

FOIA at 50

A law requiring openness in government gets an update.

THE PRINCIPLE of holding government to account is at the bedrock of U.S. democracy, and information about government decisions is essential for that accountability. The Freedom of Information Act, although not something every citizen comes in contact with, remains a vital tool for keeping government open and honest. While not perfect — not every request results in disclosure of information or documents — it at least offers a law-based process for citizens to seek information from the powerful. Does a citizen in a place like China or Russia have such a chance to pull aside the curtains of secrecy with a simple letter? No.

With bipartisan backing, Congress recently approved the first update to the Freedom of Information Act since 2007, and President Obama signed the bill Thursday. It will not resolve many of the backlogs and frustrations, but it contains important improvements.

First signed into law 50 years ago this weekend by a reluctant President Lyndon Johnson, the FOIA has had significant impact. Consider the examples compiled by the National Security Archive, a non-profit organization that has championed the use of the law: they show that, among other things, the law has been used to expose waste and mismanagement, unmask decisions on national security, and highlight threats to food safety. Records from the Food and Drug Administration, obtained by Bloomberg News under the FOIA, revealed that a product labelled “parmesan cheese” had no parmesan at all.

The most notable change has been to an exemption for information about the “deliberative process” of government agencies, such as memorandums, drafts and letters. Johnson worried a half-century ago that government officials must be able “to communicate with one another fully and frankly without publicity.” The exemption became one of the most frequently abused over the decades and was often invoked indefinitely. The new law says that it can be used to withhold information for only 25 years. This means, for example, that “deliberative process” of President Ronald Reagan’s administration and those before it, previously exempted, should now become open.



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President Obama signed the FOIA Improvement Act on Thursday.

In another improvement, the new law enshrines the presumption of openness — the idea that government agencies should start out intending to disclose. Mr. Obama gave similar instructions to all executive branch agencies on taking office in 2009, but many ignored it. Now, by law, an agency can hold back information only if it “reasonably foresees” disclosure would harm an interest protected by a FOIA exemption, or if disclosure is prohibited by law. This means the government should lean toward disclosure, not against it, as is now often the case.

Federal agencies have often starved their FOIA departments for resources; the new law will not

change that. Backlogs stretch for years. A related issue is excessive national security overclassification, which seems to have grown worse. But this is not a moment to complain. The fact that the FOIA exists after a half-century and is being amended with bipartisan support is a testament to a working democracy.