

A Government Reform Project Study

November 18, 1996

NEEDED: A CONGRESSIONAL FREEDOM OF INFORMATION ACT

INTRODUCTION

The recent growth of the Internet has spurred demand to make information on Congress readily available electronically. At the same time, newly elected House and Senate leaders have pledged to continue the significant reforms that made the 104th Congress more open and responsive to the public than its predecessors. The 105th Congress should marry internal reform and external electronic information efforts by establishing rules and procedures through a Congressional Freedom of Information Act (FOIA) to guarantee that basic legislative information is available electronically. By taking the initiative in placing all disclosable information on the Internet, Congress could avoid the contentious process of specific requests for materials as well as the necessarily more complex freedom of information procedures established for the executive branch.

Congress already has acted to place information on line with enormous success. In 1995, Congress established THOMAS, the Library of Congress's on-line legislative information service, which has been accessed more than 35 million times in just 22 months of operation. Another agency of the federal government, the Government Printing Office, manages the GPO Access system, which features 58 information databases produced by the federal government. Since December 1995, GPO Access has distributed an average of 2 million documents electronically each month.

Individual offices have also taken steps to make information available electronically. Ninety-four Senators have World Wide Web home pages, which feature text and graphics, as do 213 of the House's 435 members. Electronic mail has facilitated communication with congressional offices; 38 percent of all House members and 82 percent of Senators now have e-mail addresses.

The U. S. House of Representatives Task Force on Committee Review has recommended that Congress's open door policy be extended to include increasing public access to committee documents over the Internet.

Key materials that the House Task Force recommended be placed on the Internet include:

- Amendments to bills
- Committee and subcommittee prints
- Committee and subcommittee reports
- Oversight plans and activities.

In mid-July, Representative Rick White (R-WA) introduced H. Res. 478, which would incorporate the Task Force recommendations into the Rules for the House of Representatives. Likewise, through its "Operation Daylight," the U.S. Senate has sought to use information technology to publicize its activities more extensively.

Both H. Res. 478 and Operation Daylight would do much to bring the day-to-day workings of Congress to the on-line public. Congress should broaden these procedural reforms by creating a Congressional FOIA, encompassing all of the information which Congress already makes available to the public. In addition to the committee documents detailed by the House task force for inclusion on the Internet, Congress should add issue briefs, spending reports, and financial and lobbying disclosure documents.

Through key institutional and procedural reforms, the 104th Congress sought to unmask and dismantle the network of liberal special interests that ran Capitol Hill for decades. A Congressional Freedom of Information Act would complete and confirm the move toward open access to Congress.

Providing citizens outside of Washington with the means to closely examine and actively monitor the work of their elected representatives would do more to foster openness and prevent back room politics than any other single reform. The 30 million American families with personal computers would be able to use the Internet to observe more closely the activities of Congress and their particular representatives; other citizens may take advantage of the numerous possibilities for Internet access at work and at public and university libraries to find timely information on current legislation that may affect their lives. Overall, these changes would make our democratic system stronger and more responsive to the average citizen.

CONGRESSIONAL REFORM IN THE 104th CONGRESS

Heeding the public cry to "clean up Congress" in the aftermath of the House bank, bookkeeping, and post office scandals, Members of the 104th Congress took office in January 1994 determined to reform the institution. The House and Senate cut their budgets, reduced committee staff, eliminated perks, banned most gifts to Members, applied laws imposed on the private sector to itself, required lobbyists to register and disclose their activities, and imposed term limits on committee chairmen. The House also overhauled its committee system, once a haven for pork-barrel politics and back room deals.

Congress's move to bring itself on line in the age of the information superhighway was an important, albeit unheralded, part of these changes.

The 104th Congress transformed itself into a more open and responsive body in part by affording Americans new and quicker channels of access to, as well as new sources of information from, their elected representatives. The increased use of electronic mail affords the public a new opportunity to comment on legislation currently under consideration; 38 percent of all House members and 82 percent of Senators now have e-mail addresses. As of early November 1996, 94 Senators and 213 House members have World Wide Web home pages. Likewise, congressional committees have posted information on line as part of their open door efforts. Eighteen House committees have home pages, with the remaining two scheduled to go on line within the year. Eight of the Senate's seventeen committees have home pages.

Most significantly, House and Senate leaders have made much federal legislative information freely accessible to constituents through the Internet. In January 1994, congressional leadership brought the Library of Congress THOMAS system on line. As a result, some bill texts, the *Congressional Record Index*, bill summaries, and legislative status updates are readily available, free of charge, to the Internet-using public. THOMAS has been an enormous success: It was consulted nearly 14 million times in its first year of operation and more than 21 million times in the first ten months of 1996 alone.

In addition, the GPO Access system went on line in December 1995 to provide access to 58 federal government databases, including the *Congressional Record*. On average, users download two million documents a month from the service free of charge. Among the most useful Web sites on GPO Access is the home page for the General Accounting Office, Congress's investigative arm. The GAO home page offers full-text searchable files of reports on major rules by federal agencies, GAO reports, testimony, policy and guidelines, comptroller general decisions, and bid protest regulations. In addition, the home page includes a direct link to GAO FraudNet, allowing Internet users to report evidence of fraud and abuse.

The 1995 Congressional Accountability Act required Congress to comply with legislation covering private workplaces. It excluded the Freedom of Information Act from its list of covered laws, however, as the FOIA does not apply to the private sector. Enacted in 1966 and amended several times since, the FOIA requires executive branch agencies to make many kinds of documents available to citizens, scholars, journalists, and others interested in government activity and statistical information. Unfortunately, compliance with this law has been characterized by excessive delays, and, in some cases, outright neglect. One major problem is that the FOIA has impact only after individuals request information from a government agency. The FOIA process begins with an often controversial decision about whether the requested information is eligible to be released to the public.

Congress recently passed an amendment called the Electronic Freedom of Information Act, requiring the executive branch to make greater use of the Internet in responding to requests for information. A huge advantage of electronic disclosure is that an agency can take the initiative to determine what information should be disclosed and make it available rather than waiting for citizens to ask.

Congress should establish similar open information procedures for itself. By starting with electronic disclosure through the Internet, Congress can avoid much of the contention and controversy that has characterized the executive branch experience with the FOIA.

HOUSE TASK FORCE ON COMMITTEE REVIEW RECOMMENDATIONS

Congress already is considering additional steps to increase on-line access to information about the congressional process. The House Task Force on Committee Review, chaired by Representative David Dreier (R-CA), has called for significant House rule changes for the 105th Congress to assure greater public access to key committee documents. These recommendations were largely incorporated in H. Res. 478, introduced by Representative Rick White. In particular, H. Res. 478 would require House committees to place important legislative documents on line, including committee and subcommittee prints of bills, amendments, meeting transcripts, reports on legislation, and oversight plans and activity reports. At low marginal cost and with great efficiency of dissemination, these measures would improve public access to documents and information that previously had been the domain of congressional staffers and influence peddlers. Increased public access would help level the playing field between ordinary citizens and high-powered lobbyists, whose ability to obtain inside information often enables them to influence legislation. The Senate Rules and Administration Committee is considering similar steps as part of Operation Daylight.

H. Res. 478 would require that the following information be made available on the Internet:

- **Committee and subcommittee prints of bills and marks (when introduced or given to Members for markups).** Currently, citizens can read copies of bills that have been introduced in the House or the Senate via THOMAS or GPO Access. But bills almost always are transformed during committee or subcommittee scrutiny. Versions of bills to be considered by committees, termed "chairman's marks," often are not available to the public until after committees have acted on them.
- **Committee amendments to bills (as soon as technically feasible).** Amendments can fundamentally alter a bill. While average citizens may be able to review and comment upon the original version of legislation, they usually will be unaware of how profoundly it can be changed by amendments. Until amendments to bills are made widely available, Washington lobbyists will continue to have the opportunity to review amendments and to urge changes before the broader public has a similar opportunity.
- **Committee and subcommittee reports (when filed with the Clerk of the House or the Secretary of the Senate).** Even though bills may be available via Internet, they are likely to be incomprehensible to the non-lawyer. Committee and subcommittee reports help to translate technical language into comprehensible English. Such reports also offer a summary of congressional hearings on legislation and an examination of the rationale behind a bill, as well as the primary arguments for and against it. Currently, these documents are made available through THOMAS but only after they have been published by GPO. Making committee reports available as soon as possible would assure that those who are interested in a piece of legisla-

tion can receive the most current and comprehensive information about it. Waiting for printing before making information available on the Internet misses the huge advantage of electronic dissemination. The current policy resembles the early days of the automobile, when laws required that horse-drawn buggies with lanterns light the way for their speedier replacements.

- **Hearing and mark-up transcripts (within five days).** Currently, most citizens have to wait until official committee publication to obtain transcripts of congressional hearings. Publication of such transcripts often takes months or even more than a year, frequently occurring when an issue once considered crucial has faded from center stage. Although the public is denied quick and free access to such transcripts, lobbyists can purchase them from private transcribing agencies. By making hearing and mark-up transcripts available, the proposed House Rule change would help to give every citizen the information easily available to special interests. The 104th Congress changed its rules to allow C-SPAN and citizens to attend more committee and subcommittee hearings and mark-ups; thus it is only fitting for citizens unable to attend a hearing personally or view it on television to be able to read what transpired. Now that the Internet is an option, there is no good reason why transcripts should be delayed because of printing schedules.
- **Prepared statements (when submitted).** When individuals testify before Congress, they are asked to provide written copies of their testimony for distribution to members of the committee. In addition to requiring hard copies, House and Senate committees should ask witnesses to submit their testimony on diskette. Prepared statements could then be made available immediately on the relevant committee Web site.
- **Schedules and notices (when distributed).** Posting committee and subcommittee notices, hearings, and mark-up meeting times would allow the public to better keep track of committee activities. Currently, advance information on committee meetings is most easily accessible through specialized publications that are targeted specifically at congressional staffers and lobbyists. Placing such information on the Internet would afford constituents the opportunity to contact their representatives to voice their concerns and suggest possible questions for witnesses.
- **Committee rules (when approved or amended).** Committee rules include important technical procedures, whose nuances vary from committee to committee. Making these rules available to the public would help to demystify internal committee workings.
- **Oversight plans and activity reports.** Congress has broad constitutional authority to engage in oversight and investigation. Through its oversight of the executive branch, Congress often seeks to publicize or prevent abuses of federal authority, to identify wasteful federal programs, and to save federal tax dollars. House and Senate committees would more easily invite the participation of whistleblowers or others knowledgeable about a subject by making oversight plans more available.
- **Member and staff directories.** Members of Congress serve at the public's will. Their staffers, though unelected, are given the public's trust, and can wield enormous influence. Their office addresses and telephone numbers should be available to the public. Staff listings can be found in various Capitol Hill directories, but

these books are expensive to purchase and not widely available outside the Washington, D.C., area. Making such information more easily available would be a boon to ordinary citizens.

By placing this vast array of information at the fingertips of the on-line public, the House Task Force recommendations would effectively open up the doors of congressional committees, thereby enhancing efforts at full, effective disclosure of congressional activity.

BROADENING DISCLOSURE POLICIES

In addition to the impressive recommendations of the House Task Force, Congress should release additional information on line. In particular, Congress should place on line information in the public domain that has not been readily available electronically, including:

- **Conference Reports.** For a bill to become law, both chambers of Congress must approve identical versions of the same bill (the conference report). These reports can contain significant changes in legislation already voted on in the House and Senate, as conference compromises or additions may not have appeared in either congressional version of the legislation. As conference committees serve temporarily, they would not have a regular mechanism for publishing their reports, so the House and Senate standing committees with lead responsibility for a particular conference should place the compromise legislation and report on their own home pages.
- **Voting records and (co)sponsorships for Members of the House and Senate.** Members of the House and Senate should be held accountable to constituents for their voting records. Numerous Web sites already publish select information on votes in the House and the Senate. If comprehensive voting records were readily accessible, constituents could more easily examine complete records of the performance of their representatives. Congress might even establish issue area databases that would group, for instance, all defense or transportation infrastructure votes.
- **Press releases and issue statements.** Press releases and issue statements are routinely sent to the national media and the regional press. By placing such documents on line, Members could better inform their constituents of their positions on various issues.
- **Franked mass mailings.** Congressmen are permitted to send mass mailing to their constituents for free, as long as the purpose of the mailing is to update citizens on their representative's official business. By placing the content of these publications on line, it would be much easier for journalists, watchdog groups, and political opponents to insure that this privilege is not used for electioneering.
- **Congressional Research Service (CRS) Reports.** The CRS home page allows congressional staff access to a library of CRS Reports and Issue Briefs written at the request of Members of Congress. These reports summarize key research findings and the state of public opinion on a given public policy issue, and clearly explain the impact of proposed legislation. They often are a major source of informa-

tion for congressional staffers and Members of the House and Senate in shaping prospective legislation. There is no reason to keep this information from the public, especially since the costly research services are funded by their tax dollars. To make such reports available, however, long-standing language in the House legislative branch appropriations requiring the CRS to focus solely on serving Congress would have to be amended.

- **House and Senate Records, including the Statement of Disbursements of the House, Secretary of the Senate Reports, and House and Senate Financial Disclosure Reports.** In the aftermath of the banking and post office scandals, the 104th Congress undertook significant measures to overhaul the documents that show how House members spend the funds available to run their offices (the Representational Allowances). Making this information more widely available would allow constituents to compare the franking and office expenditures of their elected representatives to those of other Senators and Congressmen and help to restore public confidence in Congress.
- **Federal Election Commission reports.** In nearly every election, there is a clamor for campaign finance reform. One reason is the belief that special interests have been able to purchase access to Members of Congress. By allowing quick, free, and easy on-line access to Federal Election Commission reports, Congress could help to disperse some of the clouds of suspicion and misinformation surrounding campaign financing.
- **Lobbyist Disclosure Reports.** The Lobbying Disclosure Act of 1995 closed numerous loopholes in lobby registration requirements. Currently, these forms are retrievable only by lobbyist, not by bill, committee, issue, or dollar amount. Placing these Disclosure Reports on line would make it much simpler for constituents to research the lobbying activity surrounding a particular issue or committee.
- **Whistleblower Page.** By establishing a whistleblower page, Congress would encourage citizens—some of whom may be reluctant or ignorant of how to file such reports—to document cases of waste, fraud, and abuse, thereby potentially saving millions of tax dollars annually. A system operator working for the whistleblower page could forward appropriate information to the relevant committee, subcommittee, or federal agency inspector general. Strict precautions would need to be taken to maintain confidentiality for whistleblowers.

WHAT A CONGRESSIONAL FOIA WOULD NOT DO

By pledging to place information on the Internet, Congress would define its FOIA commitment. Increased access to official and committee documents will keep citizens better informed; however, the congressional FOIA should not be so broad as to allow unlimited access to all areas of congressional activity. Congress should not duplicate the FOIA that applies to executive branch agencies, whose members are not held accountable to the voters via the electoral process. Through its execution of the laws, executive branch agencies tend to affect individuals directly, whereas legislation is far more general in scope. Because of their particular powers and lack of direct accountability to the voters, executive branch agencies should be held to a different FOIA standard than the legislative branch.

The legislative process is one of give-and-take, and individual Members often will shift position on given legislation as that legislation itself changes. Congressional staffers and Members have a right to operate with a degree of confidentiality, so that they do not fear that every word they write could one day become part of the public record. The Privacy Act of 1974 and the Computer Security Act of 1987 contain provisions that require federal offices to protect individuals from the unauthorized release of personal information and to protect the public from receiving documents that may not be accurate. Sensitive information in the computer systems of individual congressional offices should be protected from dissemination. Internal office memoranda and preliminary documents such as discussion drafts of bills, for example, should not be distributed on line, as such documents represent neither official actions nor even the considered viewpoint of a legislator.

By adding information recommended by the Task Force on Committee Reform to information that Congress already makes public, and by establishing an umbrella disclosure system through the Internet, Congress could devise a freedom of information system which is simultaneously comprehensive for the public but less invasive for the institution than is the executive branch process. Because the Congressional FOIA would be an internal congressional rule, complaints would be resolved within Congress, rather than by the courts.

The changes heralded by placing member offices and committee information on line should not be exaggerated. Increasing the amount of information on line should not, for instance, be seen as opening the gates for what has been termed electronic democracy. The congressional FOIA proposal falls far short of creating electronic plebiscites. Congressional Web sites should not become the locus of instantaneous and unscientific polling. In the eyes of America's Founding Fathers, Congress, particularly the Senate, was to be a deliberative body, not an immediate mirror of the public's unfettered passions and prejudices. Increasing public access to congressional documents can serve an important didactic role that dovetails well with the Founding Fathers' vision.

HOW TO IMPLEMENT A CONGRESSIONAL FREEDOM OF INFORMATION ACT

Several steps must be taken to implement a Congressional FOIA. On the first day of the 105th Congress, the House and Senate should adopt rules mandating that committees electronically disclose the information recommended in the Task Force on Committee Review report. At the same time, the House and Senate should provide for the establishment of "freedom of information" home pages. These pages would include links to sources of already disclosable information on Congress, including Federal Election Commission data, lobbying and financial disclosure reports, Clerk of the House and Secretary of the Senate reports, franking commission data, and Congressional Research Service reports. Some of this material, currently unavailable electronically, would need to be adapted to the new format.

To assure effective implementation of the Congressional FOIA, the House Oversight Committee and Senate Rules Committees should appoint advisory groups consisting of computer industry experts, journalists, and political scientists. These advisors would review the information Congress discloses and offer suggestions to improve the presenta-

tion, format, or types of information available. The boards would offer informed outside advice on congressional disclosure policy and also represent a congressional outreach to the Internet community and other information consumers.

As a second step, the Senate Rules and House Oversight committees should be assigned the task of defining what categories of information individual Members' offices should be required to disclose via the Internet. These committees should also determine whether responsibility for posting such information—such as franking costs, franked mass mailing, and financial disclosure forms—should lie with each individual office or should be maintained through a central service. The House Oversight and Senate Rules committees should coordinate to assure that the information disseminated by House and Senate offices is as similar as possible, while respecting the divergent characters of the two congressional chambers. The Senate Rules and House Oversight reports, which should include an implementation schedule, should be completed no later than December 1997.

CONCLUSION

Public input is essential to an effective Congress. The 104th Congress opened its procedures to the public more than ever before. The 105th Congress should build on this success by mandating widespread disclosure of congressional documents and information on the Internet by passing a Congressional Freedom of Information Act. Making House and Senate documents and information available on the Internet will allow citizens to better judge the effectiveness of their elected officials. Making committee documents available to the public at large will promote input on pending legislation from knowledgeable sources beyond the Beltway.

Furthermore, using the Internet as the freedom of information mechanism will allow Congress to determine and manage information disclosure without the disputes and confrontations that have characterized the executive branch freedom of information process. The enormous success of THOMAS—35 million computerized inquiries in just 22 months—is proof of a clear constituency for the type of electronic information that a congressional FOIA would make available. Electronic access to such documents, moreover, is relatively inexpensive, especially when compared to old fashioned distribution by the Government Printing Office or the U.S. Postal Service.

The Congressional FOIA would provide the public easy and prompt access to a variety of documents produced by the legislative branch. Much of the material that would be covered under a Congressional FOIA is already in the public domain, including press releases, voting records, legislative co-sponsorships, Federal Election Commission reports, conference reports, amendments to bills, and committee oversight plans. A Congressional FOIA would assure that such information is posted on the Internet in a standardized, user-friendly format.

In addition to facilitating access to documents that Congress readily distributes, a Congressional FOIA would afford timely public access to committee and conference materials that previously had been released only in final format, including committee and subcommittee prints of bills and marks and preliminary transcripts of hearings and mark-ups. Afforded access to such materials in a timely fashion, citizens whose lives might be affected by amendments or new laws would be able to communicate with their repre-

sentatives as legislation is being considered. Congress would be able to receive more feedback on legislative proposals than is possible in the typical half-day hearing with a limited number of witnesses. Policy specialists at universities, businesses, and in state and local governments also could offer perspectives that Congress would not otherwise hear.

Yet the main reason to enact a congressional FOIA is not to make Congress more effective, but because it is the right thing to do. In their offices and at committee meetings, Members of Congress are conducting the public's business. The public has a right to know what occurs in a detailed and timely fashion. Moreover, a congressional FOIA would allow citizens to comment on pending proposals. Without information on committee business in particular, only Washington insiders and high-powered lobbyists would have the ability to do anything to affect deals or amendments. Opening the congressional committee system to the 30 million households with personal computers can only enhance our democracy.

Both the House and the Senate would have to institute rules changes to implement a Congressional FOIA. Such rules changes would stipulate both the extent and the format of the information to be made available electronically. To assure effective execution of a Congressional FOIA, the relevant House and Senate committees should review implementation plans with the assistance of a group of scholars and information industry leaders.

By instituting a Congressional Freedom of Information Act, Congress would increase public access to committee documents over the Internet in an organized, comprehensive, and user-friendly manner. As Congress continues its efforts of the past two years to devolve power and authority away from Washington to citizens and the institutions they control directly, citizens will need increased access to the sources of information that will guide them. By empowering ordinary citizens at the expense of well-connected Washington insiders, a Congressional FOIA would be a critical step in reforming government.

Kenneth R. Weinstein
Director, Government Reform Project
August Stofferahn
Research Assistant

The authors wish to thank Gary Ruskin, Director of the Congressional Accountability Project, for his helpful comments on an earlier draft of this paper.