




Strengthening the Information Quality Act to Improve Federally Disseminated Public Health Information

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Discussant: **Lewis A. Grossman**, Professor of Law, Washington College of Law, American University

Moderator: **James O'Reilly**, Professor of Law, University of Cincinnati



Dig In or Not?

Using the Information Quality Act for the Battle of Correcting Nuances: Is this Battle Worth Fighting in the Age of Curious Presidential Tweets?

Prof. Jim O'Reilly, University of
Cincinnati

~24,000 FOIA Cases v.12 IQA Decisions

- Swampy Statutes Breed Litigation “Mosquitos” in Court
- IQA has no stinger, unlike FOIA
- Courts not inclined to get into swampy subjective criteria
- IQA terms are vague and one’s right to enforcement is more vague
- Look at the ~40 IQA decisions, about 12 worth considering
- Courts definitely dislike creating remedies to enforce IQA
- Contrast to many thousands of FOIA cases in my 3 thick volumes
- **Federal Information Disclosure** text since 1976 earned \$1.3 million

Can You Use IQA in Place of FOIA? No!

- FOIA 1963-67 Debates – tough defenses by agencies – Big Coverage
- Typical Agency reluctant to explain its actions, Fought Hard Not To
- FOIA sponsors agreed: No Duty to Explain, Just to Divulge “Records”
- Games followed: “No record exists”, slice ‘n dice to avoid “why” issues
- Then 19 years ago remedial “Quality” explanations slipped into law
- “Complaints” for “Corrections” and not the FOIA litigation highway
- In Year 2000 appropriations bill, 2 clauses: Pub L 106-554 section 515

Not a Litigation Focus, Not a Specific “Record”

- FOIA: Actual Tangible “Record”
- IQA: Extremely Subjective “should” and “ought to be...”
- OMB guidelines ensuring and maximizing the
- quality,
- objectivity,
- utility, and
- integrity of information
- (including statistical information) disseminated by the agency

Today's 19 Year Look-Back on IQA

- What did Congress NOT do?
- Did it avoid FOIA remedial options for reason?
- When should we care about agency statements?
- Does this Executive Branch care about these qualities?
- Would we be able to challenge Trumpian Tweeting on these criteria?
- Is there an IQA or APA remedy for choices made by agencies?



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