

113TH CONGRESS
2D SESSION

S. 2520

To improve the Freedom of Information Act.

IN THE SENATE OF THE UNITED STATES

JUNE 24, 2014

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

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”.

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)—

11 (i) in the matter preceding subpara-
12 graph (A), by striking “for public inspec-

1 tion and copying” and inserting “for public
2 inspection in an electronic format”;

3 (ii) by striking subparagraph (D) and
4 inserting the following:

5 “(D) copies of all records, regardless of form or
6 format—

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

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

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

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

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

23 “(viii)(I) Except as provided in subclause (II),
24 an agency shall not assess any search fees (or in the
25 case of a requester described under clause (ii)(II) of

1 this subparagraph, duplication fees) under this sub-
2 paragraph if the agency has failed to comply with
3 any time limit under paragraph (6).

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

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

19 (C) in paragraph (6)—

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

1 “(I) such determination and the rea-
2 sons therefore;

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

6 “(III) in the case of an adverse deter-
7 mination—

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

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

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

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

1 “(8) An agency—

2 “(A) shall—

3 “(i) withhold information under this sec-
4 tion only if—

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

9 “(II) disclosure is prohibited by law;
10 and

11 “(ii)(I) consider whether partial disclosure
12 of information is possible whenever the agency
13 determines that a full disclosure of a requested
14 record is not possible; and

15 “(II) take reasonable steps necessary to
16 segregate and release nonexempt information;
17 and

18 “(B) may not—

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

24 “(ii) withhold information requested under
25 this section because the information may be em-

1 barrassing to the agency or because of specula-
2 tive or abstract concerns.”;

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

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

9 “(A) in the case of deliberative process
10 privilege or attorney work-product privilege, the
11 agency interest in protecting the records or in-
12 formation is not outweighed by a public interest
13 in disclosure;

14 “(B) in the case of attorney-client privi-
15 lege, the agency interest in protecting the
16 records or information is not outweighed by a
17 compelling public interest in disclosure; and

18 “(C) the requested record or information
19 was created less than 25 years before the date
20 on which the request was made;”;

21 (3) in subsection (e)

22 (A) in paragraph (1)—

23 (i) in the matter preceding subpara-
24 graph (A), by inserting “and to the Direc-

1 tor of the Office of Government Informa-
2 tion Services” after “United States”;

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

5 (iii) in subparagraph (O), by striking
6 the period at the end and inserting a semi-
7 colon; and

8 (iv) by adding at the end the fol-
9 lowing:

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

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

15 (B) by striking paragraph (3) and insert-
16 ing the following:

17 “(3) Each agency shall make each such report avail-
18 able for public inspection in an electronic format. In addi-
19 tion, each agency shall make the raw statistical data used
20 in each report available in a timely manner for public in-
21 spection in an electronic format, which shall be made
22 available—

23 “(A) without charge, license, or registration re-
24 quirement;

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

1 “(C) in a format that may be downloaded in
2 bulk.”;

3 (C) in paragraph (4)—

4 (i) by striking “Government Reform
5 and Oversight” and inserting “Oversight
6 and Government Reform”;

7 (ii) by inserting “Homeland Security
8 and” before “Governmental Affairs”; and

9 (iii) by striking “April” and inserting
10 “March”; and

11 (D) by striking paragraph (6) and insert-
12 ing the following:

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

19 “(i) a listing of the number of cases arising
20 under this section;

21 “(ii) a listing of—

22 “(I) each subsection, and any exemption, if
23 applicable, involved in each case arising under
24 this section;

1 “(II) the disposition of each case arising
2 under this section; and

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

6 “(iii) a description of the efforts undertaken by
7 the Department of Justice to encourage agency com-
8 pliance with this section.

9 “(B) The Attorney General of the United States shall
10 make—

11 “(i) each report submitted under subparagraph
12 (A) available for public inspection in an electronic
13 format; and

14 “(ii) the raw statistical data used in each report
15 submitted under subparagraph (A) available for pub-
16 lic inspection in an electronic format, which shall be
17 made available—

18 “(I) without charge, license, or registration
19 requirement;

20 “(II) in an aggregated, searchable format;
21 and

22 “(III) in a format that may be downloaded
23 in bulk.”;

24 (4) in subsection (g), in the matter preceding
25 paragraph (1), by striking “publicly available upon

1 request” and inserting “available for public inspec-
2 tion in an electronic format”;

3 (5) in subsection (h)—

4 (A) in paragraph (1), by adding at the end
5 the following: “The head of the Office shall be
6 the Director of the Office of Government Infor-
7 mation Services.”;

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

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

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

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

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

21 “(4)(A) Not less frequently than annually, the Direc-
22 tor of the Office of Government Information Services shall
23 submit to the Committee on Oversight and Government
24 Reform of the House of Representatives, the Committee
25 on the Judiciary of the Senate, and the President—

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

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

6 “(I) any advisory opinions issued; and

7 “(II) the number of times each agency en-
8 gaged in dispute resolution with the assistance
9 of the Office of Government Information Serv-
10 ices or the FOIA Public Liaison; and

11 “(iii) legislative and regulatory recommenda-
12 tions, if any, to improve the administration of this
13 section.

14 “(B) The Director of the Office of Government Infor-
15 mation Services shall make each report submitted under
16 subparagraph (A) available for public inspection in an
17 electronic format.

18 “(C) The Director of the Office of Government Infor-
19 mation Services shall not be required to obtain the prior
20 approval, comment, or review of any officer or agency of
21 the United States, including the Department of Justice,
22 the Archivist of the United States, or the Office of Man-
23 agement and Budget before submitting to the Congress,
24 or any committee or subcommittee thereof, any reports,
25 recommendations, testimony, or comments, if such sub-

1 missions include a statement indicating that the views ex-
2 pressed therein are those of the Director and do not nec-
3 essarily represent the views of the President.

4 “(5) The Director of the Office of Government Infor-
5 mation Services may submit additional information to
6 Congress and the President as the Director determines to
7 be appropriate.

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

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

15 “(i) The Government Accountability Office shall—

16 “(1) conduct audits of administrative agencies
17 on compliance with and implementation of the re-
18 quirements of this section and issue reports detailing
19 the results of such audits; and

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

23 “(j)(1) Each agency shall designate a Chief FOIA Of-
24 ficer who shall be a senior official of such agency (at the
25 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, appendixes, 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.”.

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

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

24 (b) **REQUIREMENTS.**—The regulations of each agency
25 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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