

Calendar No. 17

114TH CONGRESS
1ST SESSION**S. 337**To improve the Freedom of Information Act.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 2, 2015

Mr. CORNYN (for himself, Mr. LEAHY, Mr. GRASSLEY, and Mr. COONS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

FEBRUARY 9, 2015

Reported by Mr. GRASSLEY, without amendment

A BILL

To improve the Freedom of Information Act.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “FOIA Improvement
5 Act of 2015”.

6 **SEC. 2. AMENDMENTS TO FOIA.**

7 Section 552 of title 5, United States Code, is amend-
8 ed—

1 (1) in subsection (a)—

2 (A) in paragraph (2)—

3 (i) in the matter preceding subpara-
4 graph (A), by striking “for public inspec-
5 tion and copying” and inserting “for public
6 inspection in an electronic format”;

7 (ii) by striking subparagraph (D) and
8 inserting the following:

9 “(D) copies of all records, regardless of form or
10 format—

11 “(i) that have been released to any person
12 under paragraph (3); and

13 “(ii)(I) that because of the nature of their
14 subject matter, the agency determines have be-
15 come or are likely to become the subject of sub-
16 sequent requests for substantially the same
17 records; or

18 “(II) that have been requested 3 or more
19 times; and”;

20 (iii) in the undesignated matter fol-
21 lowing subparagraph (E), by striking
22 “public inspection and copying current”
23 and inserting “public inspection in an elec-
24 tronic format current”;

1 (B) in paragraph (4)(A), by striking clause
2 (viii) and inserting the following:

3 “(viii)(I) Except as provided in subclause (II),
4 an agency shall not assess any search fees (or in the
5 case of a requester described under clause (ii)(II) of
6 this subparagraph, duplication fees) under this sub-
7 paragraph if the agency has failed to comply with
8 any time limit under paragraph (6).

9 “(II)(aa) If an agency has determined that un-
10 usual circumstances apply (as the term is defined in
11 paragraph (6)(B)) and the agency provided a timely
12 written notice to the requester in accordance with
13 paragraph (6)(B), a failure described in subclause
14 (I) is excused for an additional 10 days. If the agen-
15 cy fails to comply with the extended time limit, the
16 agency may not assess any search fees (or in the
17 case of a requester described under clause (ii)(II) of
18 this subparagraph, duplication fees).

19 “(bb) If an agency has determined that unusual
20 circumstances apply and more than 50,000 pages
21 are necessary to respond to the request, an agency
22 may charge search fees (or in the case of a requester
23 described under clause (ii)(II) of this subparagraph,
24 duplication fees) if the agency has provided a timely
25 written notice to the requester in accordance with

1 paragraph (6)(B) and the agency has discussed with
 2 the requester via written mail, electronic mail, or
 3 telephone (or made not less than 3 good-faith at-
 4 tempts to do so) how the requester could effectively
 5 limit the scope of the request in accordance with
 6 paragraph (6)(B)(ii).

7 “(cc) If a court has determined that exceptional
 8 circumstances exist (as that term is defined in para-
 9 graph (6)(C)), a failure described in subclause (I)
 10 shall be excused for the length of time provided by
 11 the court order.”;

12 (C) in paragraph (6)—

13 (i) in subparagraph (A)(i), by striking
 14 “making such request” and all that follows
 15 through “determination; and” and insert-
 16 ing the following: “making such request
 17 of—

18 “(I) such determination and the rea-
 19 sons therefor;

20 “(II) the right of such person to seek
 21 assistance from the FOIA Public Liaison
 22 of the agency; and

23 “(III) in the case of an adverse deter-
 24 mination—

1 “(aa) the right of such person to
2 appeal to the head of the agency,
3 within a period determined by the
4 head of the agency that is not less
5 than 90 days after the date of such
6 adverse determination; and

7 “(bb) the right of such person to
8 seek dispute resolution services from
9 the FOIA Public Liaison of the agen-
10 cy or the Office of Government Infor-
11 mation Services; and”;

12 (ii) in subparagraph (B)(ii), by strik-
13 ing “the agency.” and inserting “the agen-
14 cy, and notify the requester of the right of
15 the requester to seek dispute resolution
16 services from the Office of Government In-
17 formation Services.”; and

18 (D) by adding at the end the following:

19 “(8)(A) An agency—

20 “(i) shall—

21 “(I) withhold information under this sec-
22 tion only if—

23 “(aa) the agency reasonably foresees
24 that disclosure would harm an interest pro-

1 tected by an exemption described in sub-
2 section (b) or other provision of law; or

3 “(bb) disclosure is prohibited by law;

4 and

5 “(II)(aa) consider whether partial disclo-
6 sure of information is possible whenever the
7 agency determines that a full disclosure of a re-
8 quested record is not possible; and

9 “(bb) take reasonable steps necessary to
10 segregate and release nonexempt information;

11 and

12 “(ii) may not—

13 “(I) withhold information requested under
14 this section merely because the agency can dem-
15 onstrate, as a technical matter, that the records
16 fall within the scope of an exemption described
17 in subsection (b); or

18 “(II) withhold information requested under
19 this section merely because disclosure of the in-
20 formation may be embarrassing to the agency
21 or because of speculative or abstract concerns.

22 “(B) Nothing in this paragraph requires disclosure
23 of information that is otherwise prohibited from disclosure
24 by law, or otherwise exempted from disclosure under sub-
25 section (b)(3).”;

1 (2) in subsection (b), by amending paragraph
2 (5) to read as follows:

3 “(5) inter-agency or intra-agency memoran-
4 dums or letters that would not be available by law
5 to a party other than an agency in litigation with
6 the agency, if the requested record or information
7 was created less than 25 years before the date on
8 which the request was made;”;

9 (3) in subsection (e)—

10 (A) in paragraph (1)—

11 (i) in the matter preceding subpara-
12 graph (A), by inserting “and to the Direc-
13 tor of the Office of Government Informa-
14 tion Services” after “United States”;

15 (ii) in subparagraph (N), by striking
16 “and” at the end;

17 (iii) in subparagraph (O), by striking
18 the period at the end and inserting a semi-
19 colon; and

20 (iv) by adding at the end the fol-
21 lowing:

22 “(P) the number of times the agency denied a
23 request for records under subsection (e); and

1 “(Q) the number of records that were made
2 available for public inspection in an electronic for-
3 mat under subsection (a)(2).”;

4 (B) by striking paragraph (3) and insert-
5 ing the following:

6 “(3) Each agency shall make each such report avail-
7 able for public inspection in an electronic format. In addi-
8 tion, each agency shall make the raw statistical data used
9 in each report available in a timely manner for public in-
10 spection in an electronic format, which shall be made
11 available—

12 (A) without charge, license, or registration re-
13 quirement;

14 (B) in an aggregated, searchable format; and

15 (C) in a format that may be downloaded in
16 bulk.”;

17 (C) in paragraph (4)—

18 (i) by striking “Government Reform
19 and Oversight” and inserting “Oversight
20 and Government Reform”;

21 (ii) by inserting “Homeland Security
22 and” before “Governmental Affairs”; and

23 (iii) by striking “April” and inserting
24 “March”; and

1 (D) by striking paragraph (6) and insert-
2 ing the following:

3 “(6)(A) The Attorney General of the United States
4 shall submit to the Committee on Oversight and Govern-
5 ment Reform of the House of Representatives, the Com-
6 mittee on the Judiciary of the Senate, and the President
7 a report on or before March 1 of each calendar year, which
8 shall include for the prior calendar year—

9 “(i) a listing of the number of cases arising
10 under this section;

11 “(ii) a listing of—

12 “(I) each subsection, and any exemption, if
13 applicable, involved in each case arising under
14 this section;

15 “(II) the disposition of each case arising
16 under this section; and

17 “(III) the cost, fees, and penalties assessed
18 under subparagraphs (E), (F), and (G) of sub-
19 section (a)(4); and

20 “(iii) a description of the efforts undertaken by
21 the Department of Justice to encourage agency com-
22 pliance with this section.

23 “(B) The Attorney General of the United States shall
24 make—

1 “(i) each report submitted under subparagraph
2 (A) available for public inspection in an electronic
3 format; and

4 “(ii) the raw statistical data used in each report
5 submitted under subparagraph (A) available for public
6 inspection in an electronic format, which shall be
7 made available—

8 “(I) without charge, license, or registration
9 requirement;

10 “(II) in an aggregated, searchable format;
11 and

12 “(III) in a format that may be downloaded
13 in bulk.”;

14 (4) in subsection (g), in the matter preceding
15 paragraph (1), by striking “publicly available upon
16 request” and inserting “available for public inspec-
17 tion in an electronic format”;

18 (5) in subsection (h)—

19 (A) in paragraph (1), by adding at the end
20 the following: “The head of the Office shall be
21 the Director of the Office of Government Infor-
22 mation Services.”;

23 (B) in paragraph (2), by striking subpara-
24 graph (C) and inserting the following:

1 “(C) identify procedures and methods for im-
2 proving compliance under this section.”;

3 (C) by striking paragraph (3) and insert-
4 ing the following:

5 “(3) The Office of Government Information Services
6 shall offer mediation services to resolve disputes between
7 persons making requests under this section and adminis-
8 trative agencies as a non-exclusive alternative to litigation
9 and may issue advisory opinions at the discretion of the
10 Office or upon request of any party to a dispute.”; and

11 (D) by adding at the end the following:

12 “(4)(A) Not less frequently than annually, the Direc-
13 tor of the Office of Government Information Services shall
14 submit to the Committee on Oversight and Government
15 Reform of the House of Representatives, the Committee
16 on the Judiciary of the Senate, and the President—

17 “(i) a report on the findings of the information
18 reviewed and identified under paragraph (2);

19 “(ii) a summary of the activities of the Office
20 of Government Information Services under para-
21 graph (3), including—

22 “(I) any advisory opinions issued; and

23 “(II) the number of times each agency en-
24 gaged in dispute resolution with the assistance

1 of the Office of Government Information Serv-
2 ices or the FOIA Public Liaison; and

3 “(iii) legislative and regulatory recommenda-
4 tions, if any, to improve the administration of this
5 section.

6 “(B) The Director of the Office of Government Infor-
7 mation Services shall make each report submitted under
8 subparagraph (A) available for public inspection in an
9 electronic format.

10 “(C) The Director of the Office of Government Infor-
11 mation Services shall not be required to obtain the prior
12 approval, comment, or review of any officer or agency of
13 the United States, including the Department of Justice,
14 the Archivist of the United States, or the Office of Man-
15 agement and Budget before submitting to Congress, or
16 any committee or subcommittee thereof, any reports, rec-
17 ommendations, testimony, or comments, if such submis-
18 sions include a statement indicating that the views ex-
19 pressed therein are those of the Director and do not nec-
20 essarily represent the views of the President.

21 “(5) The Director of the Office of Government Infor-
22 mation Services may directly submit additional informa-
23 tion to Congress and the President as the Director deter-
24 mines to be appropriate.

1 “(6) Not less frequently than annually, the Office of
2 Government Information Services shall conduct a meeting
3 that is open to the public on the review and reports by
4 the Office and shall allow interested persons to appear and
5 present oral or written statements at the meeting.”;

6 (6) by striking subsections (i), (j), and (k), and
7 inserting the following:

8 “(i) The Government Accountability Office shall—

9 “(1) not later than 1 year after the date of en-
10 actment of the FOIA Improvement Act of 2015 and
11 every 2 years thereafter, conduct audits of 3 or more
12 administrative agencies on compliance with and im-
13 plementation of the requirements of this section and
14 issue reports detailing the results of such audits;

15 “(2) not later than 1 year after the date of en-
16 actment of the FOIA Improvement Act of 2015 and
17 every 2 years thereafter, issue a report cataloging
18 the number of exemptions described in paragraphs
19 (3) and (5) of subsection (b) and the use of such ex-
20 emptions by each agency;

21 “(3) not later than 1 year after the date of en-
22 actment of the FOIA Improvement Act of 2015,
23 conduct a study on the methods Federal agencies
24 use to reduce the backlog of requests under this sec-

1 tion and issue a report on the effectiveness of those
2 methods; and

3 “(4) submit copies of all reports and audits de-
4 scribed in this subsection to the Committee on Over-
5 sight and Government Reform of the House of Rep-
6 resentatives and the Committee on the Judiciary of
7 the Senate.

8 “(j)(1) Each agency shall designate a Chief FOIA Of-
9 ficer who shall be a senior official of such agency (at the
10 Assistant Secretary or equivalent level).

11 “(2) The Chief FOIA Officer of each agency shall,
12 subject to the authority of the head of the agency—

13 “(A) have agency-wide responsibility for effi-
14 cient and appropriate compliance with this section;

15 “(B) monitor implementation of this section
16 throughout the agency and keep the head of the
17 agency, the chief legal officer of the agency, and the
18 Attorney General appropriately informed of the
19 agency’s performance in implementing this section;

20 “(C) recommend to the head of the agency such
21 adjustments to agency practices, policies, personnel,
22 and funding as may be necessary to improve its im-
23 plementation of this section;

24 “(D) review and report to the Attorney General,
25 through the head of the agency, at such times and

1 in such formats as the Attorney General may direct,
2 on the agency's performance in implementing this
3 section;

4 “(E) facilitate public understanding of the pur-
5 poses of the statutory exemptions of this section by
6 including concise descriptions of the exemptions in
7 both the agency's handbook issued under subsection
8 (g), and the agency's annual report on this section,
9 and by providing an overview, where appropriate, of
10 certain general categories of agency records to which
11 those exemptions apply;

12 “(F) offer training to agency staff regarding
13 their responsibilities under this section;

14 “(G) serve as the primary agency liaison with
15 the Office of Government Information Services and
16 the Office of Information Policy; and

17 “(H) designate 1 or more FOIA Public Liai-
18 sons.

19 “(3) The Chief FOIA Officer of each agency shall re-
20 view, not less frequently than annually, all aspects of the
21 administration of this section by the agency to ensure
22 compliance with the requirements of this section, includ-
23 ing—

24 “(A) agency regulations;

1 “(B) disclosure of records required under para-
2 graphs (2) and (8) of subsection (a);

3 “(C) assessment of fees and determination of
4 eligibility for fee waivers;

5 “(D) the timely processing of requests for infor-
6 mation under this section;

7 “(E) the use of exemptions under subsection
8 (b); and

9 “(F) dispute resolution services with the assist-
10 ance of the Office of Government Information Serv-
11 ices or the FOIA Public Liaison.

12 “(k)(1) There is established in the executive branch
13 the Chief FOIA Officers Council (referred to in this sub-
14 section as the ‘Council’).

15 “(2) The Council shall be comprised of the following
16 members:

17 “(A) The Deputy Director for Management of
18 the Office of Management and Budget.

19 “(B) The Director of the Office of Information
20 Policy at the Department of Justice.

21 “(C) The Director of the Office of Government
22 Information Services.

23 “(D) The Chief FOIA Officer of each agency.

24 “(E) Any other officer or employee of the
25 United States as designated by the Co-Chairs.

1 “(3) The Director of the Office of Information Policy
2 at the Department of Justice and the Director of the Of-
3 fice of Government Information Services shall be the Co-
4 Chairs of the Council.

5 “(4) The Administrator of General Services shall pro-
6 vide administrative and other support for the Council.

7 “(5)(A) The duties of the Council shall include the
8 following:

9 “(i) Develop recommendations for increasing
10 compliance and efficiency under this section.

11 “(ii) Disseminate information about agency ex-
12 periences, ideas, best practices, and innovative ap-
13 proaches related to this section.

14 “(iii) Identify, develop, and coordinate initia-
15 tives to increase transparency and compliance with
16 this section.

17 “(iv) Promote the development and use of com-
18 mon performance measures for agency compliance
19 with this section.

20 “(B) In performing the duties described in subpara-
21 graph (A), the Council shall consult on a regular basis
22 with members of the public who make requests under this
23 section.

24 “(6)(A) The Council shall meet regularly and such
25 meetings shall be open to the public unless the Council

1 determines to close the meeting for reasons of national
2 security or to discuss information exempt under subsection
3 (b).

4 “(B) Not less frequently than annually, the Council
5 shall hold a meeting that shall be open to the public and
6 permit interested persons to appear and present oral and
7 written statements to the Council.

8 “(C) Not later than 10 business days before a meet-
9 ing of the Council, notice of such meeting shall be pub-
10 lished in the Federal Register.

11 “(D) Except as provided in subsection (b), the
12 records, reports, transcripts, minutes, appendices, working
13 papers, drafts, studies, agenda, or other documents that
14 were made available to or prepared for or by the Council
15 shall be made publicly available.

16 “(E) Detailed minutes of each meeting of the Council
17 shall be kept and shall contain a record of the persons
18 present, a complete and accurate description of matters
19 discussed and conclusions reached, and copies of all re-
20 ports received, issued, or approved by the Council. The
21 minutes shall be redacted as necessary and made publicly
22 available.”; and

23 (7) by adding at the end the following:

24 “(m)(1) The Director of the Office of Management
25 and Budget, in consultation with the Attorney General,

1 shall ensure the operation of a consolidated online request
2 portal that allows a member of the public to submit a re-
3 quest for records under subsection (a) to any agency from
4 a single website. The portal may include any additional
5 tools the Director of the Office of Management and Budg-
6 et finds will improve the implementation of this section.

7 “(2) This subsection shall not be construed to alter
8 the power of any other agency to create or maintain an
9 independent online portal for the submission of a request
10 for records under this section. The Director of the Office
11 of Management and Budget shall establish standards for
12 interoperability between the portal required under para-
13 graph (1) and other request processing software used by
14 agencies subject to this section.”.

15 **SEC. 3. REVIEW AND ISSUANCE OF REGULATIONS.**

16 (a) IN GENERAL.—Not later than 180 days after the
17 date of enactment of this Act, the head of each agency
18 (as defined in section 551 of title 5, United States Code)
19 shall review the regulations of such agency and shall issue
20 regulations on procedures for the disclosure of records
21 under section 552 of title 5, United States Code, in ac-
22 cordance with the amendments made by section 2.

23 (b) REQUIREMENTS.—The regulations of each agency
24 shall include procedures for engaging in dispute resolution

1 through the FOIA Public Liaison and the Office of Gov-
2 ernment Information Services.

3 **SEC. 4. PROACTIVE DISCLOSURE THROUGH RECORDS MAN-**
4 **AGEMENT.**

5 Section 3102 of title 44, United States Code, is
6 amended—

7 (1) by redesignating paragraphs (2) and (3) as
8 paragraphs (3) and (4); and

9 (2) by inserting after paragraph (1) the fol-
10 lowing:

11 “(2) procedures for identifying records of gen-
12 eral interest or use to the public that are appro-
13 priate for public disclosure, and for posting such
14 records in a publicly accessible electronic format;”.

15 **SEC. 5. NO ADDITIONAL FUNDS AUTHORIZED.**

16 No additional funds are authorized to carry out the
17 requirements of this Act or the amendments made by this
18 Act. The requirements of this Act and the amendments
19 made by this Act shall be carried out using amounts other-
20 wise authorized or appropriated.

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