

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—113th Cong., 2d Sess.

S. 2520

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 IN THE NATURE OF A SUBSTITUTE intended
to be proposed by Mr. LEAHY (for himself and Mr. CORNYN)

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 2014”.

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 not less
15 than 3 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 (II),
24 an agency shall not assess any search fees (or in the
25 case of a requester described under clause (ii)(II) of

1 this subparagraph, duplication fees) under this sub-
2 paragraph if the agency has failed to comply with
3 any time limit under paragraph (6).

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

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

1 limit the scope of the request in accordance with
2 paragraph (6)(B)(ii).

3 “(cc) If a court has determined that exceptional
4 circumstances exist (as that term is defined in para-
5 graph (6)(C)), a failure described in subclause (I)
6 shall be excused for the length of time provided by
7 the court order.”;

8 (C) in paragraph (6)—

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

14 “(I) such determination and the rea-
15 sons therefor;

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

19 “(III) in the case of an adverse deter-
20 mination—

21 “(aa) the right of such person to
22 appeal to the head of the agency,
23 within a period determined by the
24 head of the agency that is not less

1 than 90 days after the date of such
2 adverse determination; and

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

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

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

15 “(8)(A) An agency—

16 “(i) shall—

17 “(I) withhold information under this sec-
18 tion only if—

19 “(aa) the agency reasonably foresees
20 that disclosure would harm an interest pro-
21 tected by an exemption described in sub-
22 section (b) or other provision of law; or

23 “(bb) disclosure is prohibited by law;
24 and

1 “(II)(aa) consider whether partial disclo-
2 sure of information is possible whenever the
3 agency determines that a full disclosure of a re-
4 quested record is not possible; and

5 “(bb) take reasonable steps necessary to
6 segregate and release nonexempt information;
7 and

8 “(ii) may not—

9 “(I) withhold information requested under
10 this section merely because the agency can dem-
11 onstrate, as a technical matter, that the records
12 fall within the scope of an exemption described
13 in subsection (b); or

14 “(II) withhold information requested under
15 this section merely because disclosure of the in-
16 formation may be embarrassing to the agency
17 or because of speculative or abstract concerns.

18 “(B) Nothing in this paragraph requires disclosure
19 of information that is otherwise prohibited from disclosure
20 by law, or otherwise exempted from disclosure under sub-
21 section (b)(3).”;

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

24 “(5) inter-agency or intra-agency memoran-
25 dums or letters that would not be available by law

1 to a party other than an agency in litigation with
2 the agency, if the requested record or information
3 was created less than 25 years before the date on
4 which the request was made;”;

5 (3) in subsection (e)

6 (A) in paragraph (1)—

7 (i) in the matter preceding subpara-
8 graph (A), by inserting “and to the Direc-
9 tor of the Office of Government Informa-
10 tion Services” after “United States”;

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

13 (iii) in subparagraph (O), by striking
14 the period at the end and inserting a semi-
15 colon; and

16 (iv) by adding at the end the fol-
17 lowing:

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

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

23 (B) by striking paragraph (3) and insert-
24 ing the following:

1 “(3) Each agency shall make each such report avail-
2 able for public inspection in an electronic format. In addi-
3 tion, each agency shall make the raw statistical data used
4 in each report available in a timely manner for public in-
5 spection in an electronic format, which shall be made
6 available—

7 “(A) without charge, license, or registration re-
8 quirement;

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

10 “(C) in a format that may be downloaded in
11 bulk.”;

12 (C) in paragraph (4)—

13 (i) by striking “Government Reform
14 and Oversight” and inserting “Oversight
15 and Government Reform”;

16 (ii) by inserting “Homeland Security
17 and” before “Governmental Affairs”; and

18 (iii) by striking “April” and inserting
19 “March”; and

20 (D) by striking paragraph (6) and insert-
21 ing the following:

22 “(6)(A) The Attorney General of the United States
23 shall submit to the Committee on Oversight and Govern-
24 ment Reform of the House of Representatives, the Com-
25 mittee on Judiciary of the Senate, and the President a

1 report on or before March 1 of each calendar year, which
2 shall include for the prior calendar year—

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

5 “(ii) a listing of—

6 “(I) each subsection, and any exemption, if
7 applicable, involved in each case arising under
8 this section;

9 “(II) the disposition of each case arising
10 under this section; and

11 “(III) the cost, fees, and penalties assessed
12 under subparagraphs (E), (F), and (G) of sub-
13 section (a)(4); and

14 “(iii) a description of the efforts undertaken by
15 the Department of Justice to encourage agency com-
16 pliance with this section.

17 “(B) The Attorney General of the United States shall
18 make—

19 “(i) each report submitted under subparagraph
20 (A) available for public inspection in an electronic
21 format; and

22 “(ii) the raw statistical data used in each report
23 submitted under subparagraph (A) available for pub-
24 lic inspection in an electronic format, which shall be
25 made available—

1 “(I) without charge, license, or registration
2 requirement;

3 “(II) in an aggregated, searchable format;
4 and

5 “(III) in a format that may be downloaded
6 in bulk.”;

7 (4) in subsection (g), in the matter preceding
8 paragraph (1), by striking “publicly available upon
9 request” and inserting “available for public inspec-
10 tion in an electronic format”;

11 (5) in subsection (h)—

12 (A) in paragraph (1), by adding at the end
13 the following: “The head of the Office shall be
14 the Director of the Office of Government Infor-
15 mation Services.”;

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

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

20 (C) by striking paragraph (3) and insert-
21 ing the following:

22 “(3) The Office of Government Information Services
23 shall offer mediation services to resolve disputes between
24 persons making requests under this section and adminis-
25 trative agencies as a non-exclusive alternative to litigation

1 and may issue advisory opinions at the discretion of the
2 Office or upon request of any party to a dispute.”; and

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

4 “(4)(A) Not less frequently than annually, the Direc-
5 tor of the Office of Government Information Services shall
6 submit to the Committee on Oversight and Government
7 Reform of the House of Representatives, the Committee
8 on the Judiciary of the Senate, and the President—

9 (i) a report on the findings of the information
10 reviewed and identified under paragraph (2);

11 (ii) a summary of the activities of the Office
12 of Government Information Services under para-
13 graph (3), including—

14 (I) any advisory opinions issued; and

15 (II) the number of times each agency en-
16 gaged in dispute resolution with the assistance
17 of the Office of Government Information Serv-
18 ices or the FOIA Public Liaison; and

19 (iii) legislative and regulatory recommenda-
20 tions, if any, to improve the administration of this
21 section.

22 (B) The Director of the Office of Government Infor-
23 mation Services shall make each report submitted under
24 subparagraph (A) available for public inspection in an
25 electronic format.

1 “(C) The Director of the Office of Government Infor-
2 mation Services shall not be required to obtain the prior
3 approval, comment, or review of any officer or agency of
4 the United States, including the Department of Justice,
5 the Archivist of the United States, or the Office of Man-
6 agement and Budget before submitting to Congress, or
7 any committee or subcommittee thereof, any reports, rec-
8 ommendations, testimony, or comments, if such submis-
9 sions include a statement indicating that the views ex-
10 pressed therein are those of the Director and do not nec-
11 essarily represent the views of the President.

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

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

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

23 “(i) The Government Accountability Office shall—

24 “(1) not later than 1 year after the date of en-
25 actment of the FOIA Improvement Act of 2014 and

1 every 2 years thereafter, conduct audits of 3 or more
2 administrative agencies on compliance with and im-
3 plementation of the requirements of this section and
4 issue reports detailing the results of such audits;

5 “(2) not later than 1 year after the date of en-
6 actment of the FOIA Improvement Act of 2014 and
7 every 2 years thereafter, issue a report cataloging
8 the number of exemptions described in paragraphs
9 (3) and (5) of subsection (b) and the use of such ex-
10 emptions by each agency;

11 “(3) not later than 1 year after the date of en-
12 actment of the FOIA Improvement Act of 2014,
13 conduct a study on the methods Federal agencies
14 use to reduce the backlog of requests under this sec-
15 tion and issue a report on the effectiveness of those
16 methods; and

17 “(4) submit copies of all reports and audits de-
18 scribed in this subsection to the Committee on Over-
19 sight and Government Reform of the House of Rep-
20 resentatives and the Committee on the Judiciary of
21 the Senate.

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

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

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

5 “(B) monitor implementation of this section
6 throughout the agency and keep the head of the
7 agency, the chief legal officer of the agency, and the
8 Attorney General appropriately informed of the
9 agency’s performance in implementing this section;

10 “(C) recommend to the head of the agency such
11 adjustments to agency practices, policies, personnel,
12 and funding as may be necessary to improve its im-
13 plementation of this section;

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

19 “(E) facilitate public understanding of the pur-
20 poses of the statutory exemptions of this section by
21 including concise descriptions of the exemptions in
22 both the agency’s handbook issued under subsection
23 (g), and the agency’s annual report on this section,
24 and by providing an overview, where appropriate, of

1 certain general categories of agency records to which
2 those exemptions apply;

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

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

8 “(H) designate 1 or more FOIA Public Liai-
9 sons.

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

15 “(A) agency regulations;

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

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

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

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

1 “(F) dispute resolution services with the assist-
2 ance of the Office of Government Information Serv-
3 ices or the FOIA Public Liaison.

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

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

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

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

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

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

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

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

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

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

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

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

6 “(iii) Identify, develop, and coordinate initia-
7 tives to increase transparency and compliance with
8 this section.

9 “(iv) Promote the development and use of com-
10 mon performance measures for agency compliance
11 with this section.

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

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

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

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

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

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

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

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

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

3 (2) by inserting after paragraph (1) the fol-
4 lowing:

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

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

10 No additional funds are authorized to carry out the
11 requirements of this Act or the amendments made by this
12 Act. The requirements of this Act and the amendments
13 made by this Act shall be carried out using amounts other-
14 wise authorized or appropriated.