

114TH CONGRESS  
2D SESSION

# S. 337

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## AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “FOIA Improvement  
3 Act of 2016”.

4 **SEC. 2. AMENDMENTS TO FOIA.**

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

7 (1) in subsection (a)—

8 (A) in paragraph (2)—

9 (i) in the matter preceding subpara-  
10 graph (A), by striking “for public inspec-  
11 tion and copying” and inserting “for public  
12 inspection in an electronic format”;

13 (ii) by striking subparagraph (D) and  
14 inserting the following:

15 “(D) copies of all records, regardless of form or  
16 format—

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

19 “(ii)(I) that because of the nature of their  
20 subject matter, the agency determines have be-  
21 come or are likely to become the subject of sub-  
22 sequent requests for substantially the same  
23 records; or

24 “(II) that have been requested 3 or more  
25 times; and”;

1 (iii) in the undesignated matter fol-  
2 lowing subparagraph (E), by striking  
3 “public inspection and copying current”  
4 and inserting “public inspection in an elec-  
5 tronic format current”;

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

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

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

1           “(bb) If an agency has determined that  
2 unusual circumstances apply and more than  
3 5,000 pages are necessary to respond to the re-  
4 quest, an agency may charge search fees (or in  
5 the case of a requester described under clause  
6 (ii)(II) of this subparagraph, duplication fees) if  
7 the agency has provided a timely written notice  
8 to the requester in accordance with paragraph  
9 (6)(B) and the agency has discussed with the  
10 requester via written mail, electronic mail, or  
11 telephone (or made not less than 3 good-faith  
12 attempts to do so) how the requester could ef-  
13 fectively limit the scope of the request in ac-  
14 cordance with paragraph (6)(B)(ii).

15           “(cc) If a court has determined that excep-  
16 tional circumstances exist (as that term is de-  
17 fined in paragraph (6)(C)), a failure described  
18 in subclause (I) shall be excused for the length  
19 of time provided by the court order.”;

20           (C) in paragraph (6)—

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

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

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 date 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)(A) An agency shall—

2 “(i) withhold information under this section  
3 only if—

4 “(I) the agency reasonably foresees that  
5 disclosure would harm an interest protected by  
6 an exemption described in subsection (b); or

7 “(II) disclosure is prohibited by law; and

8 “(ii)(I) consider whether partial disclosure of  
9 information is possible whenever the agency deter-  
10 mines that a full disclosure of a requested record is  
11 not possible; and

12 “(II) take reasonable steps necessary to seg-  
13 regate and release nonexempt information; and

14 “(B) Nothing in this paragraph requires disclosure  
15 of information that is otherwise prohibited from disclosure  
16 by law, or otherwise exempted from disclosure under sub-  
17 section (b)(3).”;

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

20 “(5) inter-agency or intra-agency memoran-  
21 dums or letters that would not be available by law  
22 to a party other than an agency in litigation with  
23 the agency, provided that the deliberative process  
24 privilege shall not apply to records created 25 years

1 or more before the date on which the records were  
2 requested;” and

3 (3) in subsection (e)—

4 (A) in paragraph (1)—

5 (i) in the matter preceding subpara-  
6 graph (A), by inserting “and to the Direc-  
7 tor of the Office of Government Informa-  
8 tion Services” after “United States”;

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

11 (iii) in subparagraph (O), by striking  
12 the period at the end and inserting a semi-  
13 colon; and

14 (iv) by adding at the end the fol-  
15 lowing:

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

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

21 (B) by striking paragraph (3) and insert-  
22 ing the following:

23 “(3) Each agency shall make each such report avail-  
24 able for public inspection in an electronic format. In addi-  
25 tion, each agency shall make the raw statistical data used

1 in each report available in a timely manner for public in-  
2 spection in an electronic format, which shall be made  
3 available—

4 “(A) without charge, license, or registration re-  
5 quirement;

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

7 “(C) in a format that may be downloaded in  
8 bulk.”;

9 (C) in paragraph (4)—

10 (i) by striking “Government Reform  
11 and Oversight” and inserting “Oversight  
12 and Government Reform”;

13 (ii) by inserting “Homeland Security  
14 and” before “Governmental Affairs”; and

15 (iii) by striking “April” and inserting  
16 “March”; and

17 (D) by striking paragraph (6) and insert-  
18 ing the following:

19 “(6)(A) The Attorney General of the United States  
20 shall submit to the Committee on Oversight and Govern-  
21 ment Reform of the House of Representatives, the Com-  
22 mittee on the Judiciary of the Senate, and the President  
23 a report on or before March 1 of each calendar year, which  
24 shall include for the prior calendar year—

1           “(i) a listing of the number of cases arising  
2 under this section;

3           “(ii) a listing of—

4                 “(I) each subsection, and any exemption, if  
5 applicable, involved in each case arising under  
6 this section;

7                 “(II) the disposition of each case arising  
8 under this section; and

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

12           “(iii) a description of the efforts undertaken by  
13 the Department of Justice to encourage agency com-  
14 pliance with this section.

15           “(B) The Attorney General of the United States shall  
16 make—

17                 “(i) each report submitted under subparagraph  
18 (A) available for public inspection in an electronic  
19 format; and

20                 “(ii) the raw statistical data used in each report  
21 submitted under subparagraph (A) available for pub-  
22 lic inspection in an electronic format, which shall be  
23 made available—

24                         “(I) without charge, license, or registration  
25 requirement;

1 “(II) in an aggregated, searchable format;

2 and

3 “(III) in a format that may be downloaded

4 in bulk.”;

5 (4) in subsection (g), in the matter preceding

6 paragraph (1), by striking “publicly available upon

7 request” and inserting “available for public inspec-

8 tion in an electronic format”;

9 (5) in subsection (h)—

10 (A) in paragraph (1), by adding at the end

11 the following: “The head of the Office shall be

12 the Director of the Office of Government Infor-

13 mation Services.”;

14 (B) in paragraph (2), by striking subpara-

15 graph (C) and inserting the following:

16 “(C) identify procedures and methods for im-

17 proving compliance under this section.”;

18 (C) by striking paragraph (3) and insert-

19 ing the following:

20 “(3) The Office of Government Information Services

21 shall offer mediation services to resolve disputes between

22 persons making requests under this section and adminis-

23 trative agencies as a nonexclusive alternative to litigation

24 and may issue advisory opinions at the discretion of the

25 Office or upon request of any party to a dispute.”; and

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

2 “(4)(A) Not less frequently than annually, the Direc-  
3 tor of the Office of Government Information Services shall  
4 submit to the Committee on Oversight and Government  
5 Reform of the House of Representatives, the Committee  
6 on the Judiciary of the Senate, and the President—

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

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

12 “(I) any advisory opinions issued; and

13 “(II) the number of times each agency en-  
14 gaged in dispute resolution with the assistance  
15 of the Office of Government Information Serv-  
16 ices or the FOIA Public Liaison; and

17 “(iii) legislative and regulatory recommenda-  
18 tions, if any, to improve the administration of this  
19 section.

20 “(B) The Director of the Office of Government Infor-  
21 mation Services shall make each report submitted under  
22 subparagraph (A) available for public inspection in an  
23 electronic format.

24 “(C) The Director of the Office of Government Infor-  
25 mation Services shall not be required to obtain the prior

1 approval, comment, or review of any officer or agency of  
2 the United States, including the Department of Justice,  
3 the Archivist of the United States, or the Office of Man-  
4 agement and Budget before submitting to Congress, or  
5 any committee or subcommittee thereof, any reports, rec-  
6 ommendations, testimony, or comments, if such submis-  
7 sions include a statement indicating that the views ex-  
8 pressed therein are those of the Director and do not nec-  
9 essarily represent the views of the President.

10 “(5) The Director of the Office of Government Infor-  
11 mation Services may directly submit additional informa-  
12 tion to Congress and the President as the Director deter-  
13 mines to be appropriate.

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

19 (6) by striking subsections (j) and (k), and in-  
20 serting the following:

21 “(j)(1) Each agency shall designate a Chief FOIA Of-  
22 ficer who shall be a senior official of such agency (at the  
23 Assistant Secretary or equivalent level).

24 “(2) The Chief FOIA Officer of each agency shall,  
25 subject to the authority of the head of the agency—

1           “(A) have agency-wide responsibility for effi-  
2           cient and appropriate compliance with this section;

3           “(B) monitor implementation of this section  
4           throughout the agency and keep the head of the  
5           agency, the chief legal officer of the agency, and the  
6           Attorney General appropriately informed of the  
7           agency’s performance in implementing this section;

8           “(C) recommend to the head of the agency such  
9           adjustments to agency practices, policies, personnel,  
10          and funding as may be necessary to improve its im-  
11          plementation of this section;

12          “(D) review and report to the Attorney General,  
13          through the head of the agency, at such times and  
14          in such formats as the Attorney General may direct,  
15          on the agency’s performance in implementing this  
16          section;

17          “(E) facilitate public understanding of the pur-  
18          poses of the statutory exemptions of this section by  
19          including concise descriptions of the exemptions in  
20          both the agency’s handbook issued under subsection  
21          (g), and the agency’s annual report on this section,  
22          and by providing an overview, where appropriate, of  
23          certain general categories of agency records to which  
24          those exemptions apply;

1           “(F) offer training to agency staff regarding  
2 their responsibilities under this section;

3           “(G) serve as the primary agency liaison with  
4 the Office of Government Information Services and  
5 the Office of Information Policy; and

6           “(H) designate 1 or more FOIA Public Liai-  
7 sons.

8           “(3) The Chief FOIA Officer of each agency shall re-  
9 view, not less frequently than annually, all aspects of the  
10 administration of this section by the agency to ensure  
11 compliance with the requirements of this section, includ-  
12 ing—

13           “(A) agency regulations;

14           “(B) disclosure of records required under para-  
15 graphs (2) and (8) of subsection (a);

16           “(C) assessment of fees and determination of  
17 eligibility for fee waivers;

18           “(D) the timely processing of requests for infor-  
19 mation under this section;

20           “(E) the use of exemptions under subsection  
21 (b); and

22           “(F) dispute resolution services with the assist-  
23 ance of the Office of Government Information Serv-  
24 ices or the FOIA Public Liaison.

1       “(k)(1) There is established in the executive branch  
2 the Chief FOIA Officers Council (referred to in this sub-  
3 section as the ‘Council’).

4       “(2) The Council shall be comprised of the following  
5 members:

6           “(A) The Deputy Director for Management of  
7 the Office of Management and Budget.

8           “(B) The Director of the Office of Information  
9 Policy at the Department of Justice.

10          “(C) The Director of the Office of Government  
11 Information Services.

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

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

15       “(3) The Director of the Office of Information Policy  
16 at the Department of Justice and the Director of the Of-  
17 fice of Government Information Services shall be the Co-  
18 Chairs of the Council.

19       “(4) The Administrator of General Services shall pro-  
20 vide administrative and other support for the Council.

21       “(5)(A) The duties of the Council shall include the  
22 following:

23           “(i) Develop recommendations for increasing  
24 compliance and efficiency under this section.

1           “(ii) Disseminate information about agency ex-  
2           periences, ideas, best practices, and innovative ap-  
3           proaches related to this section.

4           “(iii) Identify, develop, and coordinate initia-  
5           tives to increase transparency and compliance with  
6           this section.

7           “(iv) Promote the development and use of com-  
8           mon performance measures for agency compliance  
9           with this section.

10          “(B) In performing the duties described in subpara-  
11          graph (A), the Council shall consult on a regular basis  
12          with members of the public who make requests under this  
13          section.

14          “(6)(A) The Council shall meet regularly and such  
15          meetings shall be open to the public unless the Council  
16          determines to close the meeting for reasons of national  
17          security or to discuss information exempt under subsection  
18          (b).

19          “(B) Not less frequently than annually, the Council  
20          shall hold a meeting that shall be open to the public and  
21          permit interested persons to appear and present oral and  
22          written statements to the Council.

23          “(C) Not later than 10 business days before a meet-  
24          ing of the Council, notice of such meeting shall be pub-  
25          lished in the Federal Register.

1       “(D) Except as provided in subsection (b), the  
2 records, reports, transcripts, minutes, appendices, working  
3 papers, drafts, studies, agenda, or other documents that  
4 were made available to or prepared for or by the Council  
5 shall be made publicly available.

6       “(E) Detailed minutes of each meeting of the Council  
7 shall be kept and shall contain a record of the persons  
8 present, a complete and accurate description of matters  
9 discussed and conclusions reached, and copies of all re-  
10 ports received, issued, or approved by the Council. The  
11 minutes shall be redacted as necessary and made publicly  
12 available.”; and

13               (7) by adding at the end the following:

14       “(m)(1) The Director of the Office of Management  
15 and Budget, in consultation with the Attorney General,  
16 shall ensure the operation of a consolidated online request  
17 portal that allows a member of the public to submit a re-  
18 quest for records under subsection (a) to any agency from  
19 a single website. The portal may include any additional  
20 tools the Director of the Office of Management and Budg-  
21 et finds will improve the implementation of this section.

22       “(2) This subsection shall not be construed to alter  
23 the power of any other agency to create or maintain an  
24 independent online portal for the submission of a request  
25 for records under this section. The Director of the Office

1 of Management and Budget shall establish standards for  
2 interoperability between the portal required under para-  
3 graph (1) and other request processing software used by  
4 agencies subject to this section.”.

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

6 (a) IN GENERAL.—Not later than 180 days after the  
7 date of enactment of this Act, the head of each agency  
8 (as defined in section 551 of title 5, United States Code)  
9 shall review the regulations of such agency and shall issue  
10 regulations on procedures for the disclosure of records  
11 under section 552 of title 5, United States Code, in ac-  
12 cordance with the amendments made by section 2.

13 (b) REQUIREMENTS.—The regulations of each agency  
14 shall include procedures for engaging in dispute resolution  
15 through the FOIA Public Liaison and the Office of Gov-  
16 ernment Information Services.

17 **SEC. 4. PROACTIVE DISCLOSURE THROUGH RECORDS MAN-**  
18 **AGEMENT.**

19 Section 3102 of title 44, United States Code, is  
20 amended—

21 (1) by redesignating paragraphs (2) and (3) as  
22 paragraphs (3) and (4); and

23 (2) by inserting after paragraph (1) the fol-  
24 lowing:

1           “(2) procedures for identifying records of gen-  
2           eral interest or use to the public that are appro-  
3           priate for public disclosure, and for posting such  
4           records in a publicly accessible electronic format;”.

5 **SEC. 5. NO ADDITIONAL FUNDS AUTHORIZED.**

6           No additional funds are authorized to carry out the  
7           requirements of this Act or the amendments made by this  
8           Act. The requirements of this Act and the amendments  
9           made by this Act shall be carried out using amounts other-  
10          wise authorized or appropriated.

11 **SEC. 6. APPLICABILITY.**

12          This Act, and the amendments made by this Act,  
13          shall take effect on the date of enactment of this Act and  
14          shall apply to any request for records under section 552  
15          of title 5, United States Code, made after the date of en-  
16          actment of this Act.

        Passed the Senate March 15, 2016.

        Attest:

*Secretary.*

114<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 337**

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**AN ACT**

To improve the Freedom of Information Act.