

110TH CONGRESS
1ST SESSION

H. R. 1309

IN THE SENATE OF THE UNITED STATES

MARCH 15, 2007

Received; read twice and referred to the Committee on the Judiciary

AN ACT

To promote openness in Government by strengthening section 552 of title 5, United States Code (commonly referred to as 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,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Freedom of Information Act Amendments of 2007”.

4 (b) TABLE OF CONTENTS.—The table of contents for
5 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Protection of fee status for news media.
- Sec. 4. Recovery of attorney fees and litigation costs.
- Sec. 5. Disciplinary actions for arbitrary and capricious rejections of requests.
- Sec. 6. Time limits for agencies to act on requests.
- Sec. 7. Individualized tracking numbers for requests and status information.
- Sec. 8. Specific citations in exemptions.
- Sec. 9. Reporting requirements.
- Sec. 10. Openness of agency records maintained by a private entity.
- Sec. 11. Office of Government Information Services.
- Sec. 12. Accessibility of critical infrastructure information.
- Sec. 13. Report on personnel policies related to FOIA.
- Sec. 14. Promotion of public disclosure.
- Sec. 15. Requirement to describe exemptions authorizing deletions of material provided under FOIA.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) the Freedom of Information Act was signed
9 into law on July 4, 1966, because the American peo-
10 ple believe that—

11 (A) our constitutional democracy, our sys-
12 tem of self-government, and our commitment to
13 popular sovereignty depends upon the consent
14 of the governed;

15 (B) such consent is not meaningful unless
16 it is informed consent; and

17 (C) as Justice Black noted in his concur-
18 ring opinion in *Barr v. Matteo* (360 U.S. 564

1 (1959)), “The effective functioning of a free
2 government like ours depends largely on the
3 force of an informed public opinion. This calls
4 for the widest possible understanding of the
5 quality of government service rendered by all
6 elective or appointed public officials or employ-
7 ees.”;

8 (2) the American people firmly believe that our
9 system of government must itself be governed by a
10 presumption of openness;

11 (3) the Freedom of Information Act establishes
12 a “strong presumption in favor of disclosure” as
13 noted by the United States Supreme Court in
14 *United States Department of State v. Ray* (502 U.S.
15 164 (1991)), a presumption that applies to all agen-
16 cies governed by that Act;

17 (4) “disclosure, not secrecy, is the dominant ob-
18 jective of the Act,” as noted by the United States
19 Supreme Court in *Department of Air Force v. Rose*
20 (425 U.S. 352 (1976));

21 (5) in practice, the Freedom of Information Act
22 has not always lived up to the ideals of that Act; and

23 (6) Congress should regularly review section
24 552 of title 5, United States Code (commonly re-
25 ferred to as the Freedom of Information Act), in

1 order to determine whether further changes and im-
2 provements are necessary to ensure that the Govern-
3 ment remains open and accessible to the American
4 people and is always based not upon the “need to
5 know” but upon the fundamental “right to know”.

6 **SEC. 3. PROTECTION OF FEE STATUS FOR NEWS MEDIA.**

7 Section 552(a)(4)(A)(ii) of title 5, United States
8 Code, is amended by adding at the end the following:

9 “In making a determination of a representative of the
10 news media under subclause (II), an agency may not deny
11 that status solely on the basis of the absence of institu-
12 tional associations of the requester, but shall consider the
13 prior publication history of the requester. Prior publica-
14 tion history shall include books, magazine and newspaper
15 articles, newsletters, television and radio broadcasts, and
16 Internet publications. If the requestor has no prior publi-
17 cation history or current affiliation, the agency shall con-
18 sider the requestor’s stated intent at the time the request
19 is made to distribute information to a reasonably broad
20 audience.”.

21 **SEC. 4. RECOVERY OF ATTORNEY FEES AND LITIGATION**
22 **COSTS.**

23 (a) IN GENERAL.—Section 552(a)(4)(E) of title 5,
24 United State Code, is amended by adding at the end the
25 following: “For purposes of this section only, a complain-

1 ant has substantially prevailed if the complainant has ob-
2 tained relief through either—

3 “(i) a judicial order, administrative action, or
4 an enforceable written agreement or consent decree;
5 or

6 “(ii) a voluntary or unilateral change in posi-
7 tion by the opposing party, in a case in which the
8 complainant’s claim or defense was not frivolous.”.

9 (b) LIMITATION.—Notwithstanding section 1304 of
10 title 31, United States Code, no amounts may be obligated
11 or expended from the Claims and Judgment Fund of the
12 United States Treasury to pay the costs resulting from
13 the amendments made by this section. Any such amounts
14 shall be paid only from funds annually appropriated for
15 the Federal agency against which a claim or judgment has
16 been rendered.

17 **SEC. 5. DISCIPLINARY ACTIONS FOR ARBITRARY AND CA-**
18 **PRICIOUS REJECTIONS OF REQUESTS.**

19 Section 552(a)(4)(F) of title 5, United States Code,
20 is amended—

21 (1) by inserting “(i)” after “(F)”; and

22 (2) by adding at the end the following:

23 “(ii) The Attorney General shall—

1 “(I) notify the Special Counsel of each civil ac-
2 tion described under the first sentence of clause (i);
3 and

4 “(II) annually submit a report to Congress on
5 the number of such civil actions in the preceding
6 year.

7 “(iii) The Special Counsel shall annually submit a re-
8 port to Congress on the actions taken by the Special Coun-
9 sel under clause (i).”.

10 **SEC. 6. TIME LIMITS FOR AGENCIES TO ACT ON REQUESTS.**

11 (a) TIME LIMITS.—

12 (1) IN GENERAL.—Section 552(a)(6)(A)(i) of
13 title 5, United States Code, is amended by striking
14 “determine within 20 days (excepting Saturdays,
15 Sundays, and legal public holidays) after the receipt
16 of any such request” and inserting “within the 20-
17 day period commencing on the date on which the re-
18 quest is first received by the agency (excepting Sat-
19 urdays, Sundays, and legal public holidays), which
20 shall not be tolled without the consent of the party
21 filing the request, determine”.

22 (2) EFFECTIVE DATE.—The amendment made
23 by this subsection shall take effect 1 year after the
24 date of enactment of this Act.

25 (b) APPLICABILITY OF AGENCY FEES.—

1 (1) LIMITATION.—Section 552(a)(4)(A) of title
2 5, United States Code, is amended by adding at the
3 end the following:

4 “(viii) An agency shall refund any fees collected
5 under this subparagraph if the agency fails to comply with
6 any time limit that applies under paragraph (6). Such re-
7 funds shall be paid from annual appropriations provided
8 to that agency.”.

9 (2) EFFECTIVE DATE AND APPLICATION.—The
10 amendment made by this subsection shall take effect
11 1 year after the date of enactment of this Act and
12 shall apply to requests for information under section
13 552 of title 5, United States Code, filed on or after
14 that effective date.

15 **SEC. 7. INDIVIDUALIZED TRACKING NUMBERS FOR RE-**
16 **QUESTS AND STATUS INFORMATION.**

17 (a) IN GENERAL.—Section 552(a) of title 5, United
18 States Code, is amended by adding at the end the fol-
19 lowing:

20 “(7) Each agency shall—

21 “(A) establish a system to assign an individual-
22 ized tracking number for each request for informa-
23 tion under this section;

1 “(B) not later than 10 days after receiving a
2 request, provide each person making a request with
3 the tracking number assigned to the request; and

4 “(C) establish a telephone line or Internet serv-
5 ice that provides information about the status of a
6 request to the person making the request using the
7 assigned tracking number, including—

8 “(i) the date on which the agency origi-
9 nally received the request; and

10 “(ii) an estimated date on which the agen-
11 cy will complete action on the request.”.

12 (b) **EFFECTIVE DATE AND APPLICATION.**—The
13 amendment made by this section shall take effect 1 year
14 after the date of enactment of this Act and apply to re-
15 quests for information under section 552 of title 5, United
16 States Code, filed on or after that effective date.

17 **SEC. 8. SPECIFIC CITATIONS IN EXEMPTIONS.**

18 Section 552(b) of title 5, United States Code, is
19 amended by striking paragraph (3) and inserting the fol-
20 lowing:

21 “(3) specifically exempted from disclosure by
22 statute (other than section 552b of this title), pro-
23 vided that such statute—

24 “(A) if enacted after the date of enactment
25 of the Freedom of Information Act Amend-

1 ments of 2007, specifically cites to this section;
2 and

3 “(B)(i) requires that the matters be with-
4 held from the public in such a manner as to
5 leave no discretion on the issue; or

6 “(ii) establishes particular criteria for
7 withholding or refers to particular types of mat-
8 ters to be withheld;”.

9 **SEC. 9. REPORTING REQUIREMENTS.**

10 (a) ANNUAL REPORT REQUIREMENTS.—Section
11 552(e)(1) of title 5, United States Code, is amended—

12 (1) in the matter preceding subparagraph (A)
13 by striking “fiscal year and which” and inserting
14 “fiscal year. Information in the report shall be ex-
15 pressed in terms of each principal component of the
16 agency and for the agency overall, and”;

17 (2) in subparagraph (B)(ii), by inserting after
18 the first comma the following, “the number of occa-
19 sions on which each statute was relied upon,”;

20 (3) in subparagraph (C), by inserting after
21 “median” the following: “and average”;

22 (4) in subparagraph (E), by inserting before the
23 semicolon the following: “, based on the date on
24 which each request was initially received by the
25 agency”; and

1 (5) by redesignating subparagraphs (F) and
2 (G) as subparagraphs (N) and (O), respectively, and
3 inserting after subparagraph (E) the following new
4 subparagraphs:

5 “(F) the average number of days for the agency
6 to respond to requests beginning on the date on
7 which each request was initially received by the
8 agency, the median number of days for the agency
9 to respond to such requests, and the range in num-
10 ber of days for the agency to respond to such re-
11 quests;

12 “(G) based on the number of business days that
13 have elapsed since each request was initially received
14 by the agency—

15 “(i) the number of requests for records to
16 which the agency has responded with a deter-
17 mination within a period greater than 1 day
18 and less than 201 days, stated in 20-day incre-
19 ments;

20 “(ii) the number of requests for records to
21 which the agency has responded with a deter-
22 mination within a period greater than 200 days
23 and less than 301 days;

24 “(iii) the number of requests for records to
25 which the agency has responded with a deter-

1 mination within a period greater than 300 days
2 and less than 401 days; and

3 “(iv) the number of requests for records to
4 which the agency has responded with a deter-
5 mination within a period greater than 400 days;

6 “(H) the average number of days for the agen-
7 cy to provide the granted information beginning on
8 the date on which each request was initially received
9 by the agency, the median number of days for the
10 agency to provide the granted information, and the
11 range in number of days for the agency to provide
12 the granted information;

13 “(I) the median and average number of days
14 for the agency to respond with a determination to
15 administrative appeals based on the date on which
16 each appeal was initially received by the agency; the
17 highest number of business days taken by the agen-
18 cy to respond to an administrative appeal; and the
19 lowest number of business days taken by the agency
20 to respond to an administrative appeal;

21 “(J) data on the 10 active requests with the
22 earliest filing dates pending at the agency, including
23 the amount of time that has elapsed since each re-
24 quest was initially received by the agency;

1 “(K) data on the 10 active administrative ap-
2 peals with the earliest filing dates pending at the
3 agency as of September 30 of the preceding year, in-
4 cluding the number of business days that have
5 elapsed since each request was initially received by
6 the agency;

7 “(L) the number of expedited review requests
8 received by the agency, the number that were grant-
9 ed and the number that were denied, the average
10 and median number of days for adjudicating expe-
11 dited review requests, and the number of requests
12 that adjudicated within the required 10 days;

13 “(M) the number of fee waiver requests that
14 were granted and the number that were denied, and
15 the average and median number of days for adjudi-
16 cating fee waiver determinations;”.

17 (b) AVAILABILITY OF RAW STATISTICAL DATA.—
18 Section 552(e)(2) of title 5, United States Code, is amend-
19 ed by adding after the period the following: “In addition,
20 each agency shall make the raw statistical data used in
21 its reports available electronically to the public upon re-
22 quest.”.

1 **SEC. 10. OPENNESS OF AGENCY RECORDS MAINTAINED BY**
2 **A PRIVATE ENTITY.**

3 Section 552(f) of title 5, United States Code, is
4 amended by striking paragraph (2) and inserting the fol-
5 lowing:

6 “(2) ‘record’ and any other term used in this
7 section in reference to information includes—

8 “(A) any information that would be an
9 agency record subject to the requirements of
10 this section when maintained by an agency in
11 any format, including an electronic format; and

12 “(B) any information described under sub-
13 paragraph (A) that is maintained for an agency
14 by an entity under a contract between the agen-
15 cy and the entity.”.

16 **SEC. 11. OFFICE OF GOVERNMENT INFORMATION SERV-**
17 **ICES.**

18 (a) IN GENERAL.—Chapter 21 of title 44, United
19 States Code, is amended by inserting after section 2119
20 the following new section:

21 **“§ 2120. Office of Government Information Services**

22 “(a) IN GENERAL.—There is established in the Na-
23 tional Archives an office to be known as the ‘Office of Gov-
24 ernment Information Services’.

25 “(b) NATIONAL INFORMATION ADVOCATE.—

1 “(1) IN GENERAL.—The Office of Government
2 Information Services shall be under the supervision
3 and direction of an official to be known as the ‘Na-
4 tional Information Advocate’ who shall report di-
5 rectly to the Archivist of the United States.

6 “(2) FUNCTIONS OF OFFICE.—

7 “(A) GUIDANCE FOR REQUESTERS.—

8 “(i) IN GENERAL.—The Office of Gov-
9 ernment Information Services shall pro-
10 vide, as a non-exclusive alternative to liti-
11 gation, guidance to FOIA requesters.

12 “(ii) TYPES OF GUIDANCE.—In pro-
13 viding such guidance, the Office shall pro-
14 vide informal guidance to requesters and
15 may provide fact-finding reviews and opin-
16 ions to requesters. All reviews and opinions
17 shall be non-binding and shall be initiated
18 only on the request of FOIA requesters.

19 “(iii) AVAILABILITY.—Any written
20 opinion issued pursuant to this section
21 shall be available on the Internet in an in-
22 dexed, readily accessible format.

23 “(iv) FOIA REQUESTERS.—In this
24 paragraph, the term ‘FOIA requester’ or
25 ‘requester’ means a person who has made

1 a request under section 552 of this title
2 and who has been denied records or has
3 not received a timely response to the re-
4 quest or to an administrative appeal.

5 “(B) ANALYSES OF AGENCY OPER-
6 ATIONS.—The Office of Government Informa-
7 tion Services shall—

8 “(i) review policies and procedures of
9 administrative agencies under section 552
10 of this title and compliance with that sec-
11 tion by administrative agencies; and

12 “(ii) recommend policy changes to
13 Congress and the President to improve the
14 administration of section 552 of this title,
15 including whether agencies are receiving
16 and expending adequate funds to ensure
17 compliance with that section.

18 “(3) IMPACT ON REQUESTER ACCESS TO LITI-
19 GATION.—Nothing in this section shall affect the
20 right of requesters to seek judicial review as de-
21 scribed in section 552 of this title.”.

22 (b) TECHNICAL AND CONFORMING AMENDMENT.—
23 The table of sections for chapter 21 of title 44, United
24 States Code, is amended by inserting after the item relat-
25 ing to section 2119 the following:

“2120. Office of Government Information Services.”.

1 **SEC. 12. ACCESSIBILITY OF CRITICAL INFRASTRUCTURE**
2 **INFORMATION.**

3 (a) IN GENERAL.—Not later than January 1 of each
4 of the 3 years following the date of the enactment of this
5 Act, the Comptroller General of the United States shall
6 submit to Congress a report on the implementation and
7 use of section 214 of the Homeland Security Act of 2002
8 (6 U.S.C. 133), including—

9 (1) the number of persons in the private sector,
10 and the number of State and local agencies, that vol-
11 untarily furnished records to the Department under
12 this section;

13 (2) the number of requests for access to records
14 granted or denied under this section;

15 (3) such recommendations as the Comptroller
16 General considers appropriate regarding improve-
17 ments in the collection and analysis of sensitive in-
18 formation held by persons in the private sector, or
19 by State and local agencies, relating to
20 vulnerabilities of and threats to critical infrastruc-
21 ture, including the response to such vulnerabilities
22 and threats; and

23 (4) an examination of whether the nondislo-
24 sure of such information has led to the increased
25 protection of critical infrastructure.

1 (b) FORM.—The report shall be submitted in unclas-
2 sified form, but may include a classified annex.

3 **SEC. 13. REPORT ON PERSONNEL POLICIES RELATED TO**
4 **FOIA.**

5 Not later than 1 year after the date of enactment
6 of this Act, the Office of Personnel Management shall sub-
7 mit to Congress a report that examines—

8 (1) whether changes to executive branch per-
9 sonnel policies could be made that would—

10 (A) provide greater encouragement to all
11 Federal employees to fulfill their duties under
12 section 552 of title 5, United States Code; and

13 (B) enhance the stature of officials admin-
14 istering that section within the executive
15 branch;

16 (2) whether performance of compliance with
17 section 552 of title 5, United States Code, should be
18 included as a factor in personnel performance eval-
19 uations for any or all categories of Federal employ-
20 ees and officers;

21 (3) whether an employment classification series
22 specific to compliance with sections 552 and 552a of
23 title 5, United States Code, should be established;

24 (4) whether the highest level officials in par-
25 ticular agencies administering such sections should

1 be paid at a rate of pay equal to or greater than a
2 particular minimum rate;

3 (5) whether other changes to personnel policies
4 can be made to ensure that there is a clear career
5 advancement track for individuals interested in de-
6 voting themselves to a career in compliance with
7 such sections; and

8 (6) whether the executive branch should require
9 any or all categories of Federal employees to under-
10 take awareness training of such sections.

11 **SEC. 14. PROMOTION OF PUBLIC DISCLOSURE.**

12 Section 552 of title 5, United States Code, is amend-
13 ed by adding at the end the following:

14 “(h)(1) The policy of the Federal Government is to
15 release information to the public in response to a request
16 under this section—

17 “(A) if such release is required by law; or

18 “(B) if such release is allowed by law and the
19 agency concerned does not reasonably foresee that
20 disclosure would be harmful to an interest protected
21 by an applicable exemption.

22 “(2) All guidance provided to Federal Government
23 employees responsible for carrying out this section shall
24 be consistent with the policy set forth in paragraph (1).”.

1 **SEC. 15. REQUIREMENT TO DESCRIBE EXEMPTIONS AU-**
2 **THORIZING DELETIONS OF MATERIAL PRO-**
3 **VIDED UNDER FOIA.**

4 Section 552(b) of title 5, United States Code, is
5 amended in the matter appearing after paragraph (9)—

6 (1) in the second sentence, by inserting after
7 “amount of information deleted” the following: “,
8 and the exemption under which the deletion is
9 made,”; and

10 (2) in the third sentence, by inserting after
11 “amount of the information deleted” the following:
12 “, and the exemption under which the deletion is
13 made,”.

Passed the House of Representatives March 14,
2007.

Attest: LORRAINE C. MILLER,
Clerk.