

Suspend the Rules and Pass the Bill, H.R. 653, With an Amendment

(The amendment strikes all after the enacting clause and inserts a new text)

114TH CONGRESS
2D SESSION

H. R. 653

To amend section 552 of title 5, United States Code (commonly known as the Freedom of Information Act), to provide for greater public access to information, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 2, 2015

Mr. ISSA (for himself, Mr. CUMMINGS, and Mr. QUIGLEY) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

A BILL

To amend section 552 of title 5, United States Code (commonly known as the Freedom of Information Act), to provide for greater public access to information, 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 “FOIA Oversight and
5 Implementation Act of 2015” or the “FOIA Act”.

1 **SEC. 2. FREEDOM OF INFORMATION ACT AMENDMENTS.**

2 (a) ELECTRONIC ACCESSIBILITY.—Section 552 of
3 title 5, United States Code, is amended—

4 (1) in subsection (a)—

5 (A) in paragraph (2)—

6 (i) by striking “for public inspection
7 and copying” each place it appears and in-
8 serting “in an electronic, publicly acces-
9 sible format”;

10 (ii) by striking “; and” and inserting
11 a semicolon;

12 (iii) by striking subparagraph (E) and
13 inserting the following new subparagraphs:

14 “(E) copies of all releasable records, regardless
15 of form or format, that have been requested three or
16 more times under paragraph (3); and

17 “(F) a general index of the records referred to
18 under subparagraphs (D) and (E);” and

19 (iv) in the matter following subpara-
20 graph (F) (as added by clause (iii) of this
21 subparagraph)—

22 (I) by striking “subparagraph
23 (D)” and inserting “subparagraphs
24 (D) and (E)”;

1 (II) by striking “subparagraph
2 (E)” and inserting “subparagraph
3 (F)”; and

4 (B) in paragraph (7)—

5 (i) in subparagraph (A)—

6 (I) by striking “that will take
7 longer than ten days to process”; and

8 (II) by striking “; and” and in-
9 serting a semicolon;

10 (ii) in subparagraph (B)—

11 (I) by inserting “automated”
12 after “provides”; and

13 (II) by striking the period at the
14 end of clause (ii) and inserting “;
15 and”; and

16 (iii) by adding at the end the fol-
17 lowing new subparagraph:

18 “(C) provide a name, phone number, and email
19 address for an agency employee who can provide
20 current information about the status of each request
21 received.”;

22 (2) in subsection (g), by striking “make publicly
23 available upon request” and inserting “make avail-
24 able in an electronic, publicly accessible format”;
25 and

1 (3) by adding at the end the following new sub-
2 section:

3 “(m) ELECTRONIC SUBMISSION OF REQUESTS.—

4 “(1) CONSOLIDATED ONLINE REQUEST POR-
5 TAL.—The Director of the Office of Management
6 and Budget, in consultation with the Attorney Gen-
7 eral, shall ensure the operation of a consolidated on-
8 line request portal that allows a member of the pub-
9 lic to submit a request for records under subsection
10 (a) to any agency from a single website. The portal
11 may include any additional tools the Director of the
12 Office of Management and Budget finds will improve
13 the implementation of this section.

14 “(2) RULE OF CONSTRUCTION.—This sub-
15 section shall not be construed to alter the power of
16 any other agency to create or maintain an inde-
17 pendent online portal for the submission of a request
18 for records under this section. The Director of the
19 Office of Management and Budget shall establish
20 standards for interoperability between the portal re-
21 quired under paragraph (1) and other request proc-
22 essing software used by agencies subject to this sec-
23 tion.

24 “(3) EMAIL REQUEST REQUIRED.—At a min-
25 imum, each agency shall accept requests for records

1 under subsection (a) through an email address and
2 shall publish such email address on the website of
3 the agency.”.

4 (b) PRESUMPTION OF OPENNESS.—

5 (1) AMENDMENTS.—Section 552(b) of title 5,
6 United States Code, is amended—

7 (A) in paragraph (5), by inserting after
8 “with the agency” the following: “, excluding—
9 “(A) opinions that are controlling interpre-
10 tations of law;

11 “(B) final reports or memoranda created
12 by an entity other than the agency, including
13 other Governmental entities, at the request of
14 the agency and used to make a final policy deci-
15 sion;

16 “(C) guidance documents used by the
17 agency to respond to the public; and

18 “(D) records or information created 25
19 years or more before the date on which a re-
20 quest is made under subsection (a)(3);”;

21 (B) in paragraph (6), by striking “similar
22 files” and inserting “personal information such
23 as contact information or financial informa-
24 tion”; and

1 (C) in the matter following paragraph

2 (9)—

3 (i) by inserting before “Any reason-
4 ably segregable portion” the following: “An
5 agency may not withhold information
6 under this subsection unless such agency
7 reasonably foresees that disclosure would
8 cause specific identifiable harm to an inter-
9 est protected by an exemption, or if disclo-
10 sure is prohibited by law.”; and

11 (ii) by inserting before “If technically
12 feasible,” the following: “For each record
13 withheld in whole or in part under para-
14 graph (3), the agency shall identify the
15 statute that exempts the record from dis-
16 closure.”

17 (2) RULES OF CONSTRUCTION.—

18 (A) INTELLIGENCE SOURCES AND METH-
19 ODS.—Nothing in the amendments made by
20 this Act to section 552(b) of title 5, United
21 States Code, shall be construed to require the
22 disclosure of information that—

23 (i) is exempt under paragraph (1) of
24 such section; or

1 (ii) would adversely affect intelligence
2 sources and methods that are protected by
3 an exemption under such section.

4 (B) PERSONAL PRIVACY.—For purposes of
5 section 552(b)(6) of title 5, United States Code,
6 as amended by this Act, the term “personal pri-
7 vacy” may not be construed to include the
8 name of a Federal employee engaged in an offi-
9 cial duty of such employee.

10 (3) EXEMPTION DECISION TRANSPARENCY.—
11 Section 552(a)(6)(C)(i) of title 5, United States
12 Code, is amended by striking the fourth sentence
13 and inserting at the end the following: “Any notifi-
14 cation of denial or partial denial of any request for
15 records under this subsection shall set forth each
16 name and title or position of each person responsible
17 for the denial or partial denial or any decision to
18 withhold a responsive record under subsection (b).”.

19 (c) REQUESTS FROM CONGRESS.—Section 552(d) of
20 title 5, United States Code, is amended by adding at the
21 end the following: “In responding to requests from Con-
22 gress for information, an agency may not assert that infor-
23 mation may be withheld from Congress under this sec-
24 tion.”.

1 (d) ASSESSMENT OF ATTORNEY FEES AND OTHER
2 LITIGATION COSTS.—Section 552(a)(4)(E)(i) of title 5,
3 United States Code, is amended by striking “The court
4 may” and inserting “The court shall”.

5 (e) OFFICE OF GOVERNMENT INFORMATION SERV-
6 ICES.—Section 552 of title 5, United States Code, is
7 amended—

8 (1) in subsection (a)(4)(A)(i), by striking “the
9 Director of the Office of Management and Budget”
10 and inserting “the Director of the Office of Manage-
11 ment and Budget, in consultation with the Director
12 of the Office of Government Information Services,”;
13 and

14 (2) by amending subsection (h) to read as fol-
15 lows:

16 “(h) OFFICE OF GOVERNMENT INFORMATION SERV-
17 ICES.—

18 “(1) ESTABLISHMENT.—There is established
19 the Office of Government Information Services with-
20 in the National Archives and Records Administra-
21 tion. The head of the Office is the Director of the
22 Office of Government Information Services.

23 “(2) REVIEW OF FOIA POLICY, PROCEDURE,
24 AND COMPLIANCE.—The Office of Government In-
25 formation Services shall—

1 “(A) review policies and procedures of
2 agencies under this section;

3 “(B) review compliance with this section
4 by agencies;

5 “(C) identify methods that improve compli-
6 ance under this section that may include—

7 “(i) the timely processing of requests
8 submitted to agencies under this section;

9 “(ii) the system for assessing fees and
10 fee waivers under this section; and

11 “(iii) the use of any exemption under
12 subsection (b); and

13 “(D) review and provide guidance to agen-
14 cies on the use of fees and fee waivers.

15 “(3) MEDIATION SERVICES.—The Office of
16 Government Information Services shall offer medi-
17 ation services to resolve disputes between persons
18 making requests under this section and agencies as
19 a non-exclusive alternative to litigation and may
20 issue advisory opinions at the discretion of the Office
21 or upon request of any party to such mediation serv-
22 ices.

23 “(4) SUBMISSION OF REPORT.—

24 “(A) IN GENERAL.—The Office of Govern-
25 ment Information Services shall not less than

1 annually submit to the committees described in
2 subparagraph (C) and the President a report on
3 the findings from the information reviewed and
4 identified under paragraph (2), a summary of
5 the Office’s activities under paragraph (3) (in-
6 cluding any advisory opinions issued), and legis-
7 lative and regulatory recommendations to im-
8 prove the administration of this section.

9 “(B) ELECTRONIC AVAILABILITY OF RE-
10 PORTS.—The Office shall make available any
11 report submitted under subparagraph (A) in an
12 electronic, publicly accessible format.

13 “(C) CONGRESSIONAL SUBMISSION OF RE-
14 PORT.—The committees described in this sub-
15 paragraph are the following:

16 “(i) The Committee on Oversight and
17 Government Reform of the House of Rep-
18 resentatives.

19 “(ii) The Committees on Homeland
20 Security and Governmental Affairs and the
21 Judiciary of the Senate.

22 “(D) DIRECT SUBMISSION OF REPORTS
23 AND TESTIMONY.—Any report submitted under
24 subparagraph (A), any testimony, or any other
25 communication to Congress shall be submitted

1 directly to the committees and the President,
2 without any requirement that any officer or em-
3 ployee outside of the Office of Government In-
4 formation Services, including the Archivist of
5 the United States and the Director of the Of-
6 fice of Management and Budget, review such
7 report, testimony, or other communication.

8 “(5) SUBMISSION OF ADDITIONAL INFORMA-
9 TION.—The Director of the Office of Government
10 Information Services may submit additional informa-
11 tion to Congress and the President that the Director
12 determines to be appropriate.

13 “(6) ANNUAL MEETING REQUIRED.—Not less
14 than once a year, the Office of Government Informa-
15 tion Services shall hold a meeting that is open to the
16 public on the review and reports by the Office and
17 permit interested persons to appear and present oral
18 or written statements at such meeting.”.

19 (f) PUBLIC RESOURCES.—Section 552(a)(6) of title
20 5, United States Code, is amended—

21 (1) in subparagraph (A)—

22 (A) in clause (i), by striking “of such de-
23 termination and the reasons therefor, and of
24 the right of such person to appeal to the head

1 of the agency any adverse determination; and”
2 and inserting the following: “of—

3 “(I) such determination and the rea-
4 sons therefor;

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

8 “(III) the right of such person to ap-
9 peal to the head of the agency any adverse
10 determination, within a period determined
11 by the agency that is not less than 90 days
12 after the receipt of such adverse deter-
13 mination; and”; and

14 (B) in clause (ii), by striking the period at
15 the end and inserting the following: “and the
16 right of such person to seek dispute resolution
17 services from the agency FOIA Public Liaison
18 or the Office of Government Information Serv-
19 ices.”;

20 (2) in subparagraph (B)—

21 (A) by redesignating clause (iv) as clause
22 (v); and

23 (B) by inserting after clause (iii) the fol-
24 lowing new clause (iv):

1 “(iv) When an agency consults with
2 an entity with substantial interests in the
3 determination of a request (in this clause
4 referred to as the ‘consulted entity’):

5 “(I) The agency shall notify the
6 requestor of the consultation in writ-
7 ing, including each of the following:

8 “(aa) A brief description of
9 the consultation process.

10 “(bb) The name of each con-
11 sulted entity, unless otherwise
12 prohibited by law.

13 “(cc) An approximate num-
14 ber of pages, or other description
15 of the volume of records, that
16 each consulted entity is review-
17 ing.

18 “(II) The agency shall notify the
19 consulted entity of the need to consult
20 in writing, including each of the fol-
21 lowing:

22 “(aa) An approximate num-
23 ber of pages, or other description
24 of the volume of records, that the
25 entity is requested to review.

1 “(bb) A request to provide a
2 complete response within 15 days
3 after the date on which the noti-
4 fication is sent and a notice that
5 after the expiration of that time
6 period the agency will proceed
7 with the compliance of the re-
8 quest if a completed response is
9 not received.

10 “(cc) If the number of
11 records in the consultation under
12 this clause exceeds 3,000 pages,
13 a notification that the consulted
14 entity shall have 15 days after
15 the date on which the notice is
16 sent to submit a substantial re-
17 sponse and that a response on at
18 least 3,000 pages not less than
19 every five days thereafter is re-
20 quired to continue the consulta-
21 tion period.

22 “(dd) If the consulted entity
23 is unable or anticipates that the
24 entity will be unable to complete
25 the consultation within the time

1 period described, a notification
2 that the consulted entity may re-
3 quest mediation services at the
4 Office of Government Informa-
5 tion Services to set an alternative
6 consultation schedule.

7 “(III) If the requesting agency
8 has not received a completed request
9 within the time period described in
10 the consultation notice, the agency
11 shall request that the consulted entity
12 engage in mediation services with the
13 Office of Government Information
14 Services. If the consulted entity is an
15 agency, the consulted agency shall
16 agree to participate in mediation serv-
17 ices.

18 “(IV) If the consulted entity re-
19 quests or agrees to engage in medi-
20 ation services, the requesting agency
21 shall notify the requester of the medi-
22 ation and the opportunity to partici-
23 pate in the mediation, if participation
24 is not otherwise prohibited by law.
25 The parties in the mediation shall de-

1 termine a reasonable schedule of com-
2 pletion and a date by which the re-
3 questing agency shall complete the re-
4 sponse to the request.

5 “(V) If the consulted entity does
6 not respond or rejects the offer to me-
7 diate an alternative schedule, the re-
8 questing agency shall complete the re-
9 sponse to the requester.

10 “(VI) The previous provisions of
11 this clause shall not apply when the
12 consulted entity is an element of the
13 intelligence community (as defined in
14 section 3(4) of the National Security
15 Act of 1947 (50 U.S.C. 3003(4))).”;
16 and

17 (3) in subparagraph (F), by striking “any such
18 estimate to the person making the request, unless
19 providing such estimate would harm an interest pro-
20 tected by the exemption in subsection (b) pursuant
21 to which the denial is made.” and inserting the fol-
22 lowing: “to the person making the request the fol-
23 lowing:

1 “(i) Any such estimate, unless providing such esti-
2 mate would harm an interest protected by the exemption
3 in subsection (b) pursuant to which the denial is made.

4 “(ii) A list of all records requested the provision of
5 which was denied, unless the disclosure of such record is
6 prohibited by law.”.

7 (g) ADDITIONAL DISCLOSURE OF INFORMATION RE-
8 QUIREMENTS.—Section 552(a) of title 5, United States
9 Code, is amended by adding at the end the following new
10 paragraphs:

11 “(8) DISCLOSURE OF INFORMATION FOR INCREASED
12 PUBLIC UNDERSTANDING OF THE GOVERNMENT.—Each
13 agency shall—

14 “(A) review the records of such agency to deter-
15 mine whether the release of the records would be in
16 the public interest because it is likely to contribute
17 significantly to public understanding of the oper-
18 ations or activities of the Government;

19 “(B) for records determined to be in the public
20 interest under subparagraph (A), reasonably seg-
21 regate and redact any information exempted from
22 disclosure under subsection (b); and

23 “(C) make available in an electronic, publicly
24 accessible format, any records identified in subpara-

1 graph (A), as modified pursuant to subparagraph
2 (B).

3 “(9) INCREASED DISCLOSURE OF INFORMATION.—

4 Each agency shall—

5 “(A) make information public to the greatest
6 extent possible through modern technology to—

7 “(i) inform the public of the operations
8 and activities of the Government; and

9 “(ii) ensure timely disclosure of informa-
10 tion; and

11 “(B) establish procedures for identifying cat-
12 egories of records that may be disclosed regularly
13 and additional records of interest to the public that
14 are appropriate for public disclosure, and for posting
15 such records in an electronic, publicly accessible for-
16 mat.”.

17 (h) REPORT ON CATEGORIES OF INFORMATION FOR
18 DISCLOSURE.—Not later than one year after the date of
19 the enactment of this Act, and every two years thereafter,
20 the Director of the Office of Information Policy of the De-
21 partment of Justice, after consultation with agencies se-
22 lected by the Director, shall submit to the Committee on
23 Oversight and Government Reform of the House of Rep-
24 resentatives and the Committees on Homeland Security
25 and Governmental Affairs and the Judiciary of the Senate

1 a report that identifies categories of records that would
2 be appropriate for proactive disclosure, and shall make
3 such report available in an electronic, publicly accessible
4 format.

5 (i) AGENCY FOIA REPORT.—Section 552(e) of title
6 5, United States Code, is amended—

7 (1) in paragraph (1)—

8 (A) by inserting “and to the Director of
9 the Office of Government Information Services”
10 after “the Attorney General of the United
11 States”;

12 (B) in subparagraph (N), by striking “;
13 and” and inserting a semicolon;

14 (C) in subparagraph (O), by striking the
15 period and inserting a semicolon; and

16 (D) by adding at the end the following new
17 subparagraphs:

18 “(P) the number of times the agency invoked a
19 law enforcement exclusion under subsection (c);

20 “(Q) the number of times the agency engaged
21 in dispute resolution with the assistance of the Of-
22 fice of Government Information Services or the
23 FOIA Public Liaison;

1 “(R) the number of records that were made
2 available in an electronic, publicly accessible format
3 under subsection (a)(2); and

4 “(S) the number of times the agency assessed
5 a search or duplication fee under subsection
6 (a)(4)(A) and did not comply with a time limit
7 under subsection (a)(6).”;

8 (2) by amending paragraph (3) to read as fol-
9 lows:

10 “(3) ELECTRONIC ACCESSIBILITY OF REPORTS.—
11 Each agency shall make each such report available in an
12 electronic, publicly accessible format. In addition, each
13 agency shall make the raw statistical data used in its re-
14 ports available in a timely manner in an electronic, pub-
15 licly accessible format. Such data shall be—

16 “(A) made available without charge, license, or
17 registration requirement;

18 “(B) capable of being searched and aggregated;
19 and

20 “(C) permitted to be downloaded and
21 downloaded in bulk.”;

22 (3) in paragraph (4)—

23 (A) by striking “Committee on Govern-
24 ment Reform and Oversight” and inserting

1 “Committee on Oversight and Government Re-
2 form”;

3 (B) by striking “Governmental Affairs”
4 and inserting “Homeland Security and Govern-
5 mental Affairs”; and

6 (C) by striking “April 1” and inserting
7 “March 1”;

8 (4) in paragraph (5)—

9 (A) by inserting “and the Director of the
10 Office of Government Information Services”
11 after “the Director of the Office of Manage-
12 ment and Budget”; and

13 (B) by striking “by October 1, 1997”; and

14 (5) by amending paragraph (6) to read as fol-
15 lows:

16 “(6) ATTORNEY GENERAL FOIA REPORT.—

17 “(A) IN GENERAL.—The Attorney General of
18 the United States shall submit to Congress and the
19 President an annual report on or before March 1 of
20 each calendar year which shall include for the prior
21 calendar year—

22 “(i) a listing of the number of cases aris-
23 ing under this section, including for each case,
24 as applicable—

1 “(I) each subsection under this sec-
2 tion;

3 “(II) each paragraph of each such
4 subsection;

5 “(III) any exemption;

6 “(IV) the disposition of such case;
7 and

8 “(V) the cost, fees, and penalties as-
9 sessed under subparagraphs (E), (F), and
10 (G) of subsection (a)(4); and

11 “(ii) a description of the efforts under-
12 taken by the Department of Justice to encour-
13 age agency compliance with this section.

14 “(B) ELECTRONIC AVAILABILITY.—The Attor-
15 ney General of the United States—

16 “(i) shall make each report described
17 under subparagraph (A) available in an elec-
18 tronic, publicly accessible format; and

19 “(ii) shall make the raw statistical data
20 used in each report available in an electronic,
21 publicly accessible format, which shall be—

22 “(I) made available without charge, li-
23 cense, or registration requirement;

24 “(II) capable of being searched and
25 aggregated; and

1 “(III) permitted to be downloaded, in-
2 cluding downloaded in bulk.”.

3 (j) SEARCH OR DUPLICATION FEES.—Section
4 552(a)(4)(A) of title 5, United States Code, is amended
5 by striking clause (viii) and inserting the following new
6 clause:

7 “(viii)(I) Except as provided in subclause (II), an
8 agency shall not assess any search fees (or in the case
9 of a requester described under clause (ii)(II) of this sub-
10 paragraph, duplication fees) under this subparagraph if
11 the agency fails to comply with any time limit described
12 in paragraph (6).

13 “(II)(aa) If an agency has determined that unusual
14 circumstances apply (as the term is defined in paragraph
15 (6)(B)) and the agency provided a timely written notice
16 to the requester in accordance with paragraph (6)(B), a
17 failure described in subclause (I) is excused for an addi-
18 tional 10 days. If the agency fails to comply with the ex-
19 tended time limit, the agency may not assess any search
20 fees (or in the case of a requester described under clause
21 (ii)(II) of this subparagraph, duplication fees).

22 “(bb) If an agency has determined that unusual cir-
23 cumstances apply and more than 3,000 pages are nec-
24 essary to respond to the request, an agency may charge
25 search fees (or in the case of a requester described under

1 clause (ii)(II) of this subparagraph, duplication fees) if the
2 agency has provided a timely written notice to the re-
3 quester in accordance with paragraph (6)(B) and the
4 agency has discussed with the requester via written mail,
5 electronic mail, or telephone (or made not less than 3
6 good-faith attempts to do so) how the requester could ef-
7 fectively limit the scope of the request in accordance with
8 paragraph (6)(B)(ii).

9 “(cc) If a court has determined that exceptional cir-
10 cumstances exist (as that term is defined in paragraph
11 (6)(C)), a failure described in subclause (I) shall be ex-
12 cused for the length of time provided by the court order.

13 “(ix) When assessing or estimating fees, agencies
14 shall provide a detailed explanation of the fee calculation,
15 including—

16 “(I) the actual or estimated number, as appro-
17 priate, of—

18 “(aa) records duplicated;

19 “(bb) hours of searching;

20 “(cc) files searched;

21 “(dd) records searched;

22 “(ee) custodians searched;

23 “(ff) records reviewed; and

24 “(gg) hours of review;

1 “(II) citations to the fee schedule for each cat-
2 egory of fee assessed; and

3 “(III) in the case of an estimate, the basis for
4 such estimate.”.

5 (k) GOVERNMENT ACCOUNTABILITY OFFICE.—Sub-
6 section (i) of section 552 of title 5, United States Code,
7 is amended to read as follows:

8 “(i) GOVERNMENT ACCOUNTABILITY OFFICE.—The
9 Government Accountability Office shall—

10 “(1) conduct audits of administrative agencies
11 on compliance with and implementation of the re-
12 quirements of this section and issue reports detailing
13 the results of such audits;

14 “(2) catalog the number of exemptions under
15 subsection (b)(3) and agency use of such exemp-
16 tions; and

17 “(3) review and prepare a report on the proc-
18 essing of requests by agencies for information per-
19 taining to an entity that has received assistance
20 under title I of the Emergency Economic Stabiliza-
21 tion Act of 2008 (12 U.S.C. 5211 et seq.) during
22 any period in which the Government owns or owned
23 more than 50 percent of the stock of such entity.”.

1 (l) CHIEF FOIA OFFICER RESPONSIBILITIES; COUN-
2 CIL; REVIEW.—Section 552 of title 5, United States Code,
3 is amended—

4 (1) by striking subsections (j) and (k); and

5 (2) by inserting after subsection (i), the fol-
6 lowing new subsections:

7 “(j) CHIEF FOIA OFFICER.—

8 “(1) DESIGNATION.—Each agency shall des-
9 ignate a Chief FOIA Officer who shall be a senior
10 official of such agency (at the Assistant Secretary or
11 equivalent level).

12 “(2) DUTIES.—The Chief FOIA Officer of each
13 agency shall, subject to the authority of the head of
14 the agency—

15 “(A) have agency-wide responsibility for ef-
16 ficient and appropriate compliance with this
17 section;

18 “(B) monitor implementation of this sec-
19 tion throughout the agency and keep the head
20 of the agency, the chief legal officer of the
21 agency, and the Attorney General appropriately
22 informed of the agency’s performance in imple-
23 menting this section;

24 “(C) recommend to the head of the agency
25 such adjustments to agency practices, policies,

1 personnel, and funding as may be necessary to
2 improve the implementation of this section;

3 “(D) review and report to the Attorney
4 General, through the head of the agency, at
5 such times and in such formats as the Attorney
6 General may direct, on the agency’s perform-
7 ance in implementing this section;

8 “(E) facilitate public understanding of the
9 purposes of the statutory exemptions of this
10 section by including concise descriptions of the
11 exemptions in both the agency’s handbook
12 issued under subsection (g), and the agency’s
13 annual report on this section, and by providing
14 an overview, where appropriate, of certain gen-
15 eral categories of agency records to which those
16 exemptions apply;

17 “(F) serve as the primary agency liaison
18 with the Office of Government Information
19 Services and the Office of Information Policy;
20 and

21 “(G) designate one or more FOIA Public
22 Liaisons.

23 “(3) COMPLIANCE REVIEW REQUIRED.—The
24 Chief FOIA Officer of each agency shall—

1 “(A) review, not less than annually, all as-
2 pects of the agency’s administration of this sec-
3 tion to ensure compliance with the requirements
4 of this section, including—

5 “(i) agency regulations;

6 “(ii) disclosure of records required
7 under paragraphs (2), (8), and (9) of sub-
8 section (a);

9 “(iii) assessment of fees and deter-
10 mination of eligibility for fee waivers;

11 “(iv) the timely processing of requests
12 for information under this section;

13 “(v) the use of exemptions under sub-
14 section (b); and

15 “(vi) dispute resolution services with
16 the assistance of the Office of Government
17 Information Services or the FOIA Public
18 Liaison; and

19 “(B) make recommendations as necessary
20 to improve agency practices and compliance
21 with this section.

22 “(k) CHIEF FOIA OFFICERS COUNCIL.—

23 “(1) ESTABLISHMENT.—There is established in
24 the executive branch the Chief FOIA Officers Coun-
25 cil (in this subsection, referred to as the ‘Council’).

1 “(2) MEMBERS.—The Council shall consist of
2 the following members:

3 “(A) The Deputy Director for Manage-
4 ment of the Office of Management and Budget.

5 “(B) The Director of the Office of Infor-
6 mation Policy at the Department of Justice.

7 “(C) The Director of the Office of Govern-
8 ment Information Services at the National Ar-
9 chives and Records Administration.

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

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

14 “(3) CO-CHAIRS.—The Director of the Office of
15 Information Policy at the Department of Justice and
16 the Director of the Office of Government Informa-
17 tion Services at the National Archives and Records
18 Administration shall be the Co-Chairs of the Coun-
19 cil.

20 “(4) SUPPORT SERVICES.—The Administrator
21 of General Services shall provide administrative and
22 other support for the Council.

23 “(5) CONSULTATION.—In performing its duties,
24 the Council shall consult regularly with members of
25 the public who make requests under this section.

1 “(6) DUTIES.—The duties of the Council in-
2 clude the following:

3 “(A) Develop recommendations for increas-
4 ing compliance and efficiency under this sec-
5 tion.

6 “(B) Disseminate information about agen-
7 cy experiences, ideas, best practices, and inno-
8 vative approaches related to this section.

9 “(C) Identify, develop, and coordinate ini-
10 tiatives to increase transparency and compli-
11 ance with this section.

12 “(D) Promote the development and use of
13 common performance measures for agency com-
14 pliance with this section.

15 “(7) MEETINGS.—

16 “(A) REGULAR MEETINGS.—The Council
17 shall meet regularly and such meetings shall be
18 open to the public unless the Council deter-
19 mines to close the meeting for reasons of na-
20 tional security or to discuss information exempt
21 under subsection (b).

22 “(B) ANNUAL MEETINGS.—Not less than
23 once a year, the Council shall hold a meeting
24 that shall be open to the public and permit in-

1 terested persons to appear and present oral and
2 written statements to the Council.

3 “(C) NOTICE.—Not later than 10 business
4 days before a meeting of the Council, notice of
5 such meeting shall be published in the Federal
6 Register.

7 “(D) PUBLIC AVAILABILITY OF COUNCIL
8 RECORDS.—Except as provided in subsection
9 (b), the records, reports, transcripts, minutes,
10 appendixes, working papers, drafts, studies,
11 agenda, or other documents that were made
12 available to or prepared for or by the Council
13 shall be made publicly available.

14 “(E) MINUTES.—Detailed minutes of each
15 meeting of the Council shall be kept and shall
16 contain a record of the persons present, a com-
17 plete and accurate description of matters dis-
18 cussed and conclusions reached, and copies of
19 all reports received, issued, or approved by the
20 Council.”.

21 (m) EXCLUDED RECORDS.—Section 552(c) of title 5,
22 United States Code, is amended by adding at the end the
23 following new paragraph:

24 “(4) An agency shall notify the Department of Jus-
25 tice in each instance records responsive to a request have

1 been identified that the agency determines are not subject
2 to the requirements of this section under paragraphs (1),
3 (2), or (3) and shall provide the Department of Justice
4 with a detailed justification for such determination for
5 each such instance. The Department of Justice shall main-
6 tain records of each notification and justification received.
7 An agency may treat records created under this paragraph
8 as not subject to the requirements under this section.”.

9 (n) AGENCY PERFORMANCE; ADVERSE ACTIONS.—

10 (1) IN GENERAL.—Section 552 of title 5,
11 United States Code, is further amended by adding
12 at the end the following new subsection:

13 “(n) AGENCY PERFORMANCE.—

14 “(1) PERFORMANCE REVIEWS.—Performance
15 appraisals under chapter 43 of this title shall include
16 consideration of the employee’s responsibility for,
17 and compliance with, this section as appropriate.

18 “(2) AGENCY-WIDE TRAINING.—Each agency
19 shall ensure agency employees receive annual train-
20 ing on the responsibilities of the agency under this
21 section, including the specific responsibilities of each
22 employee, such as responding promptly to requests
23 for records and providing all records that may be re-
24 sponsive to the request.

1 “(3) FOIA OFFICER TRAINING.—Each agency
2 shall ensure agency employees directly responsible
3 for fulfilling the requirements under this section re-
4 ceive annual training on such requirements. The an-
5 nual training shall include statutory requirements
6 (such as time limits to respond to requests for
7 records, limitations on exemptions, and opportunities
8 for discretionary disclosure) and any changes to this
9 section or any interpretation of this section (such as
10 a regulation issued under this section).

11 “(4) VIOLATION OF FOIA.—

12 “(A) INTENTIONAL.—An intentional viola-
13 tion of any provision of this section, including
14 any rule, regulation, or other implementing
15 guideline, by an officer or employee of an agen-
16 cy, as determined by the appropriate supervisor,
17 shall be forwarded to the Inspector General of
18 the agency for a verification of the violation,
19 and upon verification, such officer or employee
20 shall be subject to the suspension and removal
21 provisions under subchapter II or V of chapter
22 75.

23 “(B) UNAUTHORIZED WITHHOLDING.—
24 The withholding of information in contravention
25 of the requirements of this section, including

1 any rule, regulation, or other implementing
2 guideline, as determined by the appropriate su-
3 pervisor, shall be a basis for disciplinary action
4 in accordance with subchapter I, II, or V of
5 chapter 75, as the case may be.”.

6 (2) REGULATIONS.—The Office of Personnel
7 Management shall ensure that any performance ap-
8 praisal system established pursuant to chapter 43 of
9 title 5, United States Code, shall include the require-
10 ments of section 552(n)(1) of such title (as added by
11 paragraph (1)).

12 (o) REGULATIONS; GAO STUDY; SYSTEM OF RECORD
13 NOTICE.—

14 (1) REVISION OF REGULATIONS.—Not later
15 than 180 days after the date of the enactment of
16 this Act, the head of each agency shall review the
17 regulations of such agency and shall issue regula-
18 tions on procedures for the disclosure of records
19 under section 552 of title 5, United States Code, in
20 accordance with the amendments made by this sec-
21 tion. The regulations of each agency shall include—

22 (A) procedures for engaging in dispute res-
23 olution; and

24 (B) procedures for engaging with the Of-
25 fice of Government Information Services.

1 (2) GAO NON-CUSTODIAN STUDY.—Not later
2 than 18 months after the date of the enactment of
3 this Act, the Comptroller General shall—

4 (A) conduct a study of not less than five
5 agencies to assess the feasibility of imple-
6 menting a policy requiring non-custodians to
7 search for records to meet the requirements of
8 section 552 of title 5, United States Code, and
9 requests for documents from Congress; and

10 (B) submit a report on such assessment to
11 the Committee on Oversight and Government
12 Reform of the House of Representatives and
13 the Committee on the Judiciary of the Senate
14 detailing the results of such study.

15 (3) OFFICE OF GOVERNMENT INFORMATION
16 SERVICES REPORT.—Not later than 270 days after
17 the date of the enactment of this Act, the Office of
18 Government Information Services shall submit to
19 Congress a report on agency compliance with the re-
20 quirements of this subsection.

21 (4) AGENCY SYSTEM OF RECORDS NOTICE RE-
22 QUIRED.—Not later than 90 days after the date of
23 the enactment of this Act, the head of each agency
24 shall publish in the Federal Register a system of
25 records notice as defined in section 552a of title 5,

1 United States Code, which allows the Office of Gov-
2 ernment Information Services access to records to
3 the extent necessary to meet the requirements of
4 this Act, and the amendments made by this Act.

5 (5) REPORT ON NONCOMPLIANCE.—Not later
6 than 270 days after the date of the enactment of
7 this Act, the head of an agency that does not meet
8 the requirements of paragraph (1) shall submit to
9 Congress a report on the reason for noncompliance.

10 (6) INSPECTOR GENERAL REVIEW FOR NON-
11 COMPLIANCE.—Any agency that fails to comply with
12 the requirements of this subsection shall be reviewed
13 by the Office of Inspector General of such agency
14 for compliance with section 552 of title 5, United
15 States Code.

16 (7) AGENCY DEFINED.—In this section, the
17 term “agency” has the meaning given such term in
18 section 552(f) of title 5, United States Code.

19 **SEC. 3. INSPECTOR GENERAL REVIEW.**

20 (a) PERIODIC REVIEW.—The Inspector General of
21 each agency (as such term is defined in section 552(f) of
22 this title 5, United States Code) shall—

23 (1) periodically review compliance with the re-
24 quirements of section 552 of title 5, United States
25 Code, including the timely processing of requests,

1 assessment of fees and fee waivers, and the use of
2 exemptions under subsection (b) of such section; and
3 (2) make recommendations the Inspector Gen-
4 eral determines to be necessary to the head of the
5 agency, including recommendations for disciplinary
6 action.

7 (b) REQUIRED FREQUENCY FOR CERTAIN AGEN-
8 CIES.—The Inspector General of each agency (as such
9 term is defined in section 901 of title 31, United States
10 Code) shall complete the review and make the rec-
11 ommendations required under subsection (a) not less than
12 once every two years.

13 **SEC. 4. NO ADDITIONAL FUNDS AUTHORIZED.**

14 No additional funds are authorized to carry out the
15 requirements of this Act and the amendments made by
16 this Act. Such requirements shall be carried out using
17 amounts otherwise authorized.