

S337 ENR: FOIA Improvement Act of 2016 U.S. Senate text/xml EN Pursuant to Title 17 Section 105 of the United States Code, this file is not subject to copyright protection and is in the public domain. One Hundred Fourteenth Congress of the United States of America 2d Session Begun and held at the City of Washington on Monday, the fourth day of January, two thousand and sixteen S. 337 IN THE SENATE OF THE UNITED STATES AN ACT To improve the Freedom of Information Act. 1. Short title This Act may be cited as the FOIA Improvement Act of 2016. 2. Amendments to FOIA Section 552 of title 5, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (2)—

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

(ii) by striking subparagraph (D) and inserting the following: “(D) copies of all records, regardless of form or format—

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

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

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

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

(B) in paragraph (4)(A), by striking clause (viii) and inserting the following: “(viii) (I) Except as provided in subclause (II), an agency shall not assess any search fees (or in the case of a requester described under clause (ii)(II) of this subparagraph, duplication fees) under this subparagraph if the agency has failed to comply with any time limit under paragraph (6). (II) (aa) If an agency has determined that unusual circumstances apply (as the term is defined in paragraph (6)(B)) and the agency provided a timely written notice to the requester in accordance with paragraph (6)(B), a failure described in subclause (I) is excused for an additional 10 days. If the agency fails to comply with the extended time limit, the agency may not assess any search fees (or in the case of a requester described under clause (ii)(II) of this subparagraph, duplication fees). (bb) If an agency has determined that unusual circumstances apply and more than 5,000 pages are necessary to respond to the request, an agency may charge search fees (or in the case of a requester described under clause (ii)(II) of this subparagraph, duplication fees) if the agency has provided a timely written notice to the requester in accordance with paragraph (6)(B) and the agency has discussed with the requester via written mail, electronic mail, or telephone (or made not less than 3 good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with paragraph (6)(B)(ii). (cc) If a court has determined that exceptional circumstances exist (as that term is defined in paragraph (6)(C)), a failure described in subclause (I) shall be excused for the length of time provided by the court order.”;

(C) in paragraph (6)—

(i) in subparagraph (A)(i), by striking “making such request and all that follows through determination”; and inserting the following: “(I) such determination and the reasons therefor; (II) the right of such person to seek assistance from the FOIA Public Liaison of the agency; and (III) in the case of an adverse determination—

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

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

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

(D) by adding at the end the following: “(8)(A) An agency shall—

(i) withhold information under this section only if—

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

(II) disclosure is prohibited by law; and

(ii) (I) consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible; and

(II) take reasonable steps necessary to segregate and release nonexempt information; and

(B) Nothing in this paragraph requires disclosure of information that is otherwise prohibited from disclosure by law, or otherwise exempted from disclosure under subsection (b)(3).”;

(2) in subsection (b), by amending paragraph (5) to read as follows: “(5) inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in

litigation with the agency, provided that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested;; and(3)in subsection (e) —(A)in paragraph (1)—(i)in the matter preceding subparagraph (A), by inserting and to the Director of the Office of Government Information Services after United States;(ii)in subparagraph (N), by striking and at the end;(iii)in subparagraph (O), by striking the period at the end and inserting a semicolon; and (iv)by adding at the end the following:(P)the number of times the agency denied a request for records under subsection (c); and(Q)the number of records that were made available for public inspection in an electronic format under subsection (a)(2).;(B)by striking paragraph (3) and inserting the following:(3) Each agency shall make each such report available for public inspection in an electronic format. In addition, each agency shall make the raw statistical data used in each report available in a timely manner for public inspection in an electronic format, which shall be made available—(A)without charge, license, or registration requirement;(B)in an aggregated, searchable format; and(C)in a format that may be downloaded in bulk.:(C)in paragraph (4)—(i)by striking Government Reform and Oversight and inserting Oversight and Government Reform;(ii)by inserting Homeland Security and before Governmental Affairs; and(iii)by striking April and inserting March; and(D)by striking paragraph (6) and inserting the following:(6)(A)The Attorney General of the United States shall submit to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on the Judiciary of the Senate, and the President a report on or before March 1 of each calendar year, which shall include for the prior calendar year—(i)a listing of the number of cases arising under this section;(ii) a listing of—(I)each subsection, and any exemption, if applicable, involved in each case arising under this section;(II)the disposition of each case arising under this section; and(III)the cost, fees, and penalties assessed under subparagraphs (E), (F), and (G) of subsection (a)(4); and(iii)a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.(B)The Attorney General of the United States shall make—(i)each report submitted under subparagraph (A) available for public inspection in an electronic format; and(ii)the raw statistical data used in each report submitted under subparagraph (A) available for public inspection in an electronic format, which shall be made available—(I)without charge, license, or registration requirement;(II)in an aggregated, searchable format; and(III)in a format that may be downloaded in bulk.:(4)in subsection (g), in the matter preceding paragraph (1), by striking “publicly available upon request” and inserting “available for public inspection in an electronic format”;(5)in subsection (h)—(A)in paragraph (1), by adding at the end the following: “The head of the Office shall be the Director of the Office of Government Information Services.”;(B)in paragraph (2), by striking subparagraph (C) and inserting the following:(C)identify procedures and methods for improving compliance under this section.:(C)by striking paragraph (3) and inserting the following:(3)The Office of Government Information Services shall offer mediation services to resolve disputes between persons making requests under this section and administrative agencies as a nonexclusive alternative to litigation and may issue advisory opinions at the discretion of the Office or upon request of any party to a dispute.; and(D)by adding at the end the following:(4)(A)Not less frequently than annually, the Director of the Office of Government Information Services shall submit to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on the Judiciary of the Senate, and the President—(i)a report on the findings of the information reviewed and identified under paragraph (2);(ii)a summary of the activities of the Office of Government Information Services under paragraph (3), including—(I)any advisory opinions issued; and(II)the number of times each agency engaged in dispute resolution with the assistance of the Office of Government Information Services or the FOIA Public Liaison; and(iii)legislative and regulatory recommendations, if any, to improve the administration of this section.(B)The Director of the Office of Government Information Services shall make each report submitted under subparagraph (A) available for public inspection in an electronic format.(C)The Director of the Office of Government Information Services shall not be required to obtain the prior approval, comment, or review of any officer or agency of the United States, including the Department of Justice, the Archivist of the United States, or the

Office of Management and Budget before submitting to Congress, or any committee or subcommittee thereof, any reports, recommendations, testimony, or comments, if such submissions include a statement indicating that the views expressed therein are those of the Director and do not necessarily represent the views of the President.

(5) The Director of the Office of Government Information Services may directly submit additional information to Congress and the President as the Director determines to be appropriate.

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

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

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

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

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

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

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

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

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

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

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

(H) designate 1 or more FOIA Public Liaisons.

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

(A) agency regulations;

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

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

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

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

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

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

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

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

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

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

(D) The Chief FOIA Officer of each agency.

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

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

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

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

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

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

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

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

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

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

(B) Not less frequently than annually, the Council shall hold a meeting that shall be open to the public and permit interested persons to appear and present

oral and written statements to the Council.(C)Not later than 10 business days before a meeting of the Council, notice of such meeting shall be published in the Federal Register.(D)Except as provided in subsection (b), the records, reports, transcripts, minutes, appendices, working papers, drafts, studies, agenda, or other documents that were made available to or prepared for or by the Council shall be made publicly available.(E)Detailed minutes of each meeting of the Council shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the Council. The minutes shall be redacted as necessary and made publicly available.; and(7)by adding at the end the following:(m)(1)The Director of the Office of Management and Budget, in consultation with the Attorney General, shall ensure the operation of a consolidated online request portal that allows a member of the public to submit a request for records under subsection (a) to any agency from a single website. The portal may include any additional tools the Director of the Office of Management and Budget finds will improve the implementation of this section.(2)This subsection shall not be construed to alter the power of any other agency to create or maintain an independent online portal for the submission of a request for records under this section. The Director of the Office of Management and Budget shall establish standards for interoperability between the portal required under paragraph (1) and other request processing software used by agencies subject to this section..3.Review and issuance of regulations(a)In generalNot later than 180 days after the date of enactment of this Act, the head of each agency (as defined in section 551 of title 5, United States Code) shall review the regulations of such agency and shall issue regulations on procedures for the disclosure of records under section 552 of title 5, United States Code, in accordance with the amendments made by section 2.(b)RequirementsThe regulations of each agency shall include procedures for engaging in dispute resolution through the FOIA Public Liaison and the Office of Government Information Services.4.Proactive disclosure through records managementSection 3102 of title 44, United States Code, is amended—(1)by redesignating paragraphs (2) and (3) as paragraphs (3) and (4); and(2)by inserting after paragraph (1) the following:(2)procedures for identifying records of general interest or use to the public that are appropriate for public disclosure, and for posting such records in a publicly accessible electronic format;.5.No additional funds authorizedNo additional funds are authorized to carry out the requirements of this Act or the amendments made by this Act. The requirements of this Act and the amendments made by this Act shall be carried out using amounts otherwise authorized or appropriated.6.ApplicabilityThis Act, and the amendments made by this Act, shall take effect on the date of enactment of this Act and shall apply to any request for records under section 552 of title 5, United States Code, made after the date of enactment of this Act.Speaker of the House of RepresentativesVice President of the United States and President of the Senate