

July 25, 2015

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

Dear Senators McConnell and Reid:

On behalf of the undersigned organizations concerned with government openness and accountability, we are writing to urge the removal from H.R. 22 of the FOIA exemptions in: Sec.21015 (a) (4); Sec. 32003(a); Sec. 35436 § 20168 (i) and Sec. 35438 (3). Each of these creates unnecessary, overbroad and unwise exemptions to the Freedom of Information Act (FOIA).

Much of the sensitive information likely to be shared is already protected from disclosure under the FOIA; other information that may be shared could be critical for the public to ensure its safety. Unnecessarily wide-ranging exemptions of this type have the potential to harm public safety more than they enhance that interest; the public is unable to assess whether the government is adequately combating safety issues and, therefore, unable to assess whether or how to participate in that process, and to hold officials accountable.

**Sec.21015 (a)(4)**, covering Public Safety Transportation information, exempts records provided to the Secretary of Transportation pursuant to the review or audit of a public transportation agency safety plan, if the information contains information detailing safety risks and information about how these risks would be mitigated. While the specifics of safety risks – such as vulnerabilities in rail systems – and the steps that should be taken to mitigate these risks might merit temporary protection, there is no justifiable reason to keep such information secret permanently. Risk to public safety is exactly the type of information that FOIA is intended to prevent being shielded from the public. Information about what the government knew and what it did about these risks is essential to accountability.

**Sec. 32003(a)** covers *the safety scores* assigned to motor vehicle/trucking companies and their drivers on the basis of the seven BASIC categories. The *safety scores* assigned to motor vehicle/trucking companies and their drivers are essential consumer safety information and should not be exempt from FOIA, under any circumstances. As written, the provision blocks both publishing the scores, rankings and alerts on the agency website for public viewing and prohibits the release of records containing the same information through FOIA. The public has a right to know the safety scores of companies hauling often dangerous material through their communities and near their homes and schools, and also the scores of the drivers so the companies hiring them are able to be held accountable for accidents and deaths those drivers cause.

**Sec. 35436 § 20168(i)** concerns accident footage from audio or video cameras in intercity rail and commuter trains. The bill requires that intercity rail and commuter trains install cameras in their cabs. This provision would exempt from disclosure the audio or video from that the Secretary “obtains as part of an accident or incident investigated by the Department of Transportation.” This exemption is unnecessary – such information would already be covered by Exemption 7 (investigation/law enforcement exception), and, if there are privacy implications, these would be covered under Exemption 6.

**Sec. 35438(3)** concerns information related to tank cars used in high hazard flammable train service. The bill requires the Secretary to collect information to implement a new reporting requirement to monitor progress toward modifying tank cars used in high hazard flammable train service. This provision exempts from disclosure data that the secretary collects from shippers and tank owners related to how many tank cars have been modified and what the modifications are, and information related to the facilities doing the modifications. This exemption is also unnecessary – much of this information would already be covered under Exempt 4 (confidential commercial information and trade secrets).

Any amendment to the Freedom of Information Act, especially amendments of this scope, should be referred to the Senate Judiciary Committee, which has jurisdiction over FOIA. FOIA-related legislation needs the careful consideration by that Committee, including through public hearings; such care is necessary to ensure that the bill promotes transparency and public accountability while allowing the government to withhold only that 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 remove these provisions. We look forward to working with Congress to ensure any transportation legislation passed into law both protects our nation’s transportation infrastructure and promotes transparency and accountability to the public in order to ensure public safety. If you would like to discuss these issues further, please contact Patrice McDermott, Executive Director of OpenTheGovernment.org, at 202-332-6736 or [pmcdermott@openthegovernment.org](mailto:pmcdermott@openthegovernment.org).

Sincerely,

American Society of News Editors

Association of Alternative Newsmedia

Bill of Rights Defense Committee

Campaign for Accountability

Cause of Action

Center for Science and Democracy  
at the Union of Concerned Scientists

Citizens for Responsibility and Ethics in  
Washington (CREW)

Data Transparency Coalition

Defending Dissent Foundation

Demand Progress

Essential Information

Food & Water Watch

OpenTheGovernment.org

National Security Archive

Progressive Librarians Guild

Project On Government Oversight (POGO)

R Street

Rural Coalition

Society of Professional Journalists (SPJ)

Sunlight Foundation

Cc: Senator Richard Shelby, Chair, Senate Banking, Housing, and Urban Affairs  
Senator Sherrod Brown, Ranking Member, Senate Banking, Housing, and Urban Affairs  
Senator John Thune, Chair, Senate Commerce, Science and Transportation  
Senator Bill Nelson, Ranking Member, Senate Commerce, Science and Transportation  
Senator James Inhofe, Chair, Senate Environment and Public Works  
Senator Barbara Boxer, Ranking Member, Senate Environment and Public Works  
Senator Orrin Hatch, Chair, Senate Committee on Finance  
Senator Ron Wyden, Ranking Member, Senate Committee on Finance  
Senator Charles Grassley, Chair, Senate Judiciary Committee  
Senator Patrick Leahy, Ranking Member, Senate Judiciary Committee  
Senator John Cornyn, Member, Senate Judiciary Committee