

Information Act Due for Revision

House Seeks Measure Less Stringent Than Senate Proposal

By Sandra K. Gregg
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Ten years after the last major reform of the Freedom of Information Act, it is again a candidate for revision.

In both houses of Congress, staffers have been drafting amendments to the law under the watchful eyes of numerous special-interest groups.

The Senate passed its bill early this year after three years of hearings and reports.

The House version is still under construction.

In the short time Congress is likely to be in session when it reconvenes Sept. 5, the staff of the Government Operations subcommittee on information, justice and agriculture under Rep. Glenn English (D-Okla.) will put finishing touches on an alternative to the Senate's Freedom of Information Reform Act.

English's version of the bill is expected to be less controversial than the Senate-passed bill, which further restricts access to Justice Department records, increases the fees that may be collected for processing requests and gives industry a greater role in determining what information it wants the government to keep confidential.

In a subcommittee hearing earlier this month, English said he was "impressed with the depth and strength of the opposition" to the Senate bill, which he found unne-



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essarily stringent.

English applauded the success of the current law, and suggested that few changes are needed. "Disclosures made as a result of FOIA requests have documented government waste and abuse, identified threats to health and safety and exposed violations of law. Some disclosures have resulted in dollar savings for the government," the congressman said.

English said a review of several agencies and their processing of FOIA requests showed that while

no uniform method of data collection is used by the agencies, a huge number of requests are handled and the majority are granted, at least in part.

For example, the Department of Health and Human Services had 82,488 FOIA requests in 1983, more than any other agency. HHS granted 98 percent of those, English said.

The Department of Defense handled 72,534 inquiries last year and granted 92 percent. The Justice Department granted only half of its 24,372 requests, English said.

While the system is not perfect, English said, any amendments "must preserve the act's effectiveness."

The media have offered some of the most intense opposition to the Senate bill.

Elaine English (not related to the congressman) of the Reporters' Committee for Freedom of the Press said the organization generally opposed tightening the rules of access, especially of criminal files. For example, the Senate bill pro-

poses a moratorium of five years on release of organized-crime information that an agency considers sensitive.

In testimony before English's subcommittee, Baltimore Sun Publisher Reg Murphy said he feared that the organized-crime provision would be carried to an extreme.

"Abscam was considered an organized-crime investigation by the FBI," he said.

Murphy said he was concerned that the Senate proposal would allow the FBI to "simply stamp everything as an organized crime probe and claim it is all suppressible under the bill."

In an attempt to keep members of crime families from determining if they are under investigation, the Senate proposal would allow law enforcement agencies to deny that any records on the subject exist, instead of saying those records are unavailable because of an ongoing investigation.

In defense of the Senate proposal, Deputy Attorney General Carol E. Dinkins testified that Justice

wants to circumvent abuse of FOIA by criminals and terrorists by giving law enforcement agencies more discretion to withhold information that "could reasonably be expected to" interfere with enforcement proceedings.

She said the FBI found that 15 percent of its FOIA requests were from prisoners.

The Drug Enforcement Administration reported that 58 percent of its requests come from criminals in jail.

The Senate version also excludes foreign citizens from requesting information through FOIA. FBI Director William H. Webster has cited examples of FOIA requests from terrorist groups and hostile foreign intelligence agencies.

English's staff members are still negotiating with Justice to determine if they can compromise on some of these issues.

Public Citizen, the Ralph Nader consumer protection group, is more critical of the Senate bill's concession to business.

One of the amendments suggested in that bill would allow companies to designate information exempt from disclosure and require government agencies to notify the company if a request for that information is received. The company would then be allowed 10 days to explain its objections to releasing that material.

Con Hitchcock, a Public Citizen lawyer, refers to that provision as "a corporate official secrets act."

Hitchcock fears that drug companies in particular would make frivolous claims of confidentiality, especially with the Food and Drug Administration, in order to keep trade secrets or conceal bad news.

If the Senate's rule had been in place, Hitchcock said last week, "we wouldn't have found out about Oraflex until several more deaths." Oraflex is an arthritis drug that was pulled off the market in 1982 after more than 100 deaths related to the drug were reported in Europe and the United States.