



National Newspaper Association – Washington Office

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September 20, 2018

The Honorable Pat Roberts
109 Hart Senate Office Building
Washington DC 20510-1605

and

The Honorable Debbie Stabenow
731 Hart Senate Office Building
Washington, DC 20510-2204

BY ELECTRONIC MAIL

Dear Senators Roberts and Stabenow:

On behalf of the National Newspaper Association and its 2,300 members, we urgently ask you to omit from pending legislation any proposed provisions to bar federal disclosure of Supplemental Nutrition Assistance Program (SNAP) data specific to retailers. Our request relates to HR 2, (the “farm” bill), as well as HR 6147, (the appropriations bill for the Department of Agriculture) in particular.

The proposed provisions overrule two opinions by the US Court of Appeals for the Eighth Circuit compelling Freedom of Information Act disclosure annual SNAP sales figures made on behalf of taxpayers to retailers. These data were originally sought by the Sioux Falls (SD) Argus-Leader as it probed the dramatic rise in SNAP benefits during the Great Recession. Since passage of the Food Stamp Act of 1964, this benefit that was initially thought to cost the nation \$200 million, carried a price tag of \$78 billion and had reached 46 million people during the Recession--15 percent of the nation.

Although the Argus-Leader, like any FOIA requester, need not to state the reason it seeks the information, community newspapers see considerable public interest value in USDA’s annual SNAP retailer data. The public availability of this information would enable journalists to probe many aspects of the SNAP program that should concern Congress, such as:

- existence of food deserts, particularly in the rural and highly urban areas;
- possible food stamp fraud, which a skilled journalist might detect from dramatically disparate utilization of the benefit between similarly-situated retailers;
- development of new capabilities by certain retailers who have begun to welcome SNAP beneficiaries, such as new freezers, dispensers and displays;

National Newspaper Association, founded in 1885, represents community newspapers across the United States. Our members are primarily weeklies and small dailies in America’s small towns and communities. Write us at info@nnaweb.org.

- competitive pricing among locations where SNAP beneficiaries might be able to stretch their resources further.

All of these stories would require a newspaper to be able to analyze actual retailer utilization data.

The Argus has repeatedly prevailed before federal courts in its view that the information is public under FOIA. Although the Department of Agriculture initially claimed the information was exempt, the 8th Circuit overruled USDA's contention that taxpayer payments to retailers were not public. USDA argued that releasing the information would cause competitive harm. But after a rare FOIA bench trial that included expert witnesses for both sides, a federal judge ruled that public disclosure of taxpayer payments would not cause competitive harm. USDA decided not to appeal the ruling. An industry group intervened in the case and appealed the district court ruling to the 8th Circuit. The 8th Circuit affirmed that ruling earlier this year.

Retailers may have other reasons for wishing to shield the data, but such concerns should not override the public interest in scrutiny of such an important taxpayer-funded program. In fact, the sort of in-depth reporting that the Argus wanted to provide its readers is exactly the type of oversight of public programs that lead Congress to pass the FOIA in 1966, to amend and strengthen it in 1974 and to repeatedly update and further empower public oversight as FOIA has been amended again and again with bipartisan majorities.

NNA, which represents local, community newspapers, has a long history of opposing back-door amendments to FOIA. The gravest danger to transparency and accountability by the citizen-shareholders of the US government is the piecemeal erosion of FOIA from year to year by individual interests hoping to gain their own particular shelters for records. FOIA has eight very broad exemptions to protect a wide array of interests besides the (b)(3) exemption that the industry wishes to expand. If records do not fall under them, it should be a good indication to members of Congress to support disclosure. As users of FOIA, community newspapers believe that only serious, the demonstrable and specific harms resulting from disclosure legitimately qualify for FOIA exemption.

Congress should not diminish its own historic work of 50-plus years by allowing FOIA to be diminished through piecemeal exceptions like the ones sought by industry in this case. On behalf of our local newsrooms, I would appreciate your consideration of our concerns as you confer on final versions of these bills.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan Rowell", written in a cursive style.

Susan Rowell
Publisher, Lancaster (SC) News and
President, National Newspaper Association