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#### New Legislation Would Reform the Freedom of Information Act

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On December 18, 2007, Congress approved a bill that would make the Freedom of Information Act ("FOIA") more formidable by increasing pressure on federal agencies to comply with meaningful deadlines for responses to FOIA requests and imposing consequences for late responses. The bill, known as the "OPEN Government Act of 2007," was delivered to the President on December 19, 2007. It is expected to pass into law during the congressional recess. Prompted by the Government's movement toward greater secrecy after 9/11, the new reporting requirements and penalties introduced by the bill will pressure agencies to release more records, more quickly than in the past.

In introducing the bill, Congress cites the words of Justice Black in his concurring opinion in *Barr v. Matteo*, 360 U.S. § 564 (1959), "The effective functioning of a free government like ours depends largely on the force of an informed public opinion. This calls for the widest possible understanding of all quality of government service rendered by all elective or appointed public officials or employees."

To this end, the bill would require agencies to assign individual tracking numbers to requests and establish a telephone or Internet service by which individuals could track the status of their requests. The bill would introduce a number of other changes as well, including increased agency reporting requirements.

To oversee agency compliance with FOIA, the bill would establish an Office of Government Information Services at the National Archives. This office would also help resolve disputes between individuals making requests for records and the agencies by offering mediation services.

Another provision of the bill would make it easier for individuals who sue the Government under FOIA to recover attorney fees and litigation costs. It would also require the agencies to pay such costs out of their annual operating funds rather than relying on the Judgment Fund. Again taking aim at the agencies' checkbooks, the bill would also prohibit an agency from assessing search and/or duplication fees against a requestor if the agency fails to comply with the Act's time limits.

For government contractors, the bill is a double-edged sword. On the one hand, it would provide greater access to Government records. On the other, the bill may make it more difficult to protect information provided to the Government, such as a company's proprietary information that is incorporated into an awarded contract. Under the new deadlines imposed by the bill, agencies will likely be less willing to grant requests for additional time to submit objections to the release of proprietary information, which makes it all the more important for a government contractor to have an established system in place to promptly identify and respond to an agency's notice that it intends to release the contractor's information.

For additional information or assistance regarding FOIA-related issues, please contact [Rick Vacura](#) or [Keric Chin](#).