

Right to Know: A Historical Guide to the Freedom of Information Act (FOIA)

Information has taken on a whole new meaning in the digital age, a time when sensitive data is either too easily accessible or not accessible enough. This issue of access to information encompasses fundamental human rights – specifically the freedom of speech as well as the right to privacy. Because it’s a primary means of maintaining transparency and accountability within government policies and decision-making in both the United States and around the globe, information is more valuable than ever to both government agencies and our individual lives. This guide takes an in-depth look at FOIA history and the importance of exercising your right to know.

International Right to Know Day: September 28th

September 28th marks International Right to Know Day. What began as a meeting between freedom of information organizations from 15 countries in 2002, has expanded to a global observance supported by more than 200 organizations worldwide. Each year, International Right to Know Day seeks to make people aware of the distinct rights they have to access government information that is essential to “open, democratic societies in which there is full citizen empowerment and participation in government.” Within the United States, those rights come in the form of the Freedom of Information Act, or FOIA.

Freedom of Information Act

July 2016, marked not only FOIA’s golden 50-year anniversary, a milestone in Americans’ rights to scrutinize government agency records, but also the FOIA Improvement Act of 2016. Together, they remind us that FOIA’s guarantee of access to information was not easily acquired – nor was it a legally binding right. In fact, FOIA’s very creation was highly controversial. And since it has passed, its implementation and execution have continued to present challenges of their own.

1789 Housekeeping Statute

For more than 175 years, the United States relied on what was known as the 1789 Housekeeping Statute. As the U.S. Constitution does not specify policy or procedure for information sharing either among federal bodies or with the public, Congress’ 1789 statute authorized heads of departments to maintain records and to determine how those records would be used.

Although the legislation was considered simply a “housekeeping” measure for a growing nation, opponents of free access even today continue to invoke it in arguments to withhold

information - even though a one-line 1959 amendment to the statute specifically states, "This section does not authorize withholding information from the public or limiting the availability of records to the public."

Administrative Procedure Act of 1946

As the growing nation continued to create agencies and departments, President Franklin Delano Roosevelt saw the need to once again establish some additional housekeeping rules through the Administrative Procedure Act. According to the act, federal agencies had to maintain records and make them "available to public inspection" - except for "information held confidential for good cause." Fraught with loopholes, the act gave more cause to withhold information than to share it. However, it did require that agencies:

- Establish offices where the public could "secure information or make submittals or requests."
- Publish formal and informal procedures for information sharing.
- Make available "instructions as to the scope and contents of all papers, reports, or examinations."

FOIA Reaction to Cold War Secrecy

Post-World War II, however, conflict assumed new dimensions in the Cold War. Governmental secrecy increasingly frustrated journalists and the public alike. Open demand for information grew, spurred on by Harold Cross' 1953 publication of *The People's Right To Know* and ensuing congressional initiatives led by California's Democratic Representative John Moss.

On July 4, 1966, President Lyndon B. Johnson issued a signing statement to edify Congress' fresh, new Freedom of Information Act with limitations. Although his statement asserted that "a democracy works best when the people have all the information that the security of the nation will provide," it focused heavily on the fact that "the welfare of the nation or the rights of individuals may require that some documents not be made available." While reluctantly conceding the act as necessary, Johnson removed many of the act's teeth exception by exemption. Even so, for the first time, a law had been written with the sole purpose of ensuring public access to federal agency records.

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