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250 Years After the Declaration of Independence: Transparency through FOIA

By Kimberly Tyson, Esquire and Annette Felho | July 15, 2026

"A popular government without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy or perhaps both."

Senator Russell Long repeated this statement, attributed to James Madison, sometimes called the father of the Constitution, when Long introduced legislation about transparency in government. The Louisiana senator emphasized that informed citizens are essential to democracy, a foundational principle of this country.

I. Founding Fathers Complained of a Lack of Transparency

Two hundred and fifty years ago, in the Declaration of Independence, representatives of the 13 original colonies declared their independence from Great Britain and King George III. They proclaimed that life, liberty, and the pursuit of happiness were unalienable rights secured through a government derived from the consent of the governed.

The Declaration grounded the assertion of freedom in 27 complaints against King George III. A lack of transparency was integral to those complaints, reflecting the principle that lawmaking and enforcement must be open, deliberative, accountable, and responsive to the people. Nearly 200 years later, Congress embedded this framework for transparency in the Freedom of Information Act (FOIA), codified in section 552 of title 5 of the United States Code.

II. FOIA's Enactment

On July 4, 1966, FOIA was enacted as Public Law 89-553, 80 Stat. 378-663. Its purpose was to clarify and protect the public's right to information held by the executive branch. (See Congressional Research Service, *The Freedom of Information Act (FOIA): Background, Legislation, and Policy Issues* R41933 (Aug. 14, 2015).) Through FOIA, Congress sought to reconcile, through democratic processes, two competing needs: a citizenry informed fully about their government and the protection of private or sensitive information for effective government functioning.

FOIA was enacted because the predecessor disclosure provision fell "short of its disclosure goals and came to be looked upon more as a withholding statute than a disclosure statute." *EPA v. Mink*, 410 U.S. 73, 79 (1973). Thus, FOIA's purpose "reflected 'a general philosophy of full agency disclosure unless information is exempted under clearly delineated statutory language.'" *Dep't of the Air Force v. Rose*, 425 U.S. 360-361 (1976) (quoting S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965)).

The congressional objective of FOIA was "'to pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny.'" Id. at 361. Although Congress has amended FOIA over the years, this foundational purpose favoring disclosure by government agency remains intact. *City & County of Honolulu v. EPA*, Docket No. 08-cv-00404 (D. Haw. March 27, 2009).

III. Mechanics of FOIA Information Requests

Clause (1) of section 552(a), in title 5 of the U.S. Code, addresses information that agencies must publish in the *Federal Register* as guidance for the public, while clause (2) identifies information that agencies must make available for public inspection. An agency's duty to disclose is limited by nine exemptions contained in section 552(b), which incorporates other statutes also restricting disclosure.

Other laws may independently prohibit disclosure. In the tax context, the most common statutory restri section 6103 of title 26 of the U.S. Code, which prohibits disclosure of third-party tax returns and return information. See *Church of Scientology v. IRS*, 484 U.S. 9, 17-18 (1987) (holding that section 6103 protects return information from disclosure even when identifying information is removed). Also, section 6105, in title 26 of the U.S. Code, prohibits disclosure of tax convention (treaty) information without authorization, subject to exceptions.

The FOIA Improvement Act of 2016, Pub. L. 114-185, requires the head of each agency to issue regulations governing the disclosure of public records under FOIA. The Department of Justice maintains a comprehensive FOIA treatise that addresses the procedural requirements, exemptions, and litigation considerations. Before submitting a FOIA request, requestors should consult agency-specific regulations and guidance for specific FOIA procedures (such as the National Archives, Department of Justice, Citizenship and Immigration Services, and Health and Human Services). For records requested from the IRS, applicable provisions are in section 601.702(c)(4) of the Treasury Regulations (26 C.F.R.), with additional information in the Internal Revenue Manual at 11.3.13.

Under section 552(a)(6)(A) of title 5, an agency has 20 business days after receiving a FOIA request to notify the requester whether the agency will comply. If the agency fails to respond, then section 552(a)(4)(B) authorizes the requester to initiate a suit in U.S. district court for production of records improperly withheld. Venue is proper where the plaintiff resides, where the plaintiff has a principal place of business, where the agency records are located, or in the District of Columbia. If the agency responds but redacts or withholds information the requester thinks he is entitled to, then section 552(a)(6)(A)(i)(III)(aa) of title 5 provides the requester 90 days to file an administrative appeal. If the requester is still unsuccessful, the requester can seek judicial review.

The procedures to obtain documents through FOIA can be cumbersome and expensive. Some agencies offer informal mechanisms for obtaining records outside of FOIA. For example, for tax information, taxpayers may sometimes be able to receive their IRS examination files through a "direct release" under the procedures in the memo from Edward Killen, IRS chief privacy officer, dated March 7, 2019 (Tax Notes Doc. 2019-10488). Similarly, when the IRS Independent Office of Appeals has scheduled a conference with a "specified taxpayer," section 7803(e) of title 26 of the U.S. Code requires the IRS Independent Office of Appeals to provide that taxpayer access to non-privileged portions of the case file at least 10 days before the conference.

IV. FOIA Litigation by Watchdog Groups: Tax Analysts Example

Watchdog and industry groups can be valuable resources in efforts at obtaining transparency through FOIA. An instructive example within the tax arena is the work of Tax Analysts to obtain tax information from the Internal Revenue Service and the Department of Justice. Tax Analysts is a nonprofit organization that publishes tax news and analysis. Tax Analysts has brought numerous lawsuits against the DOJ and IRS seeking disclosure of agency guidance. See, e.g., *DOJ v. Tax Analysts*, 492 U.S. 136 (1989); *Tax Analysts v. IRS*, 350 F.3d 100 (D.C. Cir. 2003); *Tax Analysts v. IRS*, 117 F.3d 607, 617 (D.C. Cir. 1997); *Tax Analysts v. IRS*, 505 F.2d 350 (D.C. Cir. 1974); *Tax Analysts v. IRS*, 97 F. Supp. 2d 13 (D.D.C. 2000); *Tax Analysts v. IRS*, 53 F. Supp. 2d 449 (D.D.C. 1999); *Tax Analysts v. IRS*, 405 F. Supp. 1065 (D.D.C. 1975). When considering the disclosure of the information, the C f Appeals for the D.C. Circuit stated that "FOIA by its explicit terms condemns 'secret law' and requires tha made public" and that "an agency will not be permitted to develop a body of 'secret law.'" *Tax Analysts*, 505 F.2d at 353; see *Tax Analysts*, 117 F.3d at 617.

V. Conclusion

Congress's efforts to promote transparency through FOIA are consistent with those expressed in the Declaration of Independence 250 years ago. This continuity is evident both in FOIA's legislative history and in judicial interpretations of FOIA, recognizing its core purpose: condemning secret law. FOIA provides an essential check on governmental power by requiring transparency, ensuring that lawmaking and enforcement remain open, deliberative, accountable, and responsive to the people.

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