

113<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2520

---

## AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “FOIA Improvement  
3 Act of 2014”.

4 **SEC. 2. AMENDMENTS TO FOIA.**

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

7 (1) in subsection (a)—

8 (A) in paragraph (2)—

9 (i) in the matter preceding subpara-  
10 graph (A), by striking “for public inspec-  
11 tion and copying” and inserting “for public  
12 inspection in an electronic format”;

13 (ii) by striking subparagraph (D) and  
14 inserting the following:

15 “(D) copies of all records, regardless of form or  
16 format—

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

19 “(ii)(I) that because of the nature of their  
20 subject matter, the agency determines have be-  
21 come or are likely to become the subject of sub-  
22 sequent requests for substantially the same  
23 records; or

24 “(II) that have been requested not less  
25 than 3 times; and”;

1 (iii) in the undesignated matter fol-  
2 lowing subparagraph (E), by striking  
3 “public inspection and copying current”  
4 and inserting “public inspection in an elec-  
5 tronic format current”;

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

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

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

24 “(bb) If an agency has determined that unusual  
25 circumstances apply and more than 50,000 pages

1 are necessary to respond to the request, an agency  
 2 may charge search fees (or in the case of a requester  
 3 described under clause (ii)(II) of this subparagraph,  
 4 duplication fees) if the agency has provided a timely  
 5 written notice to the requester in accordance with  
 6 paragraph (6)(B) and the agency has discussed with  
 7 the requester via written mail, electronic mail, or  
 8 telephone (or made not less than 3 good-faith at-  
 9 tempts to do so) how the requester could effectively  
 10 limit the scope of the request in accordance with  
 11 paragraph (6)(B)(ii).

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

17 (C) in paragraph (6)—

18 (i) in subparagraph (A)(i), by striking  
 19 “making such request” and all that follows  
 20 through “determination; and” and insert-  
 21 ing the following: “making such request  
 22 of—”

23 “(I) such determination and the rea-  
 24 sons therefor;

1 “(II) the right of such person to seek  
2 assistance from the FOIA Public Liaison  
3 of the agency; and

4 “(III) in the case of an adverse deter-  
5 mination—

6 “(aa) the right of such person to  
7 appeal to the head of the agency,  
8 within a period determined by the  
9 head of the agency that is not less  
10 than 90 days after the date of such  
11 adverse determination; and

12 “(bb) the right of such person to  
13 seek dispute resolution services from  
14 the FOIA Public Liaison of the agen-  
15 cy or the Office of Government Infor-  
16 mation Services; and”;

17 (ii) in subparagraph (B)(ii), by strik-  
18 ing “the agency.” and inserting “the agen-  
19 cy, and notify the requester of the right of  
20 the requester to seek dispute resolution  
21 services from the Office of Government In-  
22 formation Services.”; and

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

24 “(8)(A) An agency—

25 “(i) shall—

1           “(I) withhold information under this sec-  
2           tion only if—

3                   “(aa) the agency reasonably foresees  
4                   that disclosure would harm an interest pro-  
5                   tected by an exemption described in sub-  
6                   section (b) or other provision of law; or

7                   “(bb) disclosure is prohibited by law;  
8                   and

9                   “(II)(aa) consider whether partial disclo-  
10                  sure of information is possible whenever the  
11                  agency determines that a full disclosure of a re-  
12                  quested record is not possible; and

13                  “(bb) take reasonable steps necessary to  
14                  segregate and release nonexempt information;  
15                  and

16                  “(ii) may not—

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

22                   “(II) withhold information requested under  
23                   this section merely because disclosure of the in-  
24                   formation may be embarrassing to the agency  
25                   or because of speculative or abstract concerns.

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

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

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

13 (3) in subsection (e)

14 (A) in paragraph (1)—

15 (i) in the matter preceding subpara-  
16 graph (A), by inserting “and to the Direc-  
17 tor of the Office of Government Informa-  
18 tion Services” after “United States”;

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

21 (iii) in subparagraph (O), by striking  
22 the period at the end and inserting a semi-  
23 colon; and

24 (iv) by adding at the end the fol-  
25 lowing:

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

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

6           (B) by striking paragraph (3) and insert-  
7 ing the following:

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

14           “(A) without charge, license, or registration re-  
15 quirement;

16           “(B) in an aggregated, searchable format; and

17           “(C) in a format that may be downloaded in  
18 bulk.”;

19           (C) in paragraph (4)—

20           (i) by striking “Government Reform  
21 and Oversight” and inserting “Oversight  
22 and Government Reform”;

23           (ii) by inserting “Homeland Security  
24 and” before “Governmental Affairs”; and

1 (iii) by striking “April” and inserting  
2 “March”; and

3 (D) by striking paragraph (6) and insert-  
4 ing the following:

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

11 “(i) a listing of the number of cases arising  
12 under this section;

13 “(ii) a listing of—

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

17 “(II) the disposition of each case arising  
18 under this section; and

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

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

1 “(B) The Attorney General of the United States shall  
2 make—

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

6 “(ii) the raw statistical data used in each report  
7 submitted under subparagraph (A) available for pub-  
8 lic inspection in an electronic format, which shall be  
9 made available—

10 “(I) without charge, license, or registration  
11 requirement;

12 “(II) in an aggregated, searchable format;  
13 and

14 “(III) in a format that may be downloaded  
15 in bulk.”;

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

20 (5) in subsection (h)—

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

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

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

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

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

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

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

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

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

24 “(I) any advisory opinions issued; and

1           “(II) the number of times each agency en-  
2           gaged in dispute resolution with the assistance  
3           of the Office of Government Information Serv-  
4           ices or the FOIA Public Liaison; and

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

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

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

23          “(5) The Director of the Office of Government Infor-  
24          mation Services may directly submit additional informa-

1 tion to Congress and the President as the Director deter-  
2 mines to be appropriate.

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

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

10 “(i) The Government Accountability Office shall—

11 “(1) not later than 1 year after the date of en-  
12 actment of the FOIA Improvement Act of 2014 and  
13 every 2 years thereafter, conduct audits of 3 or more  
14 administrative agencies on compliance with and im-  
15 plementation of the requirements of this section and  
16 issue reports detailing the results of such audits;

17 “(2) not later than 1 year after the date of en-  
18 actment of the FOIA Improvement Act of 2014 and  
19 every 2 years thereafter, issue a report cataloging  
20 the number of exemptions described in paragraphs  
21 (3) and (5) of subsection (b) and the use of such ex-  
22 emptions by each agency;

23 “(3) not later than 1 year after the date of en-  
24 actment of the FOIA Improvement Act of 2014,  
25 conduct a study on the methods Federal agencies

1 use to reduce the backlog of requests under this sec-  
2 tion and issue a report on the effectiveness of those  
3 methods; and

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

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

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

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

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

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

1           “(D) review and report to the Attorney General,  
2 through the head of the agency, at such times and  
3 in such formats as the Attorney General may direct,  
4 on the agency’s performance in implementing this  
5 section;

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

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

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

19           “(H) designate 1 or more FOIA Public Liai-  
20 sons.

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

1           “(A) agency regulations;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9           “(5)(A) The duties of the Council shall include the  
10          following:

11           “(i) Develop recommendations for increasing  
12          compliance and efficiency under this section.

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

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

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

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

1       “(6)(A) The Council shall meet regularly and such  
2 meetings shall be open to the public unless the Council  
3 determines to close the meeting for reasons of national  
4 security or to discuss information exempt under subsection  
5 (b).

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

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

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

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

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

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

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

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

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

1 (b) REQUIREMENTS.—The regulations of each agency  
2 shall include procedures for engaging in dispute resolution  
3 through the FOIA Public Liaison and the Office of Gov-  
4 ernment Information Services.

5 **SEC. 4. PROACTIVE DISCLOSURE THROUGH RECORDS MAN-**  
6 **AGEMENT.**

7 Section 3102 of title 44, United States Code, is  
8 amended—

9 (1) by redesignating paragraphs (2) and (3) as  
10 paragraphs (3) and (4); and

11 (2) by inserting after paragraph (1) the fol-  
12 lowing:

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

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

18 No additional funds are authorized to carry out the  
19 requirements of this Act or the amendments made by this  
20 Act. The requirements of this Act and the amendments

- 1 made by this Act shall be carried out using amounts other-
- 2 wise authorized or appropriated.

Passed the Senate December 8, 2014.

Attest:

*Secretary.*

113<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 2520**

---

---

**AN ACT**

To improve the Freedom of Information Act.