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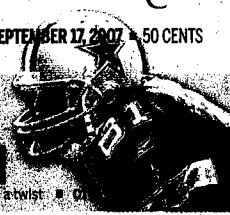
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JAMES C. HO AND TARA MAGNER | NEWSPAPER ASSOCIATION OF AMERICA

A victory for open government

Congress is closer than ever to enacting the most important legislation to ensure open government and access to public institutions in over a decade — thanks to the perseverance of two leading members of the Senate Judiciary Committee, Sens. Patrick Leahy and John Cornyn.

Open government is not just good government — it is a founding principle of our country. As James Madison, the father of our Constitution, once wrote, “A people who mean to be their own Governors, must arm themselves with the power which knowledge gives.”

It was this founding spirit that gave rise to the adoption of the Freedom of Information Act on July 4, 1966.

FOIA offers every American one simple promise: the right to know what your government is doing. Though openness must sometimes give way to other interests, such as individual privacy or national security, our government is based on a presumption in favor of disclosure. The people have a right to know, and the burden is on the government to prove otherwise — not the other way around.

But as good government advocates across the political spectrum know, the promise of FOIA has not always been fulfilled.

Those advocates cheered when Cornyn and Leahy joined forces over two years ago to introduce the first major reform since 1996.

Their efforts may soon pay off. The Senate approved the Openness Promotes Effectiveness in our National Government Act, or OPEN Government Act, and the House passed its own version of FOIA reform. Advocates are encouraging Congress to send a bill to President Bush as soon as possible.

The OPEN Government Act contains a number of important provisions, but three problems addressed by the legislation are worth highlighting.

First, FOIA imposes strict deadlines — typically, 20 days — on the federal government to respond to citizen inquiries for information. But those deadlines are routinely ignored. According to a survey by the National Security Archive, 53 of 57 federal agencies reported backlogs in processing. At least 12 agencies

admitted holding requests that have been pending for more than 10 years.

The OPEN Government Act will help ensure compliance with these deadlines by imposing real consequences on federal agencies for tardiness — inspired by similar mechanisms in Texas law.

Second, the law would help bring FOIA into the Internet world, by extending the same special “news media” status, currently enjoyed by traditional news organizations, to bloggers and other innovative, legitimate sources of news. It would also require agencies to establish tracking numbers for all FOIA requests, allowing citizens to monitor the status of their inquiries.

Third, FOIA is supposed to empower citizens by enabling them to file suit against recalcitrant agencies in court and, if their document request is valid, to recover the costs of their attorneys’ fees from the government. This is a critical provision; unlike in other lawsuits, there are no money damages for winning an FOIA claim, and

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thus, no other way to cover attorneys’ fees.

Federal agencies have exploited a loophole to avoid paying attorneys’ fees — a tactic to discourage the filing of legitimate requests by forcing citizens to litigate at great expense to themselves. The OPEN Government Act will close this loophole.

The OPEN Government Act offers hope that the spirit of openness that motivated the original drafters of FOIA will, at long last, become a reality.

The OPEN Government Act also shows that bipartisanship is thriving, even in Washington. As Cornyn and Leahy observed: “Openness in government is not a Republican or a Democratic issue. Any party in power is always reluctant to share information, out of an understandable — albeit ultimately unpersuasive — fear of arming its enemies and critics. Whatever our differences may be on the various policy controversies of the day, we should all agree that those policy differences deserve as full and complete a debate before the American people as possible.”

Ho formerly served as chief counsel to Sen. John Cornyn, R-Texas. Magner formerly served as counsel to Sen. Patrick Leahy, D-Vt.