

**“Ensuring an Informed Citizenry:
Examining the Administration’s Efforts to Improve Open Government”
Written Questions for the Record Submitted by Senator David Vitter of Louisiana.
May 13, 2015**

Question

President Obama created a “presumption of openness” by adopting a foreseeable harm standard to guide agency use of exemptions. However, the White House has officially ended the Freedom of Information Act obligations of its Office of Administration after years of rejecting FOIA requests. How will this decision affect the fourth estate and the public?

The Office of Administration took the position in 2007 that it is not an agency subject to the Freedom of Information Act. It stopped providing information in response to FOIA requests at that time, even though it had provided information in years prior. The Office of Administration prevailed in its position that it was not subject to FOIA in a subsequent lawsuit: Citizens for Responsibility and Ethics in Washington v. Office of Administration, 566 F.3d 219 (D.C. Cir. 2009). Therefore, rescinding the Office of Administration’s FOIA regulations earlier this year did not have a substantive impact on the way the Office has been responding to requests since 2007.

We do believe, however, that FOIA’s long history as a disclosure statute and the Administration’s stated intention of discretionary disclosures when possible – while protecting important interests such as trade secrets, personal privacy and national security – strongly indicates that as a policy matter, the Office of Administration should respond to FOIA requests. Such a position would be consistent with the principles of transparency.