of the legal question. Nor have they even bothered to deny that because the appeals office asked my help, as a subject expert, I have already provided all the information and documentation I have - ~~two~~ full file drawers of it!

The subject is the FBI's investigation of the JFK assassination.

These agencies are contemptuous of the Senate. About five years ago, after a public-interest group learned that the FBI had ignored about 25 of my requests for years and reported it to your subcommittee, it took testimony from Department and FBI witnesses. The/then FBI FOIPA branch chief refused to say anything at all about compliance, but the Department witnesses all stated that the FBI's conduct with me was inexcusable -- and they promised compliance. Well, it still hasn't happened.

And some of those requests go back to nearly 1969.

Several are duplicated in current 1978 litigation and FBI counsel absolutely refused compliance with them in this litigation. Some are more than 19 years old -- under a 10-day Act!

Everything I say and much more is thoroughly documented, under oath, and is and will remain unrefuted.

This includes meticulous documentation of false representations, under oath and by counsel.

Of course, if you are interested, all I have is available.

The only reason I've been persisting in this litigation is because the FBI actually opposed my dismissing it and because, to me at least, defending the Act is important. If I don't fight they get precedents that nullify the Act.

And if you want hair-~~raising~~^{raising} examples of CIA claims to protection of sources and methods and "national security," under oath, I have them, too.

I do thank you for all you've done to preserve the Act. If you agree to the proposed amendment you will be gutting the Act. The CIA needs no protection it does not now have and it can eliminate much if not most of the time it attributes to FOIA by merely abiding by it and ending its dirty-works.

Sincerely,

Harold Weisberg

By accident my wife made more copies of an affidavit than I need in the litigation referred to. It shows how the FBI controls searches, even when supposedly doing what the attorney general wants done. I enclose this extra copy.

Patrick Leahy

Post 7/14/83

Don't Let the CIA Clam Up

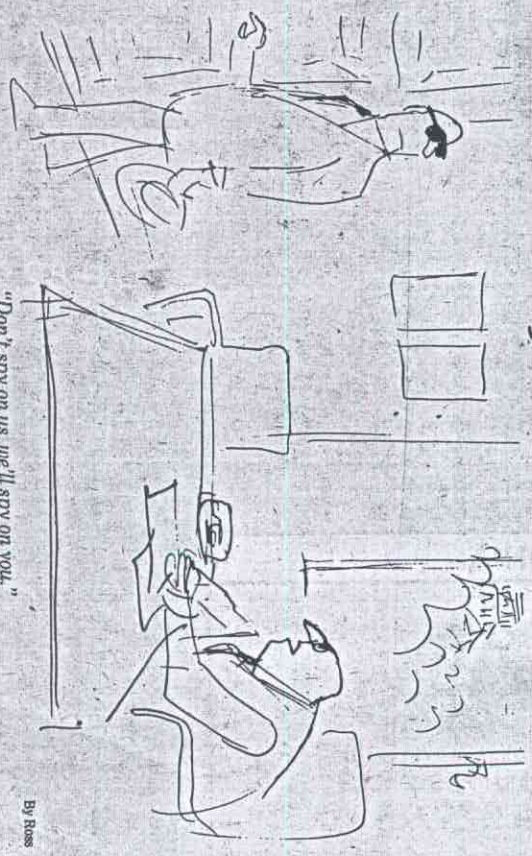
Of the many things Congress has done to open government to scrutiny and accountability, probably none has been more important to the public or more resisted by the executive branch than the Freedom of Information Act. Why do presidents and agencies resent the FOIA so much? Is it because they would prefer to file their mistakes, abuses and bad judgments in a drawer marked "Top Secret" and forget about them?

The executive branch seems to be bothered most about the supposed dangers to the operations of secret intelligence services such as the Central Intelligence Agency. Repeatedly, administrations have searched for ways to put the intelligence agencies totally out of reach of the FOIA.

Congress has refused to give in to these special pleadings. FOIA has been too important in rebuilding the American people's faith in their government. The Freedom of Information Act is here to stay, for the intelligence agencies as well as the rest of the executive branch. Information gained through the act on such important events as the Bay of Pigs and the Cuban missile crisis has added immeasurably to public understanding of our government's policies and the role of intelligence.

It is unfortunate that some in the CIA do not seem to grasp how important the FOIA is to public toleration of their agency. Secret services are alien to the basic concepts of our democracy. We accept them because, as the world's preeminent military power, we can't operate without them! We tolerate them because the American people believe there are effective controls protecting our civil liberties.

We have finally begun to restore some confidence in the intelligence agencies following abuses revealed by the Church and Pike committees. The worst thing for the CIA would be to gain a complete exemption from the FOIA. Public trust would quickly fade. Fears of renewed abuses and political manipulation would demand. Pressures would grow on Congress to



"Don't spy on us, we'll spy on you."

By Ross

legislate even more stringent controls.

Obviously, the CIA cannot give out all its secrets to people making requests for information under FOIA, nor should it. It must protect sensitive information about the identities of sources, methods of gaining intelligence and activities whose existence must not be disclosed for national security reasons. No reasonable person expects such information to be revealed. But in my judgment it is not true that the FOIA endangers these secrets. The act has broad exemptions for national security information, and the courts have repeatedly upheld CIA denials of FOIA requests on these grounds. FOIA may be imposing some burdens on the CIA, but I am not persuaded that disclosure of sensitive information is one of them.

A new bill has been introduced in the Senate that might offer an acceptable way to alleviate genuine CIA problems while protecting the pub-

lic's right of access to information about national policy. The bill, now before the Select Committee on Intelligence, would exempt the CIA "operational" files on how it collects intelligence, while leaving intelligence information going to policymakers open to FOIA search and review.

Good-faith compliance with FOIA requires the agency to undertake a search of operational files, often involving thousands of documents, with the knowledge that virtually nothing will be released. Since these files contain information that could reveal the identities of agents, the techniques of intelligence-gathering and the existence of secret operations, only experienced agency intelligence officers can do this review.

FOIA requests are handled on a first come, first served basis. While searches of operational files are causing a log-jacking, and the CIA is now taking over two years to respond to FOIA requests. Information relevant to policy decisions

which can be released is being inordinately delayed. Some way needs to be found to improve the CIA's performance under the FOIA.

The Select Committee on Intelligence has held two hearings on this legislation, and is now awaiting responses from the CIA to a number of questions on how it would be applied. The Intelligence Committee could vote as soon as the last week of July, but it would be unwise to act on the bill until the committee has resolved a number of troublesome issues.

Before it grants relief, Congress must make sure that the CIA cannot use the "operational file" label to cover material that has nothing to do with sources and methods and ongoing intelligence activity. No bill should be passed which leads to less information being released than gets out now.

Second, there must be unambiguous and enforceable procedures for discovering information on abuses and improprieties that might be stored away in operational files. FOIA has permitted the public to probe past CIA abuses aimed at American citizens. This type of information cannot be placed off-limits in the future.

And third, the public as well as the CIA has to benefit from any change in the current situation. If it is to be freed from searching and reviewing operational files, the CIA has to make serious commitments to faster, better responses to future requests for information that is accessible under the FOIA.

As a member of the Intelligence Committee, I sympathize with the agency's dislike of diverting highly trained officers to FOIA review, and with its anxiety for the safety of agents. But as a United States senator and a concerned American, I cannot agree to a return to the old days before the FOIA. That would be bad for the American people—and bad for the CIA.

The writer, a Democratic senator from Vermont, is a member of the Intelligence Committee.