

HOLD THE PORK

FOIA trail shows Congress pleading for pet projects after swearing off earmarks

BY WILL EVANS
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After Democrats took control of Congress at the beginning of the year, they ditched Republican-drafted spending bills filled with earmarks and passed a massive appropriations bill they said was “earmark free.” Given the controversy over earmarks – which factored into the Duke Cunningham and Jack Abramoff scandals – it seemed a bold step. Party leaders heralded it as a strike against “special interest pork” and a sign of change and reform.

At the time, the Washington press reported that some members of Congress were lobbying federal agencies behind the scenes to fund their earmarks anyway.

Which lawmakers were making the backdoor pleas for funding? Were they the same legislators who boasted about eliminating earmarks? What were they asking for? Did the agencies receiving requests succumb to pressure? For all the talk of earmark reform and transparency, none of the answers to these questions was publicly known.

To find out, I filed a few Freedom of Information Act requests asking a handful of federal agencies for all of their congressional correspondence related to earmarks since December 2006, when Democrats had announced their no-earmark plan. When one department responded quickly and it looked like I was onto something, I eventually sent FOIAs to more than 13 agencies. I detailed the results in a *Los Angeles Times* story (“Lawmakers try to save their earmarks”), written with *Times* staff writer Richard Simon, as well as on the Center for Investigative Reporting’s Web site. The story and all of the agency documents are posted at www.centerforinvestigativereporting.org/articles/earmarks.

The day the Senate passed the spending bill, Majority Leader Harry Reid, D-Nev., congratulated Democrats for “cleaning up the fiscal mess” left by Republicans. Two days later, Reid wrote to multiple federal agencies asking them to base funding decisions on the Republican-crafted, earmark-laden bills that the Democratic measure had replaced. On a couple of letters he scrawled handwritten notes like, “Call if I can ever help.”

Senate Appropriations Chairman Robert C. Byrd, D-W.Va., had proclaimed “Hallelujah” on the Senate floor when boasting of the spending bill’s lack of earmarks. Soon afterward, he wrote to many agencies urging funding for a long list of pet projects in West Virginia, including the International Mother’s Day Shrine building.

By the time our story ran, we had acquired copies of 122 spending requests from 52 senators and 205 representatives. Both parties were well represented.

As responses to my FOIA requests continue to roll in, I have been posting them online. The site lists lawmakers alphabetically with PDF copies of each letter they sent. It is intended as a resource for the public and other reporters, who can compare what their state’s lawmakers requested in private to what they said in public. As Congress works to pass a new round of appropriations bills, and the earmark debate continues, the Web site will continue to serve as a reminder of how earmarks can go underground.

The biggest hurdle in the project was getting documents as quickly as possible from the backlogged, understaffed FOIA offices of federal agencies. My efforts to acquire those documents taught me a number of lessons:

Request early and often: The newspapers that originally reported on the behind-the-scenes congressional pressure soon moved on to other stories. That provided an opening to dig deeper. There are clearly lots of interesting public records behind many daily government stories. The trick is to think ahead about

what can be uncovered even after the original story has run its course. Initially, I undertook somewhat of a fishing expedition, so I only made FOIA requests for documents from four agencies. As soon as I received my first response (six weeks after the request) I wished I had requested many more right at the beginning. Later on, it was a race to get the responses in time for the story.

Get to know your friendly FOIA officer: Calling before you file the request can help you find the right person and e-mail or fax number, so your request doesn’t bounce from office to office, eating up time. Each agency has its quirks – some prefer faxes, others prefer e-mail or an online form, some work better when you file to a centralized office, others when you file to a specialized one. FOIA officers can sometimes give you tips on how to word a request – how to capture what you want but exclude documents you don’t need that will ultimately slow down the process.

They can also help you navigate the FOIA bureaucracy. I found that the FOIA officers assigned to me were often just waiting for other staffers in other offices to gather the records; sometimes it paid off to give those offices a call, too.

I tried to bug the FOIA officers regularly – nicely but constantly. (A few agencies actually lost my requests, and I wouldn’t have known if I hadn’t called.) Building a rapport over the phone can’t hurt. I think most FOIA officers only get the impatient calls and never any thank you’s. They have no idea how important and valuable their jobs are. Remind them.

Expedite! Getting expedited status will bump

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The screenshot shows the website interface for the Center for Investigative Reporting. At the top, there is a logo and the text "INVESTIGATION". Below that is a navigation bar with links for "HOME", "ABOUT CIR", "CIR INVESTIGATIONS", "THE REPORTERS", "REPORTER TOOLS", "BLOGS", "DONATE", "SHOP", and "RSS". The main content area features an article titled "Lawmakers try to save their earmarks" by Will Evans and Richard Simon, dated July 10, 2007. The article text discusses the new Democratic Congress passing a major spending bill and the subsequent investigation into how lawmakers were circumventing the "earmark-free" rule. A sidebar on the right lists "Pet Projects" with names of lawmakers and their respective departments. At the bottom, there is a "Sen. Harry Reid (D-Nev.)" section with a photo and a quote about fiscal responsibility.

Member news

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manager of its Internet Technologies Group.

■ **Chris Roberts** completed his doctoral degree at the University of South Carolina and is an assistant professor of journalism there. He previously worked at *The* (Columbia, S.C.) *State* and *The Birmingham* (Ala.) *News*.

■ **Jim Strickland**, Patti DiVincenzo and Dave Darling of WSB-Atlanta won a Southeast Regional Emmy for an investigation of unlicensed dentistry. Strickland was also named outstanding specialty reporter by the Georgia Associated Press. ■ **Stephen Stock**, formerly of WESH-Orlando, is joining WFOR-Miami-Fort Lauderdale, CBS4 in South Florida.

■ **Ruth Teichroeb**, investigative reporter at the *Seattle Post-Intelligencer*, was one of 12 U.S. journalists awarded a John S. Knight Fellowship at Stanford University for the 2007-08 academic year.

■ **Fred Vallance-Jones** of *The Hamilton* (Ontario) *Spectator*, Robert Cribb of *The Toronto Star* and **Tamsin McMahon** of *The* (Kitchener, Ontario) *Record* won the Don McGillivray Award for investigative journalism from the Canadian Association of Journalists for "Collision Course." They also took first place in the computer-assisted reporting category for the same story. Vallance-Jones is now an assistant professor of journalism at the University of King's College in Halifax.

News briefs

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- **Philip Dine** of the *St. Louis Post-Dispatch* won both the correspondent award and in the investigative reporting category for daily newspapers for "Afghan Poppy and U.S. Policy."
- **Brendan Smith** of the *Legal Times* won in the general news category for weekly newspapers for "The Cruel Art of Deception."
- **Mark Segraves** of WTOpradio won the correspondent award in the investigative reporting category for "Missing Lap Tops."
- **Elaine Grossman** won in the Washington-based newsletters category for "U.S. Officers in Iraq: Insurgents Are Repeatedly Captured and Released." published in *Inside the Pentagon*.

Earmarks

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your request nearer to the front of the line. Under 5 U.S.C. § 552(a)(6)(E) of the FOIA, each government agency must provide expedited processing "in cases in which the person requesting the records demonstrates a compelling need." One of the statutory definitions of "compelling need" is readymade for journalists: "with respect to a request made by a person primarily engaged in disseminating information, [compelling need means] urgency to inform the public concerning actual or alleged Federal Government activity."

Read the FOIA regulations for the agency you're targeting – some will have an expanded definition of what qualifies for expedited processing, which you can cite in your request. I found that most agencies want you to prove to them that your request qualifies, so craft a compelling reason.

After that it's a crapshoot: even though I used the same logic for all my requests, I was denied on many and approved on others. Of my four original FOIAs, only one got expedited, but it was the one that launched the story. (For two of the others, I still haven't received the documents.) One FOIA officer told me that her office is so backlogged that she denies all requests for expedited status without exception. After telling me her tale of understaffed woe, however, she said she'd put in a good word to hurry up my request.

More is more: It helped me to file additional, very specific FOIAs to the agencies that were particularly slow in responding with documents. Even if I didn't get everything, I figured I could still finagle a document or two.

For example, from the documents I did have, I saw that Sen. Reid wrote to a few agencies on February 16, urging them to base funding decisions on the earmark-filled bills drafted by the Republicans. I wanted to know if Reid sent similar letters to other

departments. So I filed new FOIA requests to agencies where my original broad request for all earmark correspondence had bogged down. I asked for the letter Sen. Reid wrote on February 16, explaining that it was a priority. Sure enough, a couple of additional agencies sent me their Reid letters – which bolstered the story – even though they still haven't delivered the rest of the documents.

Correspondence logs: The Sunlight Foundation's Bill Allison and Anupama Narayanswamy have undertaken a massive FOIA project to create a searchable online database of congressional correspondence logs. They sent FOIAs to more than 100 agencies asking for the records – which typically include the date, the name of the lawmaker sending the letter, a subject line and sometimes a control number.

The agency responses are trickling in, and Sunlight has posted some of the initial data online (from the Environmental Protection Agency and the Air Force, among others). For those agencies, I used the logs to find correspondence relating to the 2007 budget and requested those specific documents by control number, instead of requesting a broad category of correspondence. I think this tactic sped up the process. If Allison and Narayanswamy get enough agencies to disclose their logs on a regular basis in a usable format, the resulting database would be a reporting shortcut and a handy directory of Congress' behind-the-scenes moves. To see what they have so far, go to <http://realtime.sunlightprojects.org/category/correspondence-logs>.

Of course, none of these efforts capture the pressure that lawmakers exert over the phone. But at least in the case of the earmark requests, they put plenty on paper.

Will Evans is a reporter at the Center for Investigative Reporting.

Houston Press Club Lone Star Awards

- **Todd Bensman** of the *San Antonio Express-News* took first place in the public service category for newspapers with greater than 100,000 circulation for "Katrina Crime: Real or Perceived?"
- **Craig Malisow** of the *Houston Press* won first place in investigative reporting for newspapers with greater than 100,000 circulation for "The Plane Truth."
- **Margaret Downing** of the *Houston Press* won top honors in general commentary/criticism for newspapers with greater than 100,000 circulation for "Diary of a Madman."
- **Betty Brink** of the *Fort Worth Weekly* took first place in public service for newspapers with circulation under 100,000 for "Taking the Cuffs off at Carswell."

- **Gayle Reaves** and **Jeff Prince** of the *Fort Worth Weekly* won first place in the business category for newspapers with circulation under 100,000 for "Drilling Through Peace and Property."
- **Jeremy Rogalski** of KHOU-Houston won first place in the competition for television journalist of the year.
- **Keith Tomshe** of KHOU-Houston took top honors in the competition for television photojournalist of the year.
- **Bryan Sasser** and **Amy Davis** of KPRC-Houston won first prize in the television investigative series category for "Campaign Cash and Influence."
- **Robert Arnold** of KPRC-Houston won first place in the consumer news category in television reporting for "Lotto Problems."