The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Missouri (Mr. CLAY) that the House suspend the rules and pass the bill, H.R. 1255, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. CLAY. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this question will be postponed.

FREEDOM OF INFORMATION ACT

AMENDMENTS OF 2007

Mr. CLAY. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1309) to promote openness in Gov-

tement by strengthening section 552 of title 5, United States Code (com-

monly referred to as the Freedom of Information Act), and for other purposes, as amended.

The Clerk read as follows:

H. R. 1309

Be it enacted by the Senate and House of Rep-

resentatives of the United States of America in

Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Freedom of Information Act Amend-

ments of 2007".

(b) TABLE OF CONTENTS.—The table of con-

 tents for this Act is as follows:

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     thorizing deletions of mate-
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SEC. 2. FINDINGS.

Congress finds that—

(1) The Freedom of Information Act was signed into law on July 4, 1966, because the American people believe that—

(A) our constitutional democracy, our sys-

tem of self-government, and our commit-

ment to popular sovereignty depends upon the consent of the governed;

(B) such consent is not meaningful unless it is informed;

(C) as Justice Black noted in his concur-

ring opinion in Barr v. Matteo (360 U.S. 564

(1959)), "the effective functioning of a free government like ours depends largely on the force of an informed public opinion. This calls for the widest possible understanding of the quality and the trend of our administrative proceedings, by all elective and appointed public officials or employees."

(2) the American people firmly believe that our system of government by itself be gov-

erned by a presumption of openness;

(3) The Freedom of Information Act estab-

lishes a "strong presumption in favor of dis-

closure" noted by the United States Su-

preme Court in United States Department of

State v. Ray (502 U.S. 164 (1991)), a presump-

tion that applies to all agencies governed by

that Act;

(4) "disclosure, not secrecy, is the domi-

nant objective of the Act," as noted by the United States Supreme Court in Department of

Air Force v. Rose (425 U.S. 352 (1976));

(5) in practice, the Freedom of Information Act has not always lived up to the ideals of

that Act; and

(6) Congress should regularly review sec-

tion 552 of title 5, United States Code (com-

monly referred to as the Freedom of Infor-

mation Act), in order to determine whether

further changes and improvements are nec-

essary to ensure that the Government re-

mains open and accessible to the American

people and is always based not upon the

"need to know" but upon the fundamental

"right to know".

SEC. 3. PROTECTION OF FEE STATUS FOR NEWS MEDIA.

Section 552(a)(4)(A)(ii) of title 5, United States Code, is amended by adding at the end the fol-

lowing:

"In making a determination of a representa-

tive of the news media under subclause (II), an agency may not deny that status solely on the basis of the absence of institutional associations of the requester, but shall consider the prior publication history of the re-

questor. Prior publication history shall in-

clude books, magazine and newspaper arti-

cles, newsletters, television and radio broad-

casts, and Internet publications. If the re-

questor has no prior publication history or current affiliation, the agency shall consider the requestor’s stated intent at the time the request is made to distribute information to a reasonably broad audience.”.

SEC. 4. RECOVERY OF ATTORNEY FEES AND LITIGATION COSTS.

(a) IN GENERAL.

Section 552(a)(4)(E) of title 5, United States Code, is amended by adding at the end the following:

"For purposes of this section only, a complainant has substantially prevailed if the complainant has obtained relief through either—

(1) a judicial order, administrative action, or an enforceable written agreement or con-

sent decree; or

(2) a voluntary or unilateral change in position by the opposing party, in a case in which the complainant’s claim or defense was frivolous, meritori-

ous.

(b) LIMITATION.

Notwithstanding section 1304 of title 31, United States Code, no amounts may be obligated or expended from the Claims and Judgment Fund of the United States Treasury to pay the costs resulting from the amendments made by this section. Any such amounts shall be paid only from funds annually appropriated for the Federal agency against which a claim or judgment has been rendered.

SEC. 5. DISCIPLINARY ACTIONS FOR ARBITRARY AND CAPRICIOUS REJECTIONS OF REQUESTS.

Section 552(a)(4)(F) of title 5, United States Code, is amended—

(1) by inserting "(1)" after "(F)"; and

(2) by adding at the end the following:

"(ii) The Attorney General shall—

"(I) notify the Special Counsel of each civil action described under the first sentence of clause (I); and

"(II) annually submit a report to Congress on the number of such civil actions in the preceding

year.

"(iii) The Special Counsel shall annually submit a report to Congress on the actions taken by the Special Counsel under clause (I).”.

SEC. 6. TIME LIMITS FOR AGENCIES TO ACT ON REQUESTS.

(a) TIME LIMITS.

(1) IN GENERAL.—Section 552(a)(6)(A)(i) of title 5, United States Code, is amended by inserting "Notwithstanding Saturdays, Sundays, and public legal holidays after the receipt of any such request and inserting "within the 20-day period commencing on the date on which the request is first received by the agency (excepting Saturdays, Sundays, and legal public holidays), which shall not be tolled without the consent of the party filing the request, determine" at the end the following:

"(viii) An agency shall refund any fees collected under this subparagraph if the agency fails to comply with this time limit that applies under paragraph (6). Such refunds shall be paid from annual appropriations provided to that agency."

(2) EFFECTIVE DATE AND APPLICATION.—The amendment made by this subsection shall take effect 1 year after the date of enactment of this Act.

(b) APPLICABILITY OF AGENCY FEES.

(1) LIMITATION.—Section 552(a)(4)(A) of title 5, United States Code, is amended by adding at the end the following:

"(a) Effective date and application.—The amendment made by this subsection shall take effect one year after the date of enactment of this Act and apply to requests for information under section 552 of title 5, United States Code, filed on or after that effective date.

SEC. 7. INDIVIDUALIZED TRACKING NUMBERS FOR REQUESTS AND STATUS INFORMATION.

(a) IN GENERAL.—Section 552(a) of title 5, United States Code, is amended by adding at the end the following:

"(d) Each agency shall—

"(A) establish a system to assign an individualized tracking number for each request for information under this section;

"(B) not later than 10 days after receiving a request, provide each person making a request with the tracking number assigned to the request; and

"(C) establish a telephone line or Internet service that provides information about the status of a request to the person making the request using the assigned tracking number, including—

"(i) the date on which the agency originally received the request; and

"(ii) an estimated date on which the agency will complete action on the request.".

SEC. 8. SPECIFIC CITATIONS IN EXEMPTIONS.

Section 552(b) of title 5, United States Code, is amended by striking paragraph (3) and inserting the following:

"(3) specifically exempted from disclosure by statute (other than section 52b of this title), provided that such statute—

"(A) if enacted after the date of enactment of the Freedom of Information Act Amendments of 2007, specifically cites this section; and

"(B) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or
“(ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld.”

SEC. 9. REPORTING REQUIREMENTS.

(a) ANNUAL REPORT REQUIREMENTS.—Section 552(e)(1) of title 5, United States Code, is amended—

(1) in the matter preceding subparagraph (A) by striking “fiscal year and which” and inserting “fiscal year in which”;

(2) in subparagraph (B)(i), by inserting after the first comma the following: “the number of occasions on which each statute was relied upon,”;

(3) in subparagraph (C), by inserting after “median” the following: “and average;”;

(4) in subparagraph (E), by inserting before the semicolon the following: “based on the date on which each request was initially received by the agency;” and

(5) by redesignating subparagraphs (F) and (G) as subparagraphs (N) and (O), respectively, and inserting after subparagraph (E) the following new subparagraphs:

“(F) the average number of days for the agency to respond to requests beginning on the date the request was initially received by the agency, the median number of days for the agency to respond to such requests, and the range in number of days for the agency to respond to such requests;

“(G) based on the number of business days that have elapsed since each request was initially received by the agency—

“(i) the number of requests for records to which the agency has responded with a determination within a period greater than 200 days and less than 301 days;

“(ii) the number of requests for records to which the agency has responded with a determination within a period greater than 300 days and less than 401 days; and

“(iv) the number of requests for records to which the agency has responded with a determination within a period greater than 400 days;

“(H) the average number of days for the agency to provide the granted information beginning on the date each request was initially received by the agency, the median number of days for the agency to provide the granted information, and the range in number of days for the agency to provide the granted information;

“(I) the median and average number of days for the agency to respond with a determination within a period greater than the number of business days that have elapsed since each request was initially received by the agency; and

“(J) data on the 10 active requests with the earliest filing dates pending at the agency, including the amount of time that has elapsed since each request was initially received by the agency; and

“(K) data on the 10 active administrative appeals with the earliest filing dates pending at the agency as of September 30 of the preceding fiscal year, the number of business days that have elapsed since each request was initially received by the agency; and

“(L) the number of expedited review requests received by the agency, the number that were granted and the number that were denied, the average and median number of days for adjudicating expedited review requests, and the number of requests that adjudicated within the required 10 days;

“(M) the number of fee waiver requests that were granted, the number that were denied, and the average and median number of days for adjudicating fee waiver determinations;

“(b) AVAILABILITY OF RAW STATISTICAL DATA.—Section 552(e)(2) of title 5, United States Code, is amended by adding after the period the following: “In addition, each agency shall make the raw statistical data used in its reports available electronically to the public upon request.”

SEC. 10. OPENNESS OF AGENCY RECORDS MAINTAINED BY THE NATIONAL INFORMATION ADVOCATE.

Section 552(f) of title 5, United States Code, is amended by striking paragraph (2) and inserting the following:

“(2) ‘record’ and any other term used in this section in reference to information includes—

“(A) any information that would be an agency record subject to the requirements of this section when maintained by an agency in any format, including an electronic format; and

“(B) any information described under subparagraph (A) that is maintained by an agency for an entity under a contract between the agency and the entity.”

SEC. 11. OFFICE OF GOVERNMENT INFORMATION SERVICES.

(a) IN GENERAL.—Chapter 21 of title 44, United States Code, is amended by inserting after section 2119 the following new section:

“§ 2120. Office of Government Information Services

“(a) IN GENERAL.—There is established in the National Archives and Records Office to be known as the ‘Office of Government Information Services’.

“(b) NATIONAL INFORMATION ADVOCATE.—

“(L) The National Information Advocate is

the person who shall report directly to the Archivist of the United States.

“(M) The report shall be submitted in unclassified form, but may include a classified annex.

SEC. 12. ACCESSIBILITY OF CRITICAL INFRASTRUCTURE INFORMATION.

(a) IN GENERAL.—Not later than January 1 of each of the 3 years following the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on the implementation and use of section 214 of the Homeland Security Act of 2002 (6 U.S.C. 183), including—

(1) the number of persons in the private sector, and the number of State and local agencies, that voluntarily furnished records to the Department under this section;

(2) the number of requests for access to records granted or denied under this section;

(3) such recommendations as the Comptroller General considers regarding improvements in the collection and analysis of sensitive information held by persons in the private sector, or by State and local agencies, that voluntarily furnished records to the Department under this section;

(4) an examination of whether the non-disclosure of such information has led to the increased protection of critical infrastructure;

(b) FORM.—The report shall be submitted in unclassified form, but may include a classified annex.

SEC. 13. REPORT ON PERSONNEL POLICIES RELATED TO FOIA.

Not later than 1 year after the date of enactment of this Act, the Office of Personnel Management shall submit to Congress a report that examines—

(1) whether changes to executive branch personnel policies could be made that would—

(A) provide greater encouragement to all Federal employees to fulfill their duties under section 552 of title 5, United States Code; and

(B) enhance the stature of officials administering that section within the executive branch;

(2) whether the performance of officials in compliance with section 552 of title 5, United States Code, should be included as a factor in personnel performance evaluations for any or all categories of Federal employees and officers;

(3) whether an employment classification series specific to compliance with sections 552 and 552a of title 5, United States Code, shall be established;

(4) whether the highest level officials in particular agencies administering such sections should be paid at a rate of pay equal to or greater than a particular minimum rate;

(5) whether other changes to personnel policies can be made to ensure that there is a clear career advancement track for individuals interested in devoting themselves to a career in compliance with such sections; and

(6) whether the executive branch should require any or all categories of Federal employees to undertake awareness training of such sections.

SEC. 14. PROMOTION OF PUBLIC DISCLOSURE.

“(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 21 of title 44, United States Code, is amended by inserting after the item relating to section 2119 the following:

“2120. Office of Government Information Services.”
the deletion is made, from Missouri.

PLATTS, this bipartisan legislation is in the second sentence, by inserting "an amount of information deleted" the following: "", and the exemption under which the deletion is made;", and

in the third sentence, by inserting after "amount of the information deleted" the following: "", and the exemption under which the deletion is made.

The SPEAKER pro tempore. Pursuant to the gentleman from Missouri (Mr. CLAY) and the gentleman from Ohio (Mr. TURNER) each will control 20 minutes.

The Chair recognizes the gentleman from Missouri.

Mr. CLAY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

There was no objection.

Mr. CLAY. Mr. Speaker, as chairman of the Oversight Subcommittee on Information Policy, Census and National Archives, and lead sponsor of the Freedom of Information Act Amendments of 2007, I strongly urge my colleagues to support H.R. 1309.

H.R. 1309 champions the values of transparency and open government that are celebrated during American Government Week and that are embodied in the Freedom of Information Act, or FOIA, as it is referred to.

Introduced with my colleagues Representative WAXMAN, chairman of the full Committee on Oversight and Government Reform, and Representative PLATTS, this bipartisan legislation is necessary to strengthen FOIA as a tool for enabling public access to government records.

During a hearing in February, the subcommittee heard extensive testimony concerning long delays and bureaucratic obstacles experienced by requesters when trying to obtain government records under FOIA.

According to testimony from GAO, most agencies throughout the government are failing to keep pace with the volume of requests they are receiving, the number of pending requests carried over from year to year has steadily increased, and the rate of increase is greater than that of the government.

A report released on Monday by the nonprofit National Security Archive further highlights the failure of agencies to make information available to the public in a timely way. According to the report, just 22 percent of agencies are complying with the 1966 "e-FRIS law," which requires agencies to post frequently requested information on their Websites.

An insufficient level of resources available for FOIA processing is one reason requesters are being forced to wait long periods of time for responses from agency FOIA offices. Another factor is the current administration's policy of withholding government information that would have been released under previous administrations. Government secrecy has increased as the volume of requests has gone up dramatically.

Building on the OPEN Government Act introduced in the last Congress by Senators CORNYN and LEAHY and Representative LAMAR SMITH, H.R. 1309 contains 13 substantive provisions aimed at removing obstacles to complete and timely government responses to FOIA requests.

The bill would re-establish the policy of the Clinton administration, under which agencies were directed to disclose requested information unless the disclosure would result in some harm. The current administration has encouraged agencies to be more aggressive in asserting statutory exemptions to deny FOIA requests.

In addition, the bill proposes a government-wide ombudsman to mediate disputes between agencies and requesters. This would help to reduce the number of disputes resolved through costly and time consuming litigation.

Other key provisions include: A requirement that agencies respond to FOIA requests within 20 business days or face meaningful administrative penalties; the establishment of a publicly accessible tracking system for pending FOIA requests; and new reporting requirements to allow Congress to evaluate agency compliance with FOIA laws and regulations.

In conclusion, Mr. Speaker, H.R. 1309 provides a strong, reasonable and bipartisan approach to streamlining the FOIA process and increasing transparency in government. It has the vigorous support of every major organization representing the media industry, journalists, historians, archivists and the public interest in government openness and accountability.

We owe it to our constituents to pass this legislation and ensure that the Freedom of Information Act provides actual access to government information to which the American people are entitled.

I urge all of my colleagues to support the bill.

Mr. Speaker, I reserve the balance of my time.

Mr. TURNER. Mr. Speaker, I yield myself as much as I may consume.

Mr. Speaker, we have a bit of irony in play here on the House floor. This week the Democratic leadership has declared it Open Government Week, Open Government Week as we take up amendments to the Freedom of Information Act, an act that is incredibly important as a tool for us to hold our government accountable because it gives people the opportunity to access information that can be reviewed by people to determine what action needs to be taken.

But, unfortunately, in the middle of this Open Government Week we have a bill that is coming to the floor, not the bill that went to the committee, but the bill that went through the subcommittee hearings, but an amended bill that has not been reviewed, and was handed to us 10 minutes ago.

Now, the reason why this came on the Suspension Calendar where we agree to suspend the rules is because they are bills that have been fully vetted, that have openness to them, and that people are aware of what they are and have the opportunity to review them when we have an understanding that more than a majority of this House supports what is in that bill.

But today, without prior notice, and 10-minute amendments to the bill, we have a bill that we are currently reviewing to determine what changes have been made and what the implications would be.

Some of the speakers on the other side of the aisle talked about Open Government Week that we wanted to make certain that there weren't backroom deals that were being made. Well, clearly the bill, unfortunately, that comes before us on the Freedom of Information Act is the product of a backroom deal where the majority of this House is going to be left with reviewing it to determine what is in it after it had come through our committee and subcommittee.

So my comments about this bill will be about the one that came from the committee and the subcommittee that the subcommittee Chair and the chairman worked so hard in a bipartisan way to bring to this floor.

I know others on this side of the aisle will be reserving their comments for the areas of the bill where it has been modified, where the backroom deals have been made. And we are all unaware of its impact.

The Freedom of Information Act is a popular tool for inquiry for the press, researchers, business, attorneys, activists. But most importantly, it remains a tool for the citizen. Improving the procedural aspects of the act is certainly a worthy goal.

Legislation designed to streamline and improve the Freedom of Information Act process was introduced last Congress by the gentleman from Texas (Mr. SMITH). His bill, H.R. 867, has moved through subcommittee to the full committee. This was a solid bipartisan bill that Republicans introduced and guided through the legislative process. This year the majority took that bipartisan bill and made a few changes.

Republicans offered two amendments that were not included in the reported
I yield 5 minutes to the distinguished gentleman from Ohio, the ranking member of the subcommittee.

Mr. Speaker, I first of all have to express my regret in response to the complaint that, while we have openness in government, we had an amendment to this bill suddenly presented to the minority.

And let me explain why that happened. The legislation, before us was completely bipartisan in committee. I don’t think anybody voted against the bill passing out of our committee, for all the reasons that both the Chair of the subcommittee and the ranking member described, and I would like to get into those substantive issues as well, because this is the best known and most important of the freedom of information that people look to when they want to be able to find out what government is doing. It is called the Freedom of Information Act for that reason.

But we did not have presented to us in committee any objection to the fact that there is a score on this bill of $7 million. But because there is a score, we found out last night that there might be an objection to the bill; and we didn’t want to have an objection to the bill, possibly cause people to come to the floor and vote against something as important as the Freedom of Information Act section 4 amendment to the bill that simply provided that the $7 million, which the way, is only expended if the government is sued and loses and has to pay the penalty owed to people for withholding the information. But because there is a $7 million score, we added to this bill that there would be nothing paid unless there is an appropriation of that money. So the bill would not be scored as costing any money at all.

I wish we had more time to bring this to everyone’s attention but no one brought to our attention in the committee that there was concern about this score.

Nevertheless, this bill goes to the heart of the public’s access to find out information about what its government is doing. And as we look at what we have designated “Sunshine Week,” we are considering this legislation to improve and strengthen this vital law.

H.R. 1309 has been in effect for 40 years, and we have the required language, subject to appropriations, that it is not out of order, it doesn’t waive the PAYGO rules because it does pay for itself substantially.

I do want to note that my understanding of the applicable dates are that that the markup of our bill occurred on March 8 and the CBO cost estimate I believe is dated March 12, which would explain perhaps why there were no objections in the committee.

Mr. TURNER. Mr. Speaker, I appreciate the chairman’s description of that. I do want to note that my understanding of the statutory expiration date is that the markup of our bill occurred on March 8 and the CBO cost estimate I believe is dated March 12, which would explain perhaps why there were no objections in the committee.

I yield 5 minutes to the gentleman from Wisconsin (Mr. RYAN). Mr. RYAN of Wisconsin. Mr. Speaker, I came to the floor to oppose the bill not on the merits of the FOIA policy, but on the grounds that this bill had a budgetary section 303 violation against it and that it violated the new PAYGO rules we have before us.

This bill that we just now got 10 minutes ago, as we read it, we believe does not make the PAYGO or the Budget Act or the PAYGO rules. But I think the point I would like to make is this; 10 minutes ago this bill did have a section 303 violation against it; 10 minutes ago this bill did violate the majority’s own PAYGO rules they put in place less than 10 months ago. And it scores not just a $7 million, but a $63 million increase over 10 years. So $63 million over 10 years is a lot of money. And given the fact that this new amended bill, as it appears as we read it, does have the required language, subject to appropriations, that it is not out of order, it doesn’t waive the PAYGO rules because it does pay for itself subject to appropriations.

I will withhold my objection, but I simply want to say to the majority this place would run a lot better if we put bills on the calendar and bring them to the floor, that they comply with the rules that the majority themselves put in place just 2 months ago with respect to PAYGO and with respect to the Budget Act. I just think the whole place would work a lot better if we do that. Then we get on to debating the merits of this legislation.

I think FOIA is an important tool. It needs to work better. I think there is a lot of merit to that point. But let’s make sure that as we take a look at our budget problems, and they are enormous, our budget problems, if we can’t make sure that bills that spend $63 million over 10 years can’t comply with the Budget Act, can’t comply with PAYGO, who is to say that bills that spend $2.9 trillion like our Federal budget can comply with it? So if we
can’t get the rules right on small bills, 
who is to say we are going to get the 
budget discipline rules right on the big 
bills? Fiscal discipline starts one step at 
a time, starts one bill at a time. We have 
got to get the budget discipline rules in 
place and right on small business. Espe-
cially if this Congress is going to get 
our arms around our larger fiscal prob-
lems.

That is simply the point I want to 
take to the gentleman.

Mr. WAXMAN. Mr. Speaker, will the 
gentleman yield?

Mr. RYAN of Wisconsin. I yield to 
the gentleman from California.

Mr. WAXMAN. I thank the gentle-
man for yielding to me, and I just 
want to say what is seldom said on the 
House floor, that I agree with you. And 
we tried to correct the problems so 
that we didn’t make the error that 
would have violated our PAYGO prin-
ciples. And I thank the gentleman for 
pointing it out, and I think you have 
raised a very good point and we should 
al be mindful of it, including the points 
about the deficit, which I strongly think 
we need to deal with. So we will have differences about that, but I do 
to want to express my agreement with 
your basic statement.

Mr. RYAN of Wisconsin. I appreciate 
the gentleman.

Mr. CLAY. Mr. Speaker, I reserve the 
balance of my time.

Mr. SMITH of Texas. Mr. Speaker, I yield 4 
minutes to the gentleman from Texas 
(Mr. SMITH).

Mr. SMITH of Texas. Mr. Speaker, I appreciate my colleague from Ohio 
yielding me time, and I also want to 
thank Ranking Member TOM DAVIS and 
Chairman HENRY WAXMAN for their 
hard work on this issue. I know how 
strongly they feel about the need for 
more open government, and I and many 
others appreciate their efforts.

The problem with obtaining govern-
ment information is overly burden-
some, and Federal agencies have be-
come less and less responsive to re-
quests for information. This deters 
citizens from obtaining information to 
which they are entitled.

H.R. 1309. The Freedom of Informa-
tion Act Amendments of 2007, has much 
to recommend it, but it contains at 
least one fatal flaw, the statutory 
presumption of disclosure. For that 
reason, I oppose this legislation.

The presumption of disclosure would 
reverse the FOIA guidelines set out by 
former Attorney General John 
Ashcroft. Shortly after September 11, 
2001, then-Attorney General John 
Ashcroft directed that FOIA be used to 
support an open and accountable system 
of government while at the same time 
protecting national security and per-
sonal privacy.

The directive encouraged agencies, 
when making a decision on discrep-
taneous disclosure, to carefully con- 
sider whether national security, pri-
acy, and government’s interest would 
be jeopardized.

Unfortunately, this bill only exacer-
bates national security and personal 
privacy concerns. Instead of allowing 
agency discretion regarding national 
security concerns, this statutory lan-
guage would mandate the release of in-
formation if the information does not 
blatantly fall under an existing exemp-
tion.

For instance, under the bill’s lan-
guage there is no discretion to deter-
mine whether the information re-
quested would invade personal privacy. 
Also, if information requested is re-
quired by FOIA to be released, under 
this language it could tip off a terrorist 
to an investigation that is being con-
sulted. So the bill could set in motion 
events that could compromise our na-
tional security.

Last year, neither the House nor Sen-
ate bipartisan legislation included this 
questionable presumption of disclosure 
language. It is my understanding that 
this year’s bipartisan Senate version 
also will not include this questionable language. And, furthermore, Mr. 
Speaker, the administration opposes 
this provision, too.

There is no good reason to support a 
flawed bill, and I encourage my col-
leagues to oppose it.

Mr. Speaker, I would ask unanimous 
consent to have the statement of oppo-
sition by the administration be made a 
part of the RECORD.

STATEMENT OF ADMINISTRATION POLICY—H.R. 
1309—FOREIGN INFORMATION ACT 
AMENDMENTS OF 2007—(REP. CLAY (D) MISSOURI AND TWO COSPONSORS )

The Administration shares the goals of 
H.R. 1309—of increasing the timeliness of 
Freedom of Information Act, FOIA, re-
 sponses and ensuring a customer-oriented 
approach to FOIA processing. The Adminis-
tration has been pursuing these goals, and 
will be continuing to pursue them, through 
the strong management review and reforms 
that the President directed 15 months ago in 
the first-ever Executive Order on FOIA—Ex-
 ecutive Order 13392, “Improving Agency Dis-
closure of Information”—which he signed on 

However, the Administration cannot sup-
port H.R. 1309. The Administration believes 
it would be premature and counterproductive 
to the goals of increasing timeliness and 
 improving customer service to amend FOIA be-
 fore agencies have had sufficient time to im-
plement the FOIA improvements that the 
President directed them to develop, put into 
place, and deliver, specifically during FYs 
2006 and 2007. For example, as explained 
below, several of the bill’s provisions would 
 impose substantial administrative and finan-
cial burdens on Federal agencies. The 
Administration believes that these 
provisions could result in slower, not faster, 
agency processing of FOIA requests, and the 
personnel and funds needed to implement 
them would have to come from existing 
agency resources. Moreover, the agency re-
ports that were issued last summer, and the 
 improvement plans that are being imple-
mented, illustrate that agencies face in responding to FOIA requests are 
unique to each agency and, there- 
fore, require agency-tailored reforms, not a 
government-wide, one-size-fits-all legislative 
approach.

The Administration’s specific concerns 
with the bill include the following:

1. The Administration strongly opposes ex-
 panding the definition of “representative of 
the news media.” The bill would exempt a 
larger class of requesters from the obligation 
to pay fees assessed for searching for respon-
sive documents. Expanding the definition 
would undermine the serious roles for the 
Executive Branch. Moreover, with no re-
 quirement that requesters pay search fees, 
the Administration believes the federal agen-
cies will likely make overly broad re-
quests, which, in turn, will stretch agency 
resources and increase the time it takes to 
process all requests. Further, under current 
law, agencies have authority to waive or re-
 duce fees upon a determination that disclo-
sure of information will contribute signifi-
cantly to public understanding.

2. The Administration also strongly opposes 
reinstating the so-called “catalyst theory” 
for the reimbursement of FOIA litigation 
fees. The Administration is concerned that 
its reinstatement would serve as a disincen-
tive to an agency’s voluntarily revisiting de-
cisions to release information, and which 
leads to the bill’s repeal of Attorney General 
Ashcroft’s FOIA Memorandum and return to 
Attorney General Reno’s pre-9/11 FOIA guid-
ances. The Administration believes the 
structure of the FOIA reflects the ap-
propriate balance between the public’s right to 
know how the government is operating and 
their right to know if and certain information, 
such as that pertaining to personal privacy or homeland security.
Mr. CLAY. Mr. Speaker, at this time I yield 4 minutes to my distinguished colleague from New York (Mrs. MALONEY).

Mrs. MALONEY of New York. I thank the gentleman for yielding and for having helped, along with Chairman CLAY, on working on so many sunshine bills to make government more open and accountable to the citizens, to our taxpayers, to the American public. And an important part of sunshine is the Freedom of Information Act Amendment Act of 1996. This important law was intended to make FOIA more efficient by providing public access to information, including in an electronic format.

The Oversight and Government Reform Committee, of which I am a member, has held many hearings on FOIA over the past few years, and we have learned that it has not progressed as well as we had hoped. Some agencies and Departments are doing a better job of fulfilling freedom of information requests, while some continue to have terrible records and lag far, far behind. Requesters often wait months or years to find out the status of their requests or to obtain the information. And I am pleased that we have report language that clarifies that they have to get back quickly on requests and at least let them know where they are.

As a result, the backlogs at agencies and Departments continue to grow, and frequently the only recourse for the individual of requested information is to file lawsuits. But many people, many Americans cannot afford the high costs associated with court costs. So by not moving in a timely manner, you are depriving them of this information.

H.R. 1309 includes many important provisions that my colleagues have spoken about and that I hope will improve the process and eliminate the problems that exist in today’s system, including an amendment that I offered in committee that would provide for greater disclosure to the FOIA requester about the exemption under which a deletion has been made from requested material.

I often hear from constituents, they come to my office with piles of FOIA requests and like the whole thing is rejected and there is absolutely no explanation why. This is really not fair, and we hope that this amendment will improve the process.

I am pleased that it was accepted in a bipartisan way by Ranking Member DAVIS and Ranking Member TURNER. I really feel this legislation is long overdue, and I commend Chairman WAXMAN and Ranking Member DAVIS and Chairman CLAY and Ranking Member TURNER for bringing this bipartisan legislation to the floor with the many other very important sunshine bills to make our government more open and accountable to the American public.

Mr. TURNER. Mr. Speaker, I yield 3 minutes to the gentleman from Pennsylvania (Mr. PLATTS).

Mr. PLATTS. Mr. Speaker, I rise in support of H.R. 1309, the Freedom of Information Act of 2007. Open and accountable government make up the cornerstones of good government. This legislation before us today seeks to strengthen these cornerstones.

The Freedom of Information Act was signed into law over 40 years ago. In June 1966, enacted after 11 years of debate, FOIA established a statutory right of public access to executive branch information.

FOIA provides that any person has the right to obtain Federal agency records. Originally, the act included nine categories of information protected from disclosure, and Congress has added additional exemptions over time.

Balancing the need for open government with the needs to protect information vital to national security and personal privacy is a constant struggle. Federal Departments and agencies are operating in the post-9/11 information age and face 21st century security, information management, and resource challenges.

As we seek to achieve this balance we must remember the words of Thomas Jefferson who said, “Information is the currency of democracy.” FOIA is an essential tool to ensure that the citizens of our great Nation have access to information in the way that Thomas Jefferson envisioned.

Over the past several years, the Government Reform Subcommittee on Government Management, Finance, and Accountability, on which I had the privilege to serve as Chair, conducted multiple hearings on FOIA implementation.

In response to legislative proposals introduced last session in the House and Senate, as well as the oversight conducted by the subcommittee, President Bush issued Executive Order 13392, entitled Improving Agency Disclosure of Information, on December 14, 2005. This document sought to improve the overall processing of FOIA requests, creating a more efficient and results-oriented approach to information policy. And I certainly commend the administration for their efforts.

In response to that effort, though, we believed further work was needed. On September 27, 2006, the subcommittee marked up legislation similar to that legislation before us here today. Specifically, the OPEN Government Act, introduced by my colleague from Texas, Lamar Smith, like the bill before us today, would close loopholes in FOIA, help requesters obtain more timely response, and provide FOIA officials with the tools they need to ensure that the Federal Government remains open and accessible.

While the legislation before us today includes provisions not included in Representative SMITH’s legislation from last session and to which he is currently opposed, I certainly want to commend Representative SMITH for his leadership and dedication to improve the Freedom of Information Act and to make government more open and accountable.

I also want to thank Chairman WAXMAN of the full committee and subcommittee Chairman CLAY for their efforts in moving this legislation forward quickly and, as well, recognize Ranking Member DAVIS of the full committee and Ranking Member TURNER at the subcommittee for their efforts.

This legislation makes up the cornerstones of good government. I urge a “yes” vote.

Mr. CLAY. Mr. Speaker, I yield myself such time as I may consume.

In closing, I would like to thank my colleagues on both sides of the aisle for working together on this bill to open up our government to the people of the United States. And I also want to thank Mr. SMITH, who has reservations about the bill, but I want to thank him for his leadership in championing the cause of freedom of information in this country.

I want to also thank my friend from Wisconsin for agreeing with us that the bill was modified since it came out of committee, and that modification was in order to eliminate the costs associated with the bill.

Let me say that H.R. 1309 champions the values of transparency and open government that we celebrate during Sunshine Week and that are embodied in the Freedom of Information Act. The bill does several things: It would reestablish the policy of previous administrations under which agencies were directed to disclose requested information unless the disclosure could result in harm. In addition, the bill proposes a government-wide ombudsman to mediate disputes between agencies and requesters. This would help to reduce the number of disputes resolved through costly and time-consuming litigation.

It does several other things: There is a requirement that agencies respond to FOIA requests within 20 business days or face meaningful administrative penalties. It establishes a publicly accessible tracking system for pending FOIA requests.

Mr. Speaker, in conclusion, H.R. 1309 provides a strong, reasonable, and bipartisan approach to streamlining FOIA and increasing transparency in government. I urge all of my colleagues to support this bill.

Mr. Speaker, I yield back the balance of my time.
Mr. TURNER. Mr. Speaker, I yield 3 minutes to the gentleman from Idaho and a member of our subcommittee (Mr. SALLI).

Mr. SALLI. Mr. Speaker, I rise today because of my serious concerns with section 4 of H.R. 1309. As I begin, let me emphasize that I support the intent of H.R. 1309. Transparency in government is an important priority. I campaigned on it and voted for the new ethics package that came before this House in early January with the hope that Congress might be more openly accountable to those who elected us.

This is a government of, by, and for the people, and the people deserve to know what their government is doing. Except for critical issues of national security policy, there must be a much better level of openness in the conduct of the Federal Government and the access of the American people to information about it.

However, section 4 of the bill before us, as it is currently drafted, appears to authorize Federal courts to award attorneys' fees to a plaintiff even when the opposing parties mutually reach and execute a settlement agreement.

This is not proper use of FOIA, and should be, to expedite and streamline production of documents falling within the statute. My concern is that when a Federal statute provides attorneys' fees after the parties mutually reach a voluntary settlement, it runs contrary to that very goal. Resolution short of protracted litigation should be encouraged, not discouraged. The current proposed language of section 4 of H.R. 1309 may have a devastating, perverse effect.

Second, the statute may further allow plaintiffs to receive attorneys' fees in almost any case they file so long as they can show that the defending government agency, for any reason, cannot expedite resolution once the case had been commenced.

While it is true that FOIA complainants often face an uphill battle when they deal with a Federal agency, the language, as proposed, invites litigation instead of resolving it. Additionally, the legislation, as drafted, may actually undermine the stated "dominant objective" of the act by giving an incentive by Federal Departments to avoid disclosure.

The question this raises in my mind, Mr. Speaker, is that given the provisions of section 4 of the bill, why would any agency settle? As I read the bill, once a lawsuit is commenced, any change in position by a Federal Department or agency would be tantamount to an admission of liability for attorneys' fees. This would only encourage the filing of a myriad of lawsuits. If lawyers know they will make money no matter what the outcome, they will see this as a great opportunity to file, file, and file some more. We will likely see a cottage industry for litigants who may not even care about the underlying documents.

Because of the concerns I have that the current proposal provides incentives to prolong litigation, I cannot support this measure in its current form. I regret that because I want to vote for any bill that prudently opens the door of government to those whom the Government represents, our fellow citizens. But the law of unintended consequences is at play here, and unless we strike section 4, we will see massive new litigation that will only clog the Federal docket, hamstring legitimate functions of Federal Government, and纳税人 potentially untold millions of dollars.

Mr. TURNER. Mr. Speaker, I yield myself such time as I may consume. I want to commend the Chair of our subcommittee, Mr. CLAY, for his thoughtful approach to hearings on this matter and his leadership in shepherding this bill. I want to thank Chairman WAXMAN for his efforts in having a very bipartisan discussion in favor of the very welcoming of the input from all of the committee members.

Unfortunately, though, here, right in the middle of Open Government Week, we have the irony that this is not the bill that my gentlemen and I were worked so diligently on a bipartisan basis for in the committee and subcommittee. It has been amended, unfortunately, as the other side of the aisle decried, in a back room by Democratic leadership in order to make the bill conform to the rules of the House for it to be able to move forward.

In the middle of Open Government Week, what does that mean? Well, it means that while we all stand up here and talk about the importance of freedom of information, and freedom of information is important because it gives people the ability to hold their government accountable; but as we all discuss that, we have a bill that is going to be moving forward and come before this House that the members of the committee did not see, the members of the subcommittee did not see, that each of them is going to have to review and have to have their staff review, that members of the public at large who may have been following this bill in the professional community or average citizens who had an interest in it will go to a Web site and look at a bill that was approved by the committee and approved by the subcommittee, but unfortunately, is not the bill that is before us.

And it is not before us because in the middle of Open Government Week, the bill that was placed before us was amended without the participation of the committee. Without the participation of the subcommittee, and without the participation of this body. We will all come to vote on a bill that has been amended in a back room by Democratic leadership.

You have heard that there are a number of concerns that people on this side of the aisle have about the bill. As you are aware, this bill began as a Republican bill offered by Mr. SMITH of Texas, H.R. 867. It has been modified in several ways about which individuals do have concern. But the underlying principle, freedom of information, that encourages effective government and encourages government to be responsive to that we all support and hold dear and certainly we should continue to support the Freedom of Information Act.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise today in strong support of H.R. 1309, the "Freedom of Information Act of 2007." This legislation contains a dozen substantive provisions that will increase public access to Government information by strengthening the Freedom of Information Act (FOIA).

Mr. Speaker, the principles embodied by FOIA are intended to make the Government, in President Lyndon B. Johnson's words, "as open as the security of the Nation permits." But in recent years, Federal agencies have come to look on FOIA requests as something to be prevented and obstructed, rather than an opportunity to facilitate. The bill before us will help end that way of doing business.

Mr. Speaker, H.R. 1309 restores the presumption of disclosure to FOIA by making it clear that records should be released to the public if disclosure is allowable under law and that agencies cannot reasonably foresee any harm from such a disclosure.

Mr. Speaker, under current law, agencies are required to respond to a request for information filed under the FOIA within 20 days but as we all know, delays and backlogs are all too common. H.R. 1309 makes this deadline meaningful by ensuring that the 20-day statutory clock runs immediately upon an agency's receipt of a request. The bill imposes consequences on Federal agencies for missing the deadline. For example, agencies are prevented from charging processing fees whenever they failed to meet the 20-working day response deadline.

The bill also requires agencies to provide requesters individualized tracking numbers for each request and access to a telephone or internet hotline with information about the status of requests. Another important feature of the bill is that it strengthens agency reporting requirements to identify excessive delays and requires each agency to make the raw data used to compile its annual reports publicly available. Also, the bill requires the Government Accountability Office to report annually to the Department of Homeland Security's use of the broad disclosure exemption for "critical infrastructure information.

The legislation before us today continues to be a much-needed step forward in improving the Freedom of Information Act. I strongly urge all of my colleagues to support this bill.
FOIA could certainly stand a little love, as open Government has been attacked many times since Lyndon Johnson signed the act into law July 4, 1966.

The revisions to FOIA in H.R. 1309, which could come before the full House as early as today, would both shine more light on the executive branch and make it of the law.

The government would have to act on FOIA requests more quickly. Agencies that did not respond to a request within 20 business days would forfeit any copying and research fees; agencies are now supposed to respond within that period, but there are no penalties.

Federal departments would have to set up FOIA hotlines and individual tracking numbers so that people and organizations that file FOIA requests can easily follow the process.

Citizen journalists and freelancers would gain new credibility. An agency could no longer summarily deny FOIA requests from journalists who are not employed or under contract with established media organizations or watchdog groups. Such requests from unaffiliated individuals can now be rejected.

The amended law would force agencies to consider any request to disseminate information to a broad audience as legitimate, particularly if the party making the request has any record of publication (including bloggers).

The government would have to reimburse the legal fees of more parties that sue under FOIA. Currently, there’s only one way a party that has filed suit to enforce a FOIA request can get repaid: The government turns over records before a final ruling is issued. This would prevent agencies from sticking media groups with attorney fees by surrendering records just before a judge rules.

The Bush administration may have been the most openly contemptuous of FOIA’s mission since the act first passed. Former Attorney General John Ashcroft urged Federal agencies to fight FOIA requests and not presume that the public has a right to know what goes on inside the executive branch.

The administration also placed gratuitous penalties on requests to the Department of Homeland Security.

President Bush will leave office in 2009, but it’s not enough to trust that future administrations will abide by the promise of openness that FOIA represents. The law needs specific measures to ensure accountability, and the amendments within H.R. 1309 mark a large stride forward.

Mr. TURNER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, proceedings will resume on motions to suspend the rules previously postponed.

The first electronic vote will be conducted as a 15-minute vote. Remaining electronic votes will be conducted as 5-minute votes.