

United States Senate

WASHINGTON, DC 20510

February 5, 2008

Hon. Jim Nussle
Director, Office of Management and Budget
725 17th Street, NW
Washington, D.C. 20503

Dear Director Nussle:

President Bush recently signed into law our OPEN Government Act of 2007, Public Law 110-175, which made the first significant reforms to the Freedom of Information Act (FOIA) in over a decade. As longtime advocates for greater openness in government, we believe that our legislation will help restore the promise of FOIA. A key component of our legislation is the creation of the Office of Government Information Services (OGIS). Among other things, OGIS will mediate disputes between agencies and FOIA requestors, review agency compliance with FOIA, and house the newly created FOIA ombudsman.

In its FY2009 budget proposal, the administration proposes transferring the responsibilities of OGIS to the Department of Justice. *Budget of the United States Government, Fiscal Year 2009*, tit. 5, § 519. This proposal violates both the explicit text of the OPEN Government Act and its legislative intent. The Act declares that “[t]here is established the Office of Government Information Services within the National Archives and Records Administration.” 5 U.S.C. § 552(h). This placement was intentional. We and our fellow lawmakers, supported by the FOIA requestor community, sought to make the FOIA ombudsman independent of the Department of Justice, which represents agencies sued by FOIA requestors. A primary reason for this intentional separation was to enhance the office’s independence, as well as to avoid real or perceived conflicts of interest. We did not want the same agency to both mediate FOIA disputes and defend against them in court, if litigation ensued. The administration’s proposal alters the essential character of OGIS as an independent, disinterested office serving FOIA requestors.

For these reasons, we strongly oppose the administration’s proposal to transfer the responsibilities of OGIS to the Department of Justice. Instead of moving OGIS, the administration should be working to stand up and adequately fund the office. We hope that you will be responsive to our concerns, and we look forward to working with you to bring this new office into existence for the benefit of the FOIA requestors it was designed to assist.

Sincerely,


PATRICK LEAHY
United States Senator


JOHN CORNYN
United States Senator