



# Legislative Briefing

## Avoid FOIA exemptions in the Farm Bill

*Updated September 20, 2018*

### **Background:**

The federal Freedom of Information Act makes government records available to any member of the public on request. FOIA recognizes 8 exemptions for privacy, investigations, bank records and the like, but it also has a catch-all “b-3” exemption that sweeps in other federal nondisclosure laws.

During the Great Recession of 2008, a journalist team at the Argus-Leader, Sioux Falls, SD, made FOIA requests for Department of Agriculture data on the Supplemental Nutritional Assistance Program or SNAP. Formerly dispersed as food stamps, the SNAP program now gives beneficiaries electronic cards to swipe when they make qualified purchases. The swipe data are aggregated into a USDA database so that annual revenues by retailer are collected. The Argus team wanted this information.

USDA objected on several grounds, including an argument that competitive concerns by retailers should shield the disclosure. But the Argus prevailed in two separate appeals to the US Court of Appeals for the Eighth Circuit and also in a district court bench trial. Between the two appeals, grocery industry groups, such as the Food Marketing Institute, intervened in the case. USDA is no longer arguing to protect the data, but FMI and other industry groups continue to fight to keep the information secret. Recently, Supreme Court justice Neil Gorsuch put a hold on the release of data while grocery industry groups petition for a full Supreme Court review.

However, that industry now is seeking a new “b-3” provision in Congress, focusing on two possible bills as hosts for their new law.

### **Legislative Action:**

HR 2, the “Farm Bill,” is important legislation that the grocery industry sees as a host for its secrecy provision. The Farm Bill is currently in conference between House and Senate.

HR 6147 is the annual appropriations bill for the Department of Agriculture. Inclusion of the secrecy provision in this bill would apply only for one year but in today’s environment, provisions in spending bills often get automatically renewed year after year.

### ***NNA Supports Disclosure of the SNAP Data***

- **In general, NNA opposes back-door amendments to FOIA. The exemptions currently in the law are strong and well-balanced. Industry special provisions should be viewed skeptically by Congress.**
- **The data in the SNAP database would permit journalists and researchers to examine a number of important stories—food deserts, benefit abuse, price gouging and comparison shopping that would help beneficiaries use their SNAP cards most efficiently.**