

DHS FOIA EFFICIENCY ACT OF 2015

JUNE 11, 2015.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MCCAUL, from the Committee on Homeland Security, submitted the following

R E P O R T

[To accompany H.R. 1615]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 1615) to direct the Chief FOIA Officer of the Department of Homeland Security to make certain improvements in the implementation of section 552 of title 5, United States Code (commonly known as the Freedom of Information Act), and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “DHS FOIA Efficiency Act of 2015”.

SEC. 2. DEPARTMENT OF HOMELAND SECURITY FREEDOM OF INFORMATION ACT IMPLEMENTATION.

(a) **DEADLINE FOR UPDATING REGULATIONS.**—Not later than 90 days after the date of the enactment of this Act, the Chief FOIA Officer of the Department of Homeland Security, as appointed pursuant to section 552(j) of title 5, United States Code, shall finalize and issue an updated regulation implementing section 552 of title 5, United States Code (commonly known as the Freedom of Information Act), which shall include—

- (1) public guidance on procedures to be followed when making requests under paragraph (1), (2), or (3) of section 552(a) of title 5, United States Code;
- (2) updated guidance to the components of the Department responsible for processing such requests, which may include information on how to adopt automated processing of requests made under paragraphs (1), (2), or (3) of section 552(a) of title 5, United States Code;
- (3) detailed information on fees and costs associated with such requests; and
- (4) detailed information on the appeals process for such requests.

(b) **IDENTIFICATION OF COSTS.**—

(1) **IN GENERAL.**—Not later than 90 days after the date of the enactment of this Act, the Chief FOIA Officer, in coordination with the Chief Financial Officer of the Department and the heads of each of the relevant components of the Department, shall identify the total annual cost to the Department of implementing section 552 of title 5, United States Code.

(2) **GUIDANCE.**—The Chief FOIA Officer shall develop guidance on reporting standards related to the direct and indirect costs to the Department associated with the processing of requests made under paragraphs (1), (2), and (3) of section 552(a) of title 5, United States Code.

(c) **COST SAVINGS.**—The Chief FOIA Officer, in collaboration with the heads of each of the relevant components of the Department, shall—

(1) identify unnecessary and duplicative actions taken by the Department in the course of processing requests made under paragraphs (1), (2), and (3) of section 552(a) of title 5, United States Code, by not later than 120 days after the date of the enactment of this Act; and

(2) eliminate unnecessary and duplicative actions taken by the Department in the course of processing requests made under paragraphs (1), (2), and (3) of section 552(a) of title 5, United States Code, by not later than 12 months after the identification of such action under paragraph (1).

(d) **FOIA TRACKING SYSTEMS.**—Not later than 90 days after the date of the enactment of this Act, the Chief FOIA Officer shall develop a plan to automate the processing of requests made under paragraphs (1), (2), and (3) of section 552(a) of title 5, United States Code to the Department. Such plan shall take into account the specific needs of each of the components of the Department responsible for processing such requests and address required and recommended technology capabilities and elements. Such plan shall include an assessment of the costs and benefits associated with establishing and using electronic processing systems to process requests made under paragraphs (1), (2), and (3) of section 552(a) of title 5, United States Code.

(e) **FOIA BACKLOG.**—Not later than 90 days after the date of the enactment of this Act, the Chief Privacy Officer of the Department, in consultation with the Chief FOIA Officer, shall update and issue guidance to the heads of each of the relevant components of the Department regarding the goal of reducing the backlog in processing requests made under paragraphs (1), (2), and (3) of section 552(a) of title 5, United States Code, by 50 percent between fiscal year 2015 and fiscal year 2018.

(f) **REPORT.**—

(1) **SEMIANNUAL PRIVACY REPORT.**—The Chief FOIA Officer shall include in each semiannual privacy report submitted under section 1062(f) of the Intelligence Reform and Terrorism Prevention Act of 2004 (42 U.S.C. 2000ee–1(f)) each of the following:

(A) The total costs to the Department of meeting the requirements of section 552 of title 5, United States Code, for the period covered by the report.

(B) An assessment of progress made toward meeting the backlog goals pursuant to subsection (e) during the period covered by the report and the periods covered by the two preceding reports.

(C) An assessment of whether the Department has adequate staffing and other resources to address the backlog goals pursuant to subsection (e) for processing requests made under paragraphs (1), (2), and (3) of section 552(a) of title 5, United States Code.

(D) An assessment of the progress made towards automating the processing of requests made under paragraphs (1), (2), and (3) of section 552(a) of title 5, United States Code, during the period covered by the report.

(2) FISCAL YEAR 2016 REQUIREMENTS.—The Chief FOIA Officer shall include in the second semiannual privacy report for fiscal year 2016 each of the following:

(A) A description of any cost savings identified under subsection (d).

(B) The plan developed under subsection (d).

(g) DUPLICATIVE ACTION DEFINED.—In this section, the term “duplicative actions” means actions carried out by two or more components or programs that are engaged in the same activities or provide the same services related to the processing of FOIA requests to the same beneficiaries.

SEC. 3. PROGRESS ON AUTOMATION.

Upon completion of the plan to automate the processing of requests made under paragraphs (1), (2), and (3) of section 552(a) of title 5, United States Code, the Chief FOIA Officer shall provide the plan to the heads of the components of the Department and seek written feedback from each head of a component agency regarding the extent to which that component will adopt the plan, the associated costs, and the projected timelines.

PURPOSE AND SUMMARY

The purpose of H.R. 1615 is to direct the Chief FOIA Officer of the Department of Homeland Security to make certain improvements in the implementation of section 552 of title 5, United States Code (commonly known as the Freedom of Information Act), and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

The Department of Homeland Security (DHS) receives and processes the most Freedom of Information Act (FOIA) requests out of any federal department. As reported by the Government Accountability Office in November 2014, DHS also faces the largest backlog of unprocessed FOIA requests of any federal agency—roughly half of the total number for all federal agencies (GAO–15–82). This legislation requires a more streamlined approach to the processing of FOIA requests, which should aid in backlog reduction. This legislation also provides greater transparency by requiring clearer accounting of costs associated with the FOIA process.

HEARINGS

No hearings were held on H.R. 1615.

COMMITTEE CONSIDERATION

The Committee met on May 20, 2015, to consider H.R. 1615, and ordered the measure to be reported to the House with a favorable recommendation, amended, by voice vote. The Committee took the following actions:

The following amendments were offered:

An Amendment in the Nature of a Substitute offered by MR. CARTER of Georgia (#1); was AGREED TO, as amended, by voice vote.

An en bloc amendment to the Amendment in the Nature of a Substitute to H.R. 1615 offered by MS. JACKSON LEE (#1A); was AGREED TO by voice vote.

Consisting of the following amendments:

Page 2, line 3, before the semicolon insert the following: “, which may include information on how to adopt automated processing of requests made under paragraphs (1), (2), or (3) of section 552(a) of title 5, United States Code”.

Page 5, after line 8, insert the following: (D) An assessment of the progress made towards automating the processing of requests made under paragraphs (1), (2), and (3) of section 552(a) of title 5, United States Code, during the period covered by the report.

Page 5, after line 22, a new section entitled “Sec. 3. Progress on Automation.”

The Subcommittee on Oversight and Management Efficiency met on May 13, 2015, to consider H.R. 1615, and ordered the measure to be reported to the Full Committee with a favorable recommendation, amended, by voice vote. The Committee took the following actions:

The following amendment was offered:

An en bloc amendment offered by MRS. WATSON COLEMAN (#1); was AGREED TO by voice vote.

Consisting of the following amendments:

Page 2, line 11, strike subsection (c) and insert a new subsection entitled “(c) Cost Savings.”

Page 5, after line 8, insert the following: (C) An assessment of whether the Department has adequate staffing and other resources to address the backlog goals pursuant to subsection (e) for processing requests made under paragraphs (1), (2), and (3) of section 552(a) of title 5, United States Code.

Page 5, after line 15, insert a new subsection entitled “(g) Duplicative Action Defined.”

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto.

No recorded votes were requested during consideration of H.R. 1615.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held oversight hearings and made findings that are reflected in this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 1615, the DHS FOIA Efficiency Act of 2015, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE
Washington, DC, June 2, 2015.

Hon. MICHAEL MCCAUL,
*Chairman, Committee on Homeland Security,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1615, the DHS FOIA Efficiency Act of 2015.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

KEITH HALL.

Enclosure.

H.R. 1615—DHS FOIA Efficiency Act of 2015

H.R. 1615 would require the Department of Homeland Security (DHS) to update regulations that implement the Freedom of Information Act (FOIA), identify the costs of complying with that act, streamline the process for implementing certain FOIA provisions, and attempt to reduce the backlog in processing FOIA requests. Because there are ongoing efforts within DHS to carry out the actions required by the bill, CBO estimates that implementing H.R. 1615 would not significantly affect DHS spending. Enacting the legislation would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 1615 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Mark Grabowicz. The estimate was approved by Theresa Gullo, Assistant Director for Budget Analysis.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

H.R. 1615 requires the Chief FOIA Officer of the Department of Homeland Security to do the following:

1. Not later than 90 days after the enactment of this Act, finalize and issue updated FOIA regulations;
2. Not later than 90 days after the enactment of this Act, identify the total annual cost to the Department of Homeland Security for implementing FOIA;
3. Develop guidance on reporting standards related to direct and indirect costs associated with the processing of FOIA requests;
4. Identify and eliminate unnecessary and duplicative actions taken by the Department in the course of processing FOIA requests;
5. Not later than 90 days after the enactment of this Act, develop a plan to automate the processing of FOIA requests;
6. Include in the Semiannual Privacy Report information regarding costs associated with processing FOIA requests, an assessment of the progress made toward meeting the backlog goal, an assessment of whether the Department has adequate staffing and resources to address the backlog

goal, and an assessment of the progress made towards automating the processing of FOIA requests;

7. Include in the second Semiannual Privacy Report for fiscal year 2016 the developed plan and any identified cost savings associated with automating the processing of FOIA requests.

DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of rule XIII, the Committee finds that H.R. 1615 does not contain any provision that establishes or reauthorizes a program known to be duplicative of another Federal program.

CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with rule XXI of the Rules of the House of Representatives, this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of the rule XXI.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

PREEMPTION CLARIFICATION

In compliance with section 423 of the Congressional Budget Act of 1974, requiring the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt State, local, or Tribal law, the Committee finds that H.R. 1615 does not preempt any State, local, or Tribal law.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that H.R. 1615 would require no directed rule makings.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section provides that bill may be cited as the “DHS FOIA Efficiency Act of 2015”.

Section 2. Department of Homeland Security Freedom of Information Act Implementation

Section 2(a). Deadline for updating regulations

Section 2(a) requires the Chief FOIA Officer of the Department of Homeland Security, to finalize and issue an updated regulation implementing the Freedom of Information Act, to include:

1. Public guidance on procedures to be followed when making FOIA requests;
2. Updated guidance to the DHS components responsible for processing such requests;
3. Detailed information on fees and costs associated with such requests; and
4. Detailed information on the appeals process for FOIA requests.

Section 2(b). Identification of costs

Section 2(b) requires the Chief FOIA Officer, in coordination with the Chief Financial Officer of the Department of Homeland Security, and the heads of each of the relevant components, to identify the total annual costs associated with the processing of FOIA requests. Additionally, the Chief FOIA Officer shall develop guidance on reporting standards related to the direct and indirect costs to DHS associated with the processing of FOIA requests.

Section 2(c). Cost savings

Section 2(c) requires the Chief FOIA Officer, in collaboration with the heads of relevant components to identify and eliminate unnecessary and duplicative actions taken during the processing of FOIA requests.

Section 2(d). FOIA tracking systems

Section 2(d) requires the Chief FOIA Officer to develop a plan to automate the processing of FOIA requests while addressing required and recommended technology capabilities and elements. An assessment of the costs and benefits associated with electronic processing shall be included.

Section 2(e). FOIA backlog

Section 2(e) requires the Chief Privacy Officer, in consultation with the Chief FOIA Officer, to update and issue guidance to the relevant components regarding FOIA backlog reduction efforts.

Section 2(f). Reporting requirements

Section 2(f) requires the Chief FOIA Officer to include in the Department's already mandated Semiannual Privacy Report:

1. The total cost to the Department of processing FOIA requests;
2. An assessment of backlog progress; and
3. An assessment of whether the Department has adequate staffing and resources to address the backlog goals
4. An assessment of the progress made towards automating the processing of FOIA requests

Section 2(f) also requires the Chief FOIA Officer to include in the already mandated second Semiannual Privacy Report for Fiscal Year 2016:

1. Any FOIA processing cost savings identified by the Department; and
2. The Department's plan to automate FOIA tracking.

Section 2(g). Definition

Section 2(g) defines "duplicative action."

Section 3. Progress on automation

Section 3 requires the Chief FOIA Officer to disseminate the Department's plan to automate FOIA processing to the heads of relevant components and to seek written feedback from each head of component regarding the extent to which that component intends to adopt this processing automation plan.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

H.R. 1615, as reported, makes no changes to existing law.