

Calendar No. 605

113TH CONGRESS
2^D SESSION**S. 2520**To improve the Freedom of Information Act.

IN THE SENATE OF THE UNITED STATES

JUNE 24, 2014

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

NOVEMBER 20, 2014

Reported by Mr. LEAHY, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

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 2014”.

1 **SEC. 2. AMENDMENTS TO FOIA.**

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

4 (1) in subsection (a)—

5 (A) in paragraph (2)—

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

10 (ii) by striking subparagraph (D) and
11 inserting the following:

12 “(D) copies of all records, regardless of form or
13 format—

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

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

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

23 (iii) in the undesignated matter fol-
24 lowing subparagraph (E), by striking
25 “public inspection and copying current”

1 and inserting “public inspection in an elec-
2 tronic format, and current”;

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

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

11 “(II)(aa) If an agency determines that unusual
12 circumstances apply (as the term is defined in para-
13 graph (6)(B)) and the agency provides a timely writ-
14 ten notice to the requester in accordance with para-
15 graph (6)(B), a failure described in subclause (I) is
16 excused for an additional 10 days. If the agency fails
17 to comply with the extended time limit, the agency
18 may not assess any search fees (or in the ease of a
19 requester described under clause (ii)(II) of this sub-
20 paragraph, duplication fees).

21 “(bb) If a court determines that exceptional cir-
22 cumstances exist (as that term is defined in para-
23 graph (6)(C)), a failure described in subclause (I)
24 shall be excused for the length of time provided by
25 the court order.”;

1 (C) in paragraph (6)—

2 (i) in subparagraph (A)(i), by striking
3 “making such request” and all that follows
4 through “determination; and” and insert-
5 ing the following: “making such request
6 of—”

7 “(I) such determination and the rea-
8 sons therefore;

9 “(II) the right of such person to seek
10 assistance from the FOIA Public Liaison
11 of the agency; and

12 “(III) in the case of an adverse deter-
13 mination—

14 “(aa) the right of such person to
15 appeal to the head of the agency;
16 within a period determined by the
17 head of the agency that is not less
18 than 90 days after the receipt of such
19 adverse determination; and

20 “(bb) the right of such person to
21 seek dispute resolution services from
22 the FOIA Public Liaison of the agen-
23 cy or the Office of Government Infor-
24 mation Services; and”; and

1 (ii) in subparagraph (B)(ii), by strik-
 2 ing “the agency.” and inserting “the agen-
 3 cy, and notify the requester of the right of
 4 the requester to seek dispute resolution
 5 services from the Office of Government In-
 6 formation Services.”; and

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

8 ~~“(8) An agency—~~

9 ~~“(A) shall—~~

10 ~~“(i) withhold information under this sec-~~
 11 ~~tion only if—~~

12 ~~“(I) the agency reasonably foresees~~
 13 ~~that disclosure would harm an interest pro-~~
 14 ~~ected by an exemption described in sub-~~
 15 ~~section (b) or other provision of law; or~~

16 ~~“(II) disclosure is prohibited by law;~~
 17 ~~and~~

18 ~~“(ii)(I) consider whether partial disclosure~~
 19 ~~of information is possible whenever the agency~~
 20 ~~determines that a full disclosure of a requested~~
 21 ~~record is not possible; and~~

22 ~~“(II) take reasonable steps necessary to~~
 23 ~~segregate and release nonexempt information;~~
 24 ~~and~~

25 ~~“(B) may not—~~

1 “(i) withhold information requested under
2 this section merely because the agency can dem-
3 onstrate, as a technical matter, that the records
4 fall within the scope of an exemption described
5 in subsection (b); or

6 “(ii) withhold information requested under
7 this section because the information may be em-
8 barrassing to the agency or because of specula-
9 tive or abstract concerns.”;

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

12 “(5) inter-agency or intra-agency memoran-
13 dums or letters that would not be available by law
14 to a party other than an agency in litigation with
15 the agency, if—

16 “(A) in the case of deliberative process
17 privilege or attorney work-product privilege, the
18 agency interest in protecting the records or in-
19 formation is not outweighed by a public interest
20 in disclosure;

21 “(B) in the case of attorney-client privi-
22 lege, the agency interest in protecting the
23 records or information is not outweighed by a
24 compelling public interest in disclosure; and

1 ~~“(C) the requested record or information~~
 2 was created less than 25 years before the date
 3 on which the request was made;”;

4 ~~(3) in subsection (c)~~

5 (A) in paragraph (1)—

6 (i) in the matter preceding subpara-
 7 graph (A), by inserting “and to the Direc-
 8 tor of the Office of Government Informa-
 9 tion Services” after “United States”;

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

12 (iii) in subparagraph (O), by striking
 13 the period at the end and inserting a semi-
 14 colon; and

15 (iv) by adding at the end the fol-
 16 lowing:

17 ~~“(P) the number of times the agency denied a~~
 18 request for records under subsection (c); and

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

22 (B) by striking paragraph (3) and insert-
 23 ing the following:

24 ~~“(3) Each agency shall make each such report avail-~~
 25 able for public inspection in an electronic format. In addi-

1 tion, each agency shall make the raw statistical data used
 2 in each report available in a timely manner for public in-
 3 spection in an electronic format, which shall be made
 4 available—

5 “(A) without charge, license, or registration re-
 6 quirement;

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

8 “(C) in a format that may be downloaded in
 9 bulk.”;

10 (C) in paragraph (4)—

11 (i) by striking “Government Reform
 12 and Oversight” and inserting “Oversight
 13 and Government Reform”;

14 (ii) by inserting “Homeland Security
 15 and” before “Governmental Affairs”; and

16 (iii) by striking “April” and inserting
 17 “March”; and

18 (D) by striking paragraph (6) and insert-
 19 ing the following:

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

1 “(i) a listing of the number of cases arising
2 under this section;

3 “(ii) a listing of—

4 “(I) each subsection, and any exemption, if
5 applicable, involved in each case arising under
6 this section;

7 “(II) the disposition of each case arising
8 under this section; and

9 “(III) the cost, fees, and penalties assessed
10 under subparagraphs (E), (F), and (G) of sub-
11 section (a)(4); and

12 “(iii) a description of the efforts undertaken by
13 the Department of Justice to encourage agency com-
14 pliance with this section.

15 “(B) The Attorney General of the United States shall
16 make—

17 “(i) each report submitted under subparagraph
18 (A) available for public inspection in an electronic
19 format; and

20 “(ii) the raw statistical data used in each report
21 submitted under subparagraph (A) available for pub-
22 lic inspection in an electronic format, which shall be
23 made available—

24 “(I) without charge, license, or registration
25 requirement;

1 “(H) in an aggregated, searchable format;
2 and

3 “(III) in a format that may be downloaded
4 in bulk.”;

5 (4) in subsection (g), in the matter preceding
6 paragraph (1), by striking “publicly available upon
7 request” and inserting “available for public inspec-
8 tion in an electronic format”;

9 (5) in subsection (h)—

10 (A) in paragraph (1), by adding at the end
11 the following: “The head of the Office shall be
12 the Director of the Office of Government Infor-
13 mation Services.”;

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

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

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

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

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

2 “(4)(A) Not less frequently than annually, the Direc-
3 tor of the Office of Government Information Services shall
4 submit to the Committee on Oversight and Government
5 Reform of the House of Representatives, the Committee
6 on the Judiciary of the Senate, and the President—

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

9 “(ii) a summary of the activities of the Office
10 of Government Information Services under para-
11 graph (3), including—

12 “(I) any advisory opinions issued; and

13 “(II) the number of times each agency en-
14 gaged in dispute resolution with the assistance
15 of the Office of Government Information Serv-
16 ices or the FOIA Public Liaison; and

17 “(iii) legislative and regulatory recommenda-
18 tions, if any, to improve the administration of this
19 section.

20 “(B) The Director of the Office of Government Infor-
21 mation Services shall make each report submitted under
22 subparagraph (A) available for public inspection in an
23 electronic format.

24 “(C) The Director of the Office of Government Infor-
25 mation Services shall not be required to obtain the prior

1 approval, comment, or review of any officer or agency of
2 the United States, including the Department of Justice,
3 the Archivist of the United States, or the Office of Man-
4 agement and Budget before submitting to the Congress,
5 or any committee or subcommittee thereof, any reports,
6 recommendations, testimony, or comments, if such sub-
7 missions include a statement indicating that the views ex-
8 pressed therein are those of the Director and do not nec-
9 essarily represent the views of the President.

10 “(5) The Director of the Office of Government Infor-
11 mation Services may submit additional information to
12 Congress and the President as the Director determines to
13 be appropriate.

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

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

21 “(i) The Government Accountability Office shall—

22 “(1) conduct audits of administrative agencies
23 on compliance with and implementation of the re-
24 quirements of this section and issue reports detailing
25 the results of such audits; and

1 ~~“(2) catalog the number of exemptions de-~~
2 ~~scribed in subsection (b)(3) and the use of such ex-~~
3 ~~emptions by each agency.~~

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

7 ~~“(2) The Chief FOIA Officer of each agency shall,~~
8 ~~subject to the authority of the head of the agency—~~

9 ~~“(A) have agency-wide responsibility for effi-~~
10 ~~cient and appropriate compliance with this section;~~

11 ~~“(B) monitor implementation of this section~~
12 ~~throughout the agency and keep the head of the~~
13 ~~agency, the chief legal officer of the agency, and the~~
14 ~~Attorney General appropriately informed of the~~
15 ~~agency’s performance in implementing this section;~~

16 ~~“(C) recommend to the head of the agency such~~
17 ~~adjustments to agency practices, policies, personnel,~~
18 ~~and funding as may be necessary to improve its im-~~
19 ~~plementation of this section;~~

20 ~~“(D) review and report to the Attorney General,~~
21 ~~through the head of the agency, at such times and~~
22 ~~in such formats as the Attorney General may direct,~~
23 ~~on the agency’s performance in implementing this~~
24 ~~section;~~

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

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

11 “(G) serve as the primary agency liaison with
12 the Office of Government Information Services and
13 the Office of Information Policy; and

14 “(H) designate 1 or more FOIA Public Liai-
15 sons.

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

21 “(A) agency regulations;

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

24 “(C) assessment of fees and determination of
25 eligibility for fee waivers;

1 ~~“(D) the timely processing of requests for infor-~~
2 ~~mation under this section;~~

3 ~~“(E) the use of exemptions under subsection~~
4 ~~(b); and~~

5 ~~“(F) dispute resolution services with the assist-~~
6 ~~ance of the Office of Government Information Serv-~~
7 ~~ices or the FOIA Public Liaison.~~

8 ~~“(k)(1) There is established in the executive branch~~
9 ~~the Chief FOIA Officers Council (referred to in this sub-~~
10 ~~section as the ‘Council’).~~

11 ~~“(2) The Council shall be comprised of the following~~
12 ~~members:~~

13 ~~“(A) The Deputy Director for Management of~~
14 ~~the Office of Management and Budget.~~

15 ~~“(B) The Director of the Office of Information~~
16 ~~Policy at the Department of Justice.~~

17 ~~“(C) The Director of the Office of Government~~
18 ~~Information Services.~~

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

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

22 ~~“(3) The Director of the Office of Information Policy~~
23 ~~at the Department of Justice and the Director of the Of-~~
24 ~~fice of Government Information Services shall be the Co-~~
25 ~~Chairs of the Council.~~

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

3 ~~“(5)(A) The duties of the Council shall include the~~
4 ~~following:~~

5 ~~“(i) Develop recommendations for increasing~~
6 ~~compliance and efficiency under this section.~~

7 ~~“(ii) Disseminate information about agency ex-~~
8 ~~periences, ideas, best practices, and innovative ap-~~
9 ~~proaches related to this section.~~

10 ~~“(iii) Identify, develop, and coordinate initia-~~
11 ~~tives to increase transparency and compliance with~~
12 ~~this section.~~

13 ~~“(iv) Promote the development and use of com-~~
14 ~~mon performance measures for agency compliance~~
15 ~~with this section.~~

16 ~~“(B) In performing the duties described in subpara-~~
17 ~~graph (A), the Council shall consult on a regular basis~~
18 ~~with members of the public who make requests under this~~
19 ~~section.~~

20 ~~“(6)(A) The Council shall meet regularly and such~~
21 ~~meetings shall be open to the public unless the Council~~
22 ~~determines to close the meeting for reasons of national~~
23 ~~security or to discuss information exempt under subsection~~
24 ~~(b).~~

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

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

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

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

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

21 (a) **IN GENERAL.**—Not later than 180 days after the
22 date of enactment of this Act, the head of each agency
23 (as defined in section 551 of title 5, United States Code)
24 shall review the regulations of such agency and shall issue
25 regulations on procedures for the disclosure of records

1 under section 552 of title 5, United States Code, in ac-
 2 cordance with the amendments made by section 2.

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

7 **SEC. 4. PROACTIVE DISCLOSURE THROUGH RECORDS MAN-**
 8 **AGEMENT.**

9 Section 3102 of title 44, United States Code, is
 10 amended—

11 (1) by redesignating paragraphs (2) and (3) as
 12 paragraphs (3) and (4); and

13 (2) by inserting after paragraph (1) the fol-
 14 lowing:

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

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

20 No additional funds are authorized to carry out the
 21 requirements of this Act or the amendments made by this
 22 Act. The requirements of this Act and the amendments
 23 made by this Act shall be carried out using amounts other-
 24 wise authorized or appropriated.

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “FOIA Improvement Act*
3 *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 *“(i)(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 subse-*
22 *quent requests for substantially the same records;*
23 *or*

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

1 (iii) in the undesignated matter fol-
2 lowing subparagraph (E), by striking “pub-
3 lic inspection and copying current” and in-
4 serting “public inspection in an electronic
5 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 (I)
19 is excused for an additional 10 days. If the agency
20 fails to comply with the extended time limit, the
21 agency may not assess any search fees (or in the case
22 of a requester described under clause (ii)(II) of this
23 subparagraph, duplication fees).

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

1 *necessary to respond to the request, an agency may*
2 *charge search fees (or in the case of a requester de-*
3 *scribed under clause (ii)(II) of this subparagraph, du-*
4 *plication 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 tele-*
8 *phone (or made not less than 3 good-faith attempts to*
9 *do so) how the requester could effectively limit the*
10 *scope of the request in accordance with paragraph*
11 *(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 the*
16 *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 inserting*
21 *the following: “making such request of—”*

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

1 “(II) the right of such person to seek
2 assistance from the FOIA Public Liaison of
3 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, with-
8 in a period determined by the head of
9 the agency that is not less than 90
10 days after the date of such adverse de-
11 termination; and

12 “(bb) the right of such person to
13 seek dispute resolution services from
14 the FOIA Public Liaison of the agency
15 or the Office of Government Informa-
16 tion 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 serv-
21 ices from the Office of Government Informa-
22 tion 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 seg-
14 regate and release nonexempt information; and

15 “(ii) may not—

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

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

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

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

7 “(5) inter-agency or intra-agency memorandums
8 or letters that would not be available by law to a
9 party other than an agency in litigation with the
10 agency, if the requested record or information was
11 created less than 25 years before the date on which the
12 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 Director
17 of the Office of Government Information
18 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 following:

1 “(P) the number of times the agency denied a re-
2 quest for records under subsection (c); and

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

6 (B) by striking paragraph (3) and inserting
7 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 avail-
13 able—

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 re-
9 port on or before March 1 of each calendar year, which shall
10 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 the*
23 *Director of the Office of Government Information*
24 *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 inserting
6 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 administra-
10 tive agencies as a non-exclusive alternative to litigation and
11 may issue advisory opinions at the discretion of the Office
12 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 Director
15 of the Office of Government Information Services shall sub-
16 mit to the Committee on Oversight and Government Reform
17 of the House of Representatives, the Committee on the Judi-
18 ciary 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 of
22 Government Information Services under paragraph
23 (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 of
3 the Office of Government Information Services or
4 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 elec-
11 tronic 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, the
16 Archivist of the United States, or the Office of Management
17 and Budget before submitting to Congress, or any com-
18 mittee or subcommittee thereof, any reports, recommenda-
19 tions, testimony, or comments, if such submissions include
20 a statement indicating that the views expressed therein are
21 those of the Director and do not necessarily represent the
22 views of the President.

23 “(5) The Director of the Office of Government Informa-
24 tion Services may directly submit additional information

1 *to Congress and the President as the Director determines*
2 *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 the*
6 *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 enact-*
12 *ment 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 enact-*
18 *ment of the FOIA Improvement Act of 2014 and*
19 *every 2 years thereafter, issue a report cataloging the*
20 *number of exemptions described in paragraphs (3)*
21 *and (5) of subsection (b) and the use of such exemp-*
22 *tions by each agency;*

23 “(3) *not later than 1 year after the date of enact-*
24 *ment of the FOIA Improvement Act of 2014, conduct*
25 *a study on the methods Federal agencies use to reduce*

1 *the backlog of requests under this section and issue a*
2 *report on the effectiveness of those 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 Offi-*
9 *cer who shall be a senior official of such agency (at the As-*
10 *sistant Secretary or equivalent level).*

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

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

15 “(B) *monitor implementation of this section*
16 *throughout the agency and keep the head of the agen-*
17 *cy, the chief legal officer of the agency, and the Attor-*
18 *ney General appropriately informed of the agency’s*
19 *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 in*

1 *such formats as the Attorney General may direct, on*
2 *the agency’s performance in implementing this sec-*
3 *tion;*

4 *“(E) facilitate public understanding of the pur-*
5 *poses of the statutory exemptions of this section by in-*
6 *cluding concise descriptions of the exemptions in both*
7 *the agency’s handbook issued under subsection (g),*
8 *and the agency’s annual report on this section, and*
9 *by providing an overview, where appropriate, of cer-*
10 *tain 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 Liaisons.*

18 *“(3) The Chief FOIA Officer of each agency shall re-*
19 *view, not less frequently than annually, all aspects of the*
20 *administration of this section by the agency to ensure com-*
21 *pliance with the requirements of this section, including—*

22 *“(A) agency regulations;*

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

1 “(C) *assessment of fees and determination of eli-*
2 *gibility for fee waivers;*

3 “(D) *the timely processing of requests for infor-*
4 *mation under this section;*

5 “(E) *the use of exemptions under subsection (b);*
6 *and*

7 “(F) *dispute resolution services with the assist-*
8 *ance of the Office of Government Information Services*
9 *or the FOIA Public Liaison.*

10 “(k)(1) *There is established in the executive branch the*
11 *Chief FOIA Officers Council (referred to in this subsection*
12 *as the ‘Council’).*

13 “(2) *The Council shall be comprised of the following*
14 *members:*

15 “(A) *The Deputy Director for Management of the*
16 *Office of Management and Budget.*

17 “(B) *The Director of the Office of Information*
18 *Policy at the Department of Justice.*

19 “(C) *The Director of the Office of Government*
20 *Information Services.*

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

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

24 “(3) *The Director of the Office of Information Policy*
25 *at the Department of Justice and the Director of the Office*

1 *of Government Information Services shall be the Co-Chairs*
2 *of the Council.*

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

5 “(5)(A) *The duties of the Council shall include the fol-*
6 *lowing:*

7 “(i) *Develop recommendations for increasing*
8 *compliance and efficiency under this section.*

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

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

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

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

21 “(6)(A) *The Council shall meet regularly and such*
22 *meetings shall be open to the public unless the Council de-*
23 *termines to close the meeting for reasons of national secu-*
24 *rity or to discuss information exempt under subsection (b).*

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

5 “(C) Not later than 10 business days before a meeting
6 of the Council, notice of such meeting shall be published in
7 the Federal Register.

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

13 “(E) Detailed minutes of each meeting of the Council
14 shall be kept and shall contain a record of the persons
15 present, a complete and accurate description of matters dis-
16 cussed and conclusions reached, and copies of all reports
17 received, issued, or approved by the Council. The minutes
18 shall be redacted as necessary and made publicly avail-
19 able.”; and

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

21 “(m)(1) The Director of the Office of Management and
22 Budget, in consultation with the Attorney General, shall en-
23 sure the operation of a consolidated online request portal
24 that allows a member of the public to submit a request for
25 records under subsection (a) to any agency from a single

1 *website. The portal may include any additional tools the*
2 *Director of the Office of Management and Budget finds will*
3 *improve the implementation of this section.*

4 “(2) *This subsection shall not be construed to alter the*
5 *power of any other agency to create or maintain an inde-*
6 *pendent online portal for the submission of a request for*
7 *records under this section. The Director of the Office of*
8 *Management and Budget shall establish standards for inter-*
9 *operability between the portal required under paragraph*
10 *(1) and other request processing software used by agencies*
11 *subject to this section.”.*

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

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

20 (b) *REQUIREMENTS.*—*The regulations of each agency*
21 *shall include procedures for engaging in dispute resolution*
22 *through the FOIA Public Liaison and the Office of Govern-*
23 *ment Information Services.*

1 **SEC. 4. PROACTIVE DISCLOSURE THROUGH RECORDS MAN-**
2 **AGEMENT.**

3 *Section 3102 of title 44, United States Code, is amend-*
4 *ed—*

5 *(1) by redesignating paragraphs (2) and (3) as*
6 *paragraphs (3) and (4); and*

7 *(2) by inserting after paragraph (1) the fol-*
8 *lowing:*

9 *“(2) procedures for identifying records of general*
10 *interest or use to the public that are appropriate for*
11 *public disclosure, and for posting such records in a*
12 *publicly accessible electronic format;”.*

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

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

Calendar No. 605

113TH CONGRESS
2^D SESSION

S. 2520

A BILL

To improve the Freedom of Information Act.

NOVEMBER 20, 2014

Reported with an amendment