The Information Quality Act: Is There a There, There?

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The famous novelist Gertrude Stein once insulted Oakland, California, with the aphorism that "There is no ***there***, there!"[1]

In the same vein, as a longtime teacher and student of administrative processes in the federal government, I was asked to assess the Information Quality Act of 2000 (IQA), which is an impressive title for just a few lines tucked into a late addition to an appropriations bill.[2] I conclude that there is no "there," no effective check upon the federal agencies, in the IQA. Its correction system is systemically flawed. And at a deeper level, I doubt that correcting the policy nuances within the content of agency documents by the Office of Management and Budget (OMB) Guidance is worth the exercise.

OMB once had a vigorous oversight role of agencies with an aggressive manager of its Information and Regulatory Affairs Office, but Cass Sunstein has long departed for academia, and the OMB Director now sweeps up the clouds of dust left by Donald Trump's bizarre "tweetstorms." The OMB "brand" is trashed by the subservience which we all see in the Trump alignment.

All students of the bureaucracy can agree that the 1946 Administrative Procedure Act[3] has had a profound impact on governance, and that the 1966 Freedom of Information Act has had a major contribution to accountability.[4] Both laws were copied extensively at the state level. Both models have resonated in other nations, as I found during a term advising the European Commission's managers of the EU Better Regulation project in Brussels.[5] But if scholars and practitioners were asked, has this IQA made a difference in federal law, the resounding answer would be "no."

The IQA has failed; it allows nuances of agency policies to be critiqued, but with no effective mechanism for lively challenges. You already know that we live in a period where bizarre presidential behavior—without objectivity and accuracy—has become the new normal, and if the IQA had applied to the head of the Executive Branch, we can wish that quality and objectivity will someday be returned to federal administrative processes.

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1 GERTRUDE STEIN, EVERYBODY'S AUTOBIOGRAPHY 298 (1937) (emphasis added).

2 Consolidated Appropriations Act of 2001, Pub. L. No. 106-554 § 515, 114 Stat. 2763 (2000).

3 5 U.S.C. § 706(2)(A) (2016).

4 5 U.S.C. § 552; *see* 1 JAMES O'REILLY, FEDERAL INFORMATION DISCLOSURE (2019).

5 GEORGE BERMANN, CHARLES KOCH & JAMES O'REILLY, ADMINISTRATIVE LAW OF THE EUROPEAN UNION (Am. Bar Assoc. Press 2009).

So we turn to the question of ***necessity*** for the IQA. The Freedom of Information Act (FOIA)[6] was adopted in the 1960s after a years-long intensive struggle that was promoted and sponsored by editors of newspapers. (Remember them? They were the social media "influencers" of ancient decades). If someone in an agency had created a "record," that item could be searched for and disclosed to a person or entity who is a "requester," who could litigate the agency denial of access and could win both the record and the reasonable costs and attorney fees. Agencies fought against the law's adoption, resisted any disclosures, and dragged out FOIA's case law interpretations for decades.[7] But the courts have ultimately agreed with FOIA reformers that the concept of a "public right to know" was stronger than the bureaucracy's desire for the power to operate in secret.

Is there a basis to assert that the IQA system of complaints and corrections was necessary in the year 2000 and thereafter? These two clauses added to the massive appropriations bill, Public Law 106-554 § 515, are extremely obscure and subjective. The terms are soft and fluffy. The use of "should" and "ought to be . . . " are divergent from those of others.[8] No specific "record" must exist, as is the case with FOIA. The agency document or statement is not defined. But when the agency statement or document is attacked as not being "objective," the agency can say the opponent's remedy is to elect a different presidential policy team. If it is attacked for not having "integrity," that's what the Government Accountability Office (GAO) does so well. If it is attacked for lacking "quality" or "utility," those subjective premises can be argued incessantly, but there is no means for any fixed objective measurement. When I came from Ohio on November 15 and told a Washington, D.C. audience that good congressional oversight hearings are much better corrective remedies than the IQA complaint process, some jaded observers laughed, because they sense that Congress would not correct flaws in an agency policy.

My response, both as a local elected official and as a scholar of the process of government, is that they may be right; Congress may fail as a monitor and as a corrector of failed agency actions, but the IQA is an empty and little-used tool. The OMB's failings reflected in television coverage of the OMB Director arise far above the level of agency failings which IQA advocates of a generation ago had sought to correct.

We all need to listen better. Last week when I completed my pre-election rounds knocking on the doors of 380 homes in my small Ohio city, I received an earful of average voter "feedback." The remedy to agency desuetude is not an expanded IQA but really paying attention to real needs expressed by real voters, through the news media and Congress. Listen better, administrative agencies, and the IQA would not be needed even if it is ignored.

So the conclusion by this veteran observer is that OMB and the IQA are DOA in the role of administrative agency quality control. Let's listen better and let the failed IQA continue to gather dust in the attic of the OMB horse barn, while downstairs the Mulvaney model of manure management in the White House stables continues.

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[6] § 552.

[7] FEDERAL INFORMATION DISCLOSURE, *supra* note 4.

[8] *See* Consolidated Appropriations Act of 2001, *supra* note 2.