

117TH CONGRESS  
2D SESSION

# S. 4401

To modify the Freedom of Information Act, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JUNE 14, 2022

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

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## A BILL

To modify the Freedom of Information Act, and for other  
purposes.

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 “First Opportunity for  
5 Information to Americans Act” or the “FOIA Fix Act”.

6 **SEC. 2. FOIA REQUESTS.**

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

9 (1) in subsection (a)—

10 (A) in paragraph (3)(A), by inserting “or  
11 paragraph (9)” after “subparagraph (E)”; and

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

2 “(9)(A) Except as provided in subparagraph (D), an  
3 agency may not make any record available under this sub-  
4 section to any requester that—

5 “(i) is an individual who is not a citizen of the  
6 United States or an alien lawfully admitted for per-  
7 manent residence;

8 “(ii) is an entity that does not have a principal  
9 place of business or headquarters located in a State,  
10 the District of Columbia, or any territory or posses-  
11 sion of the United States; or

12 “(iii) is an entity that is a subsidiary of an enti-  
13 ty with a principal place of business or headquarters  
14 located in—

15 “(I) the People’s Republic of China;

16 “(II) the Russian Federation;

17 “(III) the Democratic People’s Republic of  
18 Korea;

19 “(IV) the Islamic Republic of Iran;

20 “(V) the Republic of Cuba;

21 “(VI) the Syrian Arab Republic; or

22 “(VII) the regime of Nicolás Maduro in  
23 Venezuela.

24 “(B) Knowingly assisting, conspiring, or abetting a  
25 request for information under this section on behalf of an

1 individual or entity that is prohibited from receiving the  
2 information under subparagraph (A) is punishable by a  
3 fine of up \$10,000 per violation and not more than 1 year  
4 in prison.

5 “(C) Each agency shall promulgate regulations as  
6 necessary to carry out subparagraph (A).

7 “(D) Subparagraph (A) shall not apply to a requester  
8 that is seeking official copies of the immigration court pro-  
9 ceedings of the requester.

10 “(10) Notwithstanding any other provision of this  
11 section, an agency may determine the manner in which  
12 a request is fulfilled under this subsection if the agency  
13 has a reasonable belief that fulfilling the request in the  
14 manner requested by the requester—

15 “(A) is likely to result in the exposure of mate-  
16 rial or information that is not responsive to the re-  
17 quest, including any data describing the structure,  
18 data elements, interrelationships, or other character-  
19 istics of electronic records otherwise responsive to  
20 the request; or

21 “(B) poses a material security risk to the agen-  
22 cy or another entity in the Federal Government.”;  
23 and

24 (2) in subsection (b)—

1 (A) in paragraph (8), by striking “or” at  
2 the end; and

3 (B) in paragraph (9), by striking the pe-  
4 riod at the end and inserting “; or”; and

5 (C) by adding at the end the following:

6 “(10) records or information, such as blue-  
7 prints, schematics, formulae, technical expertise, or  
8 other similar information that is susceptible to re-  
9 verse engineering—

10 “(A) the disclosure of which is likely to  
11 damage the interests of the United States;

12 “(B) that is materially related to the study  
13 of an emerging or foundational technology iden-  
14 tified by the Department of Commerce; and

15 “(C) for which the interest of the public in  
16 disclosure does not outweigh the interests de-  
17 scribed in subparagraph (A).”.

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