To Serena & Alice, Bryon & Suzy
ACKNOWLEDGMENTS

In taking on a project of this magnitude, one incurs a lot of debts. I wish to acknowledge and thank the University of Florida, especially the Political Science Department and the Bob Graham Center. I would like to thank my committee beginning with my Chair, Larry Dodd, as well as Rich Conley, Beth Rosenson, Zack Selden, and Sean Adams. Each of you have been a true mentor and I will never be able to express the gratitude I feel towards you. I want to thank the Doddian Working Group and my colleagues in the political science department that have offered their support and willingness to listen to me talk about FOIA for the past 4 years. Thank you to Lloyd Chapman whose tutelage of FOIA was a valuable early education. A big thank you goes out to the numerous colleagues, panel chairs and discussants who provided valuable feedback on pieces of this project at various stages, presented at the annual meetings of the American Political Science Association, the Midwest Political Science Association, the Southern Political Science Association, and the American Politics Group of the Political Studies Association.

Thank you to the LBJ Foundation for their generous grant for research at the Lyndon B. Johnson Presidential Library. Thank you to the Gerald R. Ford Presidential Library for their generous research grant. Thank you to Shelia O’Neill and the staff for their help at the John E. Moss Archive at California State University, Sacramento. A large thank you to Thomas Eisinger and the staff at The Center for Legislative Archives at the National Archives in Washington, DC, and to Ryan Marteney for graciously putting me up while researching in DC.

Lastly, I would like to thank my family – Serena and Alice, and my parents – Bryon and Sue for all their unyielding support.
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Abstract of Dissertation Presented to the Graduate School of the University of Florida in Partial Fulfillment of the Requirements for the Degree of Doctor of Philosophy

PRESIDENTS, PARTISANS, AND POWER ENTREPRENEURS: INSTITUTIONAL REFORM AND THE FREEDOM OF INFORMATION ACT

By

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Major: Political Science

August 2016

One variable of institutional reform is policy, but transformative policy does not simply appear from the ether. The evolutionary development of reform policy generally happens over longer time horizons that span across multiple congresses and administrations. A Continuing Legislative Development (CLD) cycle provides a lens to understand the temporal policy development process by examining a single issue as multiple iterations within one game. Operating within the CLD cycle of transformative policy leading toward implementation is characterized as a long-term development marked by three main factors – societal change, cognitive change, and political change. Within the congressional literature each of these factors are generally examined in isolation by focusing on one without taking the others into account. By developing an analytic model that takes all three theoretical lenses into account, a more robust understanding of the evolutionary nature of the policy process is provided through an institutional perspective.

Societal change can be understood through social structure theory that accounts shifting societal demands. Cognitive change can be understood through social learning theory that accounts for the impacts of the introduction of new information and the learning process that proceeds. Political change is best understood using rational
choice theory that accounts for the politics of the moment. Within the rational choice framework, a new theory on entrepreneurial behavior – power entrepreneurship – is developed to comprehend how individual members of Congress function as key drives of transformative policy. This multidimensional model provides a foreground perspective through the politics of moment and a background perspective through accounting for changes in societal demands. The foreground and background are synthesized through understanding how new information and the learning process feed into, and is thus used by, the foreground and background perspectives, leading to the development of an interconnected double feedback loop model. To provide context, the development of the Freedom of Information Act is employed as an explanatory case, to ground the model with an empirical example to illustrate how each lens fits together to function simultaneously and constantly.
CHAPTER 1
INSTITUTIONAL CHANGE THROUGH THE LEGISLATIVE PROCESS AND THE POLITICS OF INFORMATION

On July 4, 1966 President Lyndon Johnson reluctantly signed the Freedom of Information Act, ignoring the opportunity to pocket veto the legislation and knowing that if he issued a standard veto, Congress did not have the votes to override. The twelve-year period of institutionalized legislative development of FOIA is explained through the actions of one individual member of the House – Representative John E. Moss (D-CA) from Sacramento. Moss spearheaded congressional efforts on the issue beginning in his first term in Congress, when in 1953-54 he served on the Civil Service Committee and was refused documents required for an oversight hearing from the Eisenhower administration, due to those documents being labeled as classified (Lemov 2011). This single incident would catalyze Moss’ interest in the issue of government secrecy and public access to records that would lead to a chairmanship of a special subcommittee on this very issue in the following Congress.

Through his entrepreneurial efforts, Moss was able to harness political shifts happening both institutionally and within society that brought about an evolving mindset illustrated and influenced by a new Cold War paradigm that redefined notions of national security and secrecy of government information. This new paradigm resulted in executive branch actions towards increased security, leaving the public and the press grappling with a lack of access to information. Politically, the power dynamics between Congress and the president shifted as the White House moved to limit congressional access to executive information as well. This left Congress in a precarious situation as functionality surrounding its constitutional oversight capacity and in providing constituent services became more limited when faced with an intransigent executive.
Moss serves as the key figure behind the institutionalization of freedom of information (FOI) in Congress, beginning with the formation of the Moss Subcommittee in 1955, and remained as the power entrepreneur capable of coalition building through use of institutional power to bring transformative legislation through to fruition. However, the push for FOI began prior to the issue becoming institutionalized in Congress through the Moss Subcommittee, to the immediate aftermath of World War II as several press associations began to push back against administration policies that denied the press access. Therefore, the development period of FOIA begins in 1946 and runs through 1966 when the legislation was signed into law. This period encompasses shifting societal and political demands driven by reactions to a new paradigm fueled by changing information flows and the politics that arose from the understandings and implications of this paradigm.

The original inception of this research project came from an exploration into the legislative development of FOIA a number of years ago. This initial foray sparked my interest, leading to more research, but was centered on the puzzle of why President Lyndon B. Johnson would sign FOIA even though he opposed the legislation, knowing Congress did not have the votes to override his veto, and even had the option of using a pocket veto that would have killed the legislation outright. Additionally, I wanted to understand the circumstances as to how and why a Democratic Congress under unified government would push legislation that would effectively weaken the presidency during the Great Society period that saw largely cooperation between majorities of congressional Democrats and President Johnson surrounding major legislation focused on issues of social justice.
As research into the legislative development of FOIA progressed, the conception of this project grew from merely seeking to understand the specifics surrounding a particular policy, to seeking to understand how one policy issue can inform our thinking on the legislative process generally and systemically. Moving beyond merely informing thought of the process, but to how specific policy – transformative policy – functions as a factor of institutional change. If we can identify policy as a tool of institutional reform, then institutional politics becomes inherently tied to the processes leading to the evolutionary development of policy, and the politics of the legislative process as institutionally constrained through the politics within Congress and the politics between Congress and the president. Integrated within the institutional politics of the legislative process is the role of shifting societal demands and how these demands influence or constrain political actor behavior. As both societal and political elite actors are influenced continually by the introduction, processing and usage of new information and how this information impacts the politics of policy serves to unite societal and political actors around a specific policy issue.

The focus of this research then becomes two-fold. First and foremost, I am utilizing an historical institutional approach to develop a multidimensional analytical model that explains how an issue rises, evolves and becomes policy that transforms political institutions, and thus the politics impacting the actors functioning within. The multidimensional model develops three lenses examining the background, synthesizing, and foreground perspectives of the American political system. Second, the model will be explained by using a specific case – the development of the Freedom of Information Act. Using a specific case provides breadth and depth that lend to better understanding
the model and the functionality of the legislative process. Beyond serving an explanatory function, a singular case of transformative policy such as FOIA, offers the ability to develop generalizable theories that can be applicable to any policy at any time. While the development period of FOIA under examination here encompasses the decades of 1946 to 1966, the implications of FOIA and the politics that led to its development are applicable to the contemporary period.

**Should the Information Be Free?**

Issues of government secrecy and access to information have once again moved to the fore of political attention and discussion. This is evident when examining such phenomena as Edward Snowden, Wikileaks and Julian Assange, and Chelsea Manning. Without delving into the popular commentary surrounding these figures, their actions in making public thousands of classified government documents has impacted the public and political consciousness sparking debate over such actions as necessary and patriotic in an Ellsberg Pentagon Papers sense or as acts of treason to be met with punishment. This debate has spurred recent policy and political action with the executive and legislative branches squaring off. Legislation in the 114th Congress is advancing to amend the Freedom of Information Act (FOIA) after several bills to amend FOIA failed to be reconciled through conference committee in the 113th Congress.¹ Early in 2015, the Obama Administration issued a rule change as a means of institutionalizing a common practice of the White House Office of Administration no

longer being subject to FOIA requests. While these actions, thus far, have proved to be little more than political posturing and position taking, the debate surrounding government secrecy and public access to records is increasing in attention and momentum.

However, this debate is not new, and in fact is part of much larger discussion that in some ways stretches back to the colonial and founding period. An American tradition of a free press and open access to government records was derived from the English roots of the colonists, much as a response to unyielding secrecy. During the 17th and 18th Centuries in England, the press was barred from reporting on any activities of parliament and was severely punished if they did, where punishment could result in death (Foerstel 1999). Many colonial governments shared a similar perception that government business was in no way a public matter. Governor Berkeley of Virginia best sums this position in a 1671 correspondence where he stated,

I thank God, we have no free schools nor printing; and I hope we shall not have these hundred years; for learning has brought disobedience and heresy and sects into the world; and printing has divulged them, and libels against the government. God keep us from both (Foerstel 1999, 1).

While it would seem that the governing class within the colonies preferred an uneducated and ill-informed citizenry, many of the colonists began to revolt at such conditions. A 1689 revolt, led by John Coode, protested the Maryland government for passing a law that would punish, “all speeches, practices, and attempts relating to his

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2 Josh Gerstein, “Too Fast on Requiem for White House FOIA?” Politico 3 Mar. 2015. Accessed at http://www.politico.com/blogs/under-the-radar/2015/03/too-fast-on-requiem-for-white-house-foia-204693 on 20 Jan. 2016. Technically under the current FOIA law, the Executive Office of the President was exempt, but common practice until the George W. Bush administration was to accept FOIA requests for certain offices out of a courtesy and dependent upon determination if the information could be made public.
lordship and government, that shall be thought mutinous and seditious” (Foerstel 1999, 2). Punishments for violating this law, “were whipping, branding, boring through the tongue, fines, imprisonment, banishment or death” (Ibid.). Numerous examples like this shape the history of colonial America, although the crackdown and subjugation of newspapers during this period sowed the seeds of its own destruction. As colonial America came closer and closer to rebellion in what we now know as the American Revolution, the idea of an informed citizenry became seen as vital in the efforts to push back against what was viewed as an oppressive English regime.

In 1765, a young John Adams published an anonymous essay in the Boston Gazette arguing that an informed citizenry was the most effective defense against British rule. Adams stated,

> Whenever general Knowledge and sensibility have prevailed among the People, Arbitrary Government and every kind of oppression have lessened and disappeared in Proportion…The people have a right, an indisputable, inalienable, indefensible divine right to that most dreaded and envied kind of knowledge, I mean the characters and conduct of their rulers…The preservation of the means of knowledge among the lowest ranks, is of more importance than all the property of all the rich men in the country (Foerstel 1999, 3).

The sentiment expressed by Adams would continue to grow among the colonists at this time, driven not just by the need to inform people of what was quickly being understood as an illegitimate governing regime across the pond, but also as a means of informing citizens about actions that could benefit the growth of a better form of self-government. In 1774, the Continental Congress passed the Quebec Declaration, which among a listing of grievances towards the British Crown and rights afforded the colonies through natural law, included a specific statement on the necessity of a free press. The declaration states,
The last right we shall mention regards the freedom of the press. The importance of this consists, besides the advancement of truth, science, morality, and arts in general, in its diffusion of liberal sentiments on the administration of government its ready communication of thoughts between subjects, and its consequential promotion of union among them, whereby oppressive officers are shamed or intimidated into more honorable and just modes of conducting affairs (Ibid.).

The colonial perspective on the value of a free press became paramount as the means to disseminate information about the oppressive governing regime in order to make a case for creating a new government. The core of the argument being that citizens have a right to be informed of government action, as an informed citizenry would serve as the basis of self-government. However, those Framers who would assert the need for such openness also suffered from hypocrisy. Representative David King (D-UT) in a House floor speech to support passage of FOIA in 1966 stated,

> The deliberations that produced the Constitution of the United States were closed. Early meetings of the U.S. Senate were not regularly opened to members of the public until February 1794. Some 177 years ago, the House of Representatives heatedly debated and finally tabled a motion that would have excluded members of the press from its sessions. It was the beginning of the 19th Century before representatives of the press were formally granted admission to the Chambers of the Senate and the House of Representatives.³

Clearly, while the natural rights of men were wielded against the savage usurpations of the British Crown towards the colonists, the colonists themselves in both establishing a new government and through the implementation struggled with allowing complete and unfettered open access. Much as contemporary politics struggles to find a balance between the need for secrecy and public access, this debate began during the founding as the demands of politics and governing smashed into the ideals of open government.

Federalist and Anti-Federalist debates over what would become a bill of rights engaged around the issue of a free press, and the inherent or implied right of public access to information. The Anti-Federalist argument, as expressed through the letters of Brutus argued forcefully from the position of natural law and natural rights, in particular in Brutus II. Herbert Storing notes that one of the major areas of liberty for the Anti-Federalists was liberty of the press (Storing 1981, 64). The focus of Brutus II centers on the classic liberal argument of natural rights and natural law. Brutus is utilizing the Federalist argument to contend that certain liberties exist in natural law that are afforded to all men, and that the new government cannot infringe upon those rights. The Anti-Federalist position was asserting the need for specific protections of liberty, based on natural rights, of which a free press and therefore access to information was considered essential and must be specifically expressed through a bill of rights.

The final outcome of this debate provided a bill of rights in which the First Amendment protects both liberties of speech and press. However, the practice of protecting such liberties from government quickly became a murky debate, as with the Alien and Sedition Acts of 1798. These laws provided the president with broad authority to imprison, fine or punish any individual, including any member of the press, for speaking out against the government (Foerstel 1999, 8).

The Alien and Sedition Acts marked another iteration in the continuing debate between governing and public access, setting a precedent establishing executive power over these matters that would be utilized time and time again. The Espionage Act of 1917, passed as the US entered into World War I, revived the ideas of seditious libel, which included the passage of an amendment to the Espionage Act a year later,
referred to as the Sedition Act of 1918 (Ibid.). By 1919, a trio of Supreme Court
decisions had been handed down centered on the Espionage Act, all of which upheld
the law including the punishments as constitutional and not in violation of First
Amendment protections (Ibid., 9). In the 1925 decision in *Gitlow v. New York*, the Court
upheld the prosecution of an individual for distributing left-wing pamphlets, the Court did
however, recognize the applicability of the First Amendment to the states through the
liberty provision of the Fourteenth Amendment’s due process clause (Ibid.). The
decision in *Gitlow* marked a shift in legal precedent that would establish First
Amendment protections for individuals and the press, which would become part of the
arguments asserted several decades later of the implied “right to know” in the First
Amendment.

The roots of the current politics surrounding the issue of freedom of information
becomes evident as grounded in colonial debates at the founding. Then as now these
debates gain momentum as a response to perceived government abuses. The ability to
understand and contextualize this history provides the backdrop to understand how the
Freedom of Information Act came to exist, and the debates surrounding the legislative
development following World War II. The importance of FOIA as an explanatory case
cannot be understated for two main reasons. The first is that contemporary political
debates are informed by earlier iterations of such debates. Therefore the ability to
understand how public access to government records in a post-9/11 society where
concerns over terrorism and national security threats, both physical and virtual, lead to
claims of executive power in denying such information to the public. However, the
contemporary debates are influenced and informed by the earlier debates following
WWII where national security concerns were rampant over the Cold War, Red Scare and the rise of subversive communist threats, both external and internal, leading to claims of executive privilege in reducing channels of information to the press and public.

The legislative development of FOIA began as WWII came to a close and society, in particular the press, began to grapple with the new Cold War mindset, where the executive branch would began to build walls surrounding information. National security concerns were cited as evocation of executive privilege became the norm in denying information to the public and members of Congress. The eventual pushback by Congress and society against such executive actions would ultimately lead the passage of FOIA at the end of June 1966. President Lyndon Johnson would reluctantly sign the bill on July 4, 1966 a few hours before it would have been pocket vetoed. The twenty-year period of legislative development surrounding FOIA will yield insight into the politics surround transformative policy.

Second, FOIA serves as an example of a transformative policy that altered the functionality of governing institutions. The main reform of FOIA was directed at the executive branch, forcing nearly every executive agency and department to create an office tasked with establishing a procedure to open records to public request, assess such requests, and to either provide the requested material or deny it based on one of nine exemptions in the legislation. Denials of information can be appealed, and it is this appeals process that led to reform of the judicial branch. A requestor if denied can appeal directly to the executive agency. If the agency upholds the denial, the requestor then has the legal authority to file suit in federal court seeking judicial intervention. This means that a federal judge will determine whether the legal merits of denial have
standing or should be overturned, thus forcing the agency to turn over the previously denied information. Congress exempted itself from being subject to FOIA, but the bill did reform the legislative branch as well. FOIA is applicable to members of Congress, and as we will see, many members were denied information from the executive branch prior to the law, which helped prompt Congress to address the issue. Within Congress’ oversight capacity of the executive branch, FOIA became a tool to force information to be given to members of Congress. Transformative policy, like FOIA, functioned to reform all three branches of government, demonstrating how policy can serve as a tool to rebalance shared power between the branches.

FOIA not only shifted power being shared by the branches of government, but also served as a measure of social change as well. The passage of this legislation dramatically shifted the nature and relationship of citizens with government. FOIA’s passage in 1966 came near the end of one of the most active legislative periods in American history. The Great Society era was marked by dramatic social change with far reaching implications from Civil Rights and Voting Rights to the War on Poverty to Medicare. This period of legislative activity centered on social justice in many ways, of which FOIA was a part. By providing a structure and process to allow any citizen to request government documents and records, including legal redress, FOIA established citizen oversight of the executive branch. Understanding the politics of the development period and the transformational nature of FOIA makes it a strong exemplar case from which to build an analytical model of how policy leads to institutional reform.

A Continuing Legislative Development Cycle Perspective

This research develops an analytical model to understand how the politics of policy development bring about institutional change. The ability to utilize an explanatory
case provides context for the model while illustrating the model’s effectiveness as applicable to other cases. This allows for the model to provide a narrow focus that is empirically valid, while remaining general enough for theoretical development and relevant when applied to political phenomena. First however, our perspective of the policy process will shift to one that understands policy development to be fluid, which functions across multiple Congresses and administrations. This will be termed as the Continuing Legislative Development (CLD) cycle, which necessitates understanding the policy process as one that functions across a continuing long-term time horizon. Jones (1994) refers to a continuing agenda, where the US system provides an ongoing and often shifting legislative process that presidents will enter and exit, attempting to influence the agenda with their own priorities, while simultaneously endeavor to tackle the ongoing legislative battles and priorities of Congress that began before the president came into office (Jones 1994, 164-165). The CLD cycle is one that functions both across time and within time, whereby issue evolution and policy innovation mark a critical juncture in the process that leads through development to votes on policy that is transformative in nature (Carmines and Stimson 1989; Kingdon 1984). While scholars like Kingdon and Polsby (1984) provide a perspective on how policy innovation happens over time, my focus moves beyond the formation of agendas to one of process and function. The CLD cycle concentrates on blending policy innovation and development with the politics of the legislative process, which includes the debate, bargaining and coalition formation within Congress and between Congress and the president. This process is one that happens across time, meaning a long-term historical perspective, as well as within time, meaning the influence and constraints of the politics of any moment
under examination. The CLD cycle will develop as being continual and constant, but functional within the politics of the moment in which a policy is being considered. Therefore policy, and the processes that provide policy outcomes, becomes one factor when considering institutional change.

To borrow the logic and language of game theory, each policy idea forms a singular iterative game, even if that idea takes the form of multiple bills, which then allow the evolution of an idea through the policy process to be examined by the actions of individual actors within an institutional setting across time. As the legislative process happens within an institutional setting, the structure of the legislative institutions provides the constraints under which actors function. Such constraints offer the ability to make base assumptions of actor behavior within an institutional setting to allow for theory building around predictive behavior. Isolating a policy idea provides a lens to understand the development and politics surrounding the movement of a policy through the legislative process. Focusing on a single policy provides clarity through examining actor behavior and functionality within institutional constraints. This process illustrates how a policy outcome becomes institutionalized within the structure and function of government, thus providing an understanding of policy as a means of reform.

To provide context in understanding the CLD cycle, the case of FOIA can be utilized to explain. The issue of government secrecy and freedom of information goes back further than the 1950s, however, in the aftermath of WWII and with the rise of the Cold War, the Red Scare and McCarthyism, and the Korean War, actions were being taken by government officials to limit information being provided to the press and members of Congress (Foerstel 1999). By the late 1940s, the American Society of
Newspaper Editors (ASNE) had formed a Freedom of Information Committee that began to investigate the issues surrounding government secrecy. In their efforts, ASNE employed Harold Cross, lead counsel for the *New York Herald Tribune*, to produce a report. The report was published in 1953 as a book titled *A People’s Right to Know* and provided a legal account and perspective on secrecy and access to government information (Cross 1953). The Cross report also noted how several states had already enacted Sunshine laws that could be used as models for legislative action at the national level, and called upon Congress to take such action.

During this period, while ASNE and some members of the press began to function as an interest group on the issue, the Eisenhower administration formed the Office of Strategic Information (OSI) within the Commerce Department in November of 1954\(^4\). The justification was to create a central office within the executive branch that could screen information and work with the business community to ensure that unclassified strategic data would not be made available to foreign nations that would use the information against the interests of the US. The policies of OSI spread across all executive agencies, especially the Department of Defense, which helped to create a culture of secrecy and caution among agencies when dealing with the press or anyone seeking specific information. In Spring 1955, Secretary of Defense Charles Wilson issued a directive to government officials and defense contractors that they must limit any public information activities, and that for any information from the Defense Department to be made public must first meet security requirements and make a

“constructive contribution” to the Defense Departments efforts (Foerstel 1999, 20). The press began to refer to this and other such directives, as the ‘paper curtain’ from which the American people were being denied their constitutional right to access public records (Archibald 1979).

With Democrats taking control of Congress following the 1954 midterm elections, moving from unified Republican control to divided government, the opportunity came to act on the Eisenhower administration’s invocation of executive privilege in keeping information from members of Congress, thus impacting committee oversight capabilities. The response from Congress was to create a special subcommittee under the Government Operations Committee to research and focus on the issue. Sophomore representative John Moss (D-CA) was picked to chair the Special Subcommittee on Government Information, to be referred to as the Moss Subcommittee, as Moss had proven himself capable and interested.

The issue of freedom of information was now institutionalized in the House by the spring of 1955, providing Congress a starting point and marking a critical juncture. This juncture demarcates the start of the CLD cycle, where the institutionalization of the issue begins the legislative process and politics moving towards a policy outcome. The final version of FOIA would be signed by LBJ on July 4, 1966 providing a twelve-year span that takes the issue from institutionalization to enactment. Additionally, the formation of the Moss Subcommittee illustrates the environmental constraints already

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5 Shortly after the House formed the Moss Subcommittee, the Senate Judiciary Committee formed a Senate Constitutional Rights Subcommittee under the leadership of Chairman Thomas Hennings (D-MO) to investigate issues of executive privilege and government information. As will be shown, this subcommittee served as the Senate counterpart to the Moss Subcommittee in the House, and a continuing indication of the growing saliency of the issue.
facing Congress with both the press and the president/executive branch weighing in on
the debate surrounding government secrecy and access to information (Fenno 1973).

The CLD cycle provides a changed perspective and foundation that can be
utilized to understand any policy issue at any time. The ability to isolate a policy idea
and view it as a single iterative game offers the ability to develop an analytical model
that unites three differing perspectives to explain how an idea moves from inception
through development and finally to implementation that alters the functionality and
politics of governing institutions.

It becomes incumbent upon political science to provide coherent understandings
of shifts within politics that leads to reforms, and the impacts – both intentional and
unintentional – the reforms have on our politics, governing institutions, and society writ
large. To quote Larry Dodd,

The goal for political science, I believe, is not to discover and predict a
recurring consistency in the structure, substance, and logic of political
behavior but to clarify the processes whereby political actors create,
operate within, dissolve, and recreate new and unforeseeable political
worlds. The goal of the political scientist, in essence, is to understand the
form, variability, and contingencies of political change, not to predict a
content that is unforeseeable and a constancy that is nonexistent in a
long-term and substantive sense.6

Once we seek to understand political change, the questions of how move to the fore.
We must develop analytical models of explanation that offer empirical insight, while
being flexible enough to focus narrowly and broad enough to incorporate multiple
perspectives in providing comprehensive understanding. Creating such a model will
allow for a policy idea or issue, one which is transformative in nature, to be viewed

6 Larry Dodd, (2012 [1991])“Congress, the Presidency, and the American Experience” in Thinking About
Congress, 205.
through several differing lenses that stand alone in perspective, yet function together as each influences the politics of the others.

**Constructing a Model to Understand Change**

As discussed earlier, one factor that leads to reform is policy as it functions through the CLD cycle. Transformative policy can be defined as policy that alters the structure and function of governing institutions. Inherent within this definition is that transformative policy also alters the politics of the institutions. Although it is not that simple, as political reform is influenced by societal demands, which feed into changing institutional politics that in-turn influence societal demands. In this way, institutional political reform develops a feedback loop between institutional political actors and society. This feedback loop is also influenced by the introduction of new information, and how that new information is cognitively processed and utilized. The legislative process leading to implementation of reform policy is often a long-term development marked by three main factors – societal change, cognitive change, and political change.

An analytical model will explore of all three factors by accounting for a background perspective examines a historical approach to understand shifts in societal demand and how these demands impact politics. A synthesizing perspective provides for the cognitive understanding of how new information is utilized to influence both the foreground and background perspectives. Third, a foreground perspective that focuses on the politics of the moment – institutionally within Congress, and between Congress and the president. This model offers three lenses, each capable of offering an empirical explanation of political phenomena individually, but fitting together to provide a more robust perspective of political change. This way, it becomes clear how the background and synthesizing perspectives influence the institutional politics. In turn, the foreground
model will illustrate how the politics of the moment influences the background and synthesizing perspectives, thus demonstrating the feedback loop that ties the three lenses together into a single model.\(^7\)

A continual feedback loop is helpful to explain the model, but perhaps an expanded approach is needed. Instead, we can visualize the functionality of the model by using an infinity symbol, as a concise measure of an interconnected double feedback loop. An ongoing debate among political scientists centers on which way the causal arrow points when it comes to influence and or saliency of political issues. This chicken or egg argument seeks to understand if policy or political action is the result of elite behavior influencing public opinion or if public opinion influences elite behavior. While a multitude of studies provide empirical support for both perspectives,\(^8\) the model developed here asserts that an arrow is the wrong way to think about political phenomena. As an arrow only points in one direction, the focus is too narrow. An infinity

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\(^7\) I will note here that the basis for this research idea, of utilizing three lenses to examine an issue narrowly so that broader theoretical generalizations can be made, was influenced by similar work: Kenneth Waltz (1959) *Man, The State, and War*; Graham Allison (1971) *Essence of Decision*; and Larry Dodd (2012 [2001]) *Re-Envisioning Congress*.

symbol is a more accurate visual as it can illustrate how influence flows from society to political elites and from political elites to society simultaneously and constantly. Signaling, information, and influence on issues flow constantly from the citizenry to political elites and from elites back through the citizenry, therefore the perspective of influence should be less on who influences whom and more from a systemic approach that understands the flow of information controlling momentum and influence on any issue as society and political elites functioning together. One half of the infinity symbol (the first loop) represents societal influences with the other half (the second loop) representative of political elites influences with the symbolic structure representative of the constant flow of information toward each half while simultaneously being influenced by the other. Figure 1-1 offers a graphic representation of the infinity or interconnected double feedback loop.

The visualization of information flows to influence politics as a constant and continual function between society and political actors is helpful to shift our understanding as applicable to the model developed here. This way we begin to think of responses to political phenomena as systemic instead of causal, whereby the influence on political action is a continual flow between actors through signaling and information processing. In examining change, the historical perspective becomes necessary, as by broadening our focus we are able to see this exchange flow in action as it relates to a policy issue.⁹

⁹ The argument I am making is that scholarly research will often focus on a narrow snapshot that provides empirical data to correlate variables that influence action surrounding an issue. While this research is valid and useful, we can reexamine our thought process surrounding transformative policy and political change by focusing on a single issue and tracing the development of the issue into policy evolutionarily. This development period can be more long-term, thus using an historical approach provides the basis to broaden our focus. In doing so, we move from understanding causal arrows within a snapshot to seeing
In discussing change, whether political, social, or cognitive as it applies towards Congress, an empirical case can be employed to help explain the multidimensional model that indicates reform. As FOIA is an exemplar of transformative policy, it becomes possible to understand the impacts the reform had on governing institutions and society. However, political change swings both ways institutionally speaking, whereby transformative policy itself not just serves as reform going forward in time, but that it was the product of political change when looking backward. Therefore the purpose of developing a multidimensional model that takes account of political, social, and cognitive change provides the capability to understand the factors influencing the development of transformative policy. As society changes, politics is responsive, so policy development begins as a means of addressing the issue brought about by change. Policy development often has long historical roots. Policy develops, evolves, and is formed over a period of time influenced by society, understanding and using new information, and ultimately shaped by the politics of the legislative process. By examining the historical factors that account for shifting societal demands, accounting for how new information is processed and used, and by understanding how specific individual political actors have the ability to wield institutional power in order to drive reform policy we can account for the factors of change that lead to reform. The focus here will be to create each model – background, synthesis, foreground – then view the development of FOIA through each lens, and by doing so illustrate the connectivity of

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such arrows function as a continual interconnected double-feedback loop of shared information flows between society and political elites.
societal, cognitive psychological, and political factors that work together in driving politics and policy.

The rest of the paper will proceed as follows: Chapter 2 will be the background lens, providing an historical analysis of how Cold War politics in the fallout of WWII led society to grapple with issues of government secrecy. Chapter 3 will examine the synthesizing lens; illustrating how new information is presented, processed, and then utilized for politics, within society and political institutions. In the case of FOIA, this lens will focus on the idea and usage of executive privilege claims of secrecy, and how the cognitive understanding of the presidents' claims of executive privilege was processed and used by members of Congress, the press, and society. By focusing on the use of executive privilege by administration actors, it becomes possible to trace the evolution of its use from Truman through LBJ, as it is inexorably tied to the development of FOIA. Chapter 4 confronts the foreground lens, taking account of the politics of the moment throughout the development of FOIA. Within the politics of the moment, certain congressional actors, termed here as power entrepreneurs, are able to possess and use institutional power in order to balance power of the legislative system through policy development. The final chapter draws conclusions on the benefits of using a multidimensional model to understand political change and the policy process. This will include an understanding of the CLD cycle as one that also functions through policy implementation, evaluation, and amendment. It has been almost fifty years since FOIA was implemented, so the analytical model within the CLD cycle functions beyond the initial debates to understand the evolutionary nature of transformative policy through the
administrative functionality and politics surrounding the evaluation and amendment processes.
Figure 1-1. Graphic representation of an interconnected double feedback loop
CHAPTER 2
THROUGH THE BACKGROUND LENS

How Changes in Societal Demands and Perception Influence Policy and Politics

Based on the interconnected double feedback loop model, this chapter examines the first loop, or societal demands and influences, which constitute the background perspective. The background lens is focused through social structure theory that accounts for changes across time within society and how shifting societal conditions impact politics and governing institutions. Societal changes produce new conditions that motivate and constrain political actors, who are nested within and responsive to ongoing societal shifts in demands. Shifting conditions within society, whether external like war or foreign threats or internal like demands for social justice, over time create demands for political solutions to these problems. Dodd (2012) for example, illustrates how shifts within the US to a postindustrial society created an institution (Congress) incapable of meeting the personal power needs of career-oriented members, while maintaining its ability to function as a legislative body. Polsby (1968, 2004) demonstrated how the modernization of society and technological innovation led to the institutionalization of the House of Representatives. Additionally, documenting how the invention of air conditioning changed the politics of the South and the country setting in motion demographic shifts that led to institutional, and thus policy, change. Cooper and Brady (1981) use a diachronic analysis of environmental factors to examine how industrialization and career politicians proved unable to adapt to changing societal conditions leading to the implosion of the strong party system and end of congressional government. Zelizer (2004) discusses how failures of Progressive Era reforms when placed in the context of post-WWII politics, which included increased union power and
the Civil Rights movement, created an institutional crisis leading to the congressional reforms of the 1970s. Bartels’ (2008) research into the issue of income inequality traces how impacts brought about from changing economic conditions, including individual income and wages, changes the politics of certain groups within society over time, which in turn then impacts the policies and politics of institutional actors.¹

What emerges from the literature is an understanding of how specific shocks, technology, or previous change to society bring about shifts in demands of the political system from the governed. Over time as the specific issue or problem festers or grows, demands for political resolutions increase placing pressure on political actors. While some problems or issues fall away, lose attention, or become non-issues, others will evolve and continue, which ultimately bring about political solutions (Carmines and Stimson 1989).² In the case of FOIA, the end of WWII led directly into the Cold War, infusing the “Red Scare” of communism into the American psyche. The hearings of Sen. Joseph McCarthy and the actions of the House Committee on Un-American Activities led to widespread accusations and a constant fear of communist infiltration at the highest levels of government and society. While tensions with the Soviet Union grew, the Korean War, followed closely by the Bay of Pigs and Cuban Missile Crisis along with growing tensions in Southeast Asia resulting in the Vietnam War engrained the ideas of fighting communism abroad in order to stem its domestic influences. The legislative

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¹ A portion of the above literature discussion appeared in an earlier working paper – Kevin M. Baron, “The Information is Free” presented at the Midwest Political Science Association Annual Meeting, Chicago IL, 2013.

² The purpose is here is not to focus on the former, but the latter, being a problem or issue that does bring about political action. Social structure theory allows us to examine how societal problems manifest in political action.
development of FOIA became a response to society attempting to grapple with the shifting climate of the global politics of the Cold War.

Following WWII, the president and executive branch were forced to come to terms with a new global order that pitted the U.S. against the Soviet Union in a bipolar international system (Waltz 1979). The fear of enemies abroad and infiltration at home, led to actions from the executive branch to clamp down on public access to government information. These actions in particular targeted the press, but began to impact Congress as well. The amalgamation of factors led to an executive branch taking overzealous actions to control the public flow of government information, a Congress unable to access executive information for oversight and constituent services, and a media and press corps feeling alienated with their constitutional right of a free press being trampled over. Within the rise of these conditions – a changed society forced to deal with the threat of immanent nuclear annihilation, the president(s) and executive branch responded by building a “paper curtain” leaving society, Congress and the press grappling with how to respond (Foerstel 1991). Increasingly, the executive branch began to utilize claims of executive privilege in taking unilateral action to stem information moving to the public out of national security concerns.

In March of 1947, President Truman issued Executive Order (EO) 9835, titled “Prescribing Procedures for the Administration of an Employees Loyalty Program in the Executive Branch of the Government.” The threat of communist infiltration within the ranks of the federal government had become a perceived reality. The EO states,

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WHEREAS it is of vital importance that persons employed in the Federal service be of complete and unswerving loyalty to the United States; and WHEREAS, although the loyalty of by far the overwhelming majority of all Government employees is beyond question, the presence within the Government service of any disloyal or subversive person constitutes a threat to our democratic processes; and WHEREAS maximum protection must be afforded the United States against infiltration of disloyal persons into the ranks of its employees, and equal protection from unfounded accusations of disloyalty must be afforded the loyal employees of the Government.

Institutionalizing the threats faced by Communism, the Truman administrations fiat via executive order to remove subversive persons from federal employment sent a clear message to the public that the dangers were real. Truman’s actions reinforced the establishment of the Cold War mindset over society, political actors, and civil service employees. The signaling from the administration through the interconnected double feedback loop served to influence societal perceptions, solidifying fears leading to shifting demands upon political actors.

**Measuring Shifting Societal Demands**

But how do we measure changing societal demands? The period of time under examination is 1946 to 1966, which provides for the immediate post-war period through the passage of FOIA on July 4, 1966. The situation detailed above is a snapshot of society in the late 1940s, which is a starting point. We will assume that society functions as a cohesive unit on issues, which allows the ability to focus on increased public attention on a single issue as valid for shifting demand. The assumption does not take into account varying positions on a policy issue, as society is generally split along a continuum of positions on any given policy issue. However, the purpose of measuring

changes in societal demand is less focused on the specific positions groups will take, and instead will focus on the attention an issue receives. By examining attention, it becomes possible to argue that an increase in attention provides issue saliency, which leads to demands placed on political elites and policy makers. While issue saliency alone does not necessarily lead to policy outcomes, the increased attention can lead to increased debate and influence political elites, which can lead to policy development.

To make such an assumption and claim, content analysis has been employed. Mayhew (2000) utilized content analysis of secondary source material to develop a dataset of congressional actions over a 200-year period of time. Binder (2003) examined newspaper articles over a 50-year period to argue that attention of an issue in the New York Times editorial pages illustrated issue saliency. In this way, Binder was able to successfully argue that congressional agenda items were based around issue saliency from public attention vis-à-vis the press, and to examine if legislative actions were taken. My approach is that press attention is a proxy variable for societal demand, so that increased press attention on an issue builds issue saliency. If press attention grows over the period of time under examination, then the saliency of the issue grows reciprocally, allowing an argument that societal demand has shifted. As Peter Hall stated, “The press is both a mirror of public opinion and a magnifying glass for the issues that it takes up” (Hall 1993, 288). Content analysis of news stories provides the empirical foundation from which to make these claims. Additionally, archival research has been conducted from multiple sources and secondary source material has been
utilized.\textsuperscript{4} The newspaper stories, primary and secondary source documents offer the ability to recreate events and perspective of the time to provide for shifting societal demands centered on the issue of government secrecy and public access to records.

One additional point must be addressed regarding this argument. In the case of FOIA, the press acted as an interest group in favor of legislative action to curb executive branch secrecy. It was in the press’ own self-interest to advocate for change on this issue. This does not harm the assumption that increased press attention leads to issue saliency and shifting societal demand. As the press functions as the main conduit of information from and about government to the public, press attention on an issue, regardless of their reasoning or self-interest, still brings attention of the issue to the public. Therefore, public consumption of the issue becomes increased in turn with press attention, which builds issue saliency. Political actors often use press attention of an issue as a proxy of societal demand, therefore the media’s own advocacy for the issue only helps to increase the saliency of the issue in the eyes of the public and political elites. Within the continual interconnected double feedback loop, the press functions as an integral part of society with political actors engaged in an ongoing flow of information processes as a means to influence political outcomes. To put it another way, within the model the press and media function as the structure of the infinity symbol, serving as the main conduit of information to society from political elites and from society to political elites. Therefore the information flows function largely based on the press.

\textsuperscript{4} Archival research has been conducted at the LBJ and Ford Presidential Libraries, the National Archives in Washington DC, and the John E. Moss Collection at CSU Sacramento.
During this period of time, as the Cold War mentality began to take hold creating the new security state within the US, the role of the press as advocate for open records laws illustrate how the politics surrounding the issues of national security and government secrecy began to shift. In essence, the executive branch began to use classification of documents as a political tool against the press and Congress, in order to achieve its own political goals. The philosophical claims by the press of an inherent Constitutional right to government records vis-à-vis the First Amendment was now being blockaded by administrations claims of secrecy. Such executive actions incentivized the press, and the public and Congress along with them, to seek to counter such claims.

In examining the issue of government secrecy and the “paper curtain” deployed by the executive branch beginning with Truman and growing under Eisenhower, not all members of the press functioned as advocates for policies like FOIA. In a letter on August 8, 1957 from V.M. “Red” Newton, editor of the Tampa Morning Tribune and head of the Freedom of Information Committee for Sigma Delta Chi (SDX), to Sam Archibald, staff director for the Moss Subcommittee, Newton complains of difficulties in convincing Washington correspondents of the need for an open public records law.\(^5\) Newton goes on to describe specific instances of ridicule he had received from some reporters, including one who likened the work of the Moss Subcommittee to nothing more than politicians crying wolf, as there was no secrecy conspiracy. The exchange between Newton and Archibald illustrate that the press was not unified in support of and in advocacy efforts for legislation like FOIA. There is a sense of balance as some news

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outlets were more cavalier in their advocacy opposing government secrecy, while others felt concern over alienating officials and losing access, therefore providing the public with a measured sense of the issue as it was being debated during this period of time.

Methodologically, for the period of 1946 to 1966, a dataset of newspaper articles was collected from the *New York Times*, the *Washington Post*, the *Chicago Tribune*, and the *Christian Science Monitor*. The articles were coded based on two factors. The first is based on search term. For the purposes of this research, four search terms were used that are directly related to the development of FOIA. The four search terms used were “freedom of information;” “government secrecy;” “executive privilege;” and “John E. Moss.” Through archival research, these terms were recognized as widely used when referring to the issue at hand. Inductively, using specific terms allowed for a narrow search of newspapers to focus on the issue of FOIA development. Gathering and analyzing newspapers provides the ability to broadly examine any patterns of coverage over the 20-year timeframe, as well as obtain context that focuses on the specific debated being waged within society and government. Second, the articles were coded based on type, which allowed differentiating between front-page stories, articles, special features, editorials and op-eds, as well as other entries found in the newspaper that referenced a search term such as ads or presidential speech transcripts. In total, a

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6 I must thank TJ Pyche, my research assistant, for his tireless help with the collection of news stories and dataset creation. The terms were based on archival research, during the period under consideration, the first three terms were commonly used within the debates of the time, and the last is the focus on the main congressional entrepreneur (Chpt. 4) recognized as the driver of FOIA and chair of the House Subcommittee on Government Information.
dataset of 1364 articles was created that focused on the issue of government secrecy and access to information.\(^7\)

For a measure of balance reflective within the ongoing public debate during this period of time, two of the newspapers editors were active members of ASNE’s FOI Committee – the Washington Post and the Christian Science Monitor, while the other two papers – the New York Times and Chicago Tribune did not have prominent staff serving as open advocates. These newspapers were chosen as representative of large papers with high readership that had active Washington bureaus during the period under examination here.

**Societal Shifts Through the Freedom of Information Act**

For the legislative development period of FOIA under examination, my assumption was that press coverage would consistently increase over the 20-year period. Increases in press attention provide saliency of the issue, which can lead to momentum that develops into political action. The assumption was made that steadily increasing press coverage would provide increased societal demand for legislative action on a public records law, therefore the newspaper data would confirm a continual upward trend in coverage over the period. Following WWII, 1946 becomes the demarcation to understand shifting societal demand, which would be minimal to start

\(^7\) The dataset specifically excluded any news coverage of the United Nations “Freedom of Information Committee” that was active during the period of 1946 to the early 1950s in holding many conferences focused on the issue of press freedom. The UN was pushing for a freedom of information resolution in seeking all member countries to adopt a free and open press, based on the 1st Amendment of the US Constitution, as opposed to many countries that had state-control of the media. While this debate was heavily covered in the US press, it is not relevant for this research as my focus on the development of FOIA is centered on the core debate of public access to government information, not concerned with the debate over a free press. Although it could be argued that the UN debates informed the ongoing debate on government secrecy, only stories that were specific to the US context of press or public access to government information was included in the dataset.
and then steadily increase until final passage of FOIA in 1966, thus illustrating a constant growth in attention. Figure 2-1 provides the total dataset of newspaper coverage during the development period. As is evident from the data, as opposed to the initial assumption of a steady increase, the data instead almost resembles a standard bell curve. However, it is clear that press attention during the first few years was quite minimal before growing in the early 1950s and peaking in 1957. While the data peaked in the late 1950s, it did not drop back down to the low levels of coverage from the late 1940s. Instead, the amount of coverage begins to level off at a much higher level than before, showing a continued attention by the press, thus illustrating the continued saliency of the issue and a clear shift in societal demand.

The data in Figure 2-1 provides the broad pattern of press coverage, but one that counters my initial assumption. The press began to mobilize on the issue of government secrecy by the late 1940s as several states had already passed public records laws. The push began for a public records law at the federal level that would open the executive branch to access from the press and public. The Administrative Procedures Act of 1946 contained a section detailing access to government records that was vague in its language, providing a narrow definition used by the president and executive branch actors. In 1951, President Truman issued Executive Order 10290 establishing guidelines for the executive branch on making information public out of national security concerns. President Eisenhower continued in 1953 with Executive Order 10501 that

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further tightened executive branch control over access to public information.\textsuperscript{9} In 1954, Eisenhower formed the Office of Strategic Information (OSI) within the Commerce Department in November of 1954\textsuperscript{10}. The justification was to create a central office within the executive branch that could screen information and work with the business community to ensure that unclassified strategic data would not be made available to foreign nations that would use the information against the interests of the US. The policies of OSI spread across all executive agencies, especially the Department of Defense, which helped to create a culture of secrecy and caution among agencies when dealing with the press or anyone seeking specific information. In April 1955, Secretary of Defense Charles Wilson issued a directive to government officials and defense contractors that they must limit any public information activities, and that for any information from the Defense Department to be made public must meet security requirements and make a “constructive contribution” to the Defense Departments efforts (Foerstel 1999, 20).

The efforts of press groups like ASNE and Sigma Delta Chi helped to create press coverage that was evident in the newspaper dataset, whereby members of the press covered these organizations as an interest group in pushing for legislative action on what was deemed by some to be executive abuses of power. Congress responded in 1955 with the creation of the Government Operations Special Subcommittee on Government Information, chaired by Rep. John E. Moss (D-CA). Creation of what would

\textsuperscript{9} A more thorough discussion on the use of executive privilege by the presidential administrations during this period is the given in the next chapter.

\textsuperscript{10} Department Order No. 157, Department of Commerce, Nov. 1, 1954. Freedom of Information Act – Legislative Background – Legislative Proposals, 1955-1957 [Folder 1 of 2], Box No. M-186, National Archives, Washington DC.
become known as the Moss Subcommittee institutionalized the issue of government secrecy and access to information, providing the press groups and ally in Congress, and the media in general a congressional committee to focus upon. The first attempt of Congress to address the issue legislatively came in 1958 with a bill to amend the “Housekeeping Statute” (5 U.S. Code 22), which was part of the Housekeeping Act passed in 1789 that helped create the Bill of Rights (Foerstel 1999; Archibald 1993). The statute allowed for federal departments and department heads, “to prescribe regulations, not inconsistent with the law, for the government of his department, the conduct of its officers and clerks, and the custody, use and preservation of the records, papers and property appertaining thereto” (Foerstel 1999, 33). Administration officials frequently cited the Housekeeping Statute and executive privilege when refusing to make information public or available to Congress. The bill passed and was signed by Eisenhower, who issued a signing statement asserting continued executive privilege to withhold information from the public for national security concerns.

Figure 2-2 illustrates the same newspaper data, but showing coverage of the issue based on each individual newspaper. Examination of the data illustrates that the Washington Post provided the largest amount of coverage of the four newspapers. During the early period, J. Russell Wiggins served as the managing editor of the Washington Post and as chair of ASNE’s FOI Committee, which can account for the large amount of coverage, coupled with the Washington Post’s overall focus on politics. The data illustrates the same overall trend as the previous figure but provides additional analysis to show how coverage shifted during the period for each paper, but also showing moments of increased attention to the issue at the same time.
Press coverage during the late 1940s was minimal, but what changed that would account for the rise in attention on issues of government secrecy, executive privilege, and freedom of information by the early 1950s? Press attention on freedom of information during the late 1940s was generally centered on the United Nations (UN), which had formed a freedom of information committee that examined the need for all member countries to have a free and independent press as opposed to state run media. A story from February 25, 1946 in the Christian Science Monitor discusses that ASNE had taken the lead in forming a World Freedom of Information Committee in conjunction with the UN to push for greater press freedom. The story states, “While the issue of world freedom of information is wholly supported by the United States Government, by the American press and radio and has almost universal approbation of American public opinion, the approach to it on the part of some governments is, to say the least, apathetic.”Nearly a year later, an Associated Press story run in the Christian Science Monitor would discuss how the US delegation to the UN was taking the lead in efforts to push worldwide freedom of the press.

ASNE took a lead role in pushing for global press freedom during this period, but this work would lay the foundation for their inward turn towards to problems of domestic access. In many ways, the fight over open records laws in the US began as a global movement for greater press freedom. As the US delegation to the UN, and press associations like ASNE were arguing for global press freedom, the First Amendment

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served as support of their superior moral position. However, in the new Cold War mindset, the executive branch began to close down channels of information. An editorial from January 1947 in the *Washington Post* discussed leaks of government information and how the new Secretary of State was seeking to stem such leaks. The editorial ends by asserting that the only way to prevent mischievous leaks was by full freedom of information directly from the government.\(^\text{13}\) The intention of this editorial helps to illustrate the shifting perspective both among the public and in the press over the need for increased access to government records and growing concern over executive action.

Basil L. Walters served as ASNE’s Chairman of their standing Committee on Freedom of World Information, and within this role, he noted a rise in problems domestically. In October 1948, he noted,

> It seems to me our responsibility lies in the domestic as well as the international field. I have noted a tendency of some officials in some of the smallest government units, as well as the largest, to forget that they are servants of the people and to act instead as though the taxpayers were their servants. Our duty as newspaper men, I believe, is to act always as the eyes of the American public and to keep an eternal spotlight of publicity on all servants of the people (Cross 1953, xiv).

Press organizations like ASNE began to understand the changing societal conditions of the new Cold War mindset as a call to campaign for increased attention to the issue and access to government records. For members of the press, like Walters or Harold Cross, the fight for access to public records was rooted in the First Amendment, allowing for an argument to be made that freedom of information was a civil liberty protected by the Constitution.

Going forward, the press then functions as an interest group within the ongoing debate. As an interest group, the press is uniquely situated to have an impact greater than others. Members of the press, as individuals and as groups, are able to make such arguments in advocating for open public records directly to lawmakers, while simultaneously providing increased attention to the public through news stories and editorials making the case of both a problem and a solution. The press can argue to society and political elites that a constitutional right is being infringed upon to increase attention to an issue while being able to argue for potential solutions to the issue. Within the background lens, shifting societal demands as measured through increased press attention becomes amplified through an enhanced echo-chamber effect when the news industry itself begins to advocate for policy solutions to perceived problems. That is not to allude that the press was creating a problem in order to pursue a solution. However, the issue surrounding government secrecy and access to information would grow, in part, due to the continued problems the media would face in gaining access to government information.

The *Christian Science Monitor* ran a special story in March 1949 titled, “Responsibility of Press Cited by Monitor Editor,” which contained large excerpts of a speech given by Erwin D. Canham, editor of the *Christian Science Monitor* and current ASNE president.\(^\text{14}\) Much of the commentary focused on the role of the press in being objective in the face of changing conditions in order to serve the public interest. Canham notes, “The important point is not what American newspapers say on their

editorial pages, but what they say on their front pages." Canham makes a strong argument in favor of the role of the press within American society to provide objective interpretation of the news as a necessity for a shifting American public and a changing news media taking advantage of technological advances. Much of the press coverage in the late 1940s and from secondary accounts discuss this period as an incubation of the issue, with the press beginning to understand how to utilize the First Amendment argument of a free press responsible to the public in order to counter government intransigence towards public information (Cross 1953; Foerstel 1991). These struggles would become more endemic by the early 1950s with the end of the Truman administration into the Eisenhower administration, which helps explain the low attention levels in the data followed by relatively sharp uptick in attention.

The increase in press attention in the early 1950s was not just due to improved advocacy campaigns from press associations. The shifting amplification of advocacy that began to attract enhanced societal attention was a response to an intensification of executive branch actions to limit access to government information. In September 1951, President Truman issued Executive Order 10290 that established standards and classifications of government information providing direction for all executive branch agencies to follow when dealing with the press or public.\(^{15}\) Truman argued the purpose was to protect the security of the country by protecting and safeguarding official information that could jeopardize national security.

The press did not respond favorably to Truman’s executive order. A story in the Christian Science Monitor a few days later quotes James S. Pope, Chairman of ASNE’s FOI Committee as stating, “It is impossible for our committee to challenge a genuine effort to protect military security. However, we do not believe that the President’s order will protect security as much as it will smother legitimate information about the operation of government.” Pope makes the argument that ambiguity in the order will lead to confusion over what information should be kept secret or classified as it represents a security threat if made public. The vague wording of security, coupled with the inability of most agency employees to comprehend the technical nature of the information will lead to a system where most, if not all, government information is considered classified or secret. Pope also notes the difficulty in having no means to appeal an agency decision classifying information, except to convince those officials who classified the information to begin with. News stories and editorials from other papers, like the Washington Post and Chicago Tribune echo the sentiments made by Pope.

Truman’s response to press agitation over his executive order was less than graceful. He responded to criticisms from the Associated Press Managing Editors Association (APME) by stating that the press intends to “carp and criticize” instead of being helpful. Truman argued in a series of letters of APME that they were invited to contribute input to the crafting of his executive order, which was rebuffed, and now met with complaining instead of constructive feedback. APME responded back with claims


of presenting Truman with resolutions passed by their organization prior to his executive order that were ignored. The tone of the exchange, while diplomatic, belied growing frustration between the president, who viewed national security concerns as far more important than press calls for an inherent constitutional right to access government information.

Heading into Truman’s last year in the White House, the press continued to build its case with the American people over criticism of secrecy policy. In March of 1952, the Christian Science Monitor began a series of stories focused on the issue of freedom of information. The lead story of the series discusses instances of corruption and abuse of power from officials at all levels of government, focusing on how the press was kept in the dark due to official policies. The story utilizes such language as to invoke the fight over freedom of information as a battle for essential American liberties. The story states, “The newspaper fight to smoke out tendencies toward censorship – except on matters involving the nation’s security – is commonly known as a battle for ‘freedom of the press.’ It is far more. It is a fight for freedom of information for every individual American.”\(^\text{18}\) The story continues by quoting James Pope as stating, “When news is suppressed, all the newspapers lose is a story. But the people lose touch with and control of their government.”

More and more the press began to respond to presidential actions limiting access to information. The framing used by the press touches on themes related to the First Amendment, and expanding the understanding that freedom of the press was vital to

keeping society informed and democracy functioning. In part, the press was responding to expanding executive power. In April 1952, the New York Times ran a front page story detailing a vote by the American Newspaper Publishers Association condemning Truman’s seizure of the steel industry and his statement that he had similar power to seize the press.\(^{19}\) Expansions of executive power, actions as justified through claims of national security concerns, left the press feeling vulnerable as there were no policies in place to offer protections or access. Executive authority would continue to be the theme that the press would utilize as the issue moved forward into the Eisenhower administration.

By June of 1953, the Eisenhower administration was moving towards amending Truman’s executive order detailing public access to records and censorship. Acknowledging problems with Truman’s executive order, Attorney General Herbert Brownell Jr. discussed the need to update how executive agencies handled information and relationships with the press. Brownell noted the importance of ensuring secret information remain so for national security, but also mentioned receiving suggestions from numerous agencies and members of the press on how to better manage security concerns with democratic governance that included a free press.\(^{20}\) Recognizing the growing tension with the press, Eisenhower took steps to release the text of his executive order on his security-information policies prior to officially issuing and


implementing the order. Eisenhower’s statements to the press centered on striking a balance between the need for secrecy and the openness as demanded by the press.

The Eisenhower administrations early maneuvers to head off press complaints and negative attention demonstrate how the issue was gaining saliency among the public, and in particular among the press. Eisenhower sought to defuse attention and gain favor among the press, but at the same time, he never conceded that his administration would be more open due to continued concerns over national security.

As the data in Figure 2-1 illustrates, this period saw a dramatic increase in attention to the issue of freedom of information and government secrecy. This was driven by the continued squabbles as demonstrated by Eisenhower’s attention early in his presidency, followed by issuing an executive order seeking to balance the press concerns with his for security.

On November 5, 1953, Eisenhower issued Executive Order 10501, titled “Safeguarding Official Information in the Interests of the Defense of the United States.” The order was met by the press as a step forward from the Truman order, believed to better balance access with security. Editors and press associations alike expressed gratification towards the Eisenhower administration in rolling back “Truman’s rigid public information restrictions.” The Washington Post ran a front page story praising

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Eisenhower for taking action, “to make it possible for our citizens to know more of what our government is doing.” 24 While the press largely praised Eisenhower’s order and the intent behind it, they also noted that continued vigilance was needed to ensure that such openness and access would be implemented once the order went into effect.

The good will Eisenhower’s executive order created with the press was short-lived. By January 1954, a freshman member of Congress from California, John E. Moss began seeking specific details surrounding Eisenhower’s firing of 2200 federal employees over security concerns. Moss, a member of the House Post Office and Civil Service Committee was concerned over clarification of administration activity surrounding its new security program, under which the layoffs occurred. 25 Moss, and his Senate counterparts, were troubled with the increased executive authority as justified for security purposes that the administration had taken in this case. To Moss, it seemed that any behavior – drunkenness, homosexuality, over-talkativeness – were reasons for dismissal from government employment, but do not constitute a security threat. 26 This episode serves as an example of the increasing scrutiny the Eisenhower administration would begin to come under from Congress in particular. Additionally, until this time, it was not out of the ordinary for executive branch agencies to fire employees for social behavior that were out of the mainstream, and use the excuse of security concerns. This is the very issue that Moss and the committee began to push back against, in


26 Ibid.
attempting to force the White House to justify actual security concerns versus merely taking action against those not in the norm of conventional society at the time.

Within the CLD cycle, this marks a critical juncture for two reasons. First, this instance marks the first time that Rep. John Moss is mentioned in the press for a congressional investigation related to the issue of government secrecy and freedom of information. As Chapter 4 will illustrate, Moss serves as the key power entrepreneur in Congress surrounding the legislative development through final passage of FOIA. This exchange in particular, during the course of a committee investigation will serve as a moment when the issue strikes as important with Moss, demonstrating the need for a public records law that will provide information to Congress and the public, while also serving as a check on expanding executive power.27 Second, this episode marks the first clash between the Eisenhower administration and Congress over the issue and definition of government secrecy and what authority the president has to take action. Together, this moment in 1954 demarcates the start of the CLD cycle as it pertains to the legislative development of FOIA.

By November of that year, the Eisenhower administration had moved even further towards institutionalization of security controls on information with the creation of OSI in the Commerce department as described earlier. The press hit back at the administration, calling the creation of OSI and the rules promulgated within as, “the most serious threat to freedom of information that has developed in the Eisenhower

Administration.” The press associations involved became more vocally active in calling for a legislative remedy, and in asserting the best way forward was, “through an aroused public opinion.” Press associations like ASNE, APME, and Sigma Delta Chi grew more verbose in declarations of press censorship as being detrimental to a democracy and decidedly un-American.

The rapidly devolving situation between the Eisenhower administration with members of the press and Congress helps to explain the increase in the press data from Figure 2-1, showing another dramatic increase in coverage coming in 1955 and 1956. Spring of 1955 provides another critical junction within the CLD cycle and in the evolution of the development of FOIA. The mid-term election of 1954 brought about a power shift as the federal government moved from a unified Republican government, to a divided government with the Democrats in control of Congress and Eisenhower in the White House. The partisan shift gives the press increased leverage as the Democratic majority in Congress will be far less tolerant of Eisenhower's claims of authority in controlling information.

A Senate hearing in March, led by Senators Hubert Humphrey (D-MN) and A.S. Mike Monroney (D-OK) examined secrecy and security policies in the Eisenhower administration, finding that there was a “growing tendency” among agencies to withhold

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information despite the executive order from November 1953.\textsuperscript{31} The administration response to such congressional scolding was detailed in news stories describing Eisenhower’s irritation with continued press exposure on Pentagon programs, leading Secretary Wilson to issue a “gag rule” memo tamping down on any information flowing to the press from the Defense Department (DOD).\textsuperscript{32} Wilson put restrictions in place, demanding that the press demonstrate how any DOD information would be useful or valuable, and should be constructive for the public without damaging national security. The press response was one of outrage, stating, “it was up to the people, not the Government, to decide was is ‘useful’ or ‘interesting’ in the field of information.”\textsuperscript{33}

The congressional response was the institutionalization of the FOI issue with the creation of the Special Subcommittee on Government Information in the House of Representatives, chaired by Moss. Within the CLD cycle, this is the critical juncture that places FOIA squarely into the legislative development phase, as Congress had now created a venue for policy development. A New York Times story on the creation of the Moss Subcommittee details comments from Rep. William Dawson (D-IL) Chairman of the Government Operations Committee who discussed how agencies and departments have been withholding information to the public, the press, and congressional committees. Dawson also noted, “that pressures of various sorts been applied by


Government officials to restrict the flow of information and the exchange of opinion outside government.” Moss described his subcommittee as taking the perspective, “that Federal agencies don’t have to spoon-feed the American public.”

The Moss Subcommittee began its maiden investigation into executive control of government information. The initial forays of the subcommittee focused heavily on discussions and hearings with members of the press. The active press associations contributed heavily, as well as specific individuals such as Harold Cross. As the Moss Subcommittee brought Congress into the ongoing fight the press had been waging for nearly a decade, the cooperative relationship seemed natural. In a series of letter exchanges between Sam Archibald and James Pope in September 1955 detail plans and strategies of the subcommittee working with press associations, like ASNE, to help influence public opinion and pressure the administration. Included in their discussion is a focus on how individual members of the press have been pressured by agencies and threatened with being cut-off from sources if they support efforts to ease restrictions. Archibald tells Pope that not only will the subcommittee need increased support from the press, but also increased support within Congress. These early strategy discussions are demonstrated by the rise and peak of press attention into 1957 and 1958 as the


Moss Subcommittee would investigate and hold hearings, all while constructing a policy solution to the problem.

The attention of the press and the subcommittee turned towards amending the Housekeeping Statute of 1789 as described earlier, as a legislative solution to end administration restrictions. The press continued to focus on secrecy policies and the withholding of information, particularly through OSI, while Moss would use his subcommittee chair to draw attention in Congress and urge both parties to make FOI a plank in their platforms for the 1956 election. Negative press attention on OSI increased with more than a dozen stories in 1956 alone. The press associations continued their attacks bolstered by having a congressional subcommittee investigating and offering material to the press detailing continued OSI restrictions.

The spike in press attention of 1957 and 1958 were fueled by two factors. The first was the battle to shutdown OSI, which culminated in April 1957. The demise of OSI came through the House Appropriations Committee that voted to remove all funding for OSI from the president’s budget proposal. Moss notes that his subcommittee had recommended to abolish OSI the previous year and states,

I compliment the Appropriations Committee for its action in deleting this item for an agency which in exhaustive hearings was unable to say what it was doing or what it hoped to do. It seemed to lack either policy or program.\(^\text{38}\)

The House would vote a few days later on the appropriations bill that would outright kill OSI, putting an end to the short-lived office, which was announced as officially closed in

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June. While Moss and his press allies viewed the shuttering of OSI as a victory and a necessary step forward, closing OSI was by no means an end of the fight. Moss and his allies in Congress knew that a solution to excessive secrecy from the executive branch would only come through a legislative outcome, which was already underway.

The second factor was passage of the Housekeeping Amendment statute. In January of 1957, the Moss Subcommittee and the Senate Committee on Constitutional Rights, chaired by Sen. Thomas Hennings Jr. (D-MO), jointly called for legislative action to amend the Housekeeping Statute of 1789, which would change administration record keeping in the hope of removing barriers of access to information. With the continued expansion of restrictive policies under Eisenhower, Congress became more assertive in seeking to clarify secrecy policies in statute. The press would continue to aid in this endeavor by offering examples of administration excesses over national security concerns, like the press blackout of Eisenhower’s inauguration oath-taking ceremony. Congressional Democrats blasted Eisenhower’s press exclusion saying it was a, “gross neglect of essential functions of information.”

The press would continue its increased attention during this period as evident in the data. With the cooperation of Congress in helping turn FOI into a solid political issue, the campaign for legislative action would continue to build. The Moss Subcommittee would hold hearings and release reports that were covered by the four

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newspaper outlets covered in the data, and by a host of others. The active press associations would continue to issue reports of executive branch abuses of secrecy, combined with the investigative power of the Moss Subcommittee began to lead toward change. As the offices of OSI became shuttered, the Defense Department would acknowledge and offer to change its policies on press restrictions as had been dictated in the Wilson memo from 1955.

In April 1957, another juncture in the CLD cycle is marked when Moss and Hennings introduced legislation targeting restrictive information policies. The New York Times ran a special feature on the legislation, citing the months of investigations and hearings conducted by the Moss Subcommittee and its counterpart in the Senate. Moss is quoted in the story as saying,

> Federal agencies have seized on certain words and phrases in the law to keep information secret, not only from the public, but from Congress. This is a tortured interpretation of a law intended to make information available.

In covering the pending legislation, the Washington Post quotes Defense Secretary Wilson calling the draft legislation unconstitutional as it, “ignores or seeks to repeal the Constitutional separation of powers which nearly 170 years of experience has demonstrated to be one of the keystones supporting our great form of Government.”

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42 Within the record at the John E. Moss Archive and the National Archives are folders of press clippings during this period. With the interest group activity of the press, especially with support from associations like ASNE, APME, and Sigma Delta Chi, there were numerous reporters, editors, and media outlets in support to congressional actions to stem press restrictions, therefore coverage became widespread increasing the information flow to society driving a demand for change.


Wilson would assert in widely distributed press release that, “The Subcommittee’s implication that the Secretary of Defense has improperly established policies for denial of information to the Congress the contrary to the facts.” Moss responded by noting the legislation would remove barriers and, “weak excuses to disregard the public’s right to know.”

The press continued to draw public attention during the legislative battle in Congress by utilizing statements from Moss and other congressional supporters. The Christian Science Monitor opened a story in May with a direct quote from Moss stating, “Arbitrary secrecy in government is a threat to our liberties no matter whether it occurs on the town, state, or federal level.” This type of rhetoric was endemic in the press coverage of the time, illustrating how the issue tied into American’s basic ideals of freedom and liberty. The Eisenhower administration would counter such claims as continuing to refer to any legislative proposals as unconstitutional. During July hearings before the Moss Subcommittee that year, 11 cabinet agencies and the Bureau of the Budget provided written statements strongly opposing the amendment to the Housekeeping Statute. The main reasons cited dealt with limiting executive discretion, national security concerns, and a congressional power grab.

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The constant coverage of the back and forth between Congress and the president would continue into the next year, when in March 1958, the House Government Operations Committee passed the Housekeeping Statute amendment. The full House would pass the amendment by voice vote the following month. Coverage in the press cites concerns from Moss that passage of the bill was merely the first step in seeking to end overly burdensome policies restricting the flow of government information. The Senate would, without dissent, pass the bill in August sending it to Eisenhower for his approval. Attorney General William P. Rogers called the bill meaningless, noting that the Housekeeping Statute was “legislative recognition of the executive privilege,” which provides the president the ability to withhold information as deemed necessary in the public’s interest. Eisenhower would sign the bill, but issued a strongly worded signing statement reiterating the president’s authority of executive privilege under the Constitution.

The peak in press attention illustrated in Figure 2-1 revolved around the early congressional actions resulting in the passage of the first policy aimed at curbing information restrictions. The natural relationship between the press and members of Congress, in particular Moss, helped solidify a coalition of support that would continue.


to draw public attention to the issue, even as political and policy agendas would shift. As evident in the data, attention on the issue began to decline following 1958, although the levels of attention would remain far higher than they did in the late-1940s. While recognition of the failure of the Housekeeping Statute amendment to provide the desired effects would keep the Moss Subcommittee busy into the next decade, the press coalition, while still strong, would begin to focus on additional issues demanding attention, such as civil rights.

The election of John F. Kennedy as president, brought into focus a tumultuous time within society as issue of race, equality and social justice began to demand societal and political attention. Coupled with these factors was the political reality of a unified Democratic government, leaving congressional actors like Moss in a precarious position, as attacking the president was not seen as a viable strategy. The push for FOI during this period fits with movements towards social justice, as the rhetoric used demonstrated the inherent constitutional rights to government information as asserted by the press and many political actors. Beyond the press assertions of a constitutional right inherent in the First Amendment, FOI fit with the larger social justice policy agenda as it sought to redefine the relationship between the people and government through allowing public access. Although when compared to legislative actions like the Civil Rights Act, the Voting Rights Act, and Medicare, claims of FOI being a social justice issue seems truncated. This did not dissuade the press from continuing to drive public opinion on the issue, assisting Moss in his efforts as moving policy solutions forward, culminating in passage of FOIA in 1966.
The role of certain members of the press and press organizations would be tested during the final months before passage of FOIA, and in particular during the brief time after the legislation passed Congress and was awaiting President Johnson’s signature. The members of the press acting as advocates during this period would seek to keep pressure on the Johnson administration, while working with members of Congress in support of legislative solutions. Under unified Democratic government, the press found new allies in congressional Republicans, who began to attack the positions of the Johnson administration on government secrecy and executive privilege. In early 1966, Representative Donald Rumsfeld (R-IL), a member of the Moss Subcommittee, in discussing the Senate passing a FOI bill, was quoted as saying,

Every witness who testified supported this legislation, except for every single witness sent to testify for the President on behalf of the Executive Branch of the Federal Government…The Executive Branch has been working for complete revision of the bill which would amount to a total concession to the Executive by codifying congressional support for executive secrecy under the concept of executive privilege.53

Rumsfeld’s comments were on the heels of similar attacks on the administration from the RNC and House Minority Leader Gerald Ford, who lamented Johnson’s arrogance for refusing to support FOI.54

With ongoing coverage into the final months, Congress held sway by asserting public support behind the legislation in order to counteract administration claims of the unconstitutional nature of the legislation. Simultaneously, press organizations would continue to advocate for passage of FOI legislation, much in the same manner as they


had been. Continuing to place pressure on the administration, groups like SDX would blast President Johnson for trying to, “warp the proposed Federal public records legislation into an almost unlimited authority for the President to establish broader secrecy practices.”

The final version of FOIA passed the House in June 1966 and was sent to Johnson for his signature. A few days later, Congress adjourned for a 4\textsuperscript{th} of July recess, giving the president 10 days to sign before the bill would be pocket vetoed. This gave a final push for the press advocates to express both their desire for the president’s signature and to reiterate the support from the general public as well. Bill Moyers became Johnson’s press secretary in the summer of 1965, and he notes that shortly after taking over that job, he began to meet with Russ Wiggins from the \textit{Washington Post} and several of his colleagues to push the administration forward on FOI legislation.\footnote{Promoted by these meetings, Moyers and his assistant began to dig into the issue, discovering that the DOJ claims of unconstitutionality were far more ambiguous and open to interpretation. In a memo to Robert Kintner, LBJ’s Cabinet Secretary, Moyers provided a copy of the Associated Press Media Editors (APME) red book from 1960, which detailed a speech Johnson gave the organization prior to his assuming the role of Vice President.\footnote{Memo to Robert Kintner from Bill Moyers, May 28, 1966. Folder: LE/FE 14-1; White House Central File, Subject File - Box 44. LBJ Presidential Library, Austin TX.}}


\footnote{Interview with Bill Moyers, conducted via email between March 17, 2015 and May 5, 2015.}
public informed and government officials on their toes. Moyers recommended in his note that LBJ should reflect on this speech in preparation for a signing ceremony or statement on FOIA.

In the days just prior to LBJ’s signature on FOIA, Moyers notes encouraging his friend, Eugene Patterson, executive editor of the *Atlanta Journal-Constitution* in late June to reach out directly to Johnson to help “bolster his resolve” in signing FOIA. Similar measures by numerous other press members were undertaken in late-June and early-July as telegrams, letters, and phone calls poured into LBJ’s Texas White House. Many press associations and editors sent in resolutions of support for the president’s signature on FOIA and offering praise to Johnson for his willingness to take such a historic step in signing a public records bill into law. On July 2, ASNE President Robert Notson sent Moyers a telegram noting multiple stories reporting concerns over the freedom of information bill lapsing within two days unless Johnson signs. The pressure from the press was tangible and growing louder by the day. The excessive drumbeat from the numerous members of the press helped persuade Johnson to sign FOIA on July 4, thus demonstrating the ability of the press to channel societal demands, along with their own, in favor of a policy outcome.

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58 The LBJ Library archives contained letters, telegrams, and correspondence to the administration during this period from such groups as ASNE, the Illinois News Broadcasters Association, the New York State Society of Newspaper Editors, the National Newspaper Association, the American Newspaper Publishers Association, the Illinois Broadcasters Association, as well as editorials from the Indianapolis Star, The Dallas Times Herald, The Arizona Republic, the New York Daily News. This is a small sample of correspondence from the press in placing pressure on LBJ to sign FOIA.

59 Western Union Telegram from Robert Notson to Bill Moyers, July 2, 1966. Folder: LE/FE 14-1; White House Central File, Subject File - Box 44. LBJ Presidential Library, Austin TX.
Press coverage as issue saliency and as a proxy for society demand remains valid, particularly with the lack of survey data to bolster this case. Public survey data did not track the issue of access to government information or government secrecy. Due to the period of time under examination, most survey data did not exist in valid form to trace public opinion until the late 1950s. In fact, data from the American National Election Studies (ANES) did not ask its first question on government trust until their 1958 survey, and then again not until 1964, making these data relatively useless to understand shifting societal demand during this period. Therefore, press attention to the issue serves as the best means of support to understand that increased attention serves as a driver for societal attention. However, there is some data available to help illustrate public opinion during this period. A Gallup Poll from July 1947 asked respondents, “Do you think our Government is giving the people all the important facts about world conditions today, or do you think the Government is holding back on a lot of important information which the people ought to have?”\textsuperscript{60} The results found that 59 percent of respondents believed the government was holding back information to only 18 percent thinking the government provided enough. A follow up question in the same survey asking respondents what they would like more information from government information on, 63 percent of respondents wanted more information related to Russia, Communism, Foreign Policy and Foreign Affairs.\textsuperscript{61} This survey data supports the


saliency of the FOIA issue at this time, illustrative of society and government’s struggle to cope with the new politics of the Cold War.

However, the public survey data provides mixed signals surrounding the issue of government secrecy and public access. A Gallup Poll from June 1954 asked, “Government employees are not permitted to reveal secret or confidential information – even to members of Congress – without permission. Do you think this is a good rule or a poor one?”62 A whopping 77 percent of respondents thought this was a good rule. The question belies the efforts of press groups like ASNE at the time, and with the creation of OSI, the Eisenhower administration continued to press the need for national security as dominant to public access to information. The other misleading aspect of this question is the wording of “secret or confidential information” which can skew the results, as most logical respondents would believe that secret or confidential information would betray national security interests if made public. However, much of the work of the Moss Subcommittee in the years following this survey provided details that the executive branch was using the “confidential” or “secret” stamp on information completely unrelated to national security interests. Additionally, Pew Research Center data, in conjunction with ANES data, demonstrates that public trust in government during the period of FOIA development was high. In 1958 under Eisenhower, the national average was 73, moving up to 77 in 1964 before dropping down to 65 in 1966.63 The Drop in public trust in government from 1964 to 1966 provides support for

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the final push for FOIA. However, using public trust as a proxy variable for public support for government secrecy is problematic, especially considering what was happening during this period.

**Conclusion**

The data then becomes mixed. A small sampling of survey and polling data gives a measure of indication of public support for a public records law like FOIA, although with no real public survey datasets to utilize that consistently cover the twenty-year timeframe, the proxy variables are too problematic to use other than in offering a brief snapshot of a particular moment.⁶⁴ As demonstrated, the newspaper dataset remains the strongest measure by providing issue saliency and increased public attention that drives a shift in public demands. Press attention to the issue begins slowly, then rapidly peaks in the late-1950s in conjunction with the institutionalization of the issue in Congress, followed by the initial legislative action. Shifting societal focus to additional social justice issues by the early-1960s begins to control greater press attention, but as the data illustrates, there was consistent continued attention to the issue through the final passage of FOIA in 1966. Once societal attention led to shifting demands, as demonstrated through the press coverage in the 1950s, the demand remained in place at consistently higher levels than previously, regardless of attention also focusing on larger issues of social justice.

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⁶⁴ The records at the John E. Moss Archives and the Moss Subcommittee records at the National Archives are filled with dozens of letters from citizens to Moss and the committee asking for help in retrieving government information that was being denied to them from various executive branch agencies. The letters illustrate not just individual issues with accessing government information, but an anachronistic system that citizens would have to use in attempts to retrieve records from government agencies with no appeal or adjudication process leaving citizens to petition Congress.
Shifting societal demand, however, does not provide a complete perspective on how transformative policy develops towards institutional reform. This chapter has established the first dimension of the model, the first loop in the double interconnected feedback loop. It is now possible to understand how an issue can take form within society leading to shifting demands for political action to address the problem. Clearly from the data above, increasing restrictions on government information from the executive branch had achieved a coordinated response from the press and finally from Congress as the national security justifications presented from administration officials and the president no longer held sway against shifting societal demands to balance credible national security threats with demands for access to information. There became a constant demand for change from the first loop comprised of society that continuously fed into, and responded to, the second loop of political actors. Now that the background perspective has been offered, our attention turns to the synthesizing dimension of the model, understanding how the introduction, processing and usage of new information creates flows between the two sides of the double loop.
Figure 2-1. Total Newspaper Stories - 1946-1966. N = 1364

Figure 2-2. FOIA News stories by paper 1946 - 1966
CHAPTER 3
THROUGH THE SYNTHESIZING LENS

Information Flows and New Cognitive Paradigms

The previous section provided insight into how shifting societal demands influence politics by giving saliency to issues that drive public demands for political change. The connecting feature of this research is a lens of social learning that has the ability to illustrate the connections between the background of society and the foreground of politics – the two parts of the interconnected double feedback loop. Through the introduction, processing, and usage of new information and ideas, the views of society can shift to demand action on issues as was relevant from the press data, and political actors are able to drive policy agendas, increase saliency on issues, and coalition build. The flow of information between the background and foreground form the structure of the infinity symbol in the model of our interconnected double feedback loop. A lens of social learning then allows us to examine how new ideas and information are utilized by citizens and political actors to address new societal problems within a political framework. The information flows form the connective bonds between the two loops of society and political actors. New information is processed and utilized by both to develop continuous feedback and momentum on new policy ideas.

As discussed in the previous chapter, following WWII society and government was trying to grapple with the politics of the Cold War established through the new global political order of the post-war world. Control of information became paramount for a government faced with global threats that saw national security concerns in every aspect of government, while attempting to align the new security state with the democratic values of a constitutional society built on the ideals of inherent freedoms and
a right of citizens to know about government actions. The legislative development of
FOIA was the tool political actors used to address this new societal problem. One
aspect provides for the press functioning as an interest group in delivering increased
saliency of the issue amongst the citizenry. It becomes important to then understand
how the idea for FOIA is formed into policy, and how new information is processed and
used within a political context that carries the continual flow of information through the
double feedback loop. The worldview and thinking of the previous political paradigm –
the one prior to and through WWII – becomes outmoded after the war. In order for
politics and society to address the new Cold War paradigm, thinking about the
appropriate balance of security to liberty must change, meaning the role of government
must change.

Social learning is a concept that provides a way to understand a change in
thinking. Dodd uses a social learning perspective to understand the genesis of the
Republican Revolution of 1994, noting how paradigm shifts driven by altering societal
conditions, or social crises, and outmoded political thinking lead to the construction of
new governing paradigms through a social learning process. Dodd states, “Each
generation must develop a realistic understanding of how best to balance personal and
collective well-being within its particular historical conditions” (Dodd 2012, 303). As
either social or political change unfolds, often the means of addressing problems that
arise from change no longer function appropriately. These political means are now
based on anachronistic thinking. New information can then be utilized in the
development of ideas to address new problems. It is the introduction of new information
that brings about a change in thinking through social learning.
To provide a more precise definition of social learning, I will borrow from Hall, who stated,

Learning is conventionally said to occur when individuals assimilate new information, including that based on past experience, and apply it to their subsequent actions. Therefore, we can define social learning as a deliberate attempt to adjust the goals or techniques of policy in response to past experience and new information. Learning is indicated when policy changes as the result of such a process (Hall 1993, 278).

Hall's definition provides the understanding that policy is often influenced or impacted by past policies, which allow the learning process to be pushed forward by key individual actors who possess issue expertise or political power, or both. The combination of understanding the inability of past policy or actions to address current demands combines with the input of new information to bring about a shift in thinking, whereby the learning process is detectable through a policy outcome.

Dodd and Hall use the scientific paradigm framework established by Thomas Kuhn (1970) as an analogy to understand a paradigmatic shift as resultant from a social learning process. Hall develops a model of three orders of learning, with first- and second-order learning being where the instruments and settings of policy will change through new information learning, but the overall goals remain the same. Third-order learning is relevant here, whereby the policy instruments, settings and goals change through the introduction of new information. This leads to a paradigmatic shift in the Kuhnian sense, as third-order change is reflective of a disjointed process associated with a break in the general continuities of the policy process (Hall 1993, 279). Dodd found a paradigm shift driven by unaddressed societal problems of post-industrial America fueled by the inability of the dominant majority party in Congress to develop policy to address on these problems. This led to the takeover of Congress by the
Republican Party for the first time in 40 years, which brought about political reforms of the institution of Congress itself. Hall found a policy paradigm shift through sociological and power dynamic shifts leading to changes in British macroeconomic policy-making of the 1970s and 1980s.

A Kuhnian-type policy paradigm shift is generally marked first by failure – failure of politics to address current societal demands, failure of past policy actions, failure of outdated thinking. The introduction of new information fuels the paradigm shift as it allows for the understanding of the failures and provides for action to address any issue at hand. In the case of FOIA, as established in the previous section, society and government were grappling with the new Cold War paradigm of figuring out how to balance security concerns with the need for an open flow of information to Congress and the public that values access to government information as a democratic value. The evolutionary development of FOIA during the Cold War period marks a third-order policy paradigm shift as the failure of previous policy and inability of political action to address the demand created by a need for increased government secrecy.

How then is this measurable? Borrowing from Hall’s definition, if we recognize that a social learning process happened through the passage and implementation of FOIA, then it becomes possible to work backwards to mark the policy paradigm shift as beginning in the late 1940s as the Cold War political climate escalated. To measure the learning process as it happened across the period of time under consideration, 1946 to 1966, I will utilize the debate surrounding the issue and usage of executive privilege by the president and administration members. Executive privilege is the claim by an executive branch actor, the president or otherwise, that would be invoked to avoid
making public any information that was determined to be harmful in the public’s interest. During this period, executive privilege was utilized to refuse information and access to the press. This was evident in the previous section as the lack of press access drove the concerns over government secrecy forward building the issue into a societal problem. Executive privilege was also utilized to keep executive branch information from members of Congress and congressional committees. The overuse of the claim by administration actors led to a constitutional power crisis as Congress was being stifled in its oversight ability, leading to growth of executive power at a loss to Congress.

Mark Rozell (2010) contends that executive privilege has constitutional foundations as the president has the right to keep certain information secret, but the solution to executive privilege issues is one that is born out of power struggles between Congress and the president. Executive privilege establishes a power dilemma between the branches of government, one that Rozell grounds in legal and constitutional justification. However, another aspect of the power struggle becomes pertinent here, which is the political argument.

The contextual aspect of executive privilege as provided by Rozell is useful, as the political argument is entirely focused on context. Discussions on the power dynamics between branches of government are focused on the malleable idea of power. The Constitutional power that separates the branches does so by creating a large grey area, an area that transforms over time. The contextual understanding of the political argument of executive privilege assertion is one where the president will continually assert executive privilege over making information public until another branch prevents the ability to continue to do so. The president can only make claims of
executive privilege until either Congress or the courts impede executive branch claims. It is in these moments where the context allows definition of the power being asserted, and then either upheld or removed. As will become clear, presidential claims of executive privilege in refusing to provide Congress requested information begins to shrink under increased congressional action at opposing such claims.

Executive privilege becomes the learning mechanism that drives social learning into a paradigm shift. Only by the president's continued and growing use of executive privilege, across multiple administrations, does Congress begin to learn the impacts such claims have on their own constitutional responsibilities, which have political ramifications. The president learns that use of executive privilege is acceptable until it is not, meaning that Congress or the courts provide a check on executive power. At that point, the president has the ability to simply alter the use of executive privilege and continue its use until such time that a check is provided again. Congress learns the denial of information by the executive branch through executive privilege claims builds a wall and prevents members from fulfilling their oversight function or constituent service. A social learning process happens as members of Congress process the executive branch’s use of executive privilege and develops strategies to overcome these claims in order the get the information wanted. An example was provided in the previous section where Congress passed the Housekeeping Statute amendment only to soon learn that the language did not have the desired impact. Eisenhower, and subsequent presidents, would continue to use executive privilege claims under the Administrative Procedures Act of 1946 and through various executive orders, which establishes precedent. FOIA
was the learned response from Congress to deal with the issue of executive privilege claims surrounding public and congressional access to information.

The social learning process is two-fold however, as it not just between Congress and the president, but also within society as the double feedback loop is interconnected. As the increase in attention to the issue of government secrecy and access to information continues, the public becomes educated and learns of the political impacts. This learning process unfolds across time as new information leads society to develop an understanding of the problems, and then to demand action taken through policy solutions. The Moss Subcommittee records at the John Moss archives and the National Archives contain folders with dozens, if not hundreds, of letters from constituents and citizens across the country seeking help from the committee in getting information from the executive branch. Many of these letters offer support to the committee for the legislative actions being undertaken to address claims of executive privilege in keeping information away from the public.

The interconnected double feedback loop functions as new information is presented in the form of presidential denial of making information available through claims of executive privilege. The press reports these activities to the public, which triggers the learning process through which the press and society understand executive privilege claims as a negative denial of constitutional rights to information or as affirmation of the president’s protection of national security. Simultaneously, members of Congress are being denied information from the executive branch under executive privilege claims that trigger the learning process for members as they seek policy actions to redress this power struggle. Members of Congress will and often utilize the
press to disseminate information on these activities – what the president is doing and what actions they, as members of Congress, are taking – to educate and create public support for legislative remedies. The social learning process is completed when a policy is passed and implemented that addresses the issue at hand. Passage and implementation of FOIA illustrates the social learning process as the policy brought about institutional reform through altering the constitutionality of executive privilege claims, establishing a process of access to information to members of Congress and society writ large.

**A New Cold War Paradigm and Executive Privilege**

In many ways, WWII was a fight against fascism, imperialism that sought global domination, but within the US an additional threat grew that came to dominate domestic politics, which was the threat of communism. The previous chapter already provided a glimpse of how the conversation within the society through the press was centralized on the issue of national security predicated upon the continual threat established by the Cold War. The Cold War serves as the catalyst of the paradigm shift, as existing policies were no longer capable of providing security while adhering to the democratic ideals of the Constitution.

As societal demands shifted under the increased press attention on issues of government secrecy, political changes were happening as well. In the Democratic and Republican party platforms of 1944, there was no mention of communism, however, the party platforms of 1948 tell a completely different story. The Democratic Party Platform in 1948 explicitly states,

We condemn Communism and other forms of totalitarianism and their destructive activity overseas and at home. We shall continue to build firm defenses against Communism by strengthening the economic and social
structure of our own democracy. We reiterate our pledge to expose and prosecute treasonable activities of anti-democratic and un-American organizations which would sap our strength, paralyze our will to defend ourselves, and destroy our unity, inciting race against race, class against class, and the people against free institutions.¹

Without mincing words, the party itself establishes the real threat of communism facing the US as tensions with the Soviet Union began to rise. The Republican Party also committed to stringent anti-communism policies in their platform in 1948, by stating,

We pledge a vigorous enforcement of existing laws against Communists and enactment of such new legislation as may be necessary to expose the treasonable activities of Communists and defeat their objective of establishing here a godless dictatorship controlled from abroad.²

The previous chapter mentioned Executive Order 9835 that sought to establish a loyalty program for government employees in order to root out tyranny from within. Truman did not stop with just this executive order however, as he would continue to solidify the Cold War paradigm shift. In his inaugural address in January 1949, Truman stated,

In the pursuit of these aims, the United States and other like-minded nations find themselves directly opposed by a regime with contrary aims and a totally different concept of life. That regime adheres to a false philosophy which purports to offer freedom, security, and greater opportunity to mankind. Misled by that philosophy, many peoples have sacrificed their liberties only to learn to their sorrow that deceit and mockery, poverty and tyranny, are their reward. That false philosophy is communism... I state these differences, not to draw issues of belief as such, but because the actions resulting from the Communist philosophy


are a threat to the efforts of free nations to bring about world recovery and lasting peace.³

Truman would continue to make similar statements vilifying communism as a direct threat to world peace and the American way of life. In 1950, he would send a public letter to the Speaker of the House about the necessity of an expanded truth campaign aimed at combating communist propaganda.⁴ In offering his own bit of propaganda to Congress in justifying the need of such a campaign, he states, “I regard such an expanded campaign of truth as vital to our National Security.” Later that year, Truman would veto the Internal Security Act of 1950, stating in his veto to Congress, “This is an omnibus bill containing many different legislative proposals with only one thing in common: they are all represented to be "anti-communist." But when the many complicated pieces of the bill are analyzed in detail, a startling result appears. H.R. 9490 would not hurt the communists. Instead, it would help them.”⁵

The examples from both political parties and the president during the early Cold War period are offered to demonstrate the paradigm shift to a Cold War mindset. This new perspective infected society and political elites equally, creating a void due to an inability of current policies to solve the problem. The president’s response was to take increased unilateral action to restrict access to government information, creating an enhanced security state in order to protect the public from the communist threat.


Unilateral executive actions were justified as executive privilege, based on inherent Constitutional powers given the president in order to protect the nation. We have already seen how the press would react to this and their campaign to drive public opinion in favor of legislative action to check what was understood as executive abuses. Congress however would struggle with combating claims of executive privilege legislatively, as they too understood the need for increased national security measure to combat communism.

Social learning takes place for Congress as a response to claims of executive privilege. It is not until the president, or administration actors, make executive privilege claims that Congress begins to understand the impacts of such unilateral actions. It is the claims of executive privilege themselves that serve as the initial introduction of new information, which drives policy that impacts Congress and society. Understanding the results of those impacts serve as the next introduction of new information that actors can process and utilize in order to create new policies that address the problem of the new Cold War paradigm, including the secondary impacts made by the president’s unilateral actions.

Executive privilege itself is an opaque idea, set in precedent through previous actions and grounded in claims of constitutional authority. The purpose here is not the debate the constitutional merits or legality of executive privilege, but rather to understand how it was used within the context of the Cold War paradigm as a political tool by multiple administrations, and how Congress would respond in reaction. By understanding how these power dynamics evolve, we are able to observe the social learning process as it unfolds to understand the role it plays within the legislative
process. Social learning impacts both societal and political actors in driving information flows that inform policy debates and impact institutional politics.

The Cold War paradigm had solidified within the American consciousness by the late 1940s into the early 1950s. Truman’s Executive Order 10290 established regulations and minimum standards for classifying and handling government information. The EO was applicable to all executive branch agencies and was justified as necessary for national security concerns. The EO states,

WHEREAS the furnishing of information to the public about government activities will be facilitated by clear identification and marking of those matters the safeguarding of which is required in the interest of national security.

Within the context of executive privilege in this case, an executive order serves as a form executive privilege, in that the president is taking unilateral action on an issue, whether granted discretionary power by Congress or not, and in so doing is creating the ability to use claims of privilege in the future. Truman was hesitant to make direct claims of executive privilege, instead opting to use authority through EO’s and rulemaking that allowed him to control the flow of information. In fact, the use behind the term executive privilege as a claim of inherent presidential power to withhold information came in 1954 in a letter Eisenhower sent to Defense Secretary Wilson, specifically directing him to withhold information from a Senate committee. However, Truman’s EO establishes the foundation for the claims of executive privilege that would begin with Eisenhower. Regardless of the use of the term, under the new Cold War Paradigm, Truman asserted executive authority to control the flow of information to the public and members of

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Congress. The precedent established by these actions begins to resonate among the press and society, as well as among members of Congress as learned the extent the administration was willing to go out concern for national security. As the ramifications from the administration’s actions began to be understood, and then used by the following administration, Congress would begin to process and learn how to respond.

President Eisenhower would issue EO 10501 early into his presidency. The previous chapter provided a perspective on the press and societal response, but Congress would begin to respond as a direct reaction to claims of executive authority. The EO itself would attempt to offer a balance to the two sides of the ongoing debate by stating,

WHEREAS it is essential that the citizens of the United States be informed concerning the activities of their government; and WHEREAS the interests of national defense require the preservation of the ability of the United States to protect and defend itself against all hostile or destructive action by covert or overt means, including espionage as well as military action; and WHEREAS it is essential that certain official information affecting the national defense be protected uniformly against unauthorized disclosure.7

The opening of the EO seeks to provide the balance between security and liberty that the advocates in the press and Congress were seeking, which is why this order was largely greeted warmly from the press as evident in the previous chapter. However, this EO would offer Eisenhower the constitutional basis, along with the Housekeeping Statute and the Administrative Procedures Act of 1946, as providing a designated and inherent right of executive privilege. Eisenhower would use this EO as authority to establish OSI the following year. Building upon actions taken by Truman, Eisenhower

begins to establish policies, rules, and institutional structure influenced by the Cold War paradigm that institutes unilateral presidential action shifting the balance of power towards the president and away from Congress.

In May 1954, Eisenhower sent a letter to Defense Secretary Wilson directing him to withhold information from a Senate committee investigation. In the letter, Eisenhower states,

However, it is essential to the successful working of our system that the persons entrusted with power in any one of the three great branches of Government shall not encroach upon the authority confided to the others. The ultimate responsibility for the conduct of the Executive Branch rests with the President. Within this Constitutional framework each branch should cooperate fully with each other for the common good. However, throughout our history the President has withheld information whenever he found that what was sought was confidential or its disclosure would be incompatible with the public interest or jeopardize the safety of the Nation.\(^8\)

Eisenhower continues in the letter to justify his reasoning, by stating,

I direct this action so as to maintain the proper separation of powers between the Executive and Legislative Branches of the Government in accordance with my responsibilities and duties under the Constitution. This separation is vital to preclude the exercise of arbitrary power by any branch of the Government.

Eisenhower grounds his actions in Constitutional authority, but for additional support he included a memo, written by Attorney General Brownell, with this letter that traces the history of presidential actions to withhold information from Congress that goes all the way back to President Washington. The assertions made within the memo justify the actions of the letter in precedent that establishes the use of executive

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privilege – an assertion therefore grounded in both previous executive actions and constitutional authority under the “Take Care” clause. The memo states,

For over 150 years . . . our Presidents have established, by precedent, that they and members of their Cabinet and other heads of executive departments have an undoubted privilege and discretion to keep confidential, in the public interest, papers and information which require secrecy. American history abounds in countless illustrations of the refusal, on occasion, by the President and heads of departments to furnish papers to Congress, or its committees, for reasons of public policy. The messages of our past Presidents reveal that almost every one of them found it necessary to inform Congress of his constitutional duty to execute the office of President, and, in furtherance of that duty, to withhold information and papers for the public good.

The Eisenhower administration effectively establishes the authority for an ‘executive privilege’ that exists to provide the administration a tool in fulfilling its duty under the separation of powers doctrine for the functionality of our democratic system. The argument from the administration is they are justified when faced with threats, domestic and foreign, as established by the new Cold War paradigm to prevent dangerous information from becoming public in the public's interest. The Eisenhower letter and accompanying memo established the basis for claims of executive privilege the administration would use going forward. While the letter was specific to one instance, it would nonetheless become viable across the administration reaching all agencies. A report from the Congressional Research Service would specifically cite the letter and memo as the justification used by the administration whenever questioned if the executive branch had the authority to deny information to members or committees of Congress.9 The press would become dismayed as Wilson would issue a directive that

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put in place a gag rule for the Defense Department and OSI would continue its efforts at ensuring restrictive information policies remained in place.

The direct constitutional power check by the White House to rebuke congressional committees would continue to increase in usage demonstrating the two-fold process of social learning taking place. The first stage of the process was the Eisenhower administration, in response to the Cold War paradigm, learned to control information flows to the press (society) and Congress through policies grounded in an authority of executive privilege. The second stage is the response from Congress, which as a whole learned that expansions of executive power led to negative ramifications for themselves, both individually and as an institution. It then became incumbent upon Congress to act on the new information in order to overcome grants of executive privilege from the administration.

The principal congressional response to the new information of a robust White House within the Cold War paradigm was to create the Moss Subcommittee in the House, tasked specifically with the authority to investigate administration information policies and practices. Creation of the Moss Subcommittee, followed by its counterpart in the Senate, was a concerted effort to begin to rebalance the power dynamic between the legislative and executive branches. Included within this dynamic and discussed in greater detail in the next chapter is the political calculation of tackling the issue. Eisenhower’s first two years in office were under a unified Republican government, which switched to divided government when Democrats took back control in the 1954 mid-terms. Democratic leadership was quick to adopt the issue of government secrecy as an abuse of administrative power, in part with the help of Moss’ prodding and his
willingness to take the issue on. Congressional Democrats found growing saliency with the public debate as the press became a natural ally in functioning as an interest group, which provided an additional layer of motivation. Executive privilege becomes institutionalized as a constitutional power issue between two branches, but only after congressional actors’ process and learn from administration actions in order to develop a new political strategy to counter such claims.

The Moss Subcommittee came into existence in 1955 under the jurisdiction of the House Committee on Government Operations in order to, “find out whether there is a free flow of information from the Federal executive agencies to the public through the Press and the public affairs organizations.” Early correspondence between Moss and Dawson on the investigative direction of the subcommittee indicate a focus of on the Defense Department and related agencies due to EO 10501 and the related letter from Eisenhower. The subcommittee would immediately begin by issuing a questionnaire to all executive branch agencies on the specific policies and practices as related to classification of records and in procedures for making information public. By the end of 1956, the subcommittee had held more than two-dozen hearings that included participation from members of the press and media organizations, administration officials, and other members of Congress who had been officially denied information from the administration for either investigatory purposes or constituent services.11


The first hearings of the Moss Subcommittee centered on the use of executive privilege claims as now standard policy through the directives from Eisenhower and Wilson. Moss was coordinating with several press organizations, many noted reluctance to formally participate in the hearings due to intimidation from administration officials and threats of losing sources.\textsuperscript{12} The intimidation was an issue noted by the subcommittee as in accordance with claims of authority in controlling information. During the first hearing of the subcommittee, Moss stated,

Some of the regulations which the Subcommittee has reviewed indicate that virtually unlimited discretion, of questionable legal status, is sometimes passed down departmental hierarchies to subordinates. Also, there have been exaggerated claims of authority to withhold information based on a theory of “inherent” powers stemming from the presidency. There are indications that some officials in Washington today believe they have authority to exercise presidential powers without the President’s authorization or his prior knowledge or even subsequent review of their acts…I believe that a clear need for new legislation has been established.\textsuperscript{13}

From the creation of the Moss Subcommittee to the subsequent initial investigation and hearing, the focus centered on what Congress considered to be abuses of executive power as established through the doctrine of executive privilege. While the subcommittee would continue to work toward policy to better address the balance between secrecy and open records, the issue of presidential authority of executive privilege continually simmered near the surface. No other concept or idea would influence the subcommittee and congressional action on government secrecy than

\textsuperscript{12} Letter from John E. Moss to Robert B. Hotz, Oct. 12, 1955. Folder: Correspondence and Subject Files: Hearings, Box No. M-3, National Archives, Washington DC.

executive privilege, as many members of Congress would be denied access to administration records under that authority.

When the Housekeeping Statute Amendment passed in 1958, Eisenhower issued a signing statement that read in part,

In its consideration of this legislation the Congress has recognized that the decision-making and investigative processes must be protected. It is also clear from the legislative history of the bill that it is not intended to, and indeed could not, alter the existing power of the head of an Executive department to keep appropriate information or papers confidential in the public interest. This power in the Executive Branch is inherent under the Constitution.\(^{14}\)

The statement made clear that regardless of the actions taken by Congress, the president held authority to keep information secret as necessary. Eisenhower reiterated his letter from 1954 by claiming Constitutional authority as granted to the executive branch, which included agency heads, to make decisions of executive privilege when deemed appropriate. While the term was not utilized here, the intent is clear, along with the impacts the statement had on Congress. Quickly, Moss would realize the deficiency of the amendment and would begin to seek alternative actions to counter the administration.

In response to the bill’s passage and Eisenhower’s subsequent signing statement, Sam Archibald, Staff Director for the Moss Subcommittee, would write,

The Congress has now warned the Federal Executive officials that they – as the elected representatives of the pubic – are not going to stand quietly by while Federal Executive officials warp the power to decide what information the public shall, and shall not, have…Not only did the public debate which resulted in enactment of the freedom of information law alert Congress to the current dangers of excessive secrecy, but the bill itself

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removed a blanket excuse Executive officials have been using to hide their activities from the people.15

Within his commentary, Archibald made clear that the passage of the housekeeping amendment was a direct result from the ongoing public debate over the administration’s continued claims of executive privilege in order to authorize the continued withholding of information. Archibald would then argue that the congressional check on executive power would force agency officials to specifically seek authorization from Congress to keep information secret, only after administration officials justify their reasoning. The congressional response was a learned reaction to the administration’s actions as justified through the Cold War paradigm.

In response to Eisenhower’s signing statement specifically, Archibald addressed the executive privilege doctrine directly. In his commentary, Archibald stated,

The President’s statement dragged in an entirely unrelated issue, for the so-called “executive privilege” to keep information confidential is not mentioned in the freedom of information amendment to the “housekeeping” statute. By stating that the new law does not affect “executive privilege” – a valid claim since the law has absolutely nothing to do with this particular issue – the administration contends that such a privilege does, in fact, exist. The presidential statement, which was prepared by the Department of Justice, even goes so far as to claim that the broad power of secrecy is “inherent under the Constitution” and seeps from the President down to the appointed heads of Executive Departments – departments and officials which are not even mentioned in the Constitution.

The administration’s contention that there is a right above the law – and, indeed, above the Constitution – to hide the facts of government from the public and the Congress echoes authoritarian philosophies of a totalitarian government.16

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16 Ibid.
While Archibald makes claims that executive privilege is unrelated to the issue of the legislation passed addressing FOI, the two ideas are linked, as he goes on to criticize the president’s claims of inherent authority to keep information secret. The White House justification for executive privilege comes from the argument of inherent constitutional authority, illustrating the connection to FOI.

The last part of Archibald’s statement demonstrates the impacts of the social learning process as it has played out within the CLD cycle up through the passage of the housekeeping amendment. The Cold War paradigm had changed the president’s comprehension of the world, leading to actions out of a need of increased national security in the public interest. The actions taken by the president, through assertions of executive privilege, created an inter-branch struggle for power with Congress as Congress processes and responds to the new information of the impacts of executive actions. Congress creates the Moss Subcommittee, which begins a series of investigations and hearings leading to the passage of legislation to address the issue of excessive executive secrecy. The president learns through processing the actions taken by Congress in response to his own, and responds to the new learned information by issuing a signing statement affirming his position of authority over the issue. While executive privilege and freedom of information are not always linked, the two are so closely related that it becomes necessary to understand how the use of executive privilege impacted the issue of FOI and the development of FOIA. Archibald strikes directly at the Cold War paradigm by likening Eisenhower’s claims as authoritarian. The administration may have been the first to act within the Cold War paradigm, but this
demonstrates that Congress, at least in particular the Moss Subcommittee, processed and learned how the new Cold War mindset had influenced and impacted politics.

Following the passage of the housekeeping amendment, the Moss Subcommittee would continue applying pressure on the administration over restrictive practices surrounding access to information. Moss, along with Senator Hennings, would continue seeking legislative actions to address the issue of freedom of information, illustrating the learned response to the shortfall of the housekeeping amendment when faced with continued administration intransigence. However, during this period and into the Kennedy administration, the issue of FOI would revolve heavily around the ongoing battle over use of executive privilege. Archibald notes in a memo to Moss in 1959 that,

Numerous examples of the abuse of “executive privilege” have been detailed in reports by the House Government Information Subcommittee and in reports and hearings of other Committees in Congress. Since passage of the 1958 freedom-of-information amendment to the “housekeeping” statute, agencies which had relied upon the statute as an authority for secrecy now fall back on the broad claim of an “executive privilege” to hide their operations from the public and the Congress.17

Within the context provided by Archibald, as Congress continued to take action to remove administrations capabilities of claiming secrecy, the concept of executive privilege became the default position that the administration would use to justify withholding information from the public or Congress. Archibald’s memo details numerous hearings and quotes testimony from executive officials of varying agencies that were using claims of executive privilege to deny information to congressional committees for oversight purposes or as part of a committee investigation. A report in

1959 issued by the Moss Subcommittee does not mince words regarding the increased use of executive privilege by stating,

When the Executive can select which laws shall and shall not be enforced; when this selective power is applied to laws providing information necessary for the legislative branch to carry out its constitutional duties; when the ‘executive privilege’ to control information for the Congress flows down from the President throughout the executive bureaucracy, then the Government of this Nation ceases to be a representative democracy. Sweeping claims of an unrestrained ‘executive privilege’ to control the facts of government are a step toward despotism.\(^\text{18}\)

Congress would move to take additional action to clarify and restrain administration action surrounding executive privilege. In Spring 1959, the House passed the Hardy amendments to the Mutual Security Act of 1959, sponsored by Rep. Porter Hardy (D-VA) based on research from the Moss Subcommittee. The amendment sought to undercut the use of executive privilege by requiring executive branch documents to be made available to Congress and the General Accounting Office. The problem with the amendment was that, due to the Mutual Security Act being focused on foreign policy, the amendment was only applicable to the operation and activities of the International Cooperation Administration. Regardless, Moss took to the floor of the House to state his support for the Hardy amendments and use it as a victory illustrative of the strength of the coalition supporting the issue. Moss stated,

Early in its study of Federal restrictions, the House Government Information Subcommittee uncovered repeated use of the “executive privilege” claim to hide the facts of government from the Congress and to keep the General Accounting Office from finding out how Federal agencies are spending the tax funds Congress appropriates. The shield of “executive privilege” has been held up against Congressional access to facts about the nation’s missile program. It has been used to cover up

\(^{18}\) Ibid.
financial operations in the Navy and event to hide scandals in high
government offices.¹⁹

The congressional response to Eisenhower’s continued use of restrictive policies
was expanding as more members of Congress faced denial from a host of agencies.
Just as the executive branch would take action on government secrecy, Congress
would respond by learning and processing the impacts of administrative maneuvering,
demonstrating the learning process through targeted policy responses.

Congressional action through continued investigations and hearings would lead
Eisenhower to amend EO 10501 in May 1959 by issuing EO 10816 which briefly
clarified departments and agencies that had authority to classify material under the
previous order.²⁰ The issue at the center of EO 10816 was over which agencies had the
authority to classify information, therefore possessing the ability to deny information to
the public or Congress. Just prior to his leaving office, Eisenhower issued EO 10901,
which again would amend EO 10501.²¹ The new order further limited agency authority
to classify information, providing a list of the specific agencies with such authority and
those who partial authority. During this period, Congress sought to limit the
administration’s broad use of executive privilege. Most agencies and offices were
classifying information, thereby providing them the ability to withhold records from

¹⁹ Statement of Congressman John E. Moss, June 19, 1959. Folder 49, Box 338. John E. Moss Archive,
California State University, Sacramento.

²⁰ Dwight D. Eisenhower: "Executive Order 10816 - Amendment of Executive Order No. 10501 of
November 5, 1953, Relating to Safeguarding Official Information in the Interests of the Defense of the

²¹ Dwight D. Eisenhower: "Executive Order 10901 - Amendment of Executive Order 10501, Relating to
Online by Gerhard Peters and John T. Woolley, The American Presidency Project.
Congress and the public under the justification of executive privilege. Through investigations and media attention peaking in the late-1950s, Congress was able to apply enough pressure on the administration, pushing Eisenhower to issue these executive orders as a means to limit and clarify agency action. While Congress, in particular the Moss Subcommittee was struggling to push legislation actions forward, unilateral movement from Eisenhower served as advancing the debate. Eisenhower was being heavily pressured from the Moss Subcommittee and the press, and in the face of criticisms surround executive agencies overuse of classifying information under claims of executive privilege, sought to limit those activities. Congress learned from their activities that the pressure was working, and other avenues of action aside from legislation can be impactful.

The 1960 election would shift the politics surrounding the development of FOIA and the use of executive privilege. The election of John F. Kennedy to president, coupled with gains for congressional Democrats altered the power dynamic. The partisan motivations of divided government under Eisenhower, suddenly changed as government became unified under Democratic control. Congressional Democrats quickly learned that the same attacks against government secrecy and use of executive privilege could not be so easily levied at their own president. During the 1960 election, Moss was head of the Democratic National Speakers Bureau, coordinating speakers and campaigns across the country. In this capacity, he had worked closely with Kennedy and had campaigned for him across the country.22 Both Kennedy and Lyndon

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Johnson, while in the Senate, had support Moss’ efforts to curb abuses of executive authority and both had voted in favor of the housekeeping amendment. However, the politics surrounding issues of executive privilege and government secrecy now placed Moss in a precarious position, even having House leadership seek to curtail the activities of the Moss Subcommittee and its vocal criticism of the administration (Foerstel 1999). Moss learned how the partisan shift in control altered the politics of the development of FOIA (the subject of the next chapter), but did not alter the battle over executive privilege.

In September 1961, Kennedy issued EO 10964 that amended Eisenhower’s order 10501. The order would create administrative procedure for declassifying or downgrading information as security concerns no longer required classification. Kennedy was following Eisenhower’s lead in seeking to curtail agency use of executive privilege in classifying information, while still maintaining the ability for agency heads with authority to classify and withhold information as necessary. Congressional Republicans began to strike at the administration in a similar manner that the Democrats had attacked Eisenhower. A RNC press release from October 1961 stated,

This administration has shown it couldn’t care less. It is too busy bottling up hard news while spraying the press with artificial and leaked material. It is running a tandem censor-huckster operation at the highest Government levels. Generally complaints from the press are ignored, denied or tagged as falsehoods by the White House.

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With the change in White House leadership, the campaign by the press and members of Congress continued, as congressional Republicans had learned how effective the attack campaign on Eisenhower had been. While congressional Democrats began to back away from attacking Kennedy, the Republicans stepped in to continue place pressure on the new administration.

Partisan politics demanded congressional action to push back on the administrations use of executive privilege, and with congressional Democrats giving Kennedy greater leeway, the Republicans began to fill the void. In February 1962, Kennedy sent a letter to Defense Secretary Robert McNamara directing him to withhold certain information from a Senate subcommittee investigation. Within a week, Moss wrote a letter to Kennedy expressing concerns over the directive to McNamara, comparing it to Eisenhower's similar directive from 1954.25 Moss notes in his letter that through the ongoing investigations of his subcommittee, between 1955 and 1960, they found 44 instances where executive privilege had been invoked by the administration to withhold information based on Eisenhower's 1954 letter. However, Moss takes a less aggressive strategy with Kennedy than he did with Eisenhower. Moss states,

I am confident that you share my belief that your letter of February 8, 1962 to Secretary McNamara should not be seized upon by Executive Branch employees – many of them holding the same policy-making positions of responsibility they did under the Eisenhower Administration – as a new claim of authority to withhold information from the Congress and the public. A Subcommittee staff study indicates that during the year between the time you took office and February 8, 1962, the claim of an “executive privilege” to withhold government information was not used successfully once, compared to the dozens of times in previous years administrative employees held up “executive privilege” as a shield against public and Congressional access to information.

While effectively continuing to place the blame on Eisenhower, or at least those within the bureaucracy that worked under Eisenhower’s lead, Moss baits Kennedy by asking him to clarify his position on the use of executive privilege as he intended in his letter to McNamara in the hope of preventing, “the rash of restrictions on government information which followed the May 17, 1954 letter from President Eisenhower.”

A few weeks later, Kennedy would send Moss a letter that shifted the debate on executive privilege forever. In his letter to Moss, Kennedy states that his directive to McNamara made clear that refusal of information to Congress would be made on a case by case basis, as opposed to a blanket policy.26 Kennedy goes on to state,

As you know, the Administration had gone to great lengths to achieve full cooperation with the Congress in making available to it all appropriate documents, correspondence and information. That is the basic policy of this administration, and it will continue to be so. Executive privilege can be invoked only by the president and will not be used without specific Presidential approval. Your own interest in assuring the widest public accessibility to governmental information is, of course, well known, and I can assure you this Administration will continue to cooperate with your subcommittee and the entire Congress in achieving this objective.

The letter from Kennedy removed the ability for any agency head or cabinet secretary, or any other administration official, to make claims of executive privilege without specific approval from the president.

As evident through this exchange, the Kennedy administration was attempting to shift the restrictive information policies of Eisenhower, while still being able to keep certain information secret. Partisan politics of unified government would allow for a friendly relationship between Kennedy and Congress, so Kennedy would use that to his

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advantage. Congressional Democrats had learned that the aggressive strategy on the issue would no longer work with their own president in the White House, but Congressional Republicans had learned how successful the aggressive strategy had been with Eisenhower. Therefore, Republicans would begin more aggressive movements on this issue of FOI against Kennedy and in conjunction with the press, while the Democrats would seek alternative means to solve the issue, which Moss did. The continual social learning process as it progresses over time demonstrates how negative responses to previous actions lead to shifting strategies to take actions with positive responses. However, in this case, while the confirmation from Kennedy that use of executive privilege would require presidential approval, the problem of government secrecy and access to information did not go away, it would get continue.

The position taken by Kennedy as expressed in his letter to Moss did not solve the problem, and the Moss Subcommittee would continue to press forward. In a February 1963 letter from Archibald to Paul Fisher, who created the Freedom of Information Center at the University of Missouri, he notes some of the difficulty the subcommittee has been experiencing. Archibald laments the drop in press coverage of the issue, but asserts that under Eisenhower the press was the only way to reach top policy officials in the administration, and that route had verified results.27 He notes how improved the subcommittee’s access is with the Kennedy administration leading to progress on the issue. Archibald also states,

I get damn tired of people chipping their teeth about the Moss Committee not being as touch on the Kennedy Administration as it was on Eisenhower; at the same time, Moss and I catch Hell from some

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administration officials and from powerful Democrats in Congress for being too rough on the administration. When both sides in a controversy feel you are favoring the other side, you must be doing a pretty objective job.

The position of the Moss Subcommittee becomes more difficult as the politics surrounding the situation shifted, which will be addressed in the following chapter. The social learning lens surrounding the intricate ties between executive privilege and FOI become more tenuous and limited. While Moss and his counterparts in the Senate continued to introduce and pursue legislation to address FOI, Moss learned that with the new administration he could seek action through other means. The exchange with Kennedy that limited administration use of executive privilege is an example of a non-legislative solution, which came through learned responses to information flows based on actions taken by each branch of government.

The Kennedy position on executive privilege changed the debate surrounding the inter-branch power dynamic the issue had. While the administration would continue to assert the necessity of keeping information secret due to national security concerns, a position that would continue into the subsequent administrations, the use of executive privilege as justification for doing so would decrease. However, when the Johnson (LBJ) administration came into power following Kennedy’s assassination, Moss would take no chances while continuing to push for a legislative solution. In March 1965, Moss sent a letter to LBJ detailing the problems Congress has had with administration claims of executive privilege going back to Eisenhower’s 1954 directive. He also quotes directly from the letter Kennedy sent limiting the use of executive privilege, and asks LBJ to, “reaffirm the principle that ‘executive privilege’ can be invoked by you alone and will not
be used without your specific approval."\textsuperscript{28} In the face of continued denials of information from executive branch agencies, Moss now had the Kennedy letter to use as a cudgel against Johnson, which he did. Johnson would respond to Moss with a letter on April 2, 1965 noting receipt of Moss’ letter and,

\begin{quote}
Since assuming the Presidency, I have followed the policy laid down by President Kennedy in his letter of March 7, 1962, dealing with this subject. Thus, the claim of “executive privilege” will continue to be made only by the President. This administration has attempted to cooperate completely with the Congress in making available to it all information possible, and that will continue to be our policy.\textsuperscript{29}
\end{quote}

President Johnson had learned that the issue of executive privilege had become one too politically charged at a time that he was seeking social reform through a large legislative agenda. Moss had learned that with Johnson, he was in a similar position as with Kennedy, therefore it was easy to press the president on simply reaffirming the same the position as his predecessor, which would at least keep the status quo in place on the use of executive privilege. The status quo had moved from large scale use by a myriad of administration officials to one with limited use as authorized solely by the president.

\textbf{Conclusion}

Social learning serves as the bond of information flows that tie the two loops of politics and society together. For learning to happen, thinking has to change. At times, social learning is predicated on Kuhnian-type paradigm shifts or Hall’s third-order learning where the instruments and goals have changed so much that new order is

\textsuperscript{28} Letter from John Moss to Lyndon Johnson, March 31, 1965. Executive Privilege Folder; Office Files of Harry McPherson. Box 22 – Office Files of White House Aides. LBJ Presidential Library, Austin TX.

\textsuperscript{29} Letter from Lyndon Johnson to John Moss, April 2, 1965. Executive Privilege Folder; Office Files of Harry McPherson. Box 22 – Office Files of White House Aides. LBJ Presidential Library, Austin TX.
established and becomes dominant. Following WWII it is clear that new Cold War paradigm became established and dominated thinking, which completely shifted understanding of the world. Due to this new paradigm, politics and society shifted over concerns of a widespread Communist menace at home and abroad. The intensification of the Cold War, including the Korean War, Red Scare and McCarthyism, the Bay of Pigs and Cuban Missile Crisis, the Vietnam War, all under the constant threat of nuclear attack from the Soviet Union created a changed mindset and worldview that dominated politics.

The fallout of the new Cold War paradigm left an executive branch increasingly concerned over secrecy and information control. Real and perceived domestic threats allowed executive branch actors to learn from the Cold War paradigm. In processing this information, these actors and those in subsequent administrations, take action in preventing information from being made public if it would be damaging to national security. The actions taken from the executive branch triggered social learning among society and members of Congress as well. The response of members of Congress to administrative actions, like the use of executive privilege, serves as the introduction of new information. Social learning happens as congressional actors, and those in society including the press, process administration actions and then respond. The ongoing debate over the use of executive privilege provides an explanatory means of illustrating the constant information flow needed for social learning to happen. The Cold War paradigm created a new mindset that prompted executive branch action, demonstrating how administration actors learning from the new paradigm, and processed that information as evident from the actions taken to withhold information from Congress and
the public in general. Congressional actors would respond to these actions, also
demonstrating how the information flow of executive actions would be understood,
processed and then utilized to justify a congressional response. The response from
congress, and society, illustrates that social learning has taken place. The
congressional response represents an information flow back to the White House, which
would be processed and then used to offer a counter-response, and thus the constant
back and forth flow of information would continue under the Cold War paradigm.

The lens of social learning offers a perspective to understand how the
introduction of new information, the processing of such information, and a response
influences and moves the political process. By examining the debates surrounding FOIA
and the use of executive privilege, we are able to better comprehend how the
continuous learning process unfolds within a political setting. The interconnected double
feedback loop model functions by information flows constantly moving between the two
loops of society and politics. New information and the processing and utilization of such
information flows from one loop to the other and back as a constant and continuous
influencing mechanism that services the policy process and institutional politics. Social
learning then functions as a synthesizing perspective bringing together the background
lens of shifting societal demand with the foreground lens of politics. Political actors, loop
two, is where our attention turns next in seeking to understand how individual political
actors are able to harness institutional power in order to drive forward transformative
policy. These power entrepreneurs have the capability to balance power within the
policy making process in order to achieve a favorable outcome.
CHAPTER 4
THROUGH THE FOREGROUND LENS

Power Entrepreneurship in Congress and the Politics of Policy

The Cold War paradigm, as illustrated through the power struggles over the use of executive privilege, brings into focus the functionality of the interconnected double feedback loop as provided through shifting societal demands (First Loop) and in the introduction, processing, and usage of new information. The information flows feed the demands society places upon political actors, just as political actors seek to influence and use those societal demands in pursuit of their own interests as they align with those in society. Demands and new information feed into political institutions placing constraints and influencing actors within. The continuous nature of this relationship creates the CLD cycle that political actors find themselves functioning within. As we have already examined the background lens of shifting societal demands and the synthesizing lens of new information flows, our attention now turns to the foreground lens of political actors within an institutional setting, forming the Second Loop of the model. Attention here will be given to how individual actors within this setting are capable of utilizing societal demands and new information flows to develop and construct policy that fulfills the demands of both society and political actors as well as alter the institutional political framework.

The CLD cycle provides the ability to focus on a particular policy issue by understanding the institutional politics surrounding legislative development as a single iterative game. The game functions through the interconnected double feedback loop to account for demands, constraints, and influences surrounding the issue. By narrowing the focus to a single particular issue, we can isolate specific factors to identify the
actions of individual actors within the policy process that are able to utilize power to their advantage on the issue to gain a favorable outcome. The individual actor who is capable of using institutional power to their advantage in pursuit of a policy goal, which in so doing alters political functionality becomes the focus of attention.

The emphasis here is on transformative policy, as opposed to other types of legislation that frequents the agenda and calendars of Congress. Transformative or reform policy can be defined as institutional modification through the policy process that alters the institutional structure of government- policy that revises the nature and role of governing institutions. Additionally, transformative policy has the ability through modifying institutional functionality to change the processes and thus the politics that surround and operate within an institution. As policy is one factor that contributes to institutional reform, the policy process can therefore be understood as a long-term development led by specific actors that are capable of wielding institutional power to attain a favorable outcome. To better understand the process of how transformative policy moves from inception through implementation, an analytical model will be developed to shift perspective by focusing on the drivers of policy- congressional entrepreneurs.

The foreground lens specifically seeks to examine the behavior of specific institutional actors, found mainly within Congress, but can be within the executive

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1 At this time I will acknowledge that the focus for this particular project is on reform policy that becomes institutionalized through passage and implementation. While the question can be asked as to whether the same situation and behavior of specific actors can lead to a non-favorable policy outcome – meaning policy that fails to pass – this is not addressed here and could be the subject of future research. I will assert that one perspective could view reform policy that does not become law as being situated within the Continuing Legislative Development cycle and has yet to become politically viable based on the factors discussed here, therefore failure of a policy to pass Congress is merely an intermediate equilibrium point with the final being complete loss of the issue or final passage and implementation.
branch as well. Beginning with the assumption that these actors behave in a rational manner, they are seeking self-interested goals. As scholars have demonstrated, the interaction of self-interested individual behavior within an institutional framework, like Congress or the policy process, illustrates the political impacts the institution has on the actors and the actors have on the institution (Fenno 1973; Mayhew 1974; Weingast 1979; Schickler 2001; Dodd 2012). A focal point to understand motivations of congressional actors has been to understand their behavior as a quest for personal power. As rational actors, these individuals seek to enhance their own preferences within the institution that provides each actor with a varying degree of power. Within the micro perspective of the foreground lens, the focus is on understanding the ability and functionality of one particular actor who is able to balance power within each and across all policy institutions to achieve a favorable outcome, in this case, a policy of reform. Therefore, an individual actor can pursue their rational self-interest, which will align with the interests of other individuals, where the actor can persuade or motivate additional support to form a coalition that rebalances institutional power in favor of a policy outcome leading to reform as opposed to the status quo (Schickler 2007).

The chapter will proceed in the following manner, with the first section providing a discussion of congressional entrepreneurship to help differentiate entrepreneurial behavior from standard political actors. The next section will offer an explanation of the second loop of the model by constructing a theory to understand congressional entrepreneurial behavior centered on an individual actor’s ability to balance power within and across the policy-making institutions. Here, the CLD cycle provides the temporal framework of the continuing or constant nature of legislative development.
Within this framework, these actors are referred to as ‘power entrepreneurs.’ Next, the model will be contextualized through an empirical case, the Freedom of Information Act (FOIA). In building from the previous chapters, the narrative surrounding the politics of the moment during the legislative development period of FOIA gives insight as to how each of the previous lenses impact the politics, and how institutional politics unfold. The foreground lens provides the perspective of how an individual power entrepreneur functions within the model to develop and drive transformative policy forward.

**Separating the Actors from the Entrepreneurs**

The question arises as to what separates political actors from congressional entrepreneurs, and therefore how entrepreneurial behavior is defined. One starting point to develop a model of entrepreneurial behavior is with Fenno (1973) and his research on congressional committees. While Fenno does not expressly discuss congressional entrepreneurs, he does refer to entrepreneurial behavior of committee members, and more importantly, he provides a model of strategic behavior that remains relevant. Fenno’s model centers on strategic premises, which accounts for rational actors who pursue individual goals within an institution influenced by environmental constraints. These goals and constraints work within the committee system of the House leading to strategic premises on which the decision-making process functions, leading to policy outcomes. Strategic premises act as the linking mechanism in the committee that allowed Fenno to account for the individual level goals and motivations of actors that led to the collective action outcome of committee decisions, followed by floor votes on policies. Strategic premises would allow for coalition building within a committee whereby individual members in pursuit of their own interests can come together because the strategic premise serves a common interest. Schickler (2001) uses this
concept in his theory of disjointed pluralism, which he refers to as a ‘common carrier.’

Schickler demonstrates how rational individuals within Congress form coalitions centered on specific issues at specific moments in time through a legislative package, or common carrier, that serves the goals of a diffuse group of members, often to challenge the status quo. Therefore, strategic premises or common carriers can be understood as an action strategy to pursue and as a legislative policy item that serves the interests of individual members allowing for a large enough coalition to form to provide for a policy outcome that serves the collective interest. An entrepreneur is an individual actor within Congress at the center of a strategic premise with the institutional power and ability to drive a legislative proposal forward through coalition formation.

Within the literature the role of entrepreneurship in Congress is defined as those members who differentiate themselves from others by providing policy expertise and development (Uslaner 1978), or as being a political activist (Fowler 1994), or as a member who can solve a collective action problem that also benefits their own personal goals through coordination and in providing resources (Fiorina and Shepsle 1989). Kingdon defines policy entrepreneurs as advocates who are willing to invest their resources of time, energy, reputation, and money in order to promote a position in return for some anticipated future gain (Kingdon 1984, 188). While Polsby goes further by describing entrepreneurs as those who serve as an innovator of ideas, and utilize their ambition, position, expertise and skill to drive an idea through the policy process to enactment (Polsby 1984, 171-174). Wawro (2000) identifies legislative entrepreneurs as rational actors who, “bear much of the burden of the production of legislation. Members engage in legislative entrepreneurship when they invest time, staff, and other resources
to acquire knowledge of particular policy areas, draft legislation addressing issues in those areas and, shepherd their proposals through the legislative process by building and maintaining coalitions…” using a variety of activities they have at their disposal (Wawro 2000, 2-3). A clearer picture begins to form of what defines an entrepreneur, as well as the role played by these actors.

Similar to Kingdon and Polsby, Sheingate emphasizes the policy entrepreneur as political innovator. Sheingate contends that as rules form the basis of institutions; these same rules structure the behavior of goal-oriented actors (Sheingate 2007, 14). Within a complex institutional structure policy entrepreneurs push for innovation due to the heterogeneity, uncertainty, and ambiguity of complex institutions that, “provide actors with resources for creative recombination and speculative opportunities to redefine the scope of institutional authority” (Sheingate 2007, 15). Schickler and Sheingate illustrate how policy innovation, channeled through entrepreneurial efforts pushes against the institutional status quo, thus paving the way for reform and change. An entrepreneur is therefore able to capture and utilize institutional power as a tool to engage in activity that promotes change.

It now becomes clear that congressional entrepreneurs behave in a strategic manner in order to utilize resources available to pursue a policy idea through to enactment. The available resources form the basis of institutional power that an entrepreneur can access. This behavior is marked by adept skill of not only understanding the specifics surrounding a policy idea, but an understanding of the intricacies of the legislative process itself, meaning a mastery of the rules, procedures and norms – institutional structure – that govern Congress, including the ability to
influence other members. In attempting to maintain a long-term congressional career, Dodd (2012) differentiates three types of entrepreneurs who each engage in specific behavior. The first is the electoral entrepreneur, or members concerned with reelection in order to maintain power, thus their actions lead them to behave in a manner that will enhance their electoral security. The second type is a policy entrepreneur who desires a reputation for policy-making competence. These members strive for particular committee placements in order to specialize within the committee or in a particular policy area that provides them authority and influence. Dodd also notes these policy entrepreneurs as being sensitive to the formal and informal norms and procedures governing the policy process and are adept at legislative maneuvering. Policy entrepreneurs are proficient at coalition building both within Congress and from external actors, such as interest groups, the press, and members of the executive branch. The third type is a power entrepreneur, who seeks to gain influence and control over formal organization and parliamentary procedures in the policy making process. These members will strive for committee assignments to work their way up in seniority to achieve leadership positions, which provide influence and control of specific policy areas (Dodd 2012, 88-90).

An additional factor Dodd provides within his model is time. Dodd observes the three types of entrepreneurs as following a logical temporal progression, where electoral entrepreneurs, just as Fenno asserted member reelection goals, happens early in their career and establishes a base from which to build. Without being reelected, a member has no ability to maintain and grow power or influence. The policy entrepreneur will emerge once electoral stability is achieved, and enough time is
provided to develop policy and institutional expertise. Lastly, towards the latter part of a member’s career, after gaining reelection stability and policy expertise, entrepreneurs seek power through attaining leadership positions. This temporal linear model allows us to think about career motivations of individual actors as tied to formal institutional power across time. However, congressional entrepreneurs often engage in all three types simultaneously, which can shift perspective on the role and impact these actors can have in the policy process.

Congressional entrepreneurs are now defined as being members in a position of mastery or expertise on a given policy area, who seek influence through the passage of policy, have access to necessary resources – institutional power, all based on the desire that in taking such action will further their own career or goals. Entrepreneurs have an institutional knowledge and expertise that permits them to exercise power allowing for coalition building. In order to develop a theory that moves the discussion on entrepreneurship forward, attention must focus on process and function. The literature on congressional entrepreneurship centers on a generally ill-defined concept, which is power, and power is a tricky concept to apply to the policy process.

**A Theory of Power and Congressional Entrepreneurship**

A decade ago, Moe (2005) called upon the political science discipline, in particular the rational choice and positivist scholars, to begin to understand and develop theory that takes power into account. Moe was attempting a change in perspective to understand that most rational choice theory utilized models of cooperation that solved collective action problems which benefit all concerned. However, he goes on to assert that, “when in fact the political process often gives rise to institutions that are good for some people and bad for others depending on who has the power to impose their will”
(Moe 2005, 215). Therefore, institutions themselves are not just structures of cooperation, but are structures of power, and Moe places importance on building theories that combine both. As Moe is correct to point out, often within research, power is either assumed or relegated to the periphery of theory by focusing solely on the rational choices and actions of actors, but in doing so, our understanding of reality becomes too far skewed as, within cooperative institutions solving collective action problems, oftentimes ‘voluntary’ behavior or choices may not be purely voluntary as actors have the ability to force their will upon other actors.

In bringing the discussion of power to bear on congressional entrepreneurs, we can understand the institution of Congress as providing a structure of power resources that can be wielded by both individuals and groups. As an institution is a creation of formal and informal rules, norms, and procedures that construct motivations and constraints, it is precisely these factors that give power to individuals that can be used to motivate or constrain other actors. Entrepreneurial power can come from an individual who can utilize the power constraints and motivations of the institution in order to gain a desired outcome. It is important to consider what Moe discussed in noting the difficulty in overcoming long standing mind-sets when it comes to cooperation in solving collective action problems, which is to understand that cooperative action does not benefit all involved. In fact, within an institution like Congress, there are winners and losers in solving any collective action problem, but it is not a zero-sum game for either group and instead is a continuing or iterative series of games- multiple CLD cycles happening simultaneously. For an entrepreneur then, the utilization of institutional power to achieve one particular goal comes from the ability to gain
cooperation from just enough additional members to secure the desired outcome, a majority instead of all members of the institution. Weingast built a theory of minimum winning coalitions through a Distributive Legislative Game, but this theory fell short in providing for the benefits as shown through his Universalism Legislative Game. The argument of Wiengast and scholars during this period is focused on coalition building that surrounds solving a collective action problem, where members of Congress seek to appeal universally within the institution by developing an outcome that provides increased benefits for all. Where my research differs is by bringing power into the equation and understanding that transformative policy is seeking to upend the status quo, which will shift institutional structure and functionality to benefit some at a loss to others while a new political structure is formed.

The factor of power gives an individual motivation to seek at least a minimum winning coalition, but as the legislative process is a continuing series of multiple iterative games, an entrepreneur can use power in one game to achieve a policy outcome, that can then be reciprocated through another game. Similar to Riker’s (1986) theory of heresthetics where the issue of policy multidimensionality can allow for manipulation, the same issue of multidimensionality can be applied to Congress as a whole. By thinking about the legislative process as ongoing featuring multiple bills simultaneously, power is used by specific individuals to drive policy progress on one, which shifts the dynamic surrounding others. In this way, coalition formation does not have to be concerned with universalism as the benefits accrue across multiple policies that form multiple coalitions.
Additionally, we must begin to think about this type of entrepreneurial power within the CLD cycle as encompassing four formal and one informal institution. With the four formal institutions being the House, the Senate, Congress as a whole, and the President – as all four are needed to be in agreement to pass and enact policy. The informal institution being the citizenry (society writ large) that seeks to influence political behavior within the four formal institutions. Although the informal institution will be set aside here as it forms the first loop of the model and was discussed in detail in Chapter 2. Therefore, within the formal institutional structure, the entrepreneur would need to utilize power across multiple levels and dimensions (the four policy-making institutions) through the CLD cycle in order to bring a policy idea through to enactment.

A common thread within much of the literature already discussed focuses on coalition building within the legislative process and the role the entrepreneur plays as a key individual who forms and leads such coalitions. Wawro uses Riker’s (1986) heresthetics by noting that issue multidimensionality in developing and writing legislation will remove enough objections in order to make the legislative package more sellable, thus helping to ensure passage and enactment due to the ability to build a winning coalition (Wawro 2000, 9). Therefore, coalition formation becomes one dimension of power, in the case of policy and the legislative process it is a form of institutional power. However, Wawro’s explanation does not go far enough to provide an understanding of multidimensional entrepreneurial power.

There are multiple ways individual actors can achieve power within Congress. As previously raised, there is the power that comes with reelection, whereby a member of Congress gains power and security by achieving constituent control in order to maintain
a position as an elected member of the institution. There is policy power, whereby a member’s mastery of an issue area provides them a measure of influence and control within the institution on that given issue. There is structural power, which we can think of as the formal power positions within the institution based on party leadership and control. So in the House, the position of Speaker, Majority Leader or Whip, as well as any committee or subcommittee chair would be a structural power position that provides the member with a measure of control and influence. Within this type of structural power is agenda control, where members who hold such power positions are more easily able to control the agenda surrounding a specific policy issue. There is procedural power, which would include coalition building, where a member has achieved a mastery of the norms and procedures of the institution, coupled with an intimate understanding of other members’ behavior that will allow them a measure of influence and control over the policy process. Power then, in any form, becomes an essential tool for any congressional entrepreneur to possess in order to achieve any goal. As noted above, power is also diffuse within the constraints of the institutional structure itself, which allows entrepreneurial members the ability to press the levers of power in order to control outcomes.

By understanding the CLD cycle as a series of iterations in a game surrounding a single policy issue over a prolonged period of time, it would be logical to then understand the institution of Congress through the lens of seeking to balance power, with the congressional entrepreneur as the key individual who is able to achieve a balance of power favorable to their own goal as it pertains to the single policy issue. To help illuminate the discussion on balance of power, we turn to Morgenthau (1948
[1985]) in *Politics Among Nations* and borrow some perspective from International Relations theory. Morgenthau established balance of power theory in international relations that has helped to influence Realist thought within the discipline. Morgenthau offers a foundational perspective to build from. The basic idea of balance of power in international relations through Morgenthau, and others like Waltz (1979), the world or international system is viewed as an anarchic system in which states form coalitions to balance power against aggressive or hegemonic states in order to achieve desired self-interested goals. The same base idea can then be applied to the US Congress, and the CLD cycle. I am not asserting that Congress is an anarchic system, as the mere fact that each house of Congress is itself an institution nested within the broader institution of the legislative branch of government all operating under a formal and informal structure of rules, norms, and procedures, all of which makes anarchy impossible. However, by altering our mindset to think of each house of Congress – the House and Senate – as each a system unto itself, while both also functioning together as a larger system (an inter-institutional system), and then include the President and executive branch to create an even larger system (the legislative process system) it becomes possible to think about a balance of power as necessary within each system, whereby each singular system is nested together within the other systems in which an entrepreneur can act to balance power across all four systems in order to bring about the stable result, or equilibrium point, that is policy enactment. The CLD cycle functions as a consequence of entrepreneurial activity that seeks to balance power within each institution (system) and across all institutions (systems) in order to achieve a positive
policy outcome that meets the preferred goal of the entrepreneur and the goals of enough other members to sway the balance of power in favor of that outcome.

Morgenthau contends that balance of power is a synonym for equilibrium, and that actors within a system are either seeking to maintain or overthrow the status quo, which necessitates the need to find balance. Transformative policy spurred by entrepreneurial activity within the CLD cycle is inherently seeking to overthrow the status quo and establish a new balance of power, which would be considered institutional reform. Morgenthau notes two assumptions at the foundation of all equilibrium, which is that the elements to be balanced are necessary for society and entitled to exist, and second, that without equilibrium one element will gain increased power over others, which will lead to imbalance and destroy the system (Morgenthau 1985, 188-189). Therefore the balance of power must maintain the system without destroying the individual elements that comprise the system. However, as Moe noted, not all actors involved within an institution will benefit from collective action solutions. Morgenthau is examining states within an anarchic international system, I am applying the concept to the policy institutions in the US, whereby the process of cooperation within an iterative framework can lead to a balance of power within an institution like Congress by thinking about each policy idea as a separate iterative game within an institution of multiple ongoing games. Therefore, while some actors will not benefit from entrepreneurial policy activity in one game, a balance can still occur within the system (institution) as multiple games are happening simultaneously and iteratively. Morgenthau utilizes the Madisonian system of institutional checks and balances between branches sharing power in the US as an example of how balance of power can
function domestically. Therefore, within the legislative process system, balance of power can be achieved within each institution and across all institutions that brings Congress, both House and Senate, and the president into a new equilibrium point with the passage of a policy.

Balance of power is then established through entrepreneurial activity inside a multilayered multidimensional model. Entrepreneurial power is established as the ability of an actor – a power entrepreneur – to balance power within each system and at each level in order to achieve a positive or favorable policy outcome. It is first necessary to break apart the layers and dimensions in order to better understand the usage of entrepreneurial power. As was previously mentioned, the layers consist of four nested and integrated systems – the House, the Senate, Congress as a whole, and the President. Generally, a power entrepreneur in either house of Congress will face a similar situation within each system and across each layer. Figure 4-1 offers a representation of the nested integrated systems at each level. Within a balance of power model, each institution acts as its own system, with each integrated into the others that make-up one large system of the legislative process. If a policy idea originates within the House, the entrepreneur pushing the bill will form a coalition that balances the power of the House in their favor before or simultaneously seeking to do the same in the Senate. Once the balance of power is achieved within the House and Senate, it must be attained by consensus bringing the system of Congress into balance with the subsystems of the House and Senate nested within. Once a balance of power has been achieved in Congress, the president represents the last system to be brought into balance. If the president is supportive of the policy, then the entire system – the
legislative process system – is brought into balance that favors the policy outcome. The entrepreneur acts as a key individual in seeking to bring the entire legislative process system into balance by first acting to balance each subsystem, beginning with their own. So an entrepreneur in the House will first seek to balance power in the House, an entrepreneur in the Senate will seek to balance power first in the Senate.

When a policy idea moves into the CLD cycle, demarcating the start of a new game, the entrepreneur will face a current set of actors in the system/institution in which they serve. It is the other individual actors in each system that the entrepreneur will seek support from in order to sway the balance of power. Those actors in each system are divided into three categories – allies, adversaries, and unknowns. Allies are members that the entrepreneur already has the support of and will assist the entrepreneur to obtain and wield institutional power. These are the original members of a coalition and those actors willing to use their influence and resources to build the coalition. Adversaries are those members that stand in opposition to the policy and will generally not be swayed. These actors will lead an organized or unorganized effort in opposition. The last category, unknowns, consists of those members that have not yet taken a position on the policy issue and will be the main target of the entrepreneur in order to move enough of the unknowns into the allies category that will sway the balance of power in the entrepreneur’s favor. The difference between an adversary and unknown is the adversary is active in opposition and will prove most difficult to change position. A balance is reached when the entrepreneur is able to attract enough unknowns to grow the coalition to the majority size needed for the policy to pass in each subsystem and across the legislative process system as a whole. This coalition must
include the formal institutional leadership within each system, which helps to ensure that
the policy will be brought to the floor for votes. Table 4-1 offers a concise representation
of the three types of actors an entrepreneur will face within each system.

Within the House or Senate systems, there exist multiple institutional layers
where an entrepreneur will have to win allies and sway the balance of power in their
favor. In the House for example, an entrepreneur must begin to seek and gain allies at
the individual level, the committee level- including the rules committee, House
leadership level, and finally at the floor level. Through each level the entrepreneur will
be able to attract allies while attempting to mitigate adversaries, which will allow
continued coalition building capable of passing the legislation within each institution.
The process is similar in the Senate. For Congress, there also exists an inter-
institutional system, whereby the entrepreneur will need to balance power of both
houses simultaneously in order to produce one single legislative package that will go to
the president for approval. With the ability to balance the president in favor of the
legislative package, the power entrepreneur will have achieved balancing power at each
level and bringing all four systems into balance simultaneously, thus creating a new
equilibrium. Table 4-2 provides an illustrated model to help visualize the multiple layers
that the entrepreneur will seek to bring into balance. The row across the top represents
the four systems that will function individually and as a single integrated system,
provided the entrepreneur is capable of bringing each into a balance of power that
favors the policy goal. The rows going downward illustrate each layer within each
subsystem where the entrepreneur will seek to gain a power advantage in the quest of
achieving enough members in the allies category at each level to rebalance the system in her favor.

The power entrepreneur will utilize institutional power as a means to balance power in each system and at each level, which offers a perspective on the temporal element of the CLD cycle. The institutional power factors the entrepreneur will utilize to balance power are numerous, but for our purposes here, I will focus on perhaps the main dimension of congressional institutional power which is the partisan element. Party control and make-up of government is the strongest factor a power entrepreneur will have at their disposal, and one from which many others will stem. Party control of each institution or system will determine the partisan control of government – unified, divided, or quasi-divided – which will in itself motivate and constrain individual behavior and entrepreneurial initiative.

At a general level party control or more importantly majority party control provides access to institutional power and will allow an entrepreneur in the majority party capabilities to utilize power more effectively. Majority control, coupled with the committee system is the institutional power base of Congress; therefore the party in control of the institution has control of the committees, leadership, and agenda (Aldrich, Perry, and Rohde 2013). Majority control provides an entrepreneur motivation to achieve power, which includes the ability to constrain adversaries, and to achieve a power position, such as committee or subcommittee chair, or even a formal leadership position, which will provide a position of policy expertise and influence on a given issue. In this situation, the influence an entrepreneur can wield with other members could be in the form of incentivized motivations by offering strands of power in return that provide
other members pathways to achieve their own goals. This gives the ability to attract more allies from the unknown category while simultaneously attempting to mitigate those adversaries. Within a system of unified government, it becomes easier for the entrepreneur in the majority party to achieve this power, thereby providing the ability to balance power across each system and the entire legislative process system as whole to achieve a policy outcome.

A power entrepreneur in the majority party under unified control, or at least majority-party control of their respective institution, would be in a power position that will be termed ‘offensive entrepreneurship.’ Pursuing an offensive strategy will allow certain expectations to be made of a power entrepreneur when facing a specific set of circumstances. Offensive entrepreneurship is where an individual member on a given policy issue is provided with the institutional and government make-up that would afford the greatest ability to control institutional power in seeking a strategy to achieve a favorable policy goal. Therefore a member of the majority party in either the House or Senate during a period of unified government control could be in the most favorable position to balance power in support of a policy goal. Majority control provides those individuals with institutional power through the committee system and agenda control. The partisan leadership in control of floor proceedings offers, at minimum, a group of allies to form a coalition at the outset. Offensive entrepreneurs have the power to seek aggressive strategies in attempting to gain a favorable policy outcome. Therefore, an offensive entrepreneur is in a position to seek assertive strategies due to the ability to use institutional power to their advantage, which simultaneously constrains adversarial actors regardless if those actors are in the minority or majority party.
At the opposite side of entrepreneurship, a member in the minority party under unified control by the opposition party, or in the minority party in their respective institution, would be in the weakest position to attempt to gain institutional power in order to balance power for a favorable policy outcome. This position will be termed as ‘defensive entrepreneurship.’ As the entrepreneur would be facing opposition control and lack the ability to have committee and agenda control, the entrepreneur will seek activities that will keep the policy issue alive and moving forward, which may at minimum be to have the issue remain as part of the discussion and debate. During this period, while a defensive entrepreneur may lack direct institutional power, attempts at coalition building still remain viable at least at the individual level, where a skilled and strategic actor may continue to win allies, even if the numbers remain low. Defensive entrepreneurs find themselves in a weakened position with little power to support activity. At these times, the entrepreneur takes a more protective and passive position in seeking to keep the issue alive until partisan control or societal demands shift that would allow the entrepreneur to move into an offensive position.

In between offensive and defensive entrepreneurship lies a mixed form, where strategies employed by the entrepreneur can take either an offensive or aggressive form, or a defensive or passive form. The form could follow the skill and strategy of the entrepreneur dependent on how the individual perceives any given situation. The situation could depend on partisan majority control versus minority power, whereby a situation of quasi-divided government may offer paths to power for an entrepreneur that would not be available under differing partisan make-up. It is logical to understand that a strategic power entrepreneur will utilize a combination of positions, both offensive and
defensive under any circumstances of partisan control in order to win a majority of allies from the unknowns or adversaries to swing the balance of power in their favor. This is to provide a general framework to understand entrepreneurial behavior more broadly, leaving the minutiae and context for specific cases of examination. Table 4-3 provides an overview summary of offensives versus defensive entrepreneurial advantages and disadvantages under differing partisan control of government.

Offensive versus defensive entrepreneurship, as influenced by party structure, is a determinative strategy the power entrepreneur will utilize during policy development. Agenda setting assists to focus attention on the issue, which by doing creates momentum that drives the policy forward (Baumgartner and Jones 2009; Kingdon 1984). Momentum then becomes a dominant mechanism by which a power entrepreneur will fluctuate between an offensive and defensive strategy. Momentum drives positive feedback that builds upon itself giving life to the policy issue, much in the same way that Pierson's (2004) positive feedback loops contribute to path dependency. As momentum builds, a power entrepreneur will utilize an offensive strategy to balance power, whereby offensive actions contribute to building momentum and continuing positive feedback. However, within the CLD cycle, momentum can break, particularly when partisan control shifts. When this happens, a power entrepreneur will shift to a defensive strategy of keeping the policy on the agenda and attempt to rebuild momentum. The defensive strategy will be pursued until enough momentum can rebuild, thus providing the opportunity for the entrepreneur to shift back into an offensive strategy. As thus, momentum within the offensive and defensive strategies can be cyclical, as demonstrated in Figure 4-2.
Figure 4-2 illustrates the cyclical nature of the momentum cycle, where a power entrepreneur will seek an offensive strategy when faced with the positive partisan conditions allowing for coalition building to balance power. A defensive strategy is pursued as a response to a loss of partisan advantage. Momentum as an entity is therefore responsive to the institutional power structure that allows for agenda control. Within the model, momentum is fluid and can fluctuate and shift quickly. As opposed to momentum being created externally to Congress as in the background model, and as opposed to momentum being bound as a cognitive function of new information in the synthesis model, momentum in the foreground model becomes self-constructed by a power entrepreneur as a necessity to drive policy forward in the process. Therefore, within the political function of an institution as Congress, an individual can utilize institutional power to generate perceived momentum, buoyed by momentum from external sources as the press or societal demands, and by cognitively processing new information that can be utilized to the power entrepreneur’s advantage. This provides the entrepreneur the capability to construct positive momentum within each subsystem as a tool of coalition building in gaining allies.

The theory developed here constructs a model to provide for expectations and functions of individual congressional actors in order to achieve a transformative policy outcome. We can expect certain behavior under particular partisan alignment of government and issue momentum. Therefore, when the factors of partisan make-up align with rational self-interest behind a specific policy goal, the behavior of a power entrepreneur is expected to follow a defensive or offensive strategy based on the
momentum cycle. However, there is one additional factor that must be included, which is the president.

**The Role of the Executive Branch in a Balance of Power Model**

Within the second loop, the theoretical model functions by keeping focus on power entrepreneurship in Congress, however, the role and behavior of the president and executive branch functions in conjunction with and separate from Congress. As the legislative and executive are coequal branches sharing power within the legislative process, the actual functionality for the president and executive branch actors following the president's lead, differs enough to warrant greater specificity for this part of the model. As the model on power entrepreneurship denotes the role of the president in needing to be brought into the balance of power, we can then begin with certain assumptions that will allow for specific behavioral expectations given certain conditions of the president and executive branch actors.

First, the legislative process is grounded in Constitutional power where the president does not have the ability to introduce policy. However, the president is not passive when it comes to policy, simply reacting to what Congress sends along. Instead, the president has his own agenda and the ability to bargain with and motivate Congress (Edwards 1990; Neustadt 1991; Jones 1994; Conley 2003). As a rational actor, the president will also pursue a set of self-interested goals that at times can align with congressional coalitions or at times be opposed. Sullivan and di Marchi (2011) provide a model of presidential policy bargaining with Congress as a long-term game of sequences, but more focused as a model of give and take, than from a strict game theoretical perspective. From this starting point, we can assume the president is a rational actor within the CLD cycle, who understands his role in the policy process as
the ability to bargain with Congress in order to achieve a favorable outcome. By utilizing the power entrepreneur framework, the president fits within a similar model, but the strategies he will employ for bargaining are based on a public versus private strategy that is impacted by the differing partisan make-up of government (Conley 2003b). Therefore, under certain partisan circumstances, we can expect the president to behave in a specific strategic manner. An additional assumption will be made here for the purpose of simplicity, which is; executive branch actors behave the same as the president. Actors speaking or bargaining with members of Congress on the president’s behalf hold the same self-interested goals as the president. This is a way to leave aside the principal-agent dilemma, in order to assume that all executive branch actors have the same goals as the president.

The president has the option of taking either a public or private bargaining strategy. Logically, this strategy will be pursued based in part on the specifics of the policy, and in part on the politics of the situation, which the politics is dominated by party control of Congress. Therefore, the president would take a public strategy of bargaining under conditions of divided or quasi-divided government, when he is at greater odds with Congress in attempts to utilize the bully pulpit to his advantage. A public bargaining strategy provides the president the benefits of offering support to allies in Congress, while drawing distinctions with adversaries. The specifics of the policy can be impactful for a public bargaining strategy, in particular if the public is an ally to the president’s position, as could be shown with the background lens as described in Chapter 2. A public strategy then can afford the president public support or increased attention that can apply pressure to members of Congress.
We can expect a private bargaining strategy to be pursued under conditions of unified government, when the president’s own party is in control of Congress. Under unified control, the president would be less likely to take a strong public stand opposing congressional leadership, while those leaders are of the same party. It would logically be more prudent for the president to bargain privately with Congress during these periods, as the difference in position on policy within the same party is likely to be minimal with avenues of communication more open. Cameron (2000) observed that veto-bargaining was rare under conditions of unified government, therefore the expectation of a private bargaining strategy on policy would be rational considering electoral outlook alone. The reasoning for the rarity of veto bargaining under these conditions is illustrative of the private strategy, where partisan interests become dominant. The president can use veto threats privately with his own party actors in Congress as a means of achieving a favorable compromise on policy specifics.

The case of FOIA deviates from the literature by providing a policy situation that changes the institutional structure and function of government, in particular, the executive branch. FOIA is an example of a transformative policy that will shift the constitutional balance of power between the legislative and executive branches. Congress is utilizing the policy as a direct check on executive power as was demonstrated through the synthesizing lens in Chapter 3. This is where the specific policy can impact the president’s choice of strategy. In the case of FOIA, a rational president would not be in favor of any policy that would shift power away from the executive branch and towards Congress and the public. Therefore, the expectation is the president will not support this type of reform policy and will seek a bargaining
strategy to neutralize the final outcome. Table 4-4 provides a summary of the factors at play when a president will seek a public or private strategy during times of unified or divided government.

There is one more factor of consideration that becomes specific for the case of FOIA, but can be applicable to other situations where the president is at odds with Congress. The issue is the use of executive privilege, which provides the president and executive branch actors the ability to refuse information to Congress, or the public, as discussed in the previous chapter. It is worth noting here again for the specific case of FOIA, as in any instance the president still maintains the power to invoke executive privilege in order to keep information secret. Executive privilege is justified as necessary in the public interest out of national security concerns. Regardless of bargaining position of the executive branch, and the president specifically, and no matter the outcome of a legislative solution such as FOIA, the president maintains the ability to use executive privilege as deemed necessary, even with the limitations imposed by Congress.

Although, as Congress begins to challenge unilateral executive power, the president will pursue a bargaining strategy in order to minimize the loss of executive power through policy outcomes.

A theoretical model of entrepreneurial balance of power has been developed that provides insight into the decision-making processes of specific actors that seek to wield institutional power in order to achieve a desired policy outcome. Strategic power entrepreneurs facing environmental constraints and partisan control will seek to utilize an offensive or defensive approach surrounding a specific policy issue that allows coalition building to achieve a balance. For this model, a balance is achieved when the
entrepreneurial coalition is able to gain a majority of allies over unknowns and adversaries to allow for passage of the policy in each system and across all systems. The focus will be on a specific power entrepreneur in Congress, John Moss, but the bargaining role of the president within the legislative process system will be illustrated as well. This provides the ability to examine the exchanges within Congress, as Moss pursues the policy goal of FOIA through utilizing institutional power at his disposal, with the ongoing bargaining between Congress and the President.

To provide context in order to better explain the model, the case of FOIA will be utilized in the following chapter. The next chapter offers an empirical case of transformative policy explained by the model as established above. The role of the power entrepreneur in Congress is established with Moss as the central figure in driving for the reforms that become FOIA. Motivation as driven in part through the press and societal demands, as discussed in Chapter 2, and through the introduction and use of new information, as provided in Chapter 3, offer a power entrepreneur incentives in the legislative process to utilize institutional power against the status quo. By pursuing transformative policy that will establish a new balance of power, a power entrepreneur will utilize offensive and defensive strategies to coalition build across all subsystems in order to gain the advantage. The final outcome – passage of policy – rebalances power to create a collective action solution that is beneficial for the majority, not necessarily all. The following Chapter will illustrate the model through the legislative development of FOIA.
Figure 4-1. Model of Integrated Nested Systems of the Policy-Making Institutions

Table 4-1. Institutional Actor Categorization for Entrepreneurial Balance of Power

<table>
<thead>
<tr>
<th>Allies</th>
<th>Unknowns</th>
<th>Adversaries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supporters</td>
<td>Potential Supporters</td>
<td>Active Opposition</td>
</tr>
<tr>
<td>Coalition Builders</td>
<td>Needed for Coalition</td>
<td>Unable to Sway Support</td>
</tr>
<tr>
<td>Influence and Resources</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 4-2. Multidimensional Layered Model of Congressional Balance of Power

System Level

<table>
<thead>
<tr>
<th>HOUSE → SENATE → CONGRESS (Inter-Institutional) → PRESIDENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual</td>
</tr>
<tr>
<td>Committee</td>
</tr>
<tr>
<td>Leadership</td>
</tr>
<tr>
<td>Floor</td>
</tr>
</tbody>
</table>
Table 4-3. Summary of Expectations of Offensive versus Defensive Entrepreneurial Advantages and Disadvantages

<table>
<thead>
<tr>
<th>Unified Government</th>
<th>Divided (Quasi-Divided) Government</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Offensive Entrepreneurs</strong></td>
<td><strong>Defensive Entrepreneurs</strong></td>
</tr>
<tr>
<td>- Majority Party Control = Strongest Position</td>
<td>- Majority Party Control = Weakest Position</td>
</tr>
<tr>
<td>- Committee Control</td>
<td>- Little Institutional Power</td>
</tr>
<tr>
<td>- Formal Leadership Control = Floor Control</td>
<td>- Press Policy Issue</td>
</tr>
<tr>
<td>- Agenda Control</td>
<td>- Attempt Coalition Build</td>
</tr>
<tr>
<td>- Wield Greater Institutional Power to Achieve Policy Goals</td>
<td>- Keep Issue Alive</td>
</tr>
<tr>
<td>- Coalition Build</td>
<td></td>
</tr>
<tr>
<td>Divided Government (Congress) = Strong Position</td>
<td>Divided Government</td>
</tr>
<tr>
<td>- Coalition Build – Veto-Proof Majority</td>
<td>- Minority Party = Weak Position</td>
</tr>
<tr>
<td>Quasi-Divided Government</td>
<td>- Press Policy Issue</td>
</tr>
<tr>
<td>- Majority Party Control = Moderate Position</td>
<td>- Coalition Build</td>
</tr>
<tr>
<td>- Seek Cross-Chamber Support</td>
<td>- Keep Issue Alive</td>
</tr>
<tr>
<td>- Coalition Build</td>
<td>Quasi-Divided Government</td>
</tr>
<tr>
<td>- Minority Party = Weak Position</td>
<td>- Press Policy Issue</td>
</tr>
<tr>
<td>- Keep Issue Alive</td>
<td>- Coalition Build</td>
</tr>
<tr>
<td>- Keep Issue Alive</td>
<td>- Keep Issue Alive</td>
</tr>
</tbody>
</table>
Table 4-4. Expectations of Presidential Public versus Private Bargaining Strategy Based on Partisan Make-Up of Government

<table>
<thead>
<tr>
<th></th>
<th>Unified Government</th>
<th>Divided (Quasi-Divided) Government</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Bargaining</td>
<td><strong>Weak Position:</strong></td>
<td><strong>Strong Position:</strong></td>
</tr>
<tr>
<td>Strategy</td>
<td>- If the president stands in opposition to the policy – as in reform policy that removes institutional power of the executive branch.</td>
<td>- If the president is in opposition to the policy as put forth by the opposition party.</td>
</tr>
<tr>
<td></td>
<td>- If a private bargaining strategy has already been utilized but failed to achieve the desired outcome.</td>
<td>- If the president believes public opinion is on his side.</td>
</tr>
<tr>
<td></td>
<td>- If the president believes public opinion is on his side.</td>
<td>- Electoral and partisan politics provides a disincentive for the president to keep quiet.</td>
</tr>
<tr>
<td></td>
<td>Public opposition to a unified Congress is risky – Use of Executive Privilege</td>
<td>- Use of Executive Privilege</td>
</tr>
<tr>
<td>Private Bargaining</td>
<td><strong>Strong Position:</strong></td>
<td><strong>Weak Position:</strong></td>
</tr>
<tr>
<td>Strategy</td>
<td>- If the president and his party are close in position on policy.</td>
<td>- If the president is attempting to mitigate public attention on policy.</td>
</tr>
<tr>
<td></td>
<td>- Electoral and partisan politics provides incentive for the president to bargain privately.</td>
<td>- The president may seek to bargain privately with opposition leaders in an attempt of ‘good faith’ efforts to come to agreement on policy.</td>
</tr>
<tr>
<td></td>
<td>- Offers the president, Congress and party to publicly be unified on policy issues.</td>
<td>- Threaten Use of Executive Privilege</td>
</tr>
<tr>
<td></td>
<td>- Threaten Use of Executive Privilege</td>
<td></td>
</tr>
</tbody>
</table>
CHAPTER 5
THE INFORMATION IS FREE

The Power Entrepreneurship of John Moss and the Early Years of FOI

Applying the CLD cycle and the model of power entrepreneurship, this chapter will offer context through the policy development of FOIA, which will demonstrate how institutional politics fits within the larger interconnected double feedback loop as Loop Two. The contextual use of FOIA reveals John Moss as the key power entrepreneur, demonstrating the ability of a single individual within an institutional setting as having the ability to press forward with transformative policy against the political status quo. Legislative development from infancy and institutionalization of the issue into policy development and evolution through to votes affords the ability to understand how an individual is capable of wielding institutional power in order to balance power surrounding a specific policy issue. As developed in the model in the previous Chapter, institutional power is centered on partisan control of government, coupled with issue momentum, provides Moss with motivation and incentives for developing policy around issues of government secrecy and public access to information. While Chapter 2 detailed the role of the press, and society, in struggling with these issue, this Chapter will offer insight into how Congress struggled to deal with administration policies surrounding FOI. The power struggles within Congress, and especially between the legislative and executive branches of government serve to illustrate how transformative policy and issue evolution drive institutional and political reform.

The key entrepreneur and driver behind FOIA is Rep. John Moss, first elected to Congress in 1952. In utilizing FOIA as an explanatory case, Moss will be the central actor the narrative will focus on, allowing an empirical case to provide context for the
model. Moss came into Congress during unified Republican control under Eisenhower as one of the few Democratic seats picked up in the 1952 election. Moss was assigned that term to the House Post Office and Civil Service Committee, where he ran into difficulty obtaining information from federal agencies over what he perceived as routine business (Lemov 2011). This was exemplified in Chapter 2 when Moss was denied information on the firing of over 2000 federal employees due to security concerns. With the Democrats in the minority and Moss being a freshmen member on a committee that had no jurisdiction on an issue like access to administration records, Moss was in a defensive position that afforded him little institutional power, but gave him perspective and an idea to pursue. The challenges Moss faced in his committee investigations from the increasing security measures of the Eisenhower administration provided the basis for his pursuit of an open public records policy.

The 84th Congress in 1955, saw the Democrats seize control of Congress away from Republicans, but still faced divided government with Eisenhower in the White House. With the Democrats in control, Moss was interested in being placed on the Appropriations Committee at first, then changed his mind instead to the Government Operations Committee, but faced disappointment when House Speaker Sam Rayburn (D-TX) announced the assignments and kept Moss in his previous committee assignments.¹ Moss found his committee assignments on Post Office and Civil Service, and House Administration, stifling, which prompted an exchange that would reshape Moss's political future and establish him as a power entrepreneur. After the November

election in 1954, when it became known the Democrats would be in control in the next Congress, Moss began speaking with Democratic House leadership and committee chairs in attempts to sway his committee assignments. On November 18, Moss met with soon to be Speaker Sam Rayburn and House Majority Leader John McCormack to discuss his committee placements.\(^2\) Based on that conversation, Moss began to reach out to House members that headed the delegations from each state, including his own of California, and to the committee chairs of the committees on which he wanted to serve. By January 1, 1955, Moss would send both Rayburn and McCormack a series of letters from these various members offering their support for Moss’ desired committee placement, which by then had changed from Appropriations to Government Operations.\(^3\) In contacting dozens of more senior House members, including committee chairs and leadership, Moss demonstrated his ambition to move into a committee seat that would afford him a position of influence. Simultaneously, as a junior member, his outreach to consult and ask approval from senior members provided for Moss a certain amount of respect from these members. Moss’ prowess at coalition building would prove useful in building support behind his policy activities once he attained the chair of a subcommittee.

At the start of the 84\(^{th}\) Congress a mere month into his second term, Moss went to see Speaker Sam Rayburn to make a direct case for why he should be on the Government Operations Committee. In a brief exchange with Rayburn that was


described as “not exactly” an argument, but an aggressive move for a junior member, Moss made his case directly and forcefully to the Speaker (Lemov 2011, 46). Moss received a call two days later informing him he had received his committee assignments and was to be on both the Commerce Committee and the Government Operations Committee. Through this exchange, Moss was able to make an ally of Speaker Rayburn, who was impressed with Moss’s aggressive willingness to confront him and with his political prowess (Lemov 2011). From this strong relationship, Rayburn put Moss on the leadership track towards Deputy Majority Whip, a position Moss would take in 1961 during the 87th Congress, as well as providing Moss with support on policy issues. The exchange also highlighted the ability of a determined entrepreneur, who as a mere sophomore member challenged the Speaker over committee assignments, a move that would not only create a strong bond between Moss and Rayburn, but would provide Moss the chairmanship of a subcommittee later that same year.

With control of Congress under divided government, congressional Democrats were looking for salient issues and Moss brought the issue of FOI to the attention of Government Operations Committee Chair William Dawson. The previous chapters demonstrated the growing saliency of the issue within society as driven by the press, an interest group House Democrats wanted to utilize in order to build momentum. As the Moss Subcommittee began to examine the issue of government secrecy and access to information, Moss was in a much stronger position. With Eisenhower in the White House and the Democrats in control on the Hill, Moss was able to move to an offensive position under divided government as he now chaired a subcommittee with agenda control, with House leadership as allies. While Moss would face an adversarial White
House, the shift back to partisan majority control provided Moss a position that furnished institutional power and a starting point to begin to balance power in his favor. The main motivation driving Moss and the subcommittee was the growing opposition from the Eisenhower administration to the issue. Traditional divided government offered a partisan influence that would allow congressional Democrats to mobilize around the issue against the Republican administration.

As the work of the subcommittee began to unfold and plans were underway for a survey of all executive agencies with the first hearing in November 1955, outreach from other members began almost immediately. At the end of July 1955, Archibald received a memo noting that House Judiciary Committee Chairman Emanuel Cellar (D-NY) was having trouble getting information from the Commerce Department and others.4 There was a handwritten response from Archibald noting that he will reach out to Cellar’s staff. Almost immediately the Moss Subcommittee became central to many members of Congress in seeking information compliance from the White House. The outreach to Rep. Cellar becomes noteworthy as Moss will need Cellar’s assistance to pass FOIA in 1966, so establishing a strong relationship with him early on proved Moss to be useful and earned gratitude from a senior member like Cellar. As the Moss Subcommittee held jurisdiction with investigative power on the issue of administration secrecy policies, procedures and practices, Moss’ power entrepreneurial efforts were magnified as other members of Congress, from both parties including some Senators, would seek his assistance in gaining access to agency records for oversight purposes and constituency

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work. The Moss Subcommittee quickly began to earn a reputation for being a bulldog with the administration.⁵

The first attempt at a legislative solution to the issue of government secrecy came after several years of hearings, investigations, and reports from the Moss Subcommittee. Moss had been able to attract a powerful ally in the Senate, Thomas Hennings (D-MO) who was Chair of the Senate Committee on Rules and Administration, which allowed for coalition building to happen simultaneously on both sides of the Capitol. Having Senator Hennings as an ally provided additional support for Moss as the Senate committee was also investigating the issue of government secrecy. Congressional Democrats found saliency in utilizing the issue against the Eisenhower administration, providing continued incentive and growing momentum as pushed by the increased press attention.

In 1958, Moss and Hennings simultaneously introduced legislation in order to break the increasing control over information from the Eisenhower administration.⁶ There were two bills introduced by each, one that would amend the Housekeeping Statute and one that would amend the Administrative Procedures Act of 1946 (APA).⁷ Moss would turn his subcommittee’s attention to building momentum and support

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⁵ There are numerous records in the archives that illustrate a steady call from bipartisan members of the House and Senate seeking help from the Moss Subcommittee in getting information from agencies. One such exchange included a note from Senator Robert Byrd, Chair of the Senate Armed Services Committee asking for help to get information from DOD – Memorandum from Mitchell to John Moss, Oct. 5, 1957. Folder: Moss, John E. [1955-1960], Box M-7. National Archives, Washington, DC.


behind the legislation to amend the “Housekeeping Statute” (5 U.S. Code 22). Moss would focus on this amendment in part, based on the fact that his subcommittee had jurisdiction on the housekeeping amendment, but not on the APA amendment. During this legislative battle, Moss held institutional power to amend the housekeeping statute, which he would use his subcommittee chairmanship from which to coalition build, including using the press to build momentum with the public. On the Senate side of the Capitol, Hennings subcommittee was part of the Senate Judiciary Committee, which held jurisdiction on the APA. In the House, the judiciary committee was controlled by Rep. Cellar, and Moss held no power with which to act on pushing an APA amendment. Instead, Moss would use the housekeeping amendment and continue to build relationships as his offensive strategy continued.

The housekeeping amendment would add a one-line amendment, which stated, “This section does not authorize withholding information from the public or limiting availability of records to the public”8 (Foerstel 1999, 34). The amendment passed by voice vote in both the House and Senate in 1958, and was signed by President Eisenhower, who was not supportive of the amendment and would continue to use claims of executive privilege and the APA to justify restrictive policies. Rather than vetoing the bill, which would have provoked Congress on an issue he wanted to go away, Eisenhower took a public strategy by issuing a signing statement reiterating the president’s ability to invoke executive privilege for reasons of national security. Eisenhower’s brief signing statement read in part,

In its consideration of this legislation the Congress has recognized that the decision-making and investigative processes must be protected. It is also clear from the legislative history of the bill that it is not intended to, and indeed could not, alter the existing power of the head of an Executive department to keep appropriate information or papers confidential in the public interest. This power in the Executive Branch is inherent under the Constitution.\(^9\)

Eisenhower’s signature on the Housekeeping amendment was a victory for Moss and his coalition. It showed that through an offensive strategy he was able to balance power across all systems leading to a favorable policy outcome. However, the victory was short-lived in that Moss and his allies quickly realized that the amendment did nothing to change administration claims of executive privilege under the Constitution or end the use of restrictive policies to withhold information from Congress and the public. Moss and Hennings would continue to pursue an offensive strategy although the focus now shifted to amending the APA, which provided ambiguous language the executive branch was using to claim privilege.\(^10\) While both the House and Senate would take up legislation on the issue through the remainder of the Eisenhower administration no other bills would pass Congress.\(^11\) Concurrently, with the passage of the amendment and the


\(^{10}\) The Administrative Procedures Act (APA) of 1946 included provisions to establish a comprehensive system to organize agency information, which included a provision for the disclosure of federal records, but allowed those records to be kept secret if it was in the ‘public interest’ to do so, or records dealing with the internal management of agencies. This vague and ambiguous provision became another basis for claims of executive privilege by the White House to deny members of Congress and the public access to information and increased restrictive policies.

\(^{11}\) There were at least 5 different Senate amendments to the APA introduced between 1958 and 1960, after the Housekeeping Statute had passed, which were: S. 2148 (85th Congress) introduced by Senator Hennings; S. 4004 (85th Congress) introduced by Senator Hennings; S. 186 (86th Congress) introduced by Senator Hennings; S. 1070 (86th Congress) introduced by Senators Ervin and Butler; S. 2780 (86th Congress) introduced by Senator Hennings. In the House, John Moss introduced HR 7174 (85th Congress), which was the original form of what became the Freedom of Information Act, and Moss reintroduced the bill every Congress from 1958 until it passed in 1966. From, US Senate, Committee on
additional legislative actions taken during the Eisenhower administration, the iterative nature of the CLD cycle is illustrated as multiple attempts to achieve the same policy goal are utilized over time.

In recognizing the shortcomings of the housekeeping amendment, Moss would continue an offensive strategy in the House by winning over allies from undecideds, as well as build momentum externally in working with the press. A letter to Clark Mollenhoff, Pulitzer Prize winning journalist for Cowles Publications, from Archibald discussing the future strategy of the Moss Subcommittee on going after new FOI legislation provided insight into the power entrepreneurship capabilities of Moss and the role of the subcommittee.¹² Archibald details the reasoning for pursuing the housekeeping amendment first as it was a more positive strategy that could be more easily sold to the public. Archibald notes the importance of pursuing any legislative paths for FOI during this period while momentum behind the bill is high, as he is fearful of momentum loss, and ultimately turning FOI into a losing issue if the Democrats take back control of the White House in 1960, due to what he calls “the First Law of Practical Politics.” He goes on to state that this law is,

A Congress controlled by one political party will accuse the executive controlled by the other political party of withholding information from the Congress and the public. The obvious corollary is that there will be fewer and less violent arguments about restrictions on information when the Congress and executive branch are controlled by the same political party. This may be because there is a greater flow of information or because there is less interest in uncovering skullduggery and boondoggling.

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In this statement, Archibald lays out the troubling political realities faced by Moss and the subcommittee moving forward on legislative proposals on this issue. The offensive strategy pursued by Moss would lose momentum, and perhaps support if a Democrat were elected as president. By recognizing these political realities at this time, it is clear as to why both Moss and Hennings would press for more legislation under Eisenhower, but also why Moss would continue to coalition build and win allies as he will need them if the partisan control of government shifts. This example is illustrative of the mastery of institutional politics that Moss had at the time and demonstrates the ability of a power entrepreneur to be planning for potential shifts in the future.

The continued coalition building by Moss during the last few years of the Eisenhower administration were marked by the ability of the subcommittee to impact other members by pressing the administration for withheld information. In a memo to Moss from March 1959, Archibald mentions talking with Rep. Ken Hechler’s (D-WV) office regarding a response from Hechler on an American Newspaper Guild (ANG) proposal for a public records law.\textsuperscript{13} The response to Archibald notes that Hechler’s response will be to tell ANG that will follow the lead of Congressman Moss. Later that year Moss would receive letters of praise from various members of the House and Senate, such as a letter from Senator Proxmire (D-WI) noting the important work the subcommittee had done in breaking the silence of the Army, which he had been fighting for information for more than nine years.\textsuperscript{14} Another memo to Moss from Archibald in


\textsuperscript{14} Letter to John Moss from William Proxmire, Sept. 5, 1959. Folder: Subcommittee Notices [1955-1960], Box M-10, National Archives, Washington, DC.
1960 discusses a follow-up letter from Moss to the Army based on his intervention to get records for Rep. O'Hara after he had trouble. Moss would continue to target members of Congress and the press regarding reports from the subcommittee during 1959 and 1960 in order to keep up momentum on the issue and continue to win over allies in the House and Senate. While progress on legislation remained slow during this period, Moss would increase efforts to use the institutional power afforded him through his subcommittee to drive efforts forward.

**Power Entrepreneurship and Unified Government in the Kennedy Years**

The favorable attention gained by Moss would propel him into the position as head of the Democratic National Speakers Bureau for the 1960 election. This position provided an opportunity for Moss to coordinate with the Kennedy campaign and other members of Congress to support their candidacies. Moss engaged with Kennedy’s legislative staff, briefing them on the background of the subcommittee’s efforts at countering administration policies to withhold information from Congress. Fortunately for Moss, both Kennedy and Johnson were in the Senate during the passage of the housekeeping amendment and were familiar enough of the issue to be largely supportive, at least during the 1960 campaign. Moss grew during this period as a power entrepreneur in having his subcommittee chairmanship that had gained a positive reputation as a counter to Eisenhower policies, as well as heading the Democratic

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Speakers Bureau, which provided him national attention and a close relationship with Kennedy and numerous members of Congress.\textsuperscript{18} Moss would spend significant time during the 1960 campaign cycle traveling in support of the Kennedy/Johnson ticket and many other congressional Democrats.\textsuperscript{19} Moss was gaining stature and a mastery of institutional procedures and power, from which he would continue to coalition build, gaining strength through his offensive strategy and momentum.

However, the election of Kennedy shifted the partisan make-up from divided to unified government under Democratic control, which should have provided Moss with the best possible position to utilize power and rebalance in his favor. Unfortunately, this proved to not be the case, much as Moss and Archibald had feared. The campaign for FOI against restrictive administration policies under Eisenhower had proved very successful for Moss and congressional Democrats. The problem now emerged as congressional and party leadership sought to halt the investigations and antagonistic rhetoric surrounding the new Kennedy administration. However, congressional Republicans had already begun to maneuver in pursuing a strategy against administration policies. In early 1960, prior to Kennedy being elected president, House Republicans on the Government Oversight Committee put forward a motion to disband the Moss Subcommittee, calling it “a waste of time and money,” and that its only purpose, “appears to be to harass the Administration and Republicans.”\textsuperscript{20} Through the


election and early into the Kennedy administration, Moss was facing challenges from his 
adversaries in Congress, which included his own party leadership and Republicans. 
Speaker Sam Rayburn died in 1961, ushering in new House leadership that was less 
supportive of Moss’ efforts and concerned over politically damaging attacks from the 
subcommittee. This placed Moss in a defensive position with momentum loss at the 
very time that he should be in a strong offensive position with increased momentum 
under unified Democratic government. In part, the downturn in momentum and push 
from congressional and party leadership for Moss to back away from attacking Kennedy 
is specific to the case of FOIA. As the legislation itself serves as congressional check on 
executive power, Democrats were fearful of embarrassing their new and young leader 
just as they got back control of the White House, and at a time when they wanted the 
legislative agenda to focus more on issues of social justice.

The new leadership in Congress and the White House under unified Democratic 
control left Moss to pursue a more defensive strategy through the work of his 
subcommittee and in pushing for legislative measures to address issues of government 
secrecy. The close relationship that Moss had built with Kennedy during the campaign 
would place him in a precarious situation as he attempted to balance his subcommittee 
work with the political realities of the new administration. Moss would continue 
investigations and hearings, calling out members of the Kennedy administration for 
withholding information from Congress, in particular on issues with Cuba to which 
claims of executive privilege were invoked.21 As expressed in the previous chapter,

21 Background Paper on Information Hearing, “Examples of tightened news control under Kennedy,” 
March 5, 1963. Folder: Information Hearing [1963; Folder 1 of 2], Box M-15, National Archives, 
Washington, DC.
Moss was learning at this time the difficulty of trying to balance power for policy when faced with an issue that was now viewed as politically damaging for his own party and their elected positions. Moss would continue to coalition build through subcommittee work in assisting other members of Congress, like in helping Judiciary Committee Chair Cellar with an executive privilege case his committee was working on. The strategy Moss would pursue would continue to be defensive as he was now in a lull of the momentum cycle and faced with a president from his own party and a policy agenda moving away from FOI. However, Moss remained in a power position, as he continued to hold his subcommittee chair, so he was capable of keeping the issue, investigations and hearings, and legislation moving forward, while waiting for momentum to once again build. As the example of executive privilege illustrated, Moss had opened new channels of communication with the Kennedy administration and had gained a favorable response with Kennedy’s clarification on the use of executive privilege.

The problems faced by Moss at this time were just within his own party, but also from congressional Republicans that were pursuing a similar strategy to the one that Moss had used when Eisenhower was in the White House. A press release from the Republican National Committee (RNC) in October 1961 criticized the Kennedy administration of, “censorship, favoritism, managing news, carelessness and attempting to use reporters as political propaganda conduits.” During a floor speech, Senator

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Milward Simpson (R-WY) blasted the Kennedy administration while citing a Sigma Delta Chi report on FOI. Senator Simpson stated,

Every administration attempts to present itself in a favorable light, but the New Frontier has completely misused this logical prerogative with gestapo tactics, deliberate lies, as in the case of the TFX investigation, the Cuban crisis, and more currently, the situation in Vietnam.²⁴

Simpson would continue by directly citing the report, which stated,

Secretary of Defense Robert S. McNamara and his public relations director Arthur Sylvester, have created an oligarchy of control over the release of all news emanating from the Department of Defense and which led to its boast of “management of the news” in the Cuban crisis late in 1962…All the rest of the Federal Government falls back on the mushy claims of “confidential” and similar excuses in spreading the blanket of secrecy over the records of government.

The blistering attacks faced by the Kennedy administration from congressional Republicans were reminiscent of those leveled at Eisenhower by Moss and others. This political climate, while sticky for Moss, proved beneficial for his entrepreneurial efforts.

Kennedy would continue to assert to Moss and members of the press his support for a more open and less secretive government, and noted how he supported the efforts of the Moss Subcommittee while he was in the Senate.²⁵ The chapter on the synthesizing lens provided insight into how Moss would work with the Kennedy administration, ultimately leading towards the president reducing authority on the use of executive privilege, in attempts at overcoming Republican complaints and criticism while sparing Moss from having to openly pursue legislation that would be politically perilous.


At the same time, Kennedy utilized a more private strategy to work with Moss and Congress on these issues, seeking to manage discussions behind the scenes and going public only to respond to criticism from the opposition. While the movement from Kennedy to temper use of executive privilege would not calm Republican condemnation, it did provide Moss a win to demonstrate that he was serious in pursuing the issue regardless of which party happened to occupy the White House, which would assist him in future coalition-building efforts to gain GOP support.

With Kennedy seeking a private bargaining strategy with Congress, Moss was in a strong position to pursue action with the White House on non-legislative means to reduce restrictive policies on public information. Regardless of Republican accusations against both Moss and Kennedy, the coalition Moss was building in the House and his allies in the Senate would continue to introduce legislation to address a public records law in amending the APA. The slowdown in momentum behind the issue during this period allowed Moss that chance to continue working but with a more defensive mindset in pushing the issue and potential policy solutions while foregoing the need to fervently vocal. The exception being the period surrounding Kennedy’s shift on use of executive privilege in 1962, which garnered increased press attention, refreshing momentum and allowing Moss continued power resources through his subcommittee.

The strategy Moss pursued worked in several ways, first in that Kennedy shifted position by reigning in use of executive privilege claims, in seeking to limit how those claims were used surrounding secrecy policies. Second, while Moss and the subcommittee would continue in their efforts to coalition and press against obstinate House leadership wanting the agenda and focus to be elsewhere, the Senate became
more energetic in its actions on the issue. Although Moss had lost his close Senate ally when Hennings passed, Senator Long (D-MO), who filled Hennings seat in the Senate and in committee assignments, stepped immediately into the FOI issue as a strong ally to Moss and in wanting to continue Hennings work on the issue. Similar to the House, Senate Republicans understood the issue of government secrecy and public access as an important issue to use against the White House in a partisan context. However, as opposed to the House at this time, Senate Republicans were active in working on legislative solutions to the problem with Long. On the Senate side, with the help of Long, the Senate Judiciary Committee began a vigorous approach to a legislative solution through hearings and investigations. The coalition in the Senate began to include Senators Everett Dirksen (R-IL), Sam Ervin (D-NC), Philip Hart (D-MI), and Joseph McCarthy (R-WI). During the 87th Congress, 7 different bills were introduced between the Senate and the House seeking a legislative solution through amending the APA.26 The increased activity in the Senate provided Moss with forward momentum in his attempts to balance power on both sides of the Capitol. Through his subcommittee work, Moss had been able to win over allies in both the House and Senate in using his institutional power to assist other members by countering the administration. This work now began to pay off at a time when House leadership was attempting to stifle Moss so as not to embarrass the president or the party politically. The numerous bills all seeking

26 The bills introduced were: S. 1887 (87th Congress) introduced by Senator Ervin; S. 1567 (87th Congress) introduced by Senators Hart, Long, Proxmire; S. 1907 (87th Congress) introduced by Senator Proxmire; S. 3410 (87th Congress) introduced by Senators Dirksen, Carroll; in the House: H.R. 9926 (87th Congress) introduced by Representative Walter; and Moss reintroduced his freedom of information bill that had been introduced in the previous Congress (no bill number available currently). US Senate, Committee on the Judiciary, Subcommittee on Administrative Practice and Procedure. 1974. Freedom of Information Act Sourcebook. 93rd Congress, 2nd Session. Washington: US Government Printing Office.
to amend the APA to open government records to the public illustrate the iterative nature of the CLD cycle and the evolution of policy that moved from being focused on amending the housekeeping statute, to non-legislation actions on executive privilege, now to legislation seeking to amend the APA. However, in the short-term, none of the bills in either the Senate or the House made it out of committee and died.

Early into the Spring of 1963, the Moss Subcommittee was organizing a hearing to examine how news has been managed by the executive branch, particularly in light of what Archibald called, the “Cuban Crisis.”27 Once again, Moss had learned that Kennedy’s position on executive privilege did little to change access to government information, leaving Moss to focus on the final means of legislation as a fix. The hearing would focus on the management and censorship of the news, which had been drawing increased criticism from the press and Congress surrounding issues with Cuba the growing situation in Vietnam. Moss would use this opportunity to bring together members from the press and the administration to draw attention to the problem and highlight potential legislative solutions. In background information provided prior to the hearing, Moss would note how news control had tightened under Kennedy, being even worse than with Eisenhower.28 While instances of the use of executive privilege had declined from 44 times under Eisenhower to 1 under Kennedy, Moss notes how information had become more “tightly held” under Kennedy, including the increased coordination of all news releases through the Pentagon and DOD at the specific


direction of the president. Subcommittee documents would also discuss how the Kennedy administration would leak specific information to the press in order to use the coverage as propaganda.

The debate over news censorship between Congress and the White House would continue with Moss receiving a draft copy of the “Stand-By Voluntary Censorship Code” from the Office of Emergency Planning inside the Executive Office of the President, and a letter of explanation from Edward McDermott, Director of the Office of Emergency Planning. Based on the code used during WWII, this new document was to go out to all broadcast and publication media detailing how to keep information of “value to our enemies” from being made public. The argument being made by the administration to Moss was based on the recent events with Cuba and the growing situation in Vietnam constituted wartime, therefore the President was authorizing the Office of Censorship within the Office of Emergency Planning to prepare for wartime censorship of all government information. At a time that Congress was beginning to move on legislation to address the growing tensions between branches over access to information, the Kennedy administration pivots to the Cold War paradigm asserting censorship authority during wartime as justification for stemming the flow of information to the public and Congress. With the victory Moss achieved with the issue of executive privilege, thus limiting certain strategies for the Kennedy administration, the president would turn back to national security during wartime as justification of actions.

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Press organizations like ASNE were making an argument that such censorship policies during peacetime were not acceptable, which pushed the administration to make assertions of the necessity of planning for wartime. Kennedy would state,

This nation’s foes have openly boasted of acquiring through our newspapers information they would otherwise hire agents to acquire through theft, bribery, or espionage…If the press is awaiting a declaration of war before it imposes the self-discipline of combat conditions, then I can only say that no war has posed a greater threat to our security.30

Moss would not let such executive assertions go unanswered. Cautioning the White House in order to avoid an unnecessary shutdown of information based on political instead of security concerns, he stated,

In almost every past instance the so-called security breach has turned out to be a careful controlled leak of information favorable to some government official, federal agency or military service. If such information leaks damage the national security, the perpetrators should be punished under the already adequate laws established for that purpose.

He would continue by asserting that his subcommittee,

Has uncovered information withheld by officials who contend the disclosure would endanger nation security whereas they were merely trying to protect their own political security. We must use the excuse of the cold war dangers to weaken the critical self-appraisal which is a basic ingredient of our democratic government.

As the CLD cycle moved into this next iteration, it becomes clearer of the political arguments behind the assertions from Moss and Congress, as standing in opposition to the continued need for secrecy due to security coming from the White House. Moss and his coalition in Congress had been successful in limiting presidential assertions of power through executive orders and other means, bringing this stage of evolutionary

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development firmly in the policy arena. Moss and his allies knew the only path to pursue at this point in preventing continued executive branch intransigence was through statute, therefore legislation needed to be passed.

**Power Entrepreneurship through Passage of FOIA, JFK to LBJ**

The 88th Congress in 1963 began with continued interest in issues of government secrecy with the Senate pursuing several bills seeking to amend the APA.\(^{31}\) Hearings were held in the Senate in October, and after several minor amendments, additional hearings were held in early July 1964. A final bill was passed by voice vote in the Senate at the end of July (US Senate, Committee on the Judiciary 1974). The Senate passing the first version of FOIA highlights an issue for Moss in the House. Long and Dirksen, both of whom served on the Senate Judiciary Committee, which had jurisdiction over the APA, led the coalition supporting the bill in the Senate. Therefore, the legislation that passed to amend the APA fell under judiciary committee jurisdiction in the House as well. The Moss Subcommittee was part of the House Government Operations Committee, which did not have jurisdiction over the APA, and with Moss not serving on the House Judiciary Committee, he lost procedural control of the bill when it was introduced in the House. With the Senate bill moving into the jurisdiction of the House Judiciary Committee, Moss had to change strategy in order to get the bill through and balance power in the House.

The death of Kennedy brought President Johnson into the White House and opened the door to a productive period of legislative reform, and thus an opportunity for

Moss to take advantage. Moss did not have the personal connection to Johnson as he did with Kennedy, though being a power entrepreneur, he would begin to build relationships. In the days following Kennedy’s assassination, Moss sent LBJ a telegram on the behalf of himself and the entire congressional delegation from California expressing their grief and pledging their “unreserved support” for the president.32 The Democratic National Committee (DNC) would send a response a few weeks later thanking him on behalf of the president and letting Moss know how appreciative LBJ was for his support.33 The letter would continue by thanking Moss for his leadership and “prompt cooperation in what became an unprecedented demonstration of unity.” In quickly moving to support the LBJ and the party in the moments following Kennedy’s death, Moss continued to solidify his position as a power entrepreneur in Congress and began moving strategy back towards a strong offensive position to momentum build. Having bipartisan support behind FOI legislation in the Senate provided Moss with a near balance of power there, he would continue efforts in the House to coalition build, while also seeking support from the new administration. House leadership however, was not interested in addressing the FOI issue, as the policy agenda was focused in other areas. Johnson, who supported freedom of information bills as Senate Majority Leader during the Eisenhower administration, now opposed any legislative efforts to remove executive control of information.

32 Telegram to President Lyndon B. Johnson from John Moss, Nov. 26, 1963. Folder 3, Box 111, Series 3. John E. Moss Archive, California State University, Sacramento.

While the Senate has passed a version of FOIA during the 88th Congress in 1964, there would be no movement in the House, and the bill died at the end of the Congress. The 89th Congress would begin with increased pressure in the House and from the president for Moss to back away from pushing any public records bills, as the focus from the White House was on civil rights and the Great Society programs.

However, these efforts did not deter Moss as his subcommittee continued to work on legislation. In seeking to balance power in the House, Moss found another entrepreneur to ally with, a sophomore Republican congressman from Illinois named Donald Rumsfeld. Rumsfeld was seeking to gain a power entrepreneur status by specifically requesting to be on the Moss Subcommittee, as he also viewed the issue of FOI as important, especially through a political lens. As congressional Republicans became more vocal in opposing Johnson administration secrecy policies, Rumsfeld saw an opportunity for him to be on the subcommittee on this salient issue, and Moss understood Rumsfeld to be an ally that will bring along increased Republican support.

Rumsfeld held a deep respect for Moss as someone who was willing to fight for an issue and belief, and not as just for partisan politics (Lemov 2011; Foerstel 1999; Archibald 1993). As a key ally to Moss, Rumsfeld was able to build the House coalition within the Republican caucus, including gaining the support of House Minority Leader Gerald Ford, which provided Moss growing momentum to take an assertive offensive strategy in contrast to the wishes of LBJ and House leadership (Lemov 2011; Foerstel 1999). With Republican Senate Minority Leader Dirksen already supporting the issue across the Capitol, the partisan motivation for House Republicans increased, giving Moss and the coalition enlarged support with which to balance power. The
environmental factors were shifting around the legislation as more inter-institutional support moved to balance power in Moss’s favor, while external influence from the press continued to add support. The president and executive branch actors were now the major opposition to legislation, as it seemed the balance of power in the House and Senate was moving toward a majority to support Moss. The president, while opposing any open records law, would pursue a private strategy in bargaining with Congress as LBJ was in need of congressional support for his agenda.

Early into the first term of the 89th Congress, Moss and Long made the opening move in the next iteration of the CLD cycle by introducing identical public records bills in the Senate and House. The bills, S. 1160 and HR 5012, were based on the bill the Senate had passed at the end of the previous Congress. A press release issued jointly by Moss and Long’s committees used firm language to make the case for increased access to government information based on numerous hearings and reports issued by the committees over the previous decade. Long asserts that the Senate will once again pass a FOI bill that term. The assertion from Long provided Moss the signal that the Senate was moving into a balance that would provide the first institutional system to move into a balance of power in favor of the policy. The press release also served as notice to the administration and House leadership that Moss and the coalition was serious in moving forward with legislation. While press momentum had slowed as evident in the data from Chapter 2, the political momentum behind FOI legislation had improved with increased coalition support.

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As the CLD cycle continued through iterative development, the administration was strong in opposition to the FOI legislation in Congress, providing a challenge for Moss in getting his legislation passed. In spring 1965, Phillip Hughes, assistant director for legislative reference at the Bureau of the Budget (BOB) sent a memo to Lee White, special counsel to LBJ, discussing the upcoming hearings in the House scheduled on HR 5012. In the memo, Hughes states that BOB regards the bill as “threatening a serious legislative encroachment on executive power.”

Hughes continues by speculating that the Senate will wait for the House to act, but notes that if the House passes the bill, the Senate will move quickly to do the same. He rants that freedom of information is too sensitive an issue and it would be difficult to handle at a hearing. Hughes then recommends that the issue warranted immediate attention and they needed to talk with House leadership to urge them to prevent the bill from a floor vote.

The Moss Subcommittee hearings on HR 5012, featured representatives from the Justice Department (DOJ) who testified that the proposed legislation was unconstitutional, and that all agencies involved objected. That same day, Hughes sent a detailed letter to House Government Operations Committee Chairman, William Dawson outlining BOBs position on the bill. In the letter, Hughes rips apart the legislation noting that is does not adequately protect the public interest and ended by stating that BOB strongly opposes enactment.

The argument coming from the administration was similar to the arguments in favor of executive privilege, in that the executive branch had

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35 Memorandum for Mr. Lee White, 19 March 1965: Office Files of Harry McPherson, folder: Office Files of Harry McPherson Executive Privilege, box 22, LBJ Library.

the constitutional authority to keep information secret in the public interest. With the subcommittee hearing held in private and the correspondence between the White House and House leadership, which demonstrate a concentrated effort from the Johnson administration to oppose the legislation, effectively signaling a veto threat to Congress, all of which being conducted in private as LBJ was publically pushing for the Voting Rights Act and other Great Society programs at this time. The strategy LBJ was pursuing focused on private bargaining, while Moss began taking a more public and assertive offensive strategy with LBJ, in part driven by a coalition that consisted of vocal Republican opposition led by Rumsfeld, and with Moss using his power in the House to pressure the administration at a time that the White House needed congressional support in other policy areas.

A few weeks later, in April 1965, House Democratic leaders were holding their weekly meeting with President Johnson, who requested of Speaker McCormack, Majority Leader Carl Albert and Majority Whip Hale Boggs, to explain why Moss was holding hearings and moving forward on his government secrecy bill. Johnson remarked that the legislation was terrible, asking, “What is Moss trying to do to me?” He continued, “I thought Moss was one of our boys, but the Justice Department tells me this goddamn bill will screw the Johnson Administration” (Lemov 2011; 53). Johnson then recommended to the House leadership that Moss be “brought in line.” LBJ’s comments directed at Moss are indicative of the power Moss had been able to attain in seeking to balance power in his favor toward passage of the legislation. The meeting also illustrates how the administration and congressional Democrats continued to work privately in keeping policy disagreements away from the press and the public. Within
the scope of the Great Society agenda being pursued, LBJ and congressional Democrats were facing pressure from Republicans, factions within their own party, and sectors of the public.

Within an hour of this meeting, Moss was called out of his own hearing and summoned to the Speaker’s office. McCormack expressed the LBJ’s outrage over the bill, and while the Speaker did not specifically direct Moss to kill it, the message was implied. After more than a decade of hearings and investigations into issues of government secrecy and access to records, and with congressional Republican support providing for an enhanced bipartisan coalition, Moss was not deterred by Johnson’s irritation. Moss remained cautious however, as he knew that even if the bill passed in the House, he would not have enough votes to override a veto (Lemov 2011; Foerstel 1999). Moss had been able to achieve a powerful coalition of support in the House and Senate, but was continuing to struggle against near united opposition from all corners of the executive branch. With so much focus during this time on other legislative endeavors, Moss was hampered by a slowdown in momentum from a decrease in press and public attention leaving him with an issue that remained salient, but reduced. His offensive strategy was running headfirst into LBJ’s strong opposition.

By August, regardless of the opposition with the White House, Moss pressed forward in understanding that his offensive strategy was situated at a time of massive reform, of which he saw FOI as part. Archibald sent Lee White an updated version of HR 5012, noting that any comments White could offer would be helpful.37 This letter

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prompted an internal exchange within the Johnson administration, with White forwarding the letter and bill to Hughes at BOB with a memo attached that merely said, “HELP!”

Hughes responded back noting that although some changes had been made to the language of the bill, it remained objectionable and he recommended continued opposition. The next day, Lee White sent the correspondence to Bill Moyers, who commented that he agreed with BOB’s objections and they should continue to oppose the bill. Two weeks later, White sent a letter back to Archibald noting that after having some of their legislative specialists look over the bill, the lawyers still agree that the legislation is unconstitutional and would provide an undue burden on the agencies. White ends by saying that he hopes Archibald and Moss will continue to work with the administration on developing a bill that overcomes their objections.

Prior to White responding back to Archibald, he sent a memo to Moyers stating, “I have not been bothered by Sam Archibald about this but it seems to me we ought to at least make it clear that our silence does not mean agreement. Additionally, I did not think it desirable to just say “no” but wanted to kind of preserve our “harmonious” working relationship by sticking poor old Norb [Schlei] with the duty of working with Sam.”

38 Letter to Mr. Sam Hughes, 4 August 1965, Office Files of Harry McPherson, folder: Office Files of Harry McPherson Executive Privilege, box 22, LBJ Library.

39 Memorandum for Mr. Lee White, 12 August 1965: Office Files of Harry McPherson, folder: Office Files of Harry McPherson Executive Privilege, box 22, LBJ Library.

40 Memo to Bill Moyers, 13 August 1965: Office Files of Harry McPherson, folder: Office Files of Harry McPherson Executive Privilege, box 22, LBJ Library.


By this time, it becomes evident that Moss and his subcommittee were having an impact on the administration. As both sides continued to privately bargain over the focus of the legislation, executive branch actors were getting frustrated and beginning to show concerns amongst themselves of the possibility that a FOI bill could actually pass. Within the White House, legal counsels and the DOJ were continuing to assert to Congress that the proposed legislation was unconstitutional by attempting to alter power solely provided to the president. A main area of contention between the sides was over the provision that would allow requestors of information a legal process for appealing denials through the courts. This legal mechanism did not sit well amongst White House actors. A memo on the DOJ review of HR 5012 firmly opposed court intervention in executive branch activities by stating,

Mr. Schlei pointed out that it was his opinion that the president would never approve a bill with the court review provision. Not only does the Executive not like the watchful eye of the court peering over its shoulder, but also the Judges are “not equipped to handle the informational problems which occur within the Executive.”

For Moss and the coalition, the legal mechanism that offered judicial oversight upon denial of information was an integral part of the legislation, without which it had no teeth or enforcement mechanism, which would place them back to where they already were.

The exchanges between administration actors with Moss and subcommittee staff would continue in December with Archibald sending Moyers a letter in the aftermath of the Senate passing S. 1160 in October. Archibald asserted the Moss Subcommittee and House were preparing to move on their version, HR 5012, in January and that things

were going to get “hot,” so he wanted to prepare Moyers for what to expect. Archibald discussed that the Moss Subcommittee will take up S. 1160, which did not include any of the language he had worked out with Norb Schlei and members of the Justice Department that were in the House version. He states, “But even those changes would not make the bill acceptable to those agency witnesses. In fact, I doubt whether any improvements in the present law would be acceptable to the Executive Branch holdovers.” Archibald continues by stating all of the newspaper and press groups in support, and how congressional Republicans are beginning to take partisan advantage by attacking LBJ over his delay tactics in not supporting the bill. Archibald ends by saying that he will keep Moyers informed on what the press and Republicans will do on the issue. With the Senate passing their version of FOIA by a voice vote, the first system was brought into a power balance for Moss once again. Moss now had renewed momentum to press the White House for support in moving forward with the bill.

While Moss wanted to press forward with his version, HR 5012, he began to realize that the best attempt of getting the legislation through the House, bringing the House into a power balance, was to pass the Senate version, S. 1160. The problem now faced by Moss was that the Senate version had come through the Senate Judiciary Committee, as it amended the APA, which meant that when S. 1160 was reported in the House, it was sent to the House Judiciary Committee who held jurisdiction, not to Moss or the Government Oversight Committee. Moss was now at a disadvantage as all the work he had put in and power he had achieved and used through his subcommittee

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would be for nothing if he could not shepherd the bill through the House. Moss decided that his best chance was to talk directly with the House Judiciary Committee Chair, Rep. Cellar. Moss knew this situation might happen, based on the Senate passing a similar version in the previous Congress. At that time, he had met with Cellar and discussed a plan to get the bill through. Moss reached out to Cellar and they met for a brief conversation. Following the meeting, Cellar gave jurisdiction of S. 1160 to the Moss Subcommittee allowing Moss to push the legislation through the House. Cellar had noted previous instances when Moss had assisted him and his committee with obtaining information from executive agencies, and since Moss had been so doggedly determined in his pursuit of the issue, Cellar believed Moss deserved to have control of the bill in the House for the final push. This exchange solidifies the position of Moss as a power entrepreneur by demonstrating how his continued ability to utilize institutional power to his benefit had helped other members of Congress as well. Cellar had recently presided over the passage of the Voting Rights Act and had tremendous influence with the White House, yet he wanted to provide Moss the opportunity and support to get a FOI bill through the House and onto LBJ’s desk.

The forward momentum from Moss and the coalition in the House then prompts Moyers to send a correspondence from Archibald to Lee White seeking his advice,

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noting, “This could be a potential time bomb.” White’s response back to Moyers recommends that any “Congressional liaison types” in the White House be prepared to talk with House leadership, including Moss, in order to get the subcommittee to change the bill to something more acceptable. By January 1966, White sends a memo to Schlei and Hughes with Archibald’s letter and warns them of the potential upcoming problems as outlined in the Archibald letter. He asks them to look over S. 1160 and get back to him on what the administration would be willing to accept. He then notes that they should, without delay, sit down with Moss and come to an accord on amending the bill in a way that would be acceptable to them, so they, “would not be in the awkward position of opposing freedom of information.” The continued private conversation between Congress and the White House illustrates how LBJ was able to fervently oppose legislation from his own party without having to be public about it. At this time, it is clearly becoming more apparent to administration officials that Moss may succeed in getting the bill through the House and thus bring Congress into a balance of power in favor of FOIA. This leaves the administration to begin to bargain over final terms of a bill, demonstrating that the White House opposition was moving towards being an ally, provided they could influence the scope and language of the legislation.

Over the next several months a negotiation and deal was made with Moss and House leadership, working with Moyers, White, Schlei, Hughes and others within the


49 Memorandum for Mr. Norbert Schlei and Mr. Phillip Hughes, 15 January 1966: White House Central File, Subject File, folder: Executive Folder LE/FE 14-1, box 44, LBJ Library.
Johnson administration to come to an agreement that would allow S. 1160 to come to a vote in the House. Congressional Republicans continued to attack LBJ over government secrecy as part of their “credibility gap” campaign for the 1966 mid-term elections, but the issue was gaining support from including prominent Republican leaders such as Sen. Everett Dirksen and House Minority Leader Gerald Ford. While the administration began to feel pressure politically, Moss was under pressure to work out a compromise with the administration that would get his legislation passed without forcing a political showdown between LBJ and his own party in Congress. Moss had the advantage at this point in having built a strong bipartisan coalition in the House, which included leadership of both parties, and having the Senate already in a power balance. The private bargaining strategy preferred by LBJ left him with the choice of working out a compromise bill or public opposing a bipartisan coalition led by his own party. The possibility did exist for LBJ to remain publicly quiet and veto any bill that came to him, which was a concern for Moss. Even with the support of allies in both the House and Senate that Moss had gained, he was worried that there were not enough votes to override LBJ’s veto.

This illustrates an additional wrinkle in the balance of power model of power entrepreneurship. As previously explained, a power entrepreneur only needs enough allies that constitute a majority in each house of Congress in order to pass legislation. In

50 The Ford Presidential Library archive contains documents on the Republican efforts to run a discrediting campaign against LBJ and congressional Democrats during the 1966 mid-term elections. With Rep. Donald Rumsfeld on the Moss Subcommittee pushing from the inside, House Minority Leader Ford was able to get a large group of Republican House members on board to support FOIA, which could be used as a partisan attack on LBJ.

51 Interview with Bill Moyers, conducted via email between March 17, 2015 and May 5, 2015.
the house that would be 218 votes for a simple majority, and in the Senate it would be 51 for a simple majority or 60 to overcome a procedural filibuster. However, in the model for a balance of power to occur, the president would be included that brings the entire legislative system into balance. In the case of FOIA, at this point in the development process, Moss knew he had the votes to get the bill through the House, and while he had negotiated a deal with administration officials, he was uncertain if LBJ would veto. This left Moss to press ahead to utilize his skills as a power entrepreneur to win the president’s signature, while potentially continuing to coalition build in attempts to get a veto-proof majority. With the model developed here, a veto is not considered as a balance unless the votes exist in Congress to override.

With the Senate having passed a bill already, Moss wanted to move quickly on getting the bill through the House. Moss believed the best chance now for FOIA to pass was to drop his own bill and push ahead with the Senate version unamended in the House. Moss and his coalition of support believed the only way to get the bill through was without amendment, removing the need for a conference and additional round of votes, which Moss felt they would lose, especially if LBJ kept threatening to veto. By removing the need for a conference committee on the legislation, Moss would effectively balance the inter-institutional system by default, meaning that once the House passed the Senate version, the bill would be sent directly to the president with Congress achieving a new balance of power in favor. Within this iteration of the CLD cycle, Moss worked out a deal with the administration to allow the bill to go through the House. The deal was that S. 1160 would be voted out of committee unamended, and would be brought to the floor of the House under a closed rule so that no amendments
could be offered. This would provide Moss with achieving his goal of passing FOIA and attaining a new balance of power in Congress. In order to get this deal, Moss had to agree to allow Justice Department officials to help him write the final committee report, which accompanies the legislation, providing details of the intent and recommendations for implementation.52 The agreement would allow Moss to pass FOIA in the House, and overcome the objections of executive branch agencies, including DOJ, that had been adamantly opposed to the legislation. Concessions were given on both sides, but even with administration officials now agreeing to support the legislation, no one in the White House knew for sure if LBJ would actually sign the bill or veto.

At the end of March 1966, a press release went out noting that the Moss Subcommittee had favorably reported S. 1160 out of committee and will be taken up by the full Government Operations Committee.53 The next day, Milton Semer, counsel to LBJ, sent a letter to Johnson’s administrative assistant, Henry Wilson, informing him that he and Moss had spoken about the bill coming out of his subcommittee and going before the full committee. Semer notes that Moss agreed that the bill should go to DOJ officials for comment, showing that the deal was being implemented, and asserts that he believes Moss and the administration can work things out. Semer also noted that both Moss and Moyers would be in Vietnam at the same time and he suggested to both


that they get together and talk then.\textsuperscript{54} While Moyers never went to Vietnam with Moss, they did talk several times to discuss the legislation and the issue. Moyers stated that, 

Moss was so persistent, so dogged and determined, that one had to take him seriously. He was like Hubert Humphrey on civil rights, although less publicly exuberant. The man understood what it took to pass such a crucial game-changing bill, just as HHH did. He was one of those students of Congress who knew that no victory was solo.\textsuperscript{55}

Moss was able to help sway, with the assistance of several prominent members of the press, an entrepreneur in the White House – Bill Moyers. Moyers comments that when he became Press Secretary in 1965, after turning LBJ down several times in the past, he began meeting regularly with various press officials, including strong FOI advocates like Russ Wiggins from Washington Post. In discussing the issue and reading some of ASNE’s reports, Moyers began to understand that the constitutional problems expressed by DOJ were open to interpretation, which provided him flexibility in pushing other administration officials toward working with Moss to influence the construction of the legislation instead of opposing.

By mid-May, the full House Government Operations Committee reported S. 1160 out of committee, paving the way for the bill to be voted on by the full House. This occasion was marked by a press release from the House Republican Policy Committee praising the progress of the bill and condemning the Johnson administration for delaying progress and creating a “screen of secrecy” barring reporters, members of Congress,


\textsuperscript{55} Interview with Bill Moyers, conducted via email between March 17, 2015 and May 5, 2015.
and the public from being able access vital information important to their welfare.\textsuperscript{56} The constant Republican attacks, coupled with concerns over the 1966 mid-term elections, were placing pressure on the administration to finalize a deal on FOIA and get the bill passed.\textsuperscript{57} At the end of May, Moyers sent Cabinet secretary and special assistant to the president, Robert Kintner, a memo with an attached booklet written by then Vice-President Elect Johnson in 1960 detailing how the Kennedy administration would be an open government, overcoming the access to information and government secrecy problems that were rampant in the Eisenhower administration. Moyers notes to Kintner that he keep this information on hand for LBJ to use in a signing ceremony or statement on FOIA.\textsuperscript{58} With the House on the verge of passing the bill, Moyers began a final push with administration officials and those close with LBJ in thinking through potential outcomes of using the passage of FOIA to their advantage. In winning over an ally like Moyers, Moss was able to to have support from within the administration in attempts at solidifying LBJ’s signature on the bill instead of a veto.

By mid-June with passage of FOIA in the House looming, Semer sent a memo to Moyers offering suggestions on how to handle the freedom of information bill. Semer suggested that Moyers help LBJ frame the issue as one between the transient president


\textsuperscript{57} It was not just the 1966 midterms that LBJ politically worried, but at that time, LBJ was planning to run for reelection in 1968 as well, so rationally, he would be concerned about the political impacts the issue would have on his reelection campaign, which would offer additional pressure that would impact the situation and play into a potential veto consideration.

\textsuperscript{58} Memo to Robert Kintner, 28 May 1966, White House Central File, Subject File, folder: Executive Folder LE/FE 14-1, box 44, LBJ Library.
and the power of the permanent bureaucracy. Semer ends by recommending that Johnson sign the bill at the Governor’s Conference on July 4. The internal discussion with members of the administration show that the balance of power had shifted in Moss’ favor, with officials beginning to discuss signing ceremony potentials. As the public was relatively unaware of LBJ’s strong opposition, he could use the passage of FOIA to his advantage as a demonstration of his leadership on the issue. Even with agencies shifting position to support the bill with the DOJ deal Moss worked out, and with support from Moyers and others inside the administration, no could guarantee to Moss that LBJ would not veto.

FOIA came up for a vote and passed on June 20 with a unanimous vote of 306 to 0, with 126 members not voting, with the final vote tally showing 207 Democrats and 99 Republicans voting yea. As the vote tally in the House demonstrate, while there was more than enough allies in support to balance power in the House and send the bill to the White House, Moss did not have a veto-proof majority. Moss remained hopeful that the deal made with the DOJ and the strength of the coalition would be enough to push the bill into law (Lemov 2011). At this point not even members of the administration knew what LBJ would do with FOIA, whether he would sign or veto. To complicate matters more, Congress adjourned a week later for the 4th of July recess. The adjournment added an additional worry for Moss, with Congress out of session for several weeks, LBJ was given the ability to pocket veto. The pocket veto would kill the

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60 The roll call vote count is available online through GovTrack.us, and can be accessed at http://www.govtrack.us/congress/votes/89-1966/h277.
bill outright, not giving Congress a chance to override. With shifting legislative priorities away from the Great Society and the increased war in Vietnam, Moss was concerned that he would be unable to rebalance Congress in his favor following a pocket veto.

The day FOIA passed the House, Archibald sent a letter to Semer offering suggestions on what Johnson should do to promote the legislation. Archibald recommended Johnson hold a “full-dress signing ceremony” that included prominent members of the press and Congress who had been supporting the bill. Archibald also notes that General Eisenhower had a similar opportunity in 1958, but he “muffed-it” and issued a “weasel-worded statement” that drew the wrath of his detractors whom received more favorable press coverage. He asserted that LBJ should not make that same mistake. Considering that Johnson was Senate Majority Leader in 1958, behind the efforts in the Senate to pass an open records bill at that time, and one of Eisenhower’s detractors that took advantage of his weasel-worded response, this message from Archibald made a clear and poignant statement. The next day, Senator Long, who had shepherded FOIA through the Senate, sent a letter to Mike Manatos, administrative assistant to Johnson, offering similar suggestions on a signing ceremony. Manatos sent a letter back to Long the following day noting that no decisions had been made about a signing ceremony, and giving no indication as to whether LBJ would sign the bill.


Several days later, on June 24, Kintner sent a memo to LBJ outlining a phone call he had earlier in the day with Moss, who was urging the president to sign the bill and to host a signing ceremony in order to take full advantage and credit claim.\textsuperscript{63} Kintner relayed Moss’ theory that the president could use the signing ceremony and issue a statement that would counteract the accusations Republican’s had been leveling at him and overcome the credibility gap. Across the bottom of the memo in large letters, LBJ wrote “No Ceremony.” This is the first indication that Johnson had decided he would sign the bill, but at this point, no one other than he and Kintner knew that a decision had been made, and records indicate that no official statement or position by the president was indicated to anyone in the White House or administration.

With the deadline and possibility of a pocket veto mounting, supporters of FOIA in Congress, and a multitude of press organizations began inundating the White House urging LBJ to sign the bill. Congressional Republicans kept up the pressure by issuing a press releases blasting Johnson for his refusal to sign. On June 29, Hughes sent a report to Johnson, containing responses from all federal agencies impacted by FOIA, all of whom except the Department of Health, Education and Welfare either approved of FOIA or no longer objected. Hughes explained the impacts of the legislation in detail and recommended that, even though they still disagreed with some of the language, that LBJ not withhold his signature, provided he issue a signing statement outlining his position and ability to still keep information secret in the interest of national security.\textsuperscript{64}

\textsuperscript{63} Confidential Memorandum for the President, 24 June 1966: Handwriting File Lyndon B. Johnson, folder: Handwriting-President Johnson June, 1966 (notes, instructions, doodles), box 15, LBJ Library.

\textsuperscript{64} Memorandum for the President, 29 June 1966: White House Central File, Subject File, folder: Executive Folder LE/FE 14-1, box 44, LBJ Library.
Moyers notes that by the end of June, the president had “entered into a séance” with himself over whether he should sign the bill. Moyers spent this time urging several of his close journalist friends to contact the president personally to make the case for his signature.

On July 1, Semer sent a memo to Johnson discussing the options and impacts of FOIA. Semer offers suggestions on a signing statement and notes the BOB report Hughes sent a few days earlier, which removed most of the agency and bureaucratic objections to the legislation and he recommended LBJ sign the bill. Semer notes that the agencies thought a strong signing statement, coupled with the House report would be sufficient to overcome most objections. He recommended that if Johnson did not want to sign the bill, then to use the pocket veto. Semer does ask if LBJ would like him to have the Attorney General begin working with the agencies on developing rules for implementing FOIA, to which Johnson checked YES at the bottom. It was now clear that Johnson had decided to sign FOIA, as he would now have the Justice Department begin preparations for implementation. Within the CLD cycle, this demarcates the final iteration of the process, as it now appeared LBJ would no longer veto the legislation. While the president was successful in shifting the language and having control over implementation, he was not successful in keeping FOIA from getting through Congress. With the constant attacks from Republicans, electoral concerns, a strong coalition pressing the issue with a power entrepreneur in his own party, leaving him with the inability to publicly veto, the rational choice for LBJ was to sign the bill and issue a

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statement asserting a continued measure of executive power. Moss would finally achieve a balance of power across all the subsystems bringing the legislative process system into balance.

By the morning of July 4, LBJ, albeit reluctantly and with no ceremony or fanfare, signed the Freedom of Information Act (Lemov 2011; Foerstel 1999; Archibald 1993). Moyer’s would later recount the incident by stating,

LBJ had to be dragged, kicking and screaming, to the signing...He hated the very idea of open government, hated the thought of journalists rummaging in government closets, hated them challenging the official view of reality. He dug in his heels and even threatened to pocket veto the bill after it reached the White House. Only the tenacity of a congressman named John Moss got the bill passed at all, and that was after a 12-year battle against his elders in Congress...He [Johnson] signed “the f-ing thing” as he called it and then set out to claim credit for it. (Moyers 2005; 157-8)

Moyers asserts that regardless of Johnson’s opposition to the legislation, he was a pragmatic politician, which is exactly what led him to sign the bill. In the end, Moyers said that LBJ understood the politics surrounding the larger policy agenda of the Great Society and knew he would need the support of those individuals in Congress, like Moss, to help him on future legislation. Therefore, it was in his best pragmatic and rational interest to sign FOIA and deal with it, rather than upset a large coalition in the House and Senate from which he wanted, and needed, continued support. Moyers said that LBJ was more concerned over the process rather than substance of policy, and wanted to be on the right side in the end, which played into Johnson’s strategy of keeping positions secret and everyone guessing until he made a final decision.⁶⁶

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⁶⁶ Interview with Bill Moyers, conducted via email between March 17, 2015 and May 5, 2015. Moyers also mentioned that part of LBJ’s hesitation toward FOIA may have come from pressure from J. Edgar Hoover. LBJ had needed Hoover’s continued support over Civil Rights, and Hoover adamantly opposed FOIA.
The White House issued a signing statement, which pays lip service to the importance of the legislation and government transparency in a democracy, but while also reiterating Johnson’s position that for national security reasons, not all information can be made public, and that the president still retains the ability to keep certain records and information secret. When it comes to public access to government information, the statement asserts,

[T]he welfare of the nation or the rights of individuals may require that some documents not be made available. As long as threats to peace exist, for example, there must be military secrets…Moreover, this bill in no way impairs the President’s power under our Constitution to provide for confidentiality when the national interest so requires.\textsuperscript{67}

Johnson’s signature on FOIA marked the final balance of power, showing that Moss was able to utilize an entrepreneurial strategy that led to his ability of harnessing institutional power across all systems leading to a positive outcome. The case of FOIA then illustrates the importance of understanding how the CLD cycle functions, and the importance of focusing on the ability of entrepreneurial actors to use power in their favor.

\textbf{Conclusion}

Transformative policy that leads to institutional reform does not merely appear out of the ether whereby political actors swiftly bring it through the legislative process to fruition. The process surrounding reform policy – from idea to implementation – is one that requires time, effort, and power. A Continuing Legislative Development (CLD) cycle


and according to Moyers, Hoover hated Moss, due to Moss’ persistence in making public police records from the South. So one aspect of LBJ’s reluctance was based on attempting to keep Hoover appeased.
establishes the appropriate temporal lens to understand how policy is formed, debated, amended and finally passed over a period of time longer than a single Congress. Within this cycle, a power entrepreneur functions as a shepherd for this policy as the key actor capable of achieving a position that offers the ability to utilize institutional power to balance the entire legislative system, including all subsystems, in favor of the desired policy outcome.

A power entrepreneur is a strategic actor with the capability to utilize power through strategic actions within the institution in which they serve to attain a desired goal. However, for a power entrepreneur to be successful in achieving a balance of power, they must be able to wield power through influence in the other subsystems as well as their own. In the case of FOIA, Moss was able to utilize power within the House through his position as subcommittee chair, but he also was able to influence the Senate, administration actors, and ultimately, the president. An entrepreneur faces environmental constraints from external and internal actors seeking influence on a policy issue, yet is able to construct a policy product that will allow for successful balance of power within the legislative system. In behaving in a strategic manner, an entrepreneur will utilize an offensive and/or defensive position within the ongoing CLD cycle, in part determined by the partisan make-up of government. Partisan control, specifically majority party control, provides institutional opportunities and constraints a successful actor can utilize in order to build a coalition, based in part on the flow of momentum. The offensive or defensive strategy functions on momentum surrounding the issue which provides opportunities for the entrepreneur to win allies from unknowns
and adversaries and thus build a successful coalition across all the subsystems to achieve a final policy outcome.

The analytical model developed here focuses on the idea of power when placed within an institutional context in a manner that allows entrepreneurial actors to use the procedures, rules, norms and politics of the policy-making institutions that comprise the subsystems. A balance of power is achieved at each level and across the main legislative process system when the entrepreneur has successfully built a coalition of allies that shifts the procedural power at each level and system that brings about the successful passage and implementation of a final policy. By utilizing Morgenthau’s conception of balance of power, it is possible to think of each chamber of Congress as its own system comprised of individual actors. Therefore, the House for example, is considered its own system comprised of 435 individual actors that each faces environmental constraints and offers an opportunity to coalition build from the pool. A balance is reached when the majority of actors within the system are allies, which must also include formal party leadership that will ensure a smooth procedure for the policy to receive the necessary votes. The power entrepreneur repeats the same process for each system, although differing environmental constraints, politics, procedures, rules, and norms face the entrepreneur at each additional system.

Power is then understood as an actor’s ability to utilize the institutional structure in order to achieve a desired goal. The case of FOIA offers an empirical example to help explain and visualize the model developed to understand the functionality of a power entrepreneur within the Continuing Legislative Development cycle.
The Utility of an Interconnected Double Feedback Loop Model

The three previous chapters have each provided a unique examination of the legislative development of FOIA from a different perspective. In so doing, it becomes possible to understand how each illuminates specific factors individually that must be taken into account when thinking of the influences and factors that evolve to establish transformative policy. Taken individually, each lens encompasses one particular perspective, but when taken together we are capable of seeing a bigger picture emerge. Each lens is a function of the other allowing all three to work together. The background lens of shifting societal demands is influenced by, and simultaneously influences, the institutional politics of the foreground lens, both of which are fed by the continuous and constant flow of information, and how new information is processed and used in the synthesizing lens. Together, these lenses form an interconnected double feedback loop model that is continuously functioning within society and politics.

In order to apply the interconnected double feedback loop model to a specific case, a Continuing Legislative Development (CLD) cycle is provided to account for the temporal period of legislative development. The best way to understand the functionality of the CLD cycle is to shift our thinking toward policy development to a long time horizon that encompasses multiple congresses and administrations. In this way, it is possible to separate and examine a single issue by thinking of the issue as a single game with multiple iterations. Borrowing the idea from game theory, but without placing the same constraints that narrow focus, the CLD cycle then functions by understanding the evolution of the issue through the societal and political processes that carry it forward.
toward becoming institutionalized policy. Issue development into the policy process provides the ability to view iterations as the constant back and forth bargaining happening around the issue from external actors, like the public and the press, and internal actors, being members of Congress or administration officials.

Transformative policy by its very nature is reform policy. This is policy that alters the functionality of our governing institutions, which has impacts on institutional politics and even impacts societal politics. The CLD cycle functions to provide a way of understanding how the development of transformative policy evolves across time. The interconnected double feedback loop model functions as nested within the CLD cycle to provide three specific lenses in order to account for the societal, cognitive, and political factors that influence the legislative development process leading to reform policy that ultimately changes the politics in society and governing institutions.

By examining a single issue as it develops and evolves through the policy process over time, the three lenses of the interconnected double feedback loop model offer the direction of factors to examine in order to bring a more robust explanation of the institutional politics of the policy process that includes such environmental constraints as the role of the press and the public. It is important to remember that the model functions as being continuous and constant interactions between societal and political actors, meaning that the causal arrows flow in both directions simultaneously and consistently. Instead of the chicken or egg debates that frequent the political science literature over whether the public influences the behavior of political elites or if political elites influence the behavior the public, this model presupposes that both influence each other continuously and simultaneously through constant information
flows that dispatch signals of preferences as each side seeks to influence the other. Societal actors form the first loop, political actors the second, and the flow of information creates a structure that resembles an infinity symbol.

In order to provide context to explain the model through an empirical case, the development of the Freedom of Information Act (FOIA) was employed. FOIA provides context as the legislation is an example of transformative policy that altered the power dynamics and between and functionality of all three branches of government. While the legislation mainly targeted the executive branch, it altered the ability of administration officials to keep information from the public or members of Congress for any justification provided as necessary by executive branch actors. FOIA also reshaped the bureaucratic structure of the executive branch by creating offices within each agency to administer requests and issue denials if deemed necessary. Included in these offices were the need for agency lawyers to determine the legal feasibility of denials and to argue the case before a federal judge. The new institutional structure of the executive branch leads into how the courts are impacted by FOIA. Because Congress and Moss was adamant to include a legal oversight function in the bill, any individual or member of Congress can appeal a FOIA request denial and file suit in a federal court if the appeal is denied. This legal mechanism provides teeth to the policy by creating judicial oversight of the executive branch that requires administration lawyers to argue justification for the denial of information before a federal judge. Lastly, FOIA also changed the functionality of Congress by providing an avenue of oversight capabilities on the executive branch. Second, and perhaps more important, through the policy Congress was able to alter the power dynamic between the legislative and executive
branches by removing the ability of the administration to make claims of secrecy for national security reasons or in the public interest. Through the debate surrounding FOIA, Moss was able to alter to use of executive privilege by administration actors. Congress was able to use the legislation to change the balance of power within the government structure with FOIA as a congressional check on executive power. While Congress exempted itself from FOIA, the implementation and institutionalization of the policy paved the way for congressional reforms a few years later that opened up congressional proceedings to the public.

FOIA provides an empirical case of transformative policy that was developed over a twenty-year span of time. The CLD cycle provides the ability to examine the beginning of the issue as it developed out of World War II as the press began to grapple with the new Cold War mentality from the executive branch as it transitioned from the information propaganda tools of the war, to more restrictive controls on the flow of information from agencies. As the Cold War mentality quickly disseminated through the ranks of government and across the nation, the press began to face the problems of government secrecy head-on, in part due to the focus of freedom of information being a major issue of discussion at the United Nations. Therefore, it is possible to demarcate the start of the CLD cycle to 1946 in order to encapsulate the ending of WWII through the transition into the Cold War and carry the development period through the passage of FOIA in 1966. In providing a twenty-year timeframe, I can utilize the three theoretical lenses to demonstrate how each provides insight into the development of transformative policy while working in conjunction with the other lenses to offer a multidimensional model that can account for shifting societal demands, cognitive processing and usage of
new information, and the institutional politics of the moment in providing a model that becomes applicable to analyze any policy at any point in time.

The background lens develops through social structure theory of understanding how changes in society impact politics. The background lens represents the first loop of the interconnected double feedback loop model. I assert that in the case of FOIA, shifting societal demand is stimulated by a marked shift into a new Cold War mindset, which created tensions between society and government, as well as leading to the rise of a new security state that prized control and secrecy of information through the executive branch as being justified through the Take Care clause of the Constitution in the public interest. The upsurge in administration policies and actions to withhold information began during Truman’s tenure and quickly ramped up under Eisenhower. The impact of the Cold War, the Korean War, the Red Scare and McCarthyism, the threats of a Communist menace at home and abroad began to have immediate impacts on a society that had just defeated Fascism in Europe and Imperialism in Japan. Shifting societal demands became a response to the Cold War mindset and a response to the government’s reaction to the new mindset.

In determining how to measure shifting societal demand, it became clear that the best approach was to utilize the press as a proxy measure of societal attention. Due to a lack of survey or polling data that would appropriately measure societal changes surrounding government information policies, press attention became the most viable approach. The press serves a dual role for this project specifically. In one way, press attention is a proxy of public attention, as the press is the main source of supplying information to the public. As the press is the conduit of news and opinions, especially in
dealing with politics, then the more attention the press gives to an issue, the more public attention the issue receives. In this way, I can make claim that a rise in public attention to the issues and debates surrounding FOIA would mark a transition or change in public demand. As was argued by Binder, attention of an issue in the press provides political saliency of that issue, which can then be measured through actions in government to address the demands created by the issue. Press, and therefore public, attention to FOIA serves in the same manner.

The other way that press attention serves well as a measurement for this project is that for the issue of FOI specifically, the press functioned as an interest group in support of congressional action and policy change directed at the administration, as it was in their own best interest to advocate. For measuring shifting public demand based on increased public attention, it was in the interest of the press to continually make the public case against restrictive secrecy policies and in favor of legislative solutions. The press holds a unique role as they are the main conduit of information, and one that politics requires in order to function. Any political actor needs to gain attention with the press in order to make a case with the public in sharing information that is beneficial to justify actions. For the case presented here, the press is functioning as an interest group, providing the opportunity to offer increased coverage and opinion in order to help sway public attention to favor their position. For measurement purposes, the position of the press as an invested interest group is irrelevant to the data, as I am examining the amount of press attention as a measure of public attention. In that sense, the role the press played helped to sell the problem and solution with the public, which aligns with the ability to measure how societal attention and demand shifted surrounding the issue.
The dual functionality of the press in this case offers the ability to measure shifting societal demand through increased public attention.

The shift in societal demand was measure in two ways. The first was an aggregate analysis of news stories related to the issue in four major newspapers. These papers were chosen based on the accessibility of their archives and that each paper provided significant coverage of politics. The newspapers were national enough in scope to offer reasonable coverage in the debates surrounding freedom of information. Two of the papers had editors who were active with several of the press organizations that were serving as advocates for the issue – being the Washington Post and the Christian Science Monitor. The other two papers were not identified as having active high level advocates within their organization who were working with outside press organizations. These two newspapers were the New York Times and the Chicago Tribune. In this way, we could measure if there were any significant differences in the amount of coverage surrounding the FOI debates. As the data in Chapter 2 illustrates, there was a significant spike in press attention during the period under examination in Figure 2-1. Attention was minimal in the first years following WWII, but began to gain increased attention by the end of the Truman Administration. Truman began to take action through executive orders and offering direction to agency personnel. In laying the foundation for the ‘paper wall’ the press would begin to encounter, the issue began to form within the public consciousness as the press paid greater attention. The Eisenhower administration significantly and rapidly moved administration policy toward one of withholding the maximum amount of information. Eisenhower would use executive orders and memorandum to directly control of information from agencies. He
started the Office of Strategic Information (OSI) that would create a bureaucratic structure that kept information to the press and Congress to a minimum. It was at this time that the press and Congress found an organic ally with each other that would form a symbiotic relationship, which drove the issue forward. The failure of Congress to obtain information from the administration for oversight functions and constituent services allowed the issue to be institutionalized in the House with the creation of the Moss Subcommittee in 1955. The Moss Subcommittee worked closely with members of the press to campaign against Eisenhower for solutions to government secrecy and a lack of access to information. With Moss leading the charge, victories were won by closing OIS and in passing the Housekeeping amendment in 1958, which corresponds to the peak of press coverage.

While no other legislative solutions would make it through Congress during the Eisenhower administration, the issue would continue to gain attention from the press due to Congress continuing to joust with the White House over the constitutional ability of the president to make claims to keeping information secret in the public interest. While press attention would diminish from the 1958 peak, the level of attention through the passage of FOIA in 1966 would remain significantly higher than attention during the late 1940s. The attention given to the issue from the press would translate to shifting societal demand for solutions to the issue. While there is a dearth in public survey or polling data during this period for the issue, attention, especially continued attention would keep the issue at the forefront of public debate giving the issue saliency. The public saliency would help to influence congressional actors, like Moss, in continuing to work towards policy outcomes on the problems. The more Congress worked and gave
attention to the issue, the more the press would cover the issue as forward movement was in the self-interest of both groups, and thus the symbiotic relationship functioned.

The date provided in Figure 2-2 provides the coverage in the press for each of the newspapers examined. As was assumed, the Washington Post had the most coverage of the issue across the entire period. The Washington Post has a large politics section, and being a Washington, DC newspaper, coupled with their Editor, J. Russell Wigging, was one of the most outspoken advocates for the issue and chaired the FOI Committee for ASNE. Interestingly enough, the data of each newspaper follows a similar pattern of growth and peaks during the same periods. The periods of increase and peaks were detailed in the following section of Chapter 2 that provided a robust content analysis of the newspaper stories during these periods. As the increases in attention directly correspond to actions being taken by the administration and the corresponding responses from Congress. As the two legislative branches continued the debates surrounding public records and government secrecy, the press would continue to provide the public with coverage, and kept the information flows functional.

The background lens as detailed in Chapter 2 provides a long-term temporal perspective to understand how shifting societal demands impact politics leading toward the development of policy. Press attention drives public attention on issues, providing saliency of the issue among the public, driving societal shifts. These shifts in demand then influence the politics of the time in providing justification for policy-makers to take action in crafting solutions to these issues. In the case of FOIA, I was able to provide a robust set of newspaper data demonstrating the pattern of attention in showing how press coverage increased during the period of development. The content analysis of the
news coverage, illustrates how the press was focused on the debates between Congress and the president, and in how the issue of government secrecy was impacting their own industry. This allowed for counterarguments from the press for First Amendment assertions to access executive branch information. These assertions were offered in the face of White House claims of Constitutional justifications for their actions in the public interest out of national security concerns. As the debates moved forward, the press would increase attention, but even after the peak came in 1958, attention would continue at a higher level than at the beginning.

The movement of societal preferences as driven by the press would seek to influence politics and policy. Chapter 3 provided a synthesizing lens to understand how social learning takes place by structuring the information flows that drive new information processing and usage to influence each loop. This chapter was able to demonstrate Hall’s third-order learning has taken place whereby the policy instruments, settings and goals change through the introduction of new information. Third-order learning is essentially a Kuhnian-type paradigm shift in thinking where the introduction of new information and the processing of that information brings about a complete shift in thinking due to social learning. For the purposes of this paper and in the case of FOIA specifically, social learning occurs as a multi-stage process with a paradigmatic revolution in the middle. The end of WWII into the Cold War, including the Red Scare and McCarthyism, the Korean War, all of the issues with Cuba and the missile crisis, into the Vietnam War establishes a timeline to understand the broad external and internal factors that fed into a paradigm shift to a new Cold War mindset. The mindset was institutionalized by the second-term of the Truman administration as evident
through his Executive Order 9835 establishing a loyalty program for government employees. Additionally, the language in the party platforms from 1948 offer insight into the thinking surrounding the Cold War paradigm as being established as a reaction to global events and domestic fears. Social learning takes place as a process that builds upon the past through the introduction of new information that changes perspective. In this case, a new Cold War paradigm mindset was established as the new dominant thought process for the time.

The process of social learning then unfold by understanding how the Truman administration, and then subsequent administrations – Eisenhower, Kennedy, Johnson – would react to this new paradigm through political or policy actions. The administration response would trigger a new information flow that would move through the interconnected double feedback loop model by influencing both the societal loop and the political loop. But social learning is a continual process, as the executive branch actions did not just influence thinking, but actors within each loop would learn from that new information, process it, and then apply it through response actions. Social learning is then measurable by understanding how the new Cold War paradigm provided new information of threats, to which the administration(s) would respond. In responding, the administration would send new information through both loops of the model that would influence societal and political actors. Learning then takes place as these actors process the new information and offer responses or actions of their own to counter administration positions. This back and forth flow of information, processing, learning and applying happens continuously through the interconnected double feedback loop
providing for the informed political debate surround the development of transformative policy.

To measure the social learning process, I chose to focus on one particular aspect of the FOIA development period that best demonstrated the constant and back-and-forth nature of social learning, which was the debate on the usage of executive privilege. The concept of executive privilege is one that is already ill-defined, creating a large grey-area around its use. Rozell provides for the Constitutional nature of the debate surrounding executive privilege, but also notes that the use is contextual to the moment in which it is being employed. Therefore it would not be unreasonable to say that executive privilege as employed by the president can be whatever the president claims it to be until either Congress or the courts say differently. In that way, it becomes an example of social learning surrounding the issue of FOIA, in particular as Eisenhower began to increase use of such claims, based on his understanding of the threats faced under the Cold War paradigm. Congress and the press would receive this new information on the use of executive privilege by the White House, process it, learn from it, and then employ response actions as countermeasure to those executive actions. This constant back and forth continued through the Eisenhower administration, into the Kennedy administration, and then the Johnson administration. Social learning as a continual function would shift as illustrated in the ongoing debate in how each president would employ the use of executive privilege, and how Congress would respond. Eventually, Moss was able with Kennedy to shift the debate so that executive privilege could only be employed by the president and not through other officials, which would continue under LBJ.
Ultimately however, Moss learned that the fight over executive privilege did not overcome the Cold War paradigm as a means of opening up public and congressional access to executive branch information. While the fight over executive privilege changed the parameters of how it was used, Moss and others in Congress knew that to overcome claims of secrecy in the public interest, a legislative solution would have to pass and be implemented to address such claims. The social learning lens then broadens our understanding of how the continual introduction of new information, when functioning continually through the interconnected double feedback loop alters political debates that help to establish a foundational comprehension for the development of reform policy. The social learning process functioned to bring about a new Cold War paradigm, and then continued into the debates on executive privilege influenced by such a paradigmatic shift in thinking.

Chapter 2 provided the background lens of shifting societal demands, and Chapter 3 offered a lens to understand the cognitive processing and use of new information flows in a synthesizing perspective that ties together the two loops of the model. Chapter 4 offers the foreground lens of the politics of the moment. This perspective provides a means of understanding the influence of institutional politics as the second loop of the model by focusing on specific individuals as the drivers of transformative policy. These political actors are termed power entrepreneurs as they are capable of utilizing institutional power provided them in order to achieve a specific policy outcome. A theory was developed here that positioned these power entrepreneurs as having formal institutional power driven by two main factors, which are majority party control and issue momentum. Majority party control provides for formal power position
such as committee or subcommittee chairs and formal party power that can be employed in ways that are beneficial to other actors. By doing so, the entrepreneur will seek to coalition build by gaining allies while minimizing adversaries through winning over unknowns.

The partisan control of government not only provides individuals with power positions within the institution, but will be determinative of the type of strategy employed by a power entrepreneur. Periods of unified versus divided government offer a different set of motivations and constraints that can determine whether a power entrepreneur pursues an offensive, or more aggressive, strategy or a defensive, or more passive, strategy. The entrepreneur will utilize elements of these strategies in pushing legislative packages forward while coalition building to gain support.

The other factor of momentum cycles pairs with partisan control in determining whether an offensive or defensive strategy will be employed. When momentum is increasing, as we saw when Moss was pushing forward with the Housekeeping amendment, there was more press coverage and members of Congress were behind the efforts allowing Moss to press ahead. This was also a period of divided government, where the Democratic Congress was capable of demonizing the issue as a problem of the Republican president. When Kennedy came into office, momentum began to wane and Moss switched to a more defense strategy against a president of his own party. The momentum cycle would begin to increase, allowing for Moss to once again pursue a more offensive strategy.

The strategies employed by the power entrepreneur were done to attain a final policy goal, of which would achieve a balance of power within the legislative process
system. As Moe explained, while institutions are structures of cooperative action in order to achieve a collective goal, but as institutions are also structures of power, not everyone involved will win in collective actions. So policy can be thought of as needing only a majority of each institution to support in order to pass, meaning that not everyone will be supportive or helpful in such endeavors. A power entrepreneur is then capable of building a coalition within each subsystem – the House, the Senate, Congress as a Whole (inter-institutional), and the president – in order to balance power in each. Power is balanced when a bill is passed in each subsystem and signed by the president bringing the entire system into a new equilibrium or balance of this one policy. The basic concept of balance of power is provided by Morgenthau and applied to the US policy-making system. This allows us to think about an institution like the House as being comprised of 435 individual actors seeking to be balanced when one actor can build a coalition of 218 to pass a bill.

Focusing on a single individual actor within an institutional setting offers clarity by understanding how policy development happens within a political environment. In particular for transformative policy, an individual often provides the power resources available behind the policy to keep the development process moving until a legislative solution can pass. Moss is the key power entrepreneur in the development of FOIA as an individual who was able to utilize institutional power to his advantage and coalition build over the course of twelve years until the final passage of FOIA in 1966.

The utility of the interconnected double feedback loop model is in providing a more robust understanding the political change in general. Each lens offers a unique perspective of an aspect of change that influences politics – in society, in thinking, in
governing institutions. Within the political science literature, these three lenses are generally examined individually, but this model combines all three to account for much of the variation and context of any given policy development period. Second, this model can be used as an analysis tool for any issue at any time. The model is general enough to provide a structure to better understand legislative development across time.

**FOIA at Fifty – Moving Forward**

July 4, 2016 will mark the fifty year anniversary of the passage of FOIA. The research presented here has focused on the legislative development period of 1946 to 1966, however, there is now nearly fifty years’ worth of development that can be employed in future research.¹ In understanding transformative policy and institutional change, it is important to understand how it happens, which this paper has done. But, it is also important to understand that there is another process that happens following the passage of legislation – the implementation, evaluation/oversight, and amendment process that is just as important. By being cognizant of policy following passage provides the ability to understand that the policy development process does not end with the president’s signature. Through implementation, policy becomes institutionalized within the bureaucratic structure creating new avenues back into the political realm. With FOIA, a slew of new offices was opened across agencies and departments with the need for staff positions within these offices. Congress provides executive branch oversight on these programs, which opens the process of evaluation that can lead to the call for amendment. Through amendment, the policy is placed back into the political

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¹ FOIA was not implemented until July 1967.
realm where congressional debates, and debates between Congress and the president will continue over how the policy should be amended.

The first amendments to FOIA came in 1974, less than a decade after the legislation had passed. The amendments came at a time when President Nixon was facing charges and potential impeachment in the fallout of the Watergate Scandal when issues of government secrecy and claims of executive privilege were rampant. Congress sought to strengthen FOIA by amending the law to create a central office of public information in the Justice Department that would have oversight on every federal agency, and to mandate that every agency subject to FOIA would be required to submit an annual report to this office that detailed the number of FOIA requests, fulfillments, denials, appeals, and how many lawsuits were filed during each fiscal year. Executive power had expanded tremendously under Nixon, but it was not until these details came to light and Congress process and learned this new information that led to decisions on taking action legislatively.

Once the debate over amending FOIA began, the process as analyzed through the interconnected double feedback loop model begins again. With the 1974 amendments to FOIA, many of the same political actors were involved, as Moss still chaired the House Subcommittee of Foreign Affairs and Government Information and other key players to the original legislative fight were in the White House, such as Vice President Gerry Ford and his Deputy Chief of Staff Don Rumsfeld. The FOIA

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2 The Moss Subcommittee created in 1955 was a special subcommittee and not a standing committee as part of the House Government Operations Committee. In 1962, the House voted to make the subcommittee a standing subcommittee under Government Operations and then included Foreign Affairs jurisdiction at the time when issues in Vietnam were growing.
amendments passed Congress in Summer 1974, and had moved into a conference committee at the time of Nixon’s resignation.\textsuperscript{3} Ford’s ascendency to president initiated a bargaining period of Ford attempting to influence and change policy that had already passed Congress and was in the inter-institutional system of the process. Through back and forth exchanges between Ford and the conference committee a consensus on changing the FOIA amendments failed to be reached, and Ford ultimately vetoed the amendments. Ford’s veto was overridden after an extensive effort from the White House focused on the Senate to convince enough Republican Senators reason to uphold the veto. Those efforts failed as well and the amendments became law and were implemented in 1975.

The interconnected double feedback loop model would provide insight into this period as well. By examining the background lens, it would be clear that societal demands had shifted as the Watergate Scandal grew and continued to become more impactful by shedding light on abuses of executive authority. The synthesizing lens would examine how the new information presented through Nixon’s actions, in particular through the scandal, but through other actions would demonstrate how the information was processed and then utilized in actions taken to counter. Again, the use of executive privilege becomes crucial for understanding the boundaries of executive power as compared with the other branches, as the Supreme Court would weigh in at this time against claims of executive privilege. The foreground lens of politics would illustrate a Congress seeking to rebalance power against rising executive power, and amending

\textsuperscript{3} The legislative development and fight over the 1974 FOIA amendments are detailed in another paper, Kevin M. Baron, “Veto Bargaining as Iterated Games: LBJ, Ford, and the Freedom of Information Act” presented at the Southern Political Science Association Annual Meeting, January 2015, New Orleans, LA.
FOIA became one means with which to lessen executive power, moving authority back to Congress through increased oversight capabilities.

However, it is not just the 1974 amendments to FOIA that deserve to be viewed through the model. Amendments to the legislation have been passed multiple times in the nearly 50 years of existence. Amendments were passed again in 1976, 1986, 1996, 2002, and 2007. Each time amendments were passed, there was a period of examination prior that focused on evaluation and oversight to determine if the policy was functioning in a manner as responsive to societal needs, and in maintain the political balance of power between the legislative and executive branches. By the late-1990s and early 2000s, the amendments to FOIA focused on digital records, as technological shifts in how government functions required changes to the law in order to allow for digital records to be opened for request.

The digitizing of records leads to a whole new world of debate that has become evident in recent years with the rise of hackers and document dumps from Wikileaks, Edward Snowden, and Chelsea Manning. As the digital world has shrunk the physical world, information and access to it has shifted dramatically. A law like FOIA, as demonstrated here, sought to provide a balance between the need for national security with the liberties demanded by a democratic society. This balance is once again under debate in a post-9/11 world of an endless ‘War on Terror’ where claims of secrecy over government information are vital to the protection of the public. The revelation of government programs that collect metadata of American’s phone calls, emails, and text

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4 A brief history of the amendments are provided by the National Security Archive at George Washington University at http://nsarchive.gwu.edu/nsa/foialeghistory/legistfoia.htm.
messages, and when the FBI is working to break the encryptions of iPhones from Apple, the balance between liberty and security has moved again to the fore of discussion. We as a society, both domestically and globally, must decide again where to find the balance between the need for security through the state and the liberties of open government information.

The constant and continuing influences of society and politics interacts through flows of new information, from the revelations of a National Security Agency (NSA) data collection program to the recent terrorist attacks in Paris and Brussels. The new information is processed and informs actions being taken and demanded by both political and societal actors. Currently, FOIA amendment legislation has passed in the House and Senate, and are sitting in conference committee. The two bills offer differing paths forward, but both seek to place a check on the power of the executive branch when it comes to management of government information.\(^5\) Reporting on the current debates surrounding FOIA amendments have shown that the Obama Administration had been active behind the scenes, taking a private bargaining strategy, in blocking efforts of the legislation, which had passed in the previous Congress, but died in conference committee before it could make it to the president’s desk.\(^6\) Nearly fifty years after the passage of FOIA and the same debates are taking place within society and among political actors.


The current debates surrounding the amending of FOIA illustrate another issue, which is how the executive branch has dealt with FOIA over the past fifty years and into the future. Beginning at the end of the George W. Bush administration, the Associated Press (AP) had conducted an analysis of FOIA requests each year, which has continued through the Obama Administration. The AP reports distinguish between the Bush and Obama Administrations, as the Bush administration was perceived as being secretive, and the Obama administration was perceived as being open. President Obama on January 21, 2009 issued executive order 13489 dealing with presidential records. This EO focused on the availability of presidential records through the National Archives and Records Administration, as well as sought to clarify the use of executive privilege when it came to keeping information secret. On his first full day in office, Obama issued a memorandum to all federal agencies dictating his position on FOIA, seeking to institutionalize his position on openness and transparency. While the intent of the memo was to direct agencies for increased openness through FOIA, the results have been lackluster as shown through the AP reports.

Several issues stem from the current situation. The first question raised, is how much power an individual president actually has in effecting institutional change within the bureaucracy of the executive branch. While President Obama has sought to increase transparency in his administration, reports like the one from the AP, and other

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experiences show that the message of openness has not trickled-down into the offices at the ground level handling FOIA requests. The point here is not to debate the data on either side, as reports from DOJ have shown a steady increase every year since implementation in the number of FOIA requests, leading to increases in the number of denials and subsequent lawsuits.\(^9\) While the raw numbers tell a story unto themselves, which will be viable for future research, the question remains as to how much influence a president has on changing the bureaucratic nature of agencies that have always shied away from a willingness to be open with their records.

This leads to another issue, which is how much presidents actually want to be open regarding government records. As previously discussed, the current debates are illustrative of administration positions regarding the need for increased secrecy in the public interest. Even LBJ was not in favor of FOIA in 1966 and only signed the legislation due to his political need to keep his congressional allies happy so they would back him in other legislative endeavors. An argument could be made that no president has been in support of FOIA, with some who questionably sought to undermine the legislation, including Reagan and George W. Bush. The politics surrounding the issue give insight into a tenuous power struggle between the executive branch and the other two branches of government. The pertinent Constitutional debate raised by FOIA offers the ability to examine the ongoing debates surrounding the implementation, evaluation, and amendment of FOIA over fifty years that could prove fruitful in expanding our understanding the policy process as it is nested within a larger constitutional questions

\(^9\) Through a FOIA request, I have received the cumulative government reports on FOIA for 1975 to 2011, with the past recent years still being available online. These reports were not utilized in this research, but will be considered for future research.
of power, and the application of power. FOIA served as a congressional check on executive power, which also provided a legal function allowing the courts to weigh in on the issue at times as well. It would not be difficult to logically assume that most Presidents and administration actors would not be pleased in having FOIA counter claims of executive secrecy.

An examination of the debates surrounding the amendments of FOIA provide insight into how society and politics has transformed over the course of several generations. This insight is valuable to help our understanding of how policy can be altered to fit the needs and demands of both politics and the society in which it serves. As an example of transformative policy, FOIA served to alter the nature of our governing institutions at a time of tremendous social and political change, but it has continued to alter the institutional functionality of government since implementation. FOIA shifted the power dynamics between the branches of government, taking power away from the executive and providing it to Congress and the courts. There is another strong relationship changed by FOIA, which is the relationship between government and citizens. FOIA altered this relationship by providing an avenue for any individual to request, and receive, government information. FOIA established the idea of citizen oversight, one in which investigative journalists and policy advocates have utilized since implementation. While the importance of this relationship should not be overstated, I again must circle back to the ultimate nature of this policy debate – which is finding a balance between secrecy for national security and protections of liberties as demanded by a constitutional democracy. It is this relationship that fed into the early debates and development of FOIA and the one that continues today.
LIST OF REFERENCES


BIOGRAPHICAL SKETCH

Kevin M. Baron received his Ph.D. in Political Science from the University of Florida (UF) in August 2016. His area of specialization and focus is in American Institutions and Politics through an American Political Development lens. He holds a master’s degree in political science from UF and in public administration from Sonoma State University, where he also received a bachelor’s degree in political science. Kevin's current research focuses on the power struggle within Congress and between Congress and the president during the long-term legislative process, and how that process leads toward institutional reform. Prior to coming to UF, Kevin was the director of government affairs for a small business advocacy organization, focusing on federal contracting and procurement programs.