



News release from . . .

CONGRESSMAN

GERALD D. KLECZKA

Wisconsin — Fourth District

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FOR IMMEDIATE RELEASE
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(WASHINGTON)--U.S. Rep. Gerald D. Kleczka (D-Wis.) today announced his introduction of the Freedom of Information Public Improvements Act of 1985, which he described as "a bold agenda for strengthening the Freedom of Information Act."

First enacted in 1966, the Freedom of Information Act (FOIA) has been instrumental in numerous disclosures of federal waste and abuse. Kleczka told a Capitol Hill press conference: "As we approach the Act's twentieth anniversary, it seems only appropriate that we evaluate the current law's effectiveness, and devise changes which will make it work better."

Kleczka noted that the bill was "developed with the guidance of the Society of Professional Journalists." The Society, also known as Sigma Delta Chi, was an important force behind the passage of the original FOIA.

In explaining the bill's provisions, Kleczka stressed that it would affect both the scope and the operation of current law. The bill would clarify exemptions for national security, internal personnel, and financial institutions' records. It will also promote quicker and more affordable access to information for those seeking to benefit the public, Kleczka said.

The bill enjoys the co-sponsorship of U.S. Rep. Glenn English (D-Okla.). English is Chairman of the House Government Operations Committee's Subcommittee on Government Information, Justice, and Agriculture, of which Kleczka is a member. The Subcommittee has prime jurisdiction over the FOIA.

Concerning the bill's legislative prospects, Kleczka stated: "No hearings are scheduled as of today, and I can't promise any in the near future. The main purpose of the bill is to get this positive agenda out on the table for discussion. If a consensus develops as a result, the time may be right for further consideration."

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Statement of Congressman Gerald D. Kleczka (D-WI)
Concerning
The Freedom of Information Public Improvements Act of 1985

September 17th, 1985

Good afternoon. I am pleased to announce that today I am introducing the Freedom of Information Public Improvements Act of 1985. Developed with the guidance of the Society of Professional Journalists, this bill sets a bold agenda for strengthening the Freedom of Information Act (FOIA). Unlike some other proposals in this area, the bill focuses upon the Act's original intent -- serving the public good. I want to commend the society for their historic leadership on this issue, and have appreciated working with them on this legislation.

First enacted nearly twenty years ago, the Freedom of Information Act was a landmark in the struggle for open government. Since that time, we have enjoyed the Act's utility on countless occasions. Requests under the law have led to large-scale exposures of federal waste and abuse. These exposures have covered every facet of government, from the use of spoiled food in school lunch programs to illegal billings by defense contractors. The bulk of requests, though less spectacular, have enabled journalists, scholars and others to build a solid public accounting of government's activities.

As we approach the Act's twentieth anniversary, it seems only appropriate that we evaluate the current law's effectiveness, and devise changes which will make it work better.

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As statistics released by the subcommittee on information, justice and agriculture demonstrate, the law has allowed most requesters access to the information they seek. Eight of thirteen cabinet agencies reported that in 1984 they had as a group granted over 90% of the requests made under the law. While these statistics suggest that the law is functioning, they belie certain problems, both in substance and procedure.

Most troubling is the fact that many agencies use vaguely worded exemptions in the law to shield data which deserves to be released. The current administration has proven particularly adept at this, and the time has come to assert the public interest over administrative license.

Procedurally, we have seen serious problems in delays, unfair fees, and confusing and inconsistent regulations. While many agencies make a good faith effort to meet the statutory ten-day deadline, most cases take considerably longer. Fee waivers are not always granted to requesters who deserve them, and, on occasion, billing practices have been used to intimidate those seeking information. Finally, inconsistent FOIA practices among the various agencies have created an unnecessary shroud of confusion around the law, and no doubt many potential requesters are discouraged from using the law at all.

The bill I have introduced today addresses these problems in a number of ways.

° EXEMPTIONS. The bill revises exemptions to FOIA for national security, internal personnel, and financial institution records. The national security exemption would be revised to express a balance between the security needs to protect the information and the public information needs to disclose it. This revision is similar to a proposal advanced by Senator Durenberger in the last Congress. The internal personnel exemption would be eliminated, except for law enforcement manuals that may allow criminals to avoid justice. The financial institution exemption would be sharply tightened to protect only that information whose release would cause immediate harm to a financial institution.

° TIME DELAYS. The bill establishes a system of financial penalties against agencies failing to comply with legal deadlines, and broadens disciplinary sanctions against employees who deliberately obstruct requests. In addition, the bill would require expedited access procedures when circumstances demand urgent disclosures.

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° FEES. The bill requires a standard fee schedule throughout all the agencies. The bill also provides for access to documents at little or no charge if this access would likely benefit the public.

° STANDARDIZATION AND OPENNESS IN THE FOIA PROCESS. The bill requires that agencies maintain logs of FOIA requests and responses, organize their recordkeeping systems to promote cheap and easy access, and make public any special queueing procedures in processing requests. Also worth noting, the bill vests FOIA oversight powers within the archivist of the United States. This position was recently created, and I expect it to provide independent and impartial supervision.

As a member of the House Government Operations Committee's Information Subcommittee, I am well aware that there are other proposals to modify the Freedom of Information Act. Let me stress that I do not view my bill as a response to any of these. To the contrary, it is merely an affirmation and extension of the principles behind the original Act. If there is going to be a debate on the Act's future, let's approach it with a positive agenda.

I am pleased that my bill enjoys the co-sponsorship of Congressman Glenn English, Chairman of the Information Subcommittee. He has done an able job over the years in mediating the interests of many groups concerned with FOIA. In introducing this bill, I believe we have filled a void by providing a reference point on behalf of the public. The time is right to get the debate on track.

Thank you.

THE FREEDOM OF INFORMATION PUBLIC IMPROVEMENTS ACT OF 1985
A SYNOPSIS

SEC. 2 -- FINDINGS

This section sets out the major historical and policy underpinnings of the proposed Act.

SEC. 101 -- RECORD KEEPING REQUIREMENTS

This section facilitates both oversight of agency compliance with requests and requesters' ability to determine if the information they seek already has been compiled. Each agency would be required to keep a log of requests received, a status list of pending requests and an index of all records disclosed under the FOIA. The section also includes a mandate that agencies improve the organization and maintenance of their records.

SEC. 102 -- FEES AND WAIVERS

Fees have presented a persistent problem under the FOIA. Different agencies have set fees and schedules bearing no relationship to the practices of other agencies. The bill mandates that the Office of Management and Budget promulgate a uniform fee schedule. The bill stipulates that documents will be provided at no charge or minimal charge if the information would:

"contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester,"

or if the

"information relates to a violation of law, inefficiency, or administrative error by an agency,"

or if

"the waiver or reduction of the fee is in the public interest because furnishing the information primarily benefits the general public."

If the waiver is not granted, the maximum charge to certain specified requesters under such a schedule would be duplication costs. The section also prohibits an agency from collecting an advance payment of fees, a technique that some have used to discourage usage of the Act.

SEC. 103 -- PENALTIES FOR AGENCY DELAY OR AGENCY FAILURE TO COMPLY

In order to enact meaningful sanctions against violations of the often ignored time limits in the FOIA, this section would allow a requester to be awarded expenses and attorney fees incurred in litigating an agency's failure to comply with the applicable time limits. This section also places the burden upon a non-complying agency to show the delay is warranted. A court would have the discretion to award a requester up to twenty-five dollars a day for each day that the agency exceeded the FOIA's time limits.

SEC. 104 -- SANCTIONS FOR AGENCY FAILURE TO COMPLY

The bill provides additional sanctions against agency employees who improperly handle FOIA requests. Should a court find "that circumstances raise questions whether agency personnel acted arbitrarily or capriciously with respect to" a record or fee waiver request, the agency's special counsel would have six months to investigate the agency's actions and issue a report. In order to expose agency employees who do not comply with the FOIA, copies of this report would be filed with the employee, the requester, the court and the appropriate Senate and House committees. The agency must then act on the special counsel's recommendation and report its actions to the congressional committees.

SEC. 105 -- EXPEDITED ACCESS

Since requesters, particularly members of the media, sometimes need information from the government exceptionally quickly, each agency would be required to establish regulations under which a requester demonstrating a compelling need could have expedited access to records. An agency failing to comply with a five-day limit for handling these expedited requests would be subject to reasonable attorney fees, litigation costs and, at the discretion of the court, a twenty-five dollar a day fine.

SEC. 106 -- SEPARATE QUEUES FOR PROCESSING REQUESTS

To better inform the public on agency procedures for handling FOIA requests, this section would require any agency with a separate queue or special procedure for handling a certain class of requests to describe that queue or procedure in its published regulations.

SEC. 107 -- REVISION OF EXEMPTIONS

This section revises the FOIA exemptions that have proven unreasonably restrictive.

The "b-1" national security exemption is modified in the bill along the lines proposed in the last session of Congress by Senator David Durenberger of Minnesota. The bill would exempt only properly classified information the disclosure of which "could reasonably be expected to cause identifiable damage" to the nation's defense or foreign policy interests and only if "the need to protect the information outweighs the public interest in disclosure."

The "b-2" exemption for internal agency rules and practices would be revised to exempt only "law enforcement manuals that are predominantly internal in nature to the extent that disclosure significantly risks circumvention of an agency investigation, a regulation or a statute."

The "b-8" exemption for financial reports would be amended so that only those documents which, if disclosed, "would directly injure the financial stability of the institution" could be found exempt.

Agencies would be required to publish a complete list of all statutes authorizing exceptions to the disclosure requirements of the FOIA, and would be required to notify the relevant Congressional committees of the introduction of any legislation creating new exemptions to the FOIA.

SEC. 108 -- PROHIBITION ON USE OF THE FOIA
TO WITHHOLD INFORMATION TO CONCEAL
VIOLATIONS OF LAW, INEFFICIENCY,
OR ADMINISTRATIVE ERROR

In an attempt to state explicitly what the FOIA holds implicitly, the bill provides that documents cannot be withheld under the FOIA "in order to conceal violations of law, inefficiency, or administrative error by an agency."

SEC. 109 -- OVERSIGHT OF AGENCY COMPLIANCE

Perhaps the greatest problem in the overall administration of the FOIA has been the poor, almost non-existent oversight by the Department of Justice. The bill would shift oversight responsibility for the FOIA to the newly created Archivist of the United States, who would be granted power to issue binding interpretations and advisory opinions on the FOIA.

To further encourage agency compliance with the FOIA, the bill would require each agency to present an annual report to the Archivist, the Speaker of the House of Representatives and the President of the Senate detailing the agency's handling of document and fee waiver requests made under the FOIA.

SEC. 110 -- DEFINITIONS

To clarify which agencies actually are covered by the FOIA, the bill redefines the term "agency" to include any Executive department, military department, government corporation, government-controlled corporation, or other establishment in the Executive branch of government and any independent regulatory agency and includes the Smithsonian, the Council of Economic Advisors, and the Administrative Office of the United States Courts.

The definition of "records" would be clarified to include appointment calendars and telephone logs unless kept solely for the employee's personal use.

SEC. 201 -- PRIVATE CIVIL ACTIONS TO RECOVER
AGENCY RECORDS REMOVED IN VIOLATION
OF UNITED STATES CODE

Title 2 is an attempt to rectify the damage done by the 1980 Supreme Court case Kissinger v. Reporters' Committee for Freedom of the Press. In that case the Supreme Court declined to hold that notes of telephone conversations by Henry Kissinger were "agency records." Kissinger made the notes while National Security Advisor but transferred them to the State Department when he became Secretary of State. The court found that the "papers were not in control of the State Department at any time. They were not generated by the State Department's files and were not used by the Department for any purpose." Accordingly, the definition of "agency records" has been severely restricted by this case. Lower courts have used the Kissinger decision to prevent FOIA requesters from gaining access to "agency records." Kissinger has been interpreted to hold that an agency to whom the request is directed must have exclusive control of the document. If the agency to whom the request is directed does not have exclusive control over the document, the records are not obtainable under the FOIA, the courts have held.

The amendment would allow requesters to seek records improperly removed from an agency in violation of Title 44 of the United States Code or standards, procedures or guidelines promulgated pursuant to it. Similarly, suit may be brought against the United States or any other governmental agency that is in the possession of records removed from an agency in violation of Title 44.

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