

114TH CONGRESS  
1ST SESSION

# S. 337

To improve the Freedom of Information Act.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 2, 2015

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

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## 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—

9               (1) in subsection (a)—

10               (A) in paragraph (2)—

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

5 (ii) by striking subparagraph (D) and  
 6 inserting the following:

7 “(D) copies of all records, regardless of form or  
 8 format—

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

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

16 “(II) that have been requested 3 or more  
 17 times; and”; and

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

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

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

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

17          “(bb) If an agency has determined that unusual  
18          circumstances apply and more than 50,000 pages  
19          are necessary to respond to the request, an agency  
20          may charge search fees (or in the case of a requester  
21          described under clause (ii)(II) of this subparagraph,  
22          duplication fees) if the agency has provided a timely  
23          written notice to the requester in accordance with  
24          paragraph (6)(B) and the agency has discussed with  
25          the requester via written mail, electronic mail, or

1 telephone (or made not less than 3 good-faith at-  
 2 tempts to do so) how the requester could effectively  
 3 limit the scope of the request in accordance with  
 4 paragraph (6)(B)(ii).

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

10 (C) in paragraph (6)—

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

16 “(I) such determination and the rea-  
 17 sons therefor;

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

21 “(III) in the case of an adverse deter-  
 22 mination—

23 “(aa) the right of such person to  
 24 appeal to the head of the agency,  
 25 within a period determined by the

1 head of the agency that is not less  
 2 than 90 days after the date of such  
 3 adverse determination; and

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

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

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

16 “(8)(A) An agency—

17 “(i) shall—

18 “(I) withhold information under this sec-  
 19 tion only if—

20 “(aa) the agency reasonably foresees  
 21 that disclosure would harm an interest pro-  
 22 tected by an exemption described in sub-  
 23 section (b) or other provision of law; or

24 “(bb) disclosure is prohibited by law;  
 25 and

1           “(II)(aa) consider whether partial disclo-  
 2           sure of information is possible whenever the  
 3           agency determines that a full disclosure of a re-  
 4           quested record is not possible; and

5           “(bb) take reasonable steps necessary to  
 6           segregate and release nonexempt information;  
 7           and

8           “(ii) may not—

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

14          “(II) withhold information requested under  
 15          this section merely because disclosure of the in-  
 16          formation may be embarrassing to the agency  
 17          or because of speculative or abstract concerns.

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

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

24               “(5) inter-agency or intra-agency memoran-  
 25          dums or letters that would not be available by law

1 to a party other than an agency in litigation with  
 2 the agency, if the requested record or information  
 3 was created less than 25 years before the date on  
 4 which the request was made;”;

5 (3) in subsection (e)—

6 (A) in paragraph (1)—

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

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

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

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

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

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

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

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

7 “(A) without charge, license, or registration re-  
 8 quirement;

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

10 “(C) in a format that may be downloaded in  
 11 bulk.”;

12 (C) in paragraph (4)—

13 (i) by striking “Government Reform  
 14 and Oversight” and inserting “Oversight  
 15 and Government Reform”;

16 (ii) by inserting “Homeland Security  
 17 and” before “Governmental Affairs”; and

18 (iii) by striking “April” and inserting  
 19 “March”; and

20 (D) by striking paragraph (6) and insert-  
 21 ing the following:

22 “(6)(A) The Attorney General of the United States  
 23 shall submit to the Committee on Oversight and Govern-  
 24 ment Reform of the House of Representatives, the Com-  
 25 mittee on the Judiciary of the Senate, and the President



1 a report on or before March 1 of each calendar year, which  
2 shall include for the prior calendar year—

3 “(i) a listing of the number of cases arising  
4 under this section;

5 “(ii) a listing of—

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

9 “(II) the disposition of each case arising  
10 under this section; and

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

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

17 “(B) The Attorney General of the United States shall  
18 make—

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

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

1 “(I) without charge, license, or registration  
2 requirement;

3 “(II) in an aggregated, searchable format;  
4 and

5 “(III) in a format that may be downloaded  
6 in bulk.”;

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

11 (5) in subsection (h)—

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

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

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

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

22 “(3) The Office of Government Information Services  
23 shall offer mediation services to resolve disputes between  
24 persons making requests under this section and adminis-  
25 trative agencies as a non-exclusive alternative to litigation

1 and may issue advisory opinions at the discretion of the  
2 Office or upon request of any party to a dispute.”; and

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

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

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

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

14 “(I) any advisory opinions issued; and

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

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

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

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

12       “(5) The Director of the Office of Government Infor-  
13 mation Services may directly submit additional informa-  
14 tion to Congress and the President as the Director deter-  
15 mines to be appropriate.

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

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

23       “(i) The Government Accountability Office shall—

24               “(1) not later than 1 year after the date of en-  
25 actment of the FOIA Improvement Act of 2015 and

1 every 2 years thereafter, conduct audits of 3 or more  
2 administrative agencies on compliance with and im-  
3 plementation of the requirements of this section and  
4 issue reports detailing the results of such audits;

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

11 “(3) not later than 1 year after the date of en-  
12 actment of the FOIA Improvement Act of 2015,  
13 conduct a study on the methods Federal agencies  
14 use to reduce the backlog of requests under this sec-  
15 tion and issue a report on the effectiveness of those  
16 methods; and

17 “(4) submit copies of all reports and audits de-  
18 scribed in this subsection to the Committee on Over-  
19 sight and Government Reform of the House of Rep-  
20 resentatives and the Committee on the Judiciary of  
21 the Senate.

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

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

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

5               “(B) monitor implementation of this section  
6 throughout the agency and keep the head of the  
7 agency, the chief legal officer of the agency, and the  
8 Attorney General appropriately informed of the  
9 agency’s performance in implementing this section;

10              “(C) recommend to the head of the agency such  
11 adjustments to agency practices, policies, personnel,  
12 and funding as may be necessary to improve its im-  
13 plementation of this section;

14              “(D) review and report to the Attorney General,  
15 through the head of the agency, at such times and  
16 in such formats as the Attorney General may direct,  
17 on the agency’s performance in implementing this  
18 section;

19              “(E) facilitate public understanding of the pur-  
20 poses of the statutory exemptions of this section by  
21 including concise descriptions of the exemptions in  
22 both the agency’s handbook issued under subsection  
23 (g), and the agency’s annual report on this section,  
24 and by providing an overview, where appropriate, of

1 certain general categories of agency records to which  
2 those exemptions apply;

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

5 “(G) serve as the primary agency liaison with  
6 the Office of Government Information Services and  
7 the Office of Information Policy; and

8 “(H) designate 1 or more FOIA Public Liai-  
9 sons.

10 “(3) The Chief FOIA Officer of each agency shall re-  
11 view, not less frequently than annually, all aspects of the  
12 administration of this section by the agency to ensure  
13 compliance with the requirements of this section, includ-  
14 ing—

15 “(A) agency regulations;

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

18 “(C) assessment of fees and determination of  
19 eligibility for fee waivers;

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

22 “(E) the use of exemptions under subsection  
23 (b); and

1           “(F) dispute resolution services with the assist-  
2           ance of the Office of Government Information Serv-  
3           ices or the FOIA Public Liaison.

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

7           “(2) The Council shall be comprised of the following  
8           members:

9           “(A) The Deputy Director for Management of  
10          the Office of Management and Budget.

11          “(B) The Director of the Office of Information  
12          Policy at the Department of Justice.

13          “(C) The Director of the Office of Government  
14          Information Services.

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

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

18          “(3) The Director of the Office of Information Policy  
19          at the Department of Justice and the Director of the Of-  
20          fice of Government Information Services shall be the Co-  
21          Chairs of the Council.

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

24          “(5)(A) The duties of the Council shall include the  
25          following:



1           “(i) Develop recommendations for increasing  
2 compliance and efficiency under this section.

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

6           “(iii) Identify, develop, and coordinate initia-  
7 tives to increase transparency and compliance with  
8 this section.

9           “(iv) Promote the development and use of com-  
10 mon performance measures for agency compliance  
11 with this section.

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

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

21          “(B) Not less frequently than annually, the Council  
22 shall hold a meeting that shall be open to the public and  
23 permit interested persons to appear and present oral and  
24 written statements to the Council.

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

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

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

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

17 “(m)(1) The Director of the Office of Management  
18 and Budget, in consultation with the Attorney General,  
19 shall ensure the operation of a consolidated online request  
20 portal that allows a member of the public to submit a re-  
21 quest for records under subsection (a) to any agency from  
22 a single website. The portal may include any additional  
23 tools the Director of the Office of Management and Budg-  
24 et finds will improve the implementation of this section.

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

(b) REQUIREMENTS.—The regulations of each agency shall include procedures for engaging in dispute resolution through the FOIA Public Liaison and the Office of Government Information Services.

23       Section 3102 of title 44, United States Code, is  
24 amended—

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

3           (2) by inserting after paragraph (1) the fol-  
4       lowing:

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

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

10       No additional funds are authorized to carry out the  
11       requirements of this Act or the amendments made by this  
12       Act. The requirements of this Act and the amendments  
13       made by this Act shall be carried out using amounts other-  
14       wise authorized or appropriated.

○