

June 8, 2016

The Honorable Mitch McConnell
Senate Majority Leader
317 Russell Senate Office Building
Washington, DC 20510

The Honorable Harry Reid
Senate Minority Leader
522 Hart Senate Office Building
Washington, DC 20510

The Honorable John McCain
Chairman
Senate Committee on Armed Services
228 Russell Senate Office Building
Washington, DC 20510

The Honorable Jack Reed
Ranking Member
Senate Committee on Armed Services
228 Russell Senate Office Building
Washington, DC 20510

Dear Majority Leader McConnell, Minority Leader Reid, Chairman McCain and Ranking Member Reed:

On behalf of the undersigned organizations concerned with government openness and accountability, we are writing to urge the passage of the proposed amendments from Senator Leahy and Senator Grassley that would strike three exemptions to the Freedom of Information Act (FOIA) from the Senate National Defense Authorization Act for FY 2017 (S. 2943). The Leahy-Grassley Amendments are critical to protect the integrity of the FOIA. In particular the FOIA exemption in Section

National Defense Authorization Act (NDAA), was included at the request of the Department of Defense (DoD) in March 2016.¹ The proposed language would exempt "information on military tactics, techniques, and procedures," from the Freedom of Information Act (FOIA). According to the Department, the expanded exemption is needed to address concerns about giving potential adversaries advance knowledge of this information. However, Exemption 1, which shields "properly classified" national defense information from disclosure, already addresses these concerns and more than adequately protects such information.

The Leahy-Grassley Amendments also call for the removal of Section 1055 (b), relating to the treatment of critical infrastructure security information by State and local governments, as well as Section 339(b)(2), relating to confidentiality of information provided to the Department of Defense by transportation network companies accessing Department installations.

Any amendment to the Freedom of Information Act, especially amendments of this scope, should be referred to Committees with jurisdiction over the FOIA and FOIA-related issues, in this instance, the Senate Judiciary Committee. FOIA-related legislation needs the careful consideration of those Committees, including public hearings; such care is necessary to ensure that the bill promotes transparency and public accountability while allowing the government to withhold information which truly requires protection. Time and again, over the past quarter-century, proposals to amend the Act's existing exemptions have been rejected as unwise.

We urge you to pass the amendments proposed by Senator Leahy and Senator Grassley that oppose the inclusion of the FOIA exemptions in the Senate National Defense Authorization Act for FY 2017 (S. 2943). The Pentagon's proposed FOIA carve-outs are bad for transparency and accountability and should not be included without input from the Judiciary Committee.

If you have any questions or would like to discuss this issue further, please contact Patrice McDermott, Executive Director of OpenTheGovernment.org at 202-332-6736 or pmcdermott@openthegovernment.org or Liz Hempowicz, Policy Counsel with the Project On Government Oversight at 202-347-1122 or ehempowicz@pogo.org.

Sincerely,

American Civil Liberties Union
American Library Association
Association of Alternative Newsmedia
Association of American Publishers
Association of Research Libraries
American Society of Journalists and Authors
American Society of News Editors