

Making a Federal Case

A proposed law would force the Smithsonian Institution to abide by the disclosure rules that apply to federal agencies BY NATALIE BREWSTER

If Senator Chuck Grassley (R) of Iowa gets his way, the Smithsonian Institution will have to make a few additions to the list of items it shows the public. Under a new law cosponsored by Grassley and Senator Arlen Specter (R) of Pennsylvania, the Smithsonian would be required to hold all meetings in public and provide records on request.

The Open and Transparent Smithsonian Act of 2008 would end the institution's exemption from the Freedom of Information Act (FOIA). The legislation was introduced in response to recent Smithsonian scandals, which prompted the resignation of five officials, including former secretary Lawrence M. Small, after it was discovered that they had misspent millions of dollars belonging to the institution on travel, luxury car service, and other expenses. In a summary of the bill, Grassley wrote that it would be "an effective mechanism to ensure taxpayer dollars are not lost to fraud, waste and abuse."

G. Wayne Clough, who was appointed as the new secretary in March, said at a press conference, "What we need to do is repair some bridges. We need to communicate, be transparent." According to Linda St. Thomas, the Smithsonian's director of media relations, the institution has already made several governance reforms and revisions to its FOIA policy in response to the scandals. A directive released by the Smithsonian last November mandates that paper documents, electronic data, e-mail, and contracts be made available on request. The statement adds, however, that "the Smithsonian's unique nature and activities as a trust instrumentality can necessitate withholding some records in order to further the Institution's mission."

St. Thomas explained that since the Smithsonian runs differently from a federal agency, it is not under FOIA jurisdiction. (The Smithsonian gets only 70 percent of its funding from taxpayers.) "We're more like the Library of Congress than we are like the Interior Department," she said. "We just need Congress to acknowledge that." Still, she maintains that the institution is not taking a position on the bill, and that Smithsonian attorneys are willing to work with the Senate Finance Committee.

St. Thomas also said that certain aspects of Smithsonian operations, such as fund-raising, make some exemptions from FOIA necessary. (When the Smithsonian recently announced that it would cut many salaries, it exempted some positions with significant fund-raising responsibilities from those cuts.)

But Grassley argues that the only way to ensure transparency at the Smithsonian is through "a clearly delineated, tried-and-true method outlined by Congress in FOIA." He focused on the Smithsonian after the Washington Post published stories on Small's spending habits. Small resigned in March of last year after the paper reported that he had accumulated nearly \$90,000 in unauthorized expenses—and was absent from his job 400 workdays during his seven-year tenure.

Small's resignation was followed by those of Gary M. Beer, the founding chief executive of the Smithsonian's business unit; Sheila P. Burke, the institution's deputy secretary and chief operating officer; W. Richard West Jr., the founding director of the National Museum of the American Indian; and Pilar O'Leary, the director of the Smithsonian Latino Center. All four were mentioned in the Post stories.

A July 31 Post editorial takes Grassley's case even further, saying that "if federal agencies such as NASA and the National Institutes of Health—not to mention the CIA—are able to comply with FOIA because of appropriate exemptions, so can the Smithsonian."

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