

114TH CONGRESS
1ST 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”.

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

7 (a) **ELECTRONIC ACCESSIBILITY.**—Section 552 of
8 title 5, United States Code, is amended—

1 (1) in subsection (a)—

2 (A) in paragraph (2)—

3 (i) by striking “for public inspection
4 and copying” and inserting “in an elec-
5 tronic, publicly accessible format” each
6 place it appears;

7 (ii) by striking “; and” and inserting
8 a semicolon;

9 (iii) by striking subparagraph (E) and
10 inserting the following new subparagraphs:

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

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

16 (iv) in the matter following subpara-
17 graph (F) (as added by clause (ii) of this
18 subparagraph)—

19 (I) by striking “subparagraph
20 (D)” and inserting “subparagraphs
21 (D) and (E)”; and

22 (II) by striking “subparagraph
23 (E)” and inserting “subparagraph
24 (F)”; and

25 (B) in paragraph (7)—

1 (i) in subparagraph (A), by striking
2 “that will take longer than ten days to
3 process”; and

4 (ii) in subparagraph (B), by inserting
5 “automated” after “provides”;

6 (2) in subsection (g), by striking “make publicly
7 available upon request” and inserting “make avail-
8 able in an electronic, publicly accessible format”;
9 and

10 (3) by adding at the end the following new sub-
11 section:

12 “(m) CONSOLIDATED ONLINE REQUEST PORTAL.—

13 “(1) REQUEST PORTAL REQUIRED.—The Direc-
14 tor of the Office of Management and Budget, in con-
15 sultation with the Attorney General, shall ensure the
16 operation of a consolidated online request portal that
17 allows a member of the public to submit a request
18 for records under subsection (a) to any agency from
19 a single website. The portal may include any addi-
20 tional tools the Director of the Office of Manage-
21 ment and Budget finds will improve the implementa-
22 tion of this section.

23 “(2) RULE OF CONSTRUCTION.—This sub-
24 section shall not be construed to alter the power of
25 any other agency to create or maintain an inde-

1 pendent online portal for the submission of a request
2 for records under this section. The Director of the
3 Office of Management and Budget shall establish
4 standards for interoperability between the portal re-
5 quired under paragraph (1) and other request proc-
6 essing software used by agencies subject to this sec-
7 tion.”.

8 (b) PRESUMPTION OF OPENNESS.—Section 552(b) of
9 title 5, United States Code, is amended—

10 (1) in paragraph (5), by inserting after “with
11 the agency” the following: “, excluding—

12 “(A) records that embody the working law,
13 effective policy, or the final decision of the
14 agency; or

15 “(B) records or information created 25
16 years or more before the date on which a re-
17 quest is made under subsection (a)(3);”;

18 (2) in the matter following paragraph (9), by
19 inserting before “Any reasonably segregable portion”
20 the following: “An agency may not withhold infor-
21 mation under this subsection unless such agency
22 reasonably foresees that disclosure would cause spe-
23 cific identifiable harm to an interest protected by an
24 exemption, or if disclosure is prohibited by law.”.

1 (c) THE OFFICE OF GOVERNMENT INFORMATION
2 SERVICES.—Section 552 of title 5, United States Code,
3 is amended—

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

10 (2) by amending subsection (h) to read as fol-
11 lows:

12 “(h) THE OFFICE OF GOVERNMENT INFORMATION
13 SERVICES.—

14 “(1) ESTABLISHMENT.—There is established
15 the Office of Government Information Services with-
16 in the National Archives and Records Administra-
17 tion. The head of the Office is the Director of the
18 Office of Government Information Services.

19 “(2) REVIEW OF FOIA POLICY, PROCEDURE,
20 AND COMPLIANCE.—The Office of Government In-
21 formation Services shall—

22 “(A) review policies and procedures of
23 agencies under this section;

24 “(B) review compliance with this section
25 by agencies;

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

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

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

7 “(iii) the use of any exemption under
8 subsection (b); and

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

11 “(3) MEDIATION SERVICES.—The Office of
12 Government Information Services shall offer medi-
13 ation services to resolve disputes between persons
14 making requests under this section and agencies as
15 a non-exclusive alternative to litigation and, at the
16 discretion of the Office, may issue advisory opinions
17 if mediation has not resolved the dispute.

18 “(4) SUBMISSION OF REPORT.—

19 “(A) IN GENERAL.—The Office of Govern-
20 ment Information Services shall not less than
21 annually submit to the committees described in
22 subparagraph (C) and the President a report on
23 the findings from the information reviewed and
24 identified under paragraph (2), a summary of
25 the Office’s activities under paragraph (3) (in-

1 including any advisory opinions issued), and legis-
2 lative and regulatory recommendations to im-
3 prove the administration of this section.

4 “(B) ELECTRONIC AVAILABILITY OF RE-
5 PORTS.—The Office shall make available any
6 report submitted under paragraph (A) in a pub-
7 licly accessible format.

8 “(C) CONGRESSIONAL SUBMISSION OF RE-
9 PORT.—The committees described in this sub-
10 paragraph are the following:

11 “(i) The Committee on Oversight and
12 Government Reform of the House of Rep-
13 resentatives.

14 “(ii) The Committees on Homeland
15 Security and Governmental Affairs and the
16 Judiciary of the Senate.

17 “(D) DIRECT SUBMISSION OF REPORTS
18 AND TESTIMONY.—Any report submitted under
19 paragraph (A), any testimony, or any other
20 communication to Congress shall be submitted
21 directly to the committees and the President,
22 without any requirement that any officer or em-
23 ployee outside of the Office of Government In-
24 formation Services, including the Archivist of
25 the United States and the Director of the Of-

1 fice of Management and Budget, review such
2 report, testimony, or other communication.

3 “(5) SUBMISSION OF ADDITIONAL INFORMA-
4 TION.—The Director of the Office of Government
5 Information Services may submit additional informa-
6 tion to Congress and the President that the Director
7 determines to be appropriate.

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

14 (d) PUBLIC RESOURCES.—Section 552(a)(6)(A) of
15 title 5, United States Code, is amended—

16 (1) in clause (i), by striking “of such deter-
17 mination and the reasons therefor, and of the right
18 of such person to appeal to the head of the agency
19 any adverse determination; and” and inserting the
20 following: “of—

21 “(I) such determination and the reasons
22 therefor;

23 “(II) the right of such person to seek as-
24 sistance from the agency FOIA Public Liaison;
25 and

1 “(III) the right of such person to appeal to
2 the head of the agency any adverse determina-
3 tion, within a period determined by the agency
4 that is not less than 90 days after the receipt
5 of such adverse determination; and”;

6 (2) in clause (ii), by striking the period and in-
7 serting the following: “and the right of such person
8 to seek dispute resolution services from the agency
9 FOIA Public Liaison or the Office of Government
10 Information Services.”

11 (e) ADDITIONAL DISCLOSURE OF INFORMATION RE-
12 QUIREMENTS.—Section 552(a) of title 5, United States
13 Code, is amended by adding at the end the following new
14 paragraphs:

15 “(8) DISCLOSURE OF INFORMATION FOR IN-
16 CREASED PUBLIC UNDERSTANDING OF THE GOVERN-
17 MENT.—Each agency shall—

18 “(A) review the records of such agency to
19 determine whether the release of the records
20 would be in the public interest because it is
21 likely to contribute significantly to public un-
22 derstanding of the operations or activities of the
23 Government;

24 “(B) for records determined to be in the
25 public interest under subparagraph (A), reason-

1 ably segregate and redact any information ex-
2 empted from disclosure under subsection (b);
3 and

4 “(C) make available in an electronic, pub-
5 licly accessible format, any records identified in
6 subparagraph (A), as modified pursuant to sub-
7 paragraph (B).

8 “(9) INCREASED DISCLOSURE OF INFORMA-
9 TION.—Each agency shall—

10 “(A) make information public to the great-
11 est extent possible through modern technology
12 to—

13 “(i) inform the public of the oper-
14 ations and activities of the Government;
15 and

16 “(ii) ensure timely disclosure of infor-
17 mation; and

18 “(B) establish procedures for identifying
19 categories of records that may be disclosed reg-
20 ularly and additional records of interest to the
21 public that are appropriate for public disclo-
22 sure, and for posting such records in an elec-
23 tronic, publicly accessible format.”.

24 (f) REPORT ON CATEGORIES OF INFORMATION FOR
25 DISCLOSURE.—Not later than one year after the date of

1 the enactment of this Act, and every two years thereafter,
2 the Director of the Office of Information Policy of the De-
3 partment of Justice, after consultation with agencies se-
4 lected by the Director, shall submit to the Committee on
5 Oversight and Government Reform of the House of Rep-
6 resentatives and the Committees on Homeland Security
7 and Governmental Affairs and the Judiciary of the Senate
8 a report that identifies categories of records that would
9 be appropriate for proactive disclosure, and shall make
10 such report available in an electronic, publicly accessible
11 format.

12 (g) AGENCY FOIA REPORT.—Section 552(e) of title
13 5, United States Code, is amended—

14 (1) in paragraph (1)—

15 (A) by inserting “and to the Director of
16 the Office of Government Information Services”
17 after “the Attorney General of the United
18 States”;

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

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

23 (D) by adding at the end the following new
24 subparagraphs:

1 “(P) the number of times the agency invoked a
2 law enforcement exclusion under subsection (e);

3 “(Q) the number of times the agency engaged
4 in dispute resolution with the assistance of the Of-
5 fice of Government Information Services or the
6 FOIA Public Liaison;

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

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

14 (2) by amending paragraph (3) to read as fol-
15 lows:

16 “(3) ELECTRONIC ACCESSIBILITY OF RE-
17 PORTS.—Each agency shall make each such report
18 available in an electronic, publicly accessible format.
19 In addition, each agency shall make the raw statis-
20 tical data used in its reports available in a timely
21 manner in an electronic, publicly accessible format.
22 Such data shall be—

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

1 “(B) capable of being searched and aggre-
2 gated; and

3 “(C) permitted to be downloaded and
4 downloaded in bulk.”;

5 (3) in paragraph (4)—

6 (A) by striking “Committee on Govern-
7 ment Reform and Oversight” and inserting
8 “Committee on Oversight and Government Re-
9 form”;

10 (B) by striking “Governmental Affairs”
11 and inserting “Homeland Security and Govern-
12 mental Affairs”; and

13 (C) by striking “April 1” and inserting
14 “March 1”;

15 (4) in paragraph (5)—

16 (A) by inserting “and the Director of the
17 Office of Government Information Services”
18 after “the Director of the Office of Manage-
19 ment and Budget”; and

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

21 (5) by amending paragraph (6) to read as fol-
22 lows:

23 “(6) ATTORNEY GENERAL FOIA REPORT.—

24 “(A) IN GENERAL.—The Attorney General
25 of the United States shall submit to Congress

1 and the President an annual report on or before
2 March 1 of each calendar year which shall in-
3 clude for the prior calendar year—

4 “(i) a listing of the number of cases
5 arising under this section;

6 “(ii) each subsection under this sec-
7 tion, each paragraph of the subsection, and
8 any exemption, if applicable, involved in
9 each case, the disposition of such case, and
10 the cost, fees, and penalties assessed under
11 subparagraphs (E), (F), and (G) of sub-
12 section (a)(4); and

13 “(iii) a description of the efforts un-
14 dertaken by the Department of Justice to
15 encourage agency compliance with this sec-
16 tion.

17 “(B) ELECTRONIC AVAILABILITY.—The
18 Attorney General of the United States—

19 “(i) shall make each report described
20 under subparagraph (A) available in an
21 electronic, publicly accessible format; and

22 “(ii) shall make the raw statistical
23 data used in each report available in an
24 electronic, publicly accessible format, which
25 shall be—

1 “(I) made available without
2 charge, license, or registration re-
3 quirement;

4 “(II) capable of being searched
5 and aggregated; and

6 “(III) permitted to be
7 downloaded, including downloaded in
8 bulk.”.

9 (h) SEARCH OR DUPLICATION FEES.—Section
10 552(a)(4)(A)(viii) of title 5, United States Code, is amend-
11 ed by adding at the end the following new sentence: “Any
12 agency that does assess search or duplication fees after
13 failing to comply with a time limit under paragraph (6)
14 shall provide written notice to the requester of the cir-
15 cumstance that justifies the fees. If an agency fails to pro-
16 vide such notice, the agency may not assess search or du-
17 plication fees.”.

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

21 “(i) GOVERNMENT ACCOUNTABILITY OFFICE.—The
22 Government Accountability Office shall—

23 “(1) conduct audits of administrative agencies
24 on compliance with and implementation of the re-

1 requirements of this section and issue reports detailing
2 the results of such audits;

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

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

13 (j) CHIEF FOIA OFFICER RESPONSIBILITIES; COUN-
14 CIL; REVIEW.—Section 552 of title 5, United States Code,
15 is amended—

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

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

19 “(j) CHIEF FOIA OFFICER.—

20 “(1) DESIGNATION.—Each agency shall des-
21 ignate a Chief FOIA Officer who shall be a senior
22 official of such agency (at the Assistant Secretary or
23 equivalent level).

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

4 “(A) have agency-wide responsibility for ef-
5 ficient and appropriate compliance with this
6 section;

7 “(B) monitor implementation of this sec-
8 tion throughout the agency and keep the head
9 of the agency, the chief legal officer of the
10 agency, and the Attorney General appropriately
11 informed of the agency’s performance in imple-
12 menting this section;

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

17 “(D) review and report to the Attorney
18 General, through the head of the agency, at
19 such times and in such formats as the Attorney
20 General may direct, on the agency’s perform-
21 ance in implementing this section;

22 “(E) facilitate public understanding of the
23 purposes of the statutory exemptions of this
24 section by including concise descriptions of the
25 exemptions in both the agency’s handbook

1 issued under subsection (g), and the agency’s
2 annual report on this section, and by providing
3 an overview, where appropriate, of certain gen-
4 eral categories of agency records to which those
5 exemptions apply;

6 “(F) serve as the primary agency liaison
7 with the Office of Government Information
8 Services and the Office of Information Policy;
9 and

10 “(G) designate one or more FOIA Public
11 Liaisons.

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

14 “(A) review, not less than annually, all as-
15 pects of the agency’s administration of this sec-
16 tion to ensure compliance with the requirements
17 of this section, including—

18 “(i) agency regulations;

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

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

24 “(iv) the timely processing of requests
25 for information under this section;

1 “(v) the use of exemptions under sub-
2 section (b); and

3 “(vi) dispute resolution services with
4 the assistance of the Office of Government
5 Information Services or the FOIA Public
6 Liaison; and

7 “(B) make recommendations as necessary
8 to improve agency practices and compliance
9 with this section.

10 “(k) CHIEF FOIA OFFICERS COUNCIL.—

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

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

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

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

20 “(C) The Director of the Office of Govern-
21 ment Information Services at the National Ar-
22 chives and Records Administration.

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

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

3 “(3) CO-CHAIRS.—The Director of the Office of
4 Information Policy at the Department of Justice and
5 the Director of the Office of Government Informa-
6 tion Services at the National Archives and Records
7 Administration shall be the Co-Chairs of the Coun-
8 cil.

9 “(4) SUPPORT SERVICES.—The Administrator
10 of General Services shall provide administrative and
11 other support for the Council.

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

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

17 “(A) Develop recommendations for increas-
18 ing compliance and efficiency under this sec-
19 tion.

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

23 “(C) Identify, develop, and coordinate ini-
24 tiatives to increase transparency and compli-
25 ance with this section.

1 “(D) Promote the development and use of
2 common performance measures for agency com-
3 pliance with this section.

4 “(7) MEETINGS.—

5 “(A) REGULAR MEETINGS.—The Council
6 shall meet regularly and such meetings shall be
7 open to the public unless the Council deter-
8 mines to close the meeting for reasons of na-
9 tional security or to discuss information exempt
10 under subsection (b).

11 “(B) ANNUAL MEETINGS.—Not less than
12 once a year, the Council shall hold a meeting
13 that shall be open to the public and permit in-
14 terested persons to appear and present oral and
15 written statements to the Council.

16 “(C) NOTICE.—Not later than 10 business
17 days before a meeting of the Council, notice of
18 such meeting shall be published in the Federal
19 Register.

20 “(D) PUBLIC AVAILABILITY OF COUNCIL
21 RECORDS.—Except as provided in subsection
22 (b), the records, reports, transcripts, minutes,
23 appendixes, working papers, drafts, studies,
24 agenda, or other documents that were made

1 available to or prepared for or by the Council
2 shall be made publicly available.

3 “(E) MINUTES.—Detailed minutes of each
4 meeting of the Council shall be kept and shall
5 contain a record of the persons present, a com-
6 plete and accurate description of matters dis-
7 cussed and conclusions reached, and copies of
8 all reports received, issued, or approved by the
9 Council.”.

10 (k) REGULATIONS.—

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

19 (A) procedures for engaging in dispute res-
20 olution; and

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

23 (2) OFFICE OF GOVERNMENT INFORMATION
24 SERVICES REPORT.—Not later than 270 days after
25 the date of the enactment of this Act, the Office of

1 Government Information Services shall submit to
2 Congress a report on agency compliance with the re-
3 quirements of this subsection.

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

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

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

18 **SEC. 3. INSPECTOR GENERAL REVIEW; ADVERSE ACTIONS.**

19 (a) INSPECTOR GENERAL REVIEW.—

20 (1) IN GENERAL.—The Inspector General of
21 each agency shall—

22 (A) periodically review compliance with the
23 requirements of section 552 of title 5, United
24 States Code, including the timely processing of
25 requests, assessment of fees and fee waivers,

1 and the use of exemptions under subsection (b)
2 of such section; and

3 (B) make recommendations the Inspector
4 General determines to be necessary to the head
5 of the agency, including recommendations for
6 disciplinary action.

7 (2) AGENCY DEFINED.—In this subsection, the
8 term “agency” has the meaning given that term
9 under section 552(f) of title 5, United States Code.

10 (b) ADVERSE ACTIONS.—The withholding of infor-
11 mation in a manner inconsistent with the requirements of
12 section 552 of title 5, United States Code (including any
13 rules, regulations, or other implementing guidelines), as
14 determined by the appropriate supervisor, shall be a basis
15 for disciplinary action in accordance with subchapter I, II,
16 or V of chapter 75 of such title, as the case may be.

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

18 No additional funds are authorized to carry out the
19 requirements of this Act and the amendments made by
20 this Act. Such requirements shall be carried out using
21 amounts otherwise authorized or appropriated.

○