



OFFICE *of* GOVERNMENT
INFORMATION SERVICES

Freedom of Information Act Advisory Committee

March 3, 2021

[https://www.archives.gov/ogis/foia-advisory-committee/2020-2022-term/
meetings](https://www.archives.gov/ogis/foia-advisory-committee/2020-2022-term/meetings)

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION



Process Subcommittee

Linda Frye and Michael Morisy
Subcommittee Co-Chairpersons



Technology Subcommittee

Allyson Deitrick and Jason Gart
Subcommittee Co-Chairpersons



Classification Subcommittee

Kristin Ellis and James R. Stocker
Subcommittee Co-Chairpersons



Legislation Subcommittee

Patricia Weth and Kel McClanahan
Subcommittee Co-Chairpersons



OFFICE *of* GOVERNMENT
INFORMATION SERVICES

FOIA Advisory Committee

is on a break: back soon!

<https://www.archives.gov/ogis/foia-advisory-committee/2020-2022-term/meetings>



National Archives Identifier 6656626

Transparency and the Legislative Branch

~ FOIA Advisory Committee 3/3/21 ~

Daniel Schuman

Policy Director

Demand Progress/ Demand Progress Education Fund

DANIEL  **DEMAND PROGRESS.ORG**

Presentation Preview

- The Legislative Branch is More Than Congress
- Surprising Details about the Legislative Branch
- How Legislative Branch Disclosure Happens
- Current Congressional Disclosures by Type
- How to Think About Enhancing Legislative Branch Transparency
- Some Recommendations for Legislative Branch Transparency

The Legislative Branch is More than Congress

House of Reps (political)	Personal offices; committees & subcommittees; leadership, party, and caucus offices; task forces; working groups; commissions; congressional member orgs.
House of Reps (support)	Clerk; Chief Administrative Officer; Sergeant at Arms; Chaplain; Office of Congressional Ethics; Diversity & Inclusion Office; Whistleblower Ombuds; House Inspector General; Historian; Legislative Counsel; Office of Law Revision Counsel
Senate (political)	Personal offices; committees & subcommittees; leadership, party offices, and caucuses; commissions
Senate (support)	Secretary of the Senate; Sergeant at Arms; Chaplain; internal task forces; Historian; Leg Counsel
Support Agencies	Library of Congress; Government Publishing Office; Congressional Budget Office; Government Accountability Office; U.S. Capitol Police; Office of Congressional Workplace Rights; Architect of the Capitol
Other	Commissions; Joint Committees; House Democracy Partnership; Open World Leadership Center; Stennis Center; Office of the Attending Physician

Surprising Details about the Legislative Branch

- Congress is political. It is concerned about its reputation. It writes its own rules.
- No central authority is in charge; there is no central rulemaking authority.
- Independence is the hallmark of each personal, committee, or leadership office.
- Much of Congress's work that is proactively disclosed is "pre-decisional" and "deliberative."
- Many laws do not apply to Congress.

How Legislative Branch Disclosure Happens

- Federal law (statutory)
- Concurrent resolution (non-statutory)
- Chamber rules (House rules and/or Senate rules) — includes precedent
- Committee rules (or practices or resolutions)
- Appropriations report language
- Caucus and Conference Rules
- Traditional practices/ voluntary practices (emergent)
- Legislative Branch agency regulations & guidance

Current Congressional Disclosure by Type

Mandatory Proactive	Bill text, summaries, & status information; committee reports; enacted laws; lobbying disclosure; spending; Congressional Record; floor & committee schedules; video of (some) proceedings
Voluntary Proactive	Press releases & statements; unintroduced draft bill text; personal office website info (services, etc.); letters; some “internal” reports
Mandatory Responsive	FOIA to older records at the National Archives; FOIAs to the Copyright Office
Voluntary Responsive	Press conferences; pen & pad briefings; unintroduced draft bill text; member schedules; responses to letters + tweets; some scheduling; questions for the record
Quasi-Mandatory Responsive	GAO & Library of Congress’s FOIA-like processes; Capitol Police statistical summary of complaints against USCP employees
Involuntary Disclosure	Disclosure by third parties; press coverage; FOIA to Executive agencies for legislative communications; paid services

How to Think About Enhancing Legislative Branch Transparency

- The further an entity is away from playing a deliberative role the more similar it becomes to an Executive branch agency, and thus traditional Executive branch remedies (like FOIA) may become more appropriate.
- Bright lines are best. Proactive disclosure is better than responsive disclosure.
- If you can buy the info from a 3rd party, the Legislative branch should proactively disclose it instead.
- If it is already disclosed in some format, it should be disclosed as data.
- Consider Executive branch best practices for the Legislative branch.
- Archiving & access to archived records are inconsistent.
- Classified info (esp. derivative) is a whole other world.

Some Recommendations for Legislative Branch Transparency

Easier

- Proactively release Legislative branch IG reports (e.g., on Oversight.gov)
- Historical CRS report online + current reports as data
- Congressional serial set & enacted laws online and as data

Intermediate

- FOIA-like process for various Leg branch support agencies
- Witness demographics and disclosure of conflicts-of-interest as data
- Historians/Archivists to support committees + NARA disclosure afterward

Harder

- Legislative branch declassification office
- Centralized reports & letters from/to Congress
- Leg branch-wide transparency & data coordination office
- Contextualizing legislative activities (e.g. approps language, bill comparisons)

Thank you

Consider subscribing to the *First Branch Forecast*, a weekly look into the Legislative branch and government transparency.



Open the Judicial Branch

Freedom of Information Act Advisory Committee to the Archivist

March 3, 2021

Michael Lissner
Executive Director
Free Law Project

Free Law
Project



What's in the Judicial Branch?

- ~200 courts: district, bankruptcy, appellate, special
- Administrative Office of the U.S. Courts
- Judicial Conference of the U.S.
- Federal Judicial Center (FJC)
- 81 Federal Public Defender Organizations
- U.S. Sentencing Commission
- Supreme Court Police



The Status Quo

- Secretive culture; difficult to get anything beyond court docs
- Common Law right of access
 - Frequent use for court records
 - Little (visible) use on administrative records
- Common Law's two tenets:
 - Is it a public document?
 - Is the public's need greater than the gov't privacy?



Recent Events

- Solar Winds hack
- Thomas, Kozinski, and Kavanaugh sexual harassment allegations
- PACER fee skimming



Problematic Judges

- Dozens of judicial impeachments:
 - 1804, 1805, 1806, 1873 (2x), 1874 (2x), 1879 (2x), 1912 (2x), 1914, 1915, 1924, 1929, 1936, 1939 (3x), 1945, 1969, 1974, 1978, 1983, 1985, 1986, 1989, 1991, 2009, 2010 (2x), 2013, 2015, 2017, 2018
- Not impeached:
 - J. Hugo Black was Klansman
 - J. McReynolds was anti-semite, sexist, and racist



What Could We Get — Top Ten (1/2)

1. Disciplinary actions and complaints for judges and attorneys, whistleblower reports, disbarment proceedings, admission records
2. Financial records and contracts
3. Fines and fees levied
4. AO court guidance letters
5. Security audits, recovery plans, and incident reports



What Could We Get — Top Ten (2/2)

6. SCOTUS public calendar
7. Judicial Conference committee membership and minutes
8. List of all judges past and present
9. FJC Integrated DB but *with* judge information
10. The next top ten list



Include / Exclude?

- Sealed documents?
- Court documents (e.g. trial exhibits)?
- Judicial papers?
- Clerk selection criteria?
- Retirement letters to the president?
- FISA courts?



Problems to Overcome

- How do you appeal rejected requests?
- How close to judicial proceedings and papers do you go?
- Will judges sour on FOIA oversight?
- Huge requests: “I want all filings, please.”



Thank You

Michael Lissner

@mlissner

mike@free.law

Free Law
Project





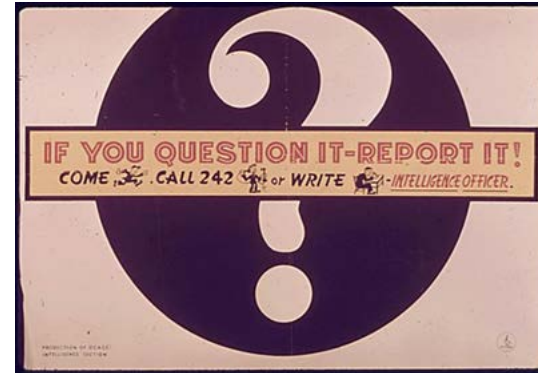
Committee Questions

Daniel Schuman

daniel@demandprogress.org

Michael Lissner

mike@free.law



National Archives Identifier 514593



FOIA Advisory Committee

Public Comments



FOIA Advisory Committee



Mark your calendars!

Next meeting: Thursday June 10,
2021

National Archives Identifier 44267671