COSPONSOR THE OPEN AND RESPONSIVE GOVERNMENT ACT

The Open and Responsive Government Act (S. 2220) strengthens the Freedom of Information Act (FOIA) by ensuring continued access to information that has regularly been disclosed through FOIA but is now at risk of being hidden from public view.

The bill protects against efforts to weaken FOIA following a recent U.S. Supreme Court decision in *Food Marketing Institute v. Argus Leader Media* that expanded the scope of “confidential” information.¹ The bill restores a longstanding legal interpretation of Exemption 4 of FOIA that serves to protect privileged or confidential trade secrets and commercial or financial information.² It strikes a balance that protects Exemption 4 without unnecessarily expanding it by defining confidential information as that which, “if disclosed, would likely cause substantial harm to the competitive position of the person from whom the information was obtained.”³

The Open and Responsive Government Act also clarifies that any information which does not otherwise fall within one of FOIA’s nine exemptions should be made public, thus reinforcing FOIA’s presumption of openness and transparency and preventing agencies from unnecessarily redacting information.

**THE ASK:** Cosponsor the Open and Responsive Government Act, S. 2220

**KEY POINTS:** The American Association of Law Libraries (AALL) supports the Open and Responsive Government Act because it:

- **Restores FOIA:** As court rulings are released and case law changes, updates to FOIA are necessary to improve compliance.

- **Ensures Government Transparency:** FOIA must be strengthened periodically to ensure effective transparency in government. Laws should be written and administered with a clear presumption in favor of disclosure. Exemptions to FOIA should be minimal.

- **Protects Access to Information:** The bill ensures that the interpretation of “confidential” commercial information that had widely been accepted throughout the federal courts of appeals is once again the law.

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¹ The U.S. Supreme Court held that Exemption 4 includes information that is “both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy.” *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356 (2019).


³ S. 2220 116th Congress §2(1) (2019).