

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—114th Cong., 2d Sess.

S. 337

To improve the Freedom of Information Act.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by _____

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “FOIA Improvement
5 Act of 2016”.

6 **SEC. 2. AMENDMENTS TO FOIA.**

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

9 (1) in subsection (a)—

10 (A) in paragraph (2)—

11 (i) in the matter preceding subpara-
12 graph (A), by striking “for public inspec-

1 tion and copying” and inserting “for public
2 inspection in an electronic format”;

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

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

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

9 “(ii)(I) that because of the nature of their
10 subject matter, the agency determines have be-
11 come or are likely to become the subject of sub-
12 sequent requests for substantially the same
13 records; or

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

16 (iii) in the undesignated matter fol-
17 lowing subparagraph (E), by striking
18 “public inspection and copying current”
19 and inserting “public inspection in an elec-
20 tronic format current”;

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

23 “(viii)(I) Except as provided in subclause
24 (II), an agency shall not assess any search fees
25 (or in the case of a requester described under

1 clause (ii)(II) of this subparagraph, duplication
2 fees) under this subparagraph if the agency has
3 failed to comply with any time limit under para-
4 graph (6).

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

16 “(bb) If an agency has determined that
17 unusual circumstances apply and more than
18 5,000 pages are necessary to respond to the re-
19 quest, an agency may charge search fees (or in
20 the case of a requester described under clause
21 (ii)(II) of this subparagraph, duplication fees) if
22 the agency has provided a timely written notice
23 to the requester in accordance with paragraph
24 (6)(B) and the agency has discussed with the
25 requester via written mail, electronic mail, or

1 telephone (or made not less than 3 good-faith
2 attempts to do so) how the requester could ef-
3 fectively limit the scope of the request in ac-
4 cordance with paragraph (6)(B)(ii).

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

10 (C) in paragraph (6)—

11 (i) in subparagraph (A)(i), by striking
12 “making such request” and all that follows
13 through “determination; and” and insert-
14 ing the following: “making such request
15 of—

16 “(I) such determination and the rea-
17 sons therefor;

18 “(II) the right of such person to seek
19 assistance from the FOIA Public Liaison
20 of the agency; and

21 “(III) in the case of an adverse deter-
22 mination—

23 “(aa) the right of such person to
24 appeal to the head of the agency,
25 within a period determined by the

1 head of the agency that is not less
2 than 90 days after the date of such
3 adverse determination; and

4 “(bb) the right of such person to
5 seek dispute resolution services from
6 the FOIA Public Liaison of the agen-
7 cy or the Office of Government Infor-
8 mation Services; and”; and

9 (ii) in subparagraph (B)(ii), by strik-
10 ing “the agency.” and inserting “the agen-
11 cy, and notify the requester of the right of
12 the requester to seek dispute resolution
13 services from the Office of Government In-
14 formation Services.”; and

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

16 “(8)(A) An agency shall—

17 “(i) withhold information under this section
18 only if—

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

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

23 “(ii)(I) consider whether partial disclosure of
24 information is possible whenever the agency deter-

1 mines that a full disclosure of a requested record is
2 not possible; and

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

5 “(B) Nothing in this paragraph requires disclosure
6 of information that is otherwise prohibited from disclosure
7 by law, or otherwise exempted from disclosure under sub-
8 section (b)(3).”;

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

11 “(5) inter-agency or intra-agency memoran-
12 dums or letters that would not be available by law
13 to a party other than an agency in litigation with
14 the agency, provided that the deliberative process
15 privilege shall not apply to records created 25 years
16 or more before the date on which the records were
17 requested;”;

18 (3) in subsection (e)—

19 (A) in paragraph (1)—

20 (i) in the matter preceding subpara-
21 graph (A), by inserting “and to the Direc-
22 tor of the Office of Government Informa-
23 tion Services” after “United States”;

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

1 (iii) in subparagraph (O), by striking
2 the period at the end and inserting a semi-
3 colon; and

4 (iv) by adding at the end the fol-
5 lowing:

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

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

11 (B) by striking paragraph (3) and insert-
12 ing the following:

13 “(3) Each agency shall make each such report avail-
14 able for public inspection in an electronic format. In addi-
15 tion, each agency shall make the raw statistical data used
16 in each report available in a timely manner for public in-
17 spection in an electronic format, which shall be made
18 available—

19 “(A) without charge, license, or registration re-
20 quirement;

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

22 “(C) in a format that may be downloaded in
23 bulk.”;

24 (C) in paragraph (4)—

1 (i) by striking “Government Reform
2 and Oversight” and inserting “Oversight
3 and Government Reform”;

4 (ii) by inserting “Homeland Security
5 and” before “Governmental Affairs”; and

6 (iii) by striking “April” and inserting
7 “March”; and

8 (D) by striking paragraph (6) and insert-
9 ing the following:

10 “(6)(A) The Attorney General of the United States
11 shall submit to the Committee on Oversight and Govern-
12 ment Reform of the House of Representatives, the Com-
13 mittee on the Judiciary of the Senate, and the President
14 a report on or before March 1 of each calendar year, which
15 shall include for the prior calendar year—

16 “(i) a listing of the number of cases arising
17 under this section;

18 “(ii) a listing of—

19 “(I) each subsection, and any exemption, if
20 applicable, involved in each case arising under
21 this section;

22 “(II) the disposition of each case arising
23 under this section; and

1 “(III) the cost, fees, and penalties assessed
2 under subparagraphs (E), (F), and (G) of sub-
3 section (a)(4); and

4 “(iii) a description of the efforts undertaken by
5 the Department of Justice to encourage agency com-
6 pliance with this section.

7 “(B) The Attorney General of the United States shall
8 make—

9 “(i) each report submitted under subparagraph
10 (A) available for public inspection in an electronic
11 format; and

12 “(ii) the raw statistical data used in each report
13 submitted under subparagraph (A) available for pub-
14 lic inspection in an electronic format, which shall be
15 made available—

16 “(I) without charge, license, or registration
17 requirement;

18 “(II) in an aggregated, searchable format;
19 and

20 “(III) in a format that may be downloaded
21 in bulk.”;

22 (4) in subsection (g), in the matter preceding
23 paragraph (1), by striking “publicly available upon
24 request” and inserting “available for public inspec-
25 tion in an electronic format”;

1 (5) in subsection (h)—

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

6 (B) in paragraph (2), by striking subpara-
7 graph (C) and inserting the following:

8 “(C) identify procedures and methods for im-
9 proving compliance under this section.”;

10 (C) by striking paragraph (3) and insert-
11 ing the following:

12 “(3) The Office of Government Information Services
13 shall offer mediation services to resolve disputes between
14 persons making requests under this section and adminis-
15 trative agencies as a nonexclusive alternative to litigation
16 and may issue advisory opinions at the discretion of the
17 Office or upon request of any party to a dispute.”; and

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

19 “(4)(A) Not less frequently than annually, the Direc-
20 tor of the Office of Government Information Services shall
21 submit to the Committee on Oversight and Government
22 Reform of the House of Representatives, the Committee
23 on the Judiciary of the Senate, and the President—

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

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

4 “(I) any advisory opinions issued; and

5 “(II) the number of times each agency en-
6 gaged in dispute resolution with the assistance
7 of the Office of Government Information Serv-
8 ices or the FOIA Public Liaison; and

9 “(iii) legislative and regulatory recommenda-
10 tions, if any, to improve the administration of this
11 section.

12 “(B) The Director of the Office of Government Infor-
13 mation Services shall make each report submitted under
14 subparagraph (A) available for public inspection in an
15 electronic format.

16 “(C) The Director of the Office of Government Infor-
17 mation Services shall not be required to obtain the prior
18 approval, comment, or review of any officer or agency of
19 the United States, including the Department of Justice,
20 the Archivist of the United States, or the Office of Man-
21 agement and Budget before submitting to Congress, or
22 any committee or subcommittee thereof, any reports, rec-
23 ommendations, testimony, or comments, if such submis-
24 sions include a statement indicating that the views ex-

1 pressed therein are those of the Director and do not nec-
2 essarily represent the views of the President.

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

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

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

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

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

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

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

1 “(C) recommend to the head of the agency such
2 adjustments to agency practices, policies, personnel,
3 and funding as may be necessary to improve its im-
4 plementation of this section;

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

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

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

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

23 “(H) designate 1 or more FOIA Public Liai-
24 sons.

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

6 “(A) agency regulations;

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

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

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

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

15 “(F) dispute resolution services with the assist-
16 ance of the Office of Government Information Serv-
17 ices or the FOIA Public Liaison.

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

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

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

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

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

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

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

8 “(3) The Director of the Office of Information Policy
9 at the Department of Justice and the Director of the Of-
10 fice of Government Information Services shall be the Co-
11 Chairs of the Council.

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

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

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

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

21 “(iii) Identify, develop, and coordinate initia-
22 tives to increase transparency and compliance with
23 this section.

1 “(iv) Promote the development and use of com-
2 mon performance measures for agency compliance
3 with this section.

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

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

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

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

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

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

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

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

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

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

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

9 (b) REQUIREMENTS.—The regulations of each agency
10 shall include procedures for engaging in dispute resolution
11 through the FOIA Public Liaison and the Office of Gov-
12 ernment Information Services.

13 **SEC. 4. PROACTIVE DISCLOSURE THROUGH RECORDS MAN-**
14 **AGEMENT.**

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

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

19 (2) by inserting after paragraph (1) the fol-
20 lowing:

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

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

2 No additional funds are authorized to carry out the
3 requirements of this Act or the amendments made by this
4 Act. The requirements of this Act and the amendments
5 made by this Act shall be carried out using amounts other-
6 wise authorized or appropriated.

7 **SEC. 6. APPLICABILITY.**

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