

113TH CONGRESS
1ST SESSION

H. R. 1211

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

MARCH 15, 2013

Mr. ISSA (for himself and Mr. CUMMINGS) 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 2013” 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”;

6 (ii) by striking subparagraph (E) and
7 inserting the following new subparagraphs:

8 “(E) copies of all records, regardless of form or
9 format, that have been released three or more times
10 under paragraph (3); and

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

13 (iii) in the matter preceding subpara-
14 graph (F) (as added by clause (ii) of this
15 subparagraph)—

16 (I) by striking “subparagraph
17 (D)” and inserting “subparagraphs
18 (D) and (E)”; and

19 (II) by striking “subparagraph
20 (E)” and inserting “subparagraph
21 (F)”; and

22 (B) in paragraph (7)—

23 (i) in subparagraph (A), by striking
24 “that will take longer than ten days to
25 process”; and

1 (ii) in subparagraph (B), by inserting
2 “automated” after “provides”;

3 (2) in subsection (g), by striking “make publicly
4 available upon request” and inserting “make avail-
5 able in an electronic, publicly accessible format”;

6 (3) in subsection (i), by striking “the implemen-
7 tation” and inserting “compliance with and imple-
8 mentation of the requirements”; and

9 (4) by adding at the end the following new sub-
10 section:

11 “(m) FOLA WEB SITE REQUIRED.—Not later than
12 one year after the date of enactment of this subsection,
13 the Office of Management and Budget shall ensure the
14 existence and operation of a single Web site, accessible by
15 the public at no cost to access, that allows the public to—

16 “(1) submit requests for records under sub-
17 section (a)(3); and

18 “(2) receive automated information about the
19 status of a request under subsection (a)(7).”.

20 (b) PRESUMPTION OF OPENNESS.—Section 552(b) of
21 title 5, United States Code, is amended in the matter pre-
22 ceding paragraph (1), by inserting “that would cause fore-
23 seeable harm and” after “matters”.

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

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) and legislative

1 and regulatory recommendations to improve the
2 administration of this section.

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

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

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

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

16 “(D) DIRECT SUBMISSION OF REPORT.—
17 Any report submitted under paragraph (A)
18 shall be submitted directly to the committees
19 and the President, without any requirement
20 that any officer or employee outside of the Of-
21 fice of Government Information Services, in-
22 cluding the Archivist of the United States and
23 the Director of the Office of Management and
24 Budget, review such report.

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

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

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

14 (1) in clause (i), by striking “such determina-
15 tion and the reasons therefor, and of the right of
16 such person to appeal to the head of the agency any
17 adverse determination; and” and inserting the fol-
18 lowing new subclauses:

19 “(I) such determination and the reasons
20 therefor;

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

24 “(III) the right of such person to appeal to
25 the head of the agency any adverse determina-

1 tion, not later than 90 days after the receipt of
2 such adverse determination; and”;

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

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

12 “(8) DISCLOSURE OF INFORMATION FOR IN-
13 CREASED PUBLIC UNDERSTANDING OF THE GOVERN-
14 MENT.—Each agency shall—

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

21 “(B) for records determined to be in the
22 public interest under subparagraph (A), reason-
23 ably segregate and redact any information ex-
24 empted from disclosure under subsection (b);
25 and

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

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

7 “(A) make information public to the great-
8 est extent possible through modern technology
9 to—

10 “(i) inform the public of the oper-
11 ations and activities of the Government;
12 and

13 “(ii) ensure timely disclosure of infor-
14 mation; and

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

21 (f) AGENCY FOIA REPORT.—Section 552(e) of title
22 5, United States Code, is amended—

23 (1) in paragraph (1)—

24 (A) by inserting “and to the Director of
25 the Office of Government Information Services”

1 after “the Attorney General of the United
2 States”;

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

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

7 (D) by adding at the end the following new
8 subparagraphs:

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

11 “(Q) the number of times the agency engaged
12 in dispute resolution with the assistance of the Of-
13 fice of Government Information Services or the
14 FOIA Public Liaison; and

15 “(R) the number of records that were made
16 available in an electronic, publicly accessible format
17 under subsection (a)(2).”;

18 (2) by amending paragraph (3) to read as fol-
19 lows:

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

1 manner in an electronic, publicly accessible format.

2 Such data shall be—

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

5 “(B) capable of being searched and aggre-
6 gated; and

7 “(C) permitted to be downloaded and
8 downloaded in bulk.”;

9 (3) in paragraph (4)—

10 (A) by striking “Committee on Govern-
11 ment Reform and Oversight” and inserting
12 “Committee on Oversight and Government Re-
13 form”;

14 (B) by striking “Governmental Affairs”
15 and inserting “Homeland Security and Govern-
16 mental Affairs”; and

17 (C) by striking “April 1” and inserting
18 “March 1”;

19 (4) in paragraph (5)—

20 (A) by inserting “and the Director of the
21 Office of Government Information Services”
22 after “the Director of the Office of Manage-
23 ment and Budget”; and

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

1 (5) by amending paragraph (6) to read as fol-
2 lows:

3 “(6) ATTORNEY GENERAL FOIA REPORT.—

4 “(A) IN GENERAL.—The Attorney General
5 of the United States shall submit to Congress
6 and the President an annual report on or before
7 March 1 of each calendar year which shall in-
8 clude for the prior calendar year—

9 “(i) a listing of the number of cases
10 arising under this section;

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

18 “(iii) a description of the efforts un-
19 dertaken by the Department of Justice to
20 encourage agency compliance with this sec-
21 tion.

22 “(B) ELECTRONIC AVAILABILITY.—The
23 Attorney General of the United States—

1 “(i) shall make each report described
2 under subparagraph (A) available in an
3 electronic, publicly accessible format; and

4 “(ii) shall make the raw statistical
5 data used in each report available in an
6 electronic, publicly accessible format, which
7 shall be—

8 “(I) made available without
9 charge, license, or registration re-
10 quirement;

11 “(II) capable of being searched
12 and aggregated; and

13 “(III) permitted to be
14 downloaded, including downloaded in
15 bulk.”.

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

19 “(i) GOVERNMENT ACCOUNTABILITY OFFICE.—The
20 Government Accountability Office shall—

21 “(1) conduct audits of administrative agencies
22 on the implementation of this section and issue re-
23 ports detailing the results of such audits; and

1 “(2) catalog the number of exemptions under
2 subsection (b)(3) and agency use of such exemp-
3 tions.”.

4 (h) CHIEF FOIA OFFICER RESPONSIBILITIES;
5 COUNCIL; REVIEW.—Section 552 of title 5, United States
6 Code is amended—

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

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

10 “(j) CHIEF FOIA OFFICER.—

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

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

18 “(A) have agency-wide responsibility for ef-
19 ficient and appropriate compliance with this
20 section;

21 “(B) monitor implementation of this sec-
22 tion throughout the agency and keep the head
23 of the agency, the chief legal officer of the
24 agency, and the Attorney General appropriately

1 informed of the agency’s performance in imple-
2 menting this section;

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

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

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

21 “(F) 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 (i) REGULATIONS.—

22 (1) REVISION OF REGULATIONS.—Not later
23 than 180 days after the date of the enactment of
24 this Act, the head of each agency shall review the
25 regulations of such agency and shall issue regula-

1 tions on procedures for the disclosure of records
2 under section 552 of title 5, United States Code, in
3 accordance with the amendments made by this sec-
4 tion. The regulations of each agency shall include—

5 (A) procedures for engaging in dispute res-
6 olution; and

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

9 (2) OFFICE OF GOVERNMENT INFORMATION
10 SERVICES REPORT.—Not later than 270 days after
11 the date of the enactment of this Act, the Office of
12 Government Information Services shall submit to
13 Congress a report on agency compliance with the re-
14 quirements of this subsection.

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

20 (4) INSPECTOR GENERAL REVIEW FOR NON-
21 COMPLIANCE.—Any agency that fails to comply with
22 the requirements of this subsection shall be reviewed
23 by the Office of Inspector General of such agency
24 for compliance with section 552 of title 5, United
25 States Code.

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

4 **SEC. 3. PILOT PROGRAM.**

5 (a) ESTABLISHMENT.—The Director of the Office of
6 Management and Budget shall establish a pilot program
7 for 3 years to review the benefits of FOIAonline to process
8 requests and release information under section 552 of title
9 5, United States Code (commonly known as the Freedom
10 of Information Act).

11 (b) PLAN REQUIRED.—Not later than 90 days after
12 the date of the enactment of this Act, the Director of the
13 Office of Management and Budget shall establish a plan
14 to evaluate FOIAonline at no less than 3 agencies that
15 have not previously participated in FOIAonline, including
16 at least one of the following:

17 (1) An agency that receives more than 50,000
18 requests annually for information under section 552
19 of title 5, United States Code.

20 (2) An agency that receives between 25,000 and
21 50,000 requests annually for information under such
22 section.

23 (3) An agency that receives 25,000 or fewer re-
24 quests annually for information under such section.

1 (c) AGENCY USE OF WEB SITE.—Each agency se-
2 lected under subsection (b) shall use FOIAonline to—

3 (1) receive requests under section 552 of title 5,
4 United States Code;

5 (2) process requests received under such sec-
6 tion;

7 (3) track the status of requests submitted
8 under such section; and

9 (4) make records released available publicly on
10 FOIAonline.

11 (d) REVIEW REQUIRED.—The Director of the Office
12 of Management and Budget shall, in consultation with the
13 Attorney General, the Office of Government Information
14 Services, and the head of each agency participating in the
15 pilot program, review the benefits of FOIAonline, includ-
16 ing—

17 (1) any cost saving, resource saving, or effi-
18 ciency gained through the use of FOIAonline;

19 (2) any change in the amount of requests re-
20 ceived under section 552 of title 5, United States
21 Code;

22 (3) any increase in transparency and accessi-
23 bility to Government information; and

24 (4) any changes in the ability to access and
25 compile information needed for agency annual re-

1 ports required under section 552 of title 5, United
2 States Code.

3 (e) REPORT REQUIRED.—Not later than 3 months
4 after the completion of the pilot program, the head of each
5 agency participating in the program shall submit to Con-
6 gress a report on the impact of the pilot program on agen-
7 cy processes under section 552 of title 5, United States
8 Code, whether the agency will continue to participate in
9 FOIAonline, and any recommendations the head of the
10 agency considers appropriate to continue the use of
11 FOIAonline.

12 (f) DEFINITIONS.—In this section:

13 (1) AGENCY.—The term “agency” has the
14 meaning given such term in section 552(f) of title 5,
15 United States Code.

16 (2) FOIAONLINE.—The term “FOIAonline”
17 means the electronic online portal
18 FOIAonline.regulations.gov.

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