

1 **Purpose: In the nature of a substitute.**

2
3

4 **S. 337**

5

6 **To improve the Freedom of Information Act.**

7

8 **Referred to the Committee on _____ and ordered to be**
9 **printed**

10 **Ordered to lie on the table and to be printed**

11 **AMENDMENT INTENDED TO BE PROPOSED BY _____**

12 **Viz:**

13 **Strike all after the enacting clause and insert the following:**

14 ~~Be it enacted by the Senate and House of Representatives of the United States of America in~~
15 ~~Congress assembled,~~

16 **SECTION 1. SHORT TITLE.**

17 This Act may be cited as the “FOIA Improvement Act of ~~2015~~ **2016**”.

18 **SEC. 2. AMENDMENTS TO FOIA.**

19 Section 552 of title 5, United States Code, is amended—

20 (1) in subsection (a)—

21 (A) in paragraph (2)—

22 (i) in the matter preceding subparagraph (A), by striking “for public inspection
23 and copying” and inserting “for public inspection in an electronic format”;

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

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

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

27 “(ii)(I) that because of the nature of their subject matter, the agency determines have
28 become or are likely to become the subject of subsequent requests for substantially the
29 same records; or

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

31 (iii) in the undesignated matter following subparagraph (E), by striking “public
32 inspection and copying current” and inserting “public inspection in an electronic

1 format current”;

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

3 “(viii)(I) Except as provided in subclause (II), an agency shall not assess any search
4 fees (or in the case of a requester described under clause (ii)(II) of this subparagraph,
5 duplication fees) under this subparagraph if the agency has failed to comply with any
6 time limit under paragraph (6).

7 “(II)(aa) If an agency has determined that unusual circumstances apply (as the term
8 is defined in paragraph (6)(B)) and the agency provided a timely written notice to the
9 requester in accordance with paragraph (6)(B), a failure described in subclause (I) is
10 excused for an additional 10 days. If the agency fails to comply with the extended time
11 limit, the agency may not assess any search fees (or in the case of a requester described
12 under clause (ii)(II) of this subparagraph, duplication fees).

13 “(bb) If an agency has determined that unusual circumstances apply and more than
14 ~~50,000~~ **5,000** pages are necessary to respond to the request, an agency may charge
15 search fees (or in the case of a requester described under clause (ii)(II) of this
16 subparagraph, duplication fees) if the agency has provided a timely written notice to
17 the requester in accordance with paragraph (6)(B) and the agency has discussed with
18 the requester via written mail, electronic mail, or telephone (or made not less than 3
19 good-faith attempts to do so) how the requester could effectively limit the scope of the
20 request in accordance with paragraph (6)(B)(ii).

21 “(cc) If a court has determined that exceptional circumstances exist (as that term is
22 defined in paragraph (6)(C)), a failure described in subclause (I) shall be excused for
23 the length of time provided by the court order.”;

24 (C) in paragraph (6)—

25 (i) in subparagraph (A)(i), by striking “making such request” and all that
26 follows through “determination; and” and inserting the following: “making such
27 request of—

28 “(I) such determination and the reasons therefor;

29 “(II) the right of such person to seek assistance from the FOIA Public Liaison
30 of the agency; and

31 “(III) in the case of an adverse determination—

32 “(aa) the right of such person to appeal to the head of the agency, within a
33 period determined by the head of the agency that is not less than 90 days
34 after the date of such adverse determination; and

35 “(bb) the right of such person to seek dispute resolution services from the
36 FOIA Public Liaison of the agency or the Office of Government Information
37 Services; and”;

38 (ii) in subparagraph (B)(ii), by striking “the agency.” and inserting “the agency,
39 and notify the requester of the right of the requester to seek dispute resolution
40 services from the Office of Government Information Services.”; and

1 (D) by adding at the end the following:
2 “(8)(A) An **agency agency**—
3 “(i) shall—
4 “(I)“(i) withhold information under this section only if—
5 “(aa)“(I) the agency reasonably foresees that disclosure would harm an interest
6 protected by an exemption described in subsection (b) ~~or other provision of law; or; or~~
7 “(bb)“(II) disclosure is prohibited by law; and
8 “(H)(aa)“(ii)(I) consider whether partial disclosure of information is possible whenever
9 the agency determines that a full disclosure of a requested record is not possible; and
10 “(bb)“(II) take reasonable steps necessary to segregate and release nonexempt
11 information; and
12 “(ii) may not—
13 “(I) withhold information requested under this section merely because the agency can
14 demonstrate, as a technical matter, that the records fall within the scope of an exemption
15 described in subsection (b); or
16 “(II) withhold information requested under this section merely because disclosure of the
17 information may be embarrassing to the agency or because of speculative or abstract concerns.
18 “(B) Nothing in this paragraph requires disclosure of information that is otherwise prohibited
19 from disclosure by law, or otherwise exempted from disclosure under subsection (b)(3).”;
20 (2) in subsection (b), by amending paragraph (5) to read as follows:
21 “(5) inter-agency or intra-agency memorandums or letters that would not be available by
22 law to a party other than an agency in litigation with the agency, ~~if the requested record or~~
23 ~~information was created less than 25 years~~ **provided that the deliberative process**
24 **privilege shall not apply to records created 25 years or more** before the date on which
25 the request was made.”; **records were requested.”; and**
26 (3) in subsection (e)—
27 (A) in paragraph (1)—
28 (i) in the matter preceding subparagraph (A), by inserting “and to the Director
29 of the Office of Government Information Services” after “United States”;
30 (ii) in subparagraph (N), by striking “and” at the end;
31 (iii) in subparagraph (O), by striking the period at the end and inserting a
32 semicolon; and
33 (iv) by adding at the end the following:
34 “(P) the number of times the agency denied a request for records under subsection (c);
35 and
36 “(Q) the number of records that were made available for public inspection in an
37 electronic format under subsection (a)(2).”;

1 (B) by striking paragraph (3) and inserting the following:
2 “(3) Each agency shall make each such report available for public inspection in an electronic
3 format. In addition, each agency shall make the raw statistical data used in each report available
4 in a timely manner for public inspection in an electronic format, which shall be made available—
5 “(A) without charge, license, or registration requirement;
6 “(B) in an aggregated, searchable format; and
7 “(C) in a format that may be downloaded in bulk.”;
8 (C) in paragraph (4)—
9 (i) by striking “Government Reform and Oversight” and inserting “Oversight
10 and Government Reform”;
11 (ii) by inserting “Homeland Security and” before “Governmental Affairs”; and
12 (iii) by striking “April” and inserting “March”; and
13 (D) by striking paragraph (6) and inserting the following:
14 “(6)(A) The Attorney General of the United States shall submit to the Committee on Oversight
15 and Government Reform of the House of Representatives, the Committee on the Judiciary of the
16 Senate, and the President a report on or before March 1 of each calendar year, which shall
17 include for the prior calendar year—
18 “(i) a listing of the number of cases arising under this section;
19 “(ii) a listing of—
20 “(I) each subsection, and any exemption, if applicable, involved in each case arising
21 under this section;
22 “(II) the disposition of each case arising under this section; and
23 “(III) the cost, fees, and penalties assessed under subparagraphs (E), (F), and (G) of
24 subsection (a)(4); and
25 “(iii) a description of the efforts undertaken by the Department of Justice to encourage
26 agency compliance with this section.
27 “(B) The Attorney General of the United States shall make—
28 “(i) each report submitted under subparagraph (A) available for public inspection in an
29 electronic format; and
30 “(ii) the raw statistical data used in each report submitted under subparagraph (A)
31 available for public inspection in an electronic format, which shall be made available—
32 “(I) without charge, license, or registration requirement;
33 “(II) in an aggregated, searchable format; and
34 “(III) in a format that may be downloaded in bulk.”;
35 (4) in subsection (g), in the matter preceding paragraph (1), by striking “publicly
36 available upon request” and inserting “available for public inspection in an electronic

1 format”;

2 (5) in subsection (h)—

3 (A) in paragraph (1), by adding at the end the following: “The head of the Office
4 shall be the Director of the Office of Government Information Services.”;

5 (B) in paragraph (2), by striking subparagraph (C) and inserting the following:
6 “(C) identify procedures and methods for improving compliance under this section.”;

7 (C) by striking paragraph (3) and inserting the following:
8 “(3) The Office of Government Information Services shall offer mediation services to resolve
9 disputes between persons making requests under this section and administrative agencies as a
10 ~~non-exclusive~~ **nonexclusive** alternative to litigation and may issue advisory opinions at the
11 discretion of the Office or upon request of any party to a dispute.”; and

12 (D) by adding at the end the following:
13 “(4)(A) Not less frequently than annually, the Director of the Office of Government
14 Information Services shall submit to the Committee on Oversight and Government Reform of the
15 House of Representatives, the Committee on the Judiciary of the Senate, and the President—
16 “(i) a report on the findings of the information reviewed and identified under paragraph
17 (2);
18 “(ii) a summary of the activities of the Office of Government Information Services under
19 paragraph (3), including—
20 “(I) any advisory opinions issued; and
21 “(II) the number of times each agency engaged in dispute resolution with the
22 assistance of the Office of Government Information Services or the FOIA Public
23 Liaison; and
24 “(iii) legislative and regulatory recommendations, if any, to improve the administration of
25 this section.
26 “(B) The Director of the Office of Government Information Services shall make each report
27 submitted under subparagraph (A) available for public inspection in an electronic format.
28 “(C) The Director of the Office of Government Information Services shall not be required to
29 obtain the prior approval, comment, or review of any officer or agency of the United States,
30 including the Department of Justice, the Archivist of the United States, or the Office of
31 Management and Budget before submitting to Congress, or any committee or subcommittee
32 thereof, any reports, recommendations, testimony, or comments, if such submissions include a
33 statement indicating that the views expressed therein are those of the Director and do not
34 necessarily represent the views of the President.
35 “(5) The Director of the Office of Government Information Services may directly submit
36 additional information to Congress and the President as the Director determines to be
37 appropriate.
38 “(6) Not less frequently than annually, the Office of Government Information Services shall
39 conduct a meeting that is open to the public on the review and reports by the Office and shall

1 allow interested persons to appear and present oral or written statements at the meeting.”;

2 (6) by striking subsections (i),(j), and (k), and inserting the following:

3
4 ~~“(i) The Government Accountability Office shall—~~

5 ~~“(1) not later than 1 year after the date of enactment of the FOIA Improvement Act of 2015-~~
6 ~~and every 2 years thereafter, conduct audits of 3 or more administrative agencies on compliance-~~
7 ~~with and implementation of the requirements of this section and issue reports detailing the results~~
8 ~~of such audits;~~

9 ~~“(2) not later than 1 year after the date of enactment of the FOIA Improvement Act of 2015-~~
10 ~~and every 2 years thereafter, issue a report cataloging the number of exemptions described in-~~
11 ~~paragraphs (3) and (5) of subsection (b) and the use of such exemptions by each agency;~~

12 ~~“(3) not later than 1 year after the date of enactment of the FOIA Improvement Act of 2015,-~~
13 ~~conduct a study on the methods Federal agencies use to reduce the backlog of requests under this~~
14 ~~section and issue a report on the effectiveness of those methods; and~~

15 ~~“(4) submit copies of all reports and audits described in this subsection to the Committee on~~
16 ~~Oversight and Government Reform of the House of Representatives and the Committee on the~~
17 ~~Judiciary of the Senate.~~

18 “(j)(1) Each agency shall designate a Chief FOIA Officer who shall be a senior official of such
19 agency (at the Assistant Secretary or equivalent level).

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

22 “(A) have agency-wide responsibility for efficient and appropriate compliance with this
23 section;

24 “(B) monitor implementation of this section throughout the agency and keep the head of
25 the agency, the chief legal officer of the agency, and the Attorney General appropriately
26 informed of the agency’s performance in implementing this section;

27 “(C) recommend to the head of the agency such adjustments to agency practices, policies,
28 personnel, and funding as may be necessary to improve its implementation of this section;

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

32 “(E) facilitate public understanding of the purposes of the statutory exemptions of this
33 section by including concise descriptions of the exemptions in both the agency’s handbook
34 issued under subsection (g), and the agency’s annual report on this section, and by
35 providing an overview, where appropriate, of certain general categories of agency records to
36 which those exemptions apply;

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

38 “(G) serve as the primary agency liaison with the Office of Government Information
39 Services and the Office of Information Policy; and

1 “(H) designate 1 or more FOIA Public Liaisons.

2 “(3) The Chief FOIA Officer of each agency shall review, not less frequently than annually,
3 all aspects of the administration of this section by the agency to ensure compliance with the
4 requirements of this section, including—

5 “(A) agency regulations;

6 “(B) disclosure of records required under paragraphs (2) and (8) of subsection (a);

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

8 “(D) the timely processing of requests for information under this section;

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

10 “(F) dispute resolution services with the assistance of the Office of Government
11 Information Services or the FOIA Public Liaison.

12 “(k)(1) There is established in the executive branch the Chief FOIA Officers Council (referred
13 to in this subsection as the ‘Council’).

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

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

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

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

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

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

20 “(3) The Director of the Office of Information Policy at the Department of Justice and the
21 Director of the Office of Government Information Services shall be the Co-Chairs of the
22 Council.

23 “(4) The Administrator of General Services shall provide administrative and other support for
24 the Council.

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

26 “(i) Develop recommendations for increasing compliance and efficiency under this
27 section.

28 “(ii) Disseminate information about agency experiences, ideas, best practices, and
29 innovative approaches related to this section.

30 “(iii) Identify, develop, and coordinate initiatives to increase transparency and
31 compliance with this section.

32 “(iv) Promote the development and use of common performance measures for agency
33 compliance with this section.

34 “(B) In performing the duties described in subparagraph (A), the Council shall consult on a
35 regular basis with members of the public who make requests under this section.

36 “(6)(A) The Council shall meet regularly and such meetings shall be open to the public unless

1 the Council determines to close the meeting for reasons of national security or to discuss
2 information exempt under subsection (b).

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

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

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

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

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

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

21 “(2) This subsection shall not be construed to alter the power of any other agency to create or
22 maintain an independent online portal for the submission of a request for records under this
23 section. The Director of the Office of Management and Budget shall establish standards for
24 interoperability between the portal required under paragraph (1) and other request processing
25 software used by agencies subject to this section.”.

26 SEC. 3. REVIEW AND ISSUANCE OF REGULATIONS.

27 (a) In General.—Not later than 180 days after the date of enactment of this Act, the head of
28 each agency (as defined in section 551 of title 5, United States Code) shall review the regulations
29 of such agency and shall issue regulations on procedures for the disclosure of records under
30 section 552 of title 5, United States Code, in accordance with the amendments made by section
31 2.

32 (b) Requirements.—The regulations of each agency shall include procedures for engaging in
33 dispute resolution through the FOIA Public Liaison and the Office of Government Information
34 Services.

35 SEC. 4. PROACTIVE DISCLOSURE THROUGH RECORDS 36 MANAGEMENT.

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

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

39 (2) by inserting after paragraph (1) the following:

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

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

5 No additional funds are authorized to carry out the requirements of this Act or the
6 amendments made by this Act. The requirements of this Act and the amendments made by this
7 Act shall be carried out using amounts otherwise authorized or ~~appropriated.66514~~
8 **appropriated.**

9 ~~Calendar No. 17~~ **SEC. 6. APPLICABILITY.**

10 ~~114th CONGRESS~~ **This Act, and the amendments made by this Act, shall take effect on**
11 **the date of enactment of this Act and shall apply to any request for records under section**
12 **552 of title 5, United States Code, made after the date of enactment of this Act.**

13 ~~1st Session~~

14 ~~S. 337~~

15

16 ~~A BILL~~

17 ~~To improve the Freedom of Information Act.~~

18

19 ~~February 9, 2015~~

20 ~~Reported without amendment~~