

Union Calendar No. 21

110TH CONGRESS
1ST SESSION

H. R. 1309

[Report No. 110-45]

To promote openness in Government by strengthening section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act), and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 5, 2007

Mr. CLAY (for himself, Mr. PLATTS, and Mr. WAXMAN) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

MARCH 12, 2007

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Insert the part printed in italic]

A BILL

To promote openness in Government by strengthening section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act), 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,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Freedom of Information Act Amendments of 2007”.

4 (b) TABLE OF CONTENTS.—The table of contents for
5 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Protection of fee status for news media.
- Sec. 4. Recovery of attorney fees and litigation costs.
- Sec. 5. Disciplinary actions for arbitrary and capricious rejections of requests.
- Sec. 6. Time limits for agencies to act on requests.
- Sec. 7. Individualized tracking numbers for requests and status information.
- Sec. 8. Specific citations in exemptions.
- Sec. 9. Reporting requirements.
- Sec. 10. Openness of agency records maintained by a private entity.
- Sec. 11. Office of Government Information Services.
- Sec. 12. Accessibility of critical infrastructure information.
- Sec. 13. Report on personnel policies related to FOIA.
- Sec. 14. Promotion of public disclosure.
- Sec. 15. *Requirement to describe exemptions authorizing deletions of material provided under FOIA.*

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) the Freedom of Information Act was signed
9 into law on July 4, 1966, because the American peo-
10 ple believe that—

11 (A) our constitutional democracy, our sys-
12 tem of self-government, and our commitment to
13 popular sovereignty depends upon the consent
14 of the governed;

15 (B) such consent is not meaningful unless
16 it is informed consent; and

17 (C) as Justice Black noted in his concur-
18 ring opinion in *Barr v. Matteo* (360 U.S. 564

1 (1959)), “The effective functioning of a free
2 government like ours depends largely on the
3 force of an informed public opinion. This calls
4 for the widest possible understanding of the
5 quality of government service rendered by all
6 elective or appointed public officials or employ-
7 ees.”;

8 (2) the American people firmly believe that our
9 system of government must itself be governed by a
10 presumption of openness;

11 (3) the Freedom of Information Act establishes
12 a “strong presumption in favor of disclosure” as
13 noted by the United States Supreme Court in
14 *United States Department of State v. Ray* (502 U.S.
15 164 (1991)), a presumption that applies to all agen-
16 cies governed by that Act;

17 (4) “disclosure, not secrecy, is the dominant ob-
18 jective of the Act,” as noted by the United States
19 Supreme Court in *Department of Air Force v. Rose*
20 (425 U.S. 352 (1976));

21 (5) in practice, the Freedom of Information Act
22 has not always lived up to the ideals of that Act; and

23 (6) Congress should regularly review section
24 552 of title 5, United States Code (commonly re-
25 ferred to as the Freedom of Information Act), in

1 order to determine whether further changes and im-
2 provements are necessary to ensure that the Govern-
3 ment remains open and accessible to the American
4 people and is always based not upon the “need to
5 know” but upon the fundamental “right to know”.

6 **SEC. 3. PROTECTION OF FEE STATUS FOR NEWS MEDIA.**

7 Section 552(a)(4)(A)(ii) of title 5, United States
8 Code, is amended by adding at the end the following:

9 “In making a determination of a representative of the
10 news media under subclause (II), an agency may not deny
11 that status solely on the basis of the absence of institu-
12 tional associations of the requester, but shall consider the
13 prior publication history of the requester. Prior publica-
14 tion history shall include books, magazine and newspaper
15 articles, newsletters, television and radio broadcasts, and
16 Internet publications. If the requestor has no prior publi-
17 cation history or current affiliation, the agency shall con-
18 sider the requestor’s stated intent at the time the request
19 is made to distribute information to a reasonably broad
20 audience.”.

21 **SEC. 4. RECOVERY OF ATTORNEY FEES AND LITIGATION**
22 **COSTS.**

23 Section 552(a)(4)(E) of title 5, United State Code,
24 is amended by adding at the end the following: “For pur-
25 poses of this section only, a complainant has substantially

1 prevailed if the complainant has obtained relief through
2 either—

3 “(i) a judicial order, administrative action, or
4 an enforceable written agreement or consent decree;
5 or

6 “(ii) a voluntary or unilateral change in posi-
7 tion by the opposing party, in a case in which the
8 complainant’s claim or defense was not frivolous.”.

9 **SEC. 5. DISCIPLINARY ACTIONS FOR ARBITRARY AND CA-**
10 **PRICIOUS REJECTIONS OF REQUESTS.**

11 Section 552(a)(4)(F) of title 5, United States Code,
12 is amended—

13 (1) by inserting “(i)” after “(F)”; and

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

15 “(ii) The Attorney General shall—

16 “(I) notify the Special Counsel of each civil ac-
17 tion described under the first sentence of clause (i);
18 and

19 “(II) annually submit a report to Congress on
20 the number of such civil actions in the preceding
21 year.

22 “(iii) The Special Counsel shall annually submit a re-
23 port to Congress on the actions taken by the Special Coun-
24 sel under clause (i).”.

1 **SEC. 6. TIME LIMITS FOR AGENCIES TO ACT ON REQUESTS.**

2 (a) TIME LIMITS.—

3 (1) IN GENERAL.—Section 552(a)(6)(A)(i) of
4 title 5, United States Code, is amended by striking
5 “determine within 20 days (excepting Saturdays,
6 Sundays, and legal public holidays) after the receipt
7 of any such request” and inserting “within the 20-
8 day period commencing on the date on which the re-
9 quest is first received by the agency (excepting Sat-
10 urdays, Sundays, and legal public holidays), which
11 shall not be tolled without the consent of the party
12 filing the request, determine”.

13 (2) EFFECTIVE DATE.—The amendment made
14 by this subsection shall take effect 1 year after the
15 date of enactment of this Act.

16 (b) APPLICABILITY OF AGENCY FEES.—

17 (1) LIMITATION.—Section 552(a)(4)(A) of title
18 5, United States Code, is amended by adding at the
19 end the following:

20 “(viii) An agency may not charge any fees under this
21 subparagraph if the agency fails to comply with any time
22 limit that applies under paragraph (6).”.

23 (2) EFFECTIVE DATE AND APPLICATION.—The
24 amendment made by this subsection shall take effect
25 1 year after the date of enactment of this Act and
26 shall apply to requests for information under section

1 552 of title 5, United States Code, filed on or after
2 that effective date.

3 **SEC. 7. INDIVIDUALIZED TRACKING NUMBERS FOR RE-**
4 **QUESTS AND STATUS INFORMATION.**

5 (a) IN GENERAL.—Section 552(a) of title 5, United
6 States Code, is amended by adding at the end the fol-
7 lowing:

8 “(7) Each agency shall—

9 “(A) establish a system to assign an individual-
10 ized tracking number for each request for informa-
11 tion under this section;

12 “(B) not later than 10 days after receiving a
13 request, provide each person making a request with
14 the tracking number assigned to the request; and

15 “(C) establish a telephone line or Internet serv-
16 ice that provides information about the status of a
17 request to the person making the request using the
18 assigned tracking number, including—

19 “(i) the date on which the agency origi-
20 nally received the request; and

21 “(ii) an estimated date on which the agen-
22 cy will complete action on the request.”.

23 (b) EFFECTIVE DATE AND APPLICATION.—The
24 amendment made by this section shall take effect 1 year
25 after the date of enactment of this Act and apply to re-

1 quests for information under section 552 of title 5, United
2 States Code, filed on or after that effective date.

3 **SEC. 8. SPECIFIC CITATIONS IN EXEMPTIONS.**

4 Section 552(b) of title 5, United States Code, is
5 amended by striking paragraph (3) and inserting the fol-
6 lowing:

7 “(3) specifically exempted from disclosure by
8 statute (other than section 552b of this title), pro-
9 vided that such statute—

10 “(A) if enacted after the date of enactment
11 of the Freedom of Information Act Amend-
12 ments of 2007, specifically cites to this section;
13 and

14 “(B)(i) requires that the matters be with-
15 held from the public in such a manner as to
16 leave no discretion on the issue; or

17 “(ii) establishes particular criteria for
18 withholding or refers to particular types of mat-
19 ters to be withheld;”.

20 **SEC. 9. REPORTING REQUIREMENTS.**

21 (a) ANNUAL REPORT REQUIREMENTS.—Section
22 552(e)(1) of title 5, United States Code, is amended—

23 (1) in the matter preceding subparagraph (A)
24 by striking “fiscal year and which” and inserting
25 “fiscal year. Information in the report shall be ex-

1 pressed in terms of each principal component of the
2 agency and for the agency overall, and”;

3 (2) in subparagraph (B)(ii), by inserting after
4 the first comma the following, “the number of occa-
5 sions on which each statute was relied upon,”;

6 (3) in subparagraph (C), by inserting after
7 “median” the following: “and average”;

8 (4) in subparagraph (E), by inserting before the
9 semicolon the following: “, based on the date on
10 which each request was initially received by the
11 agency”; and

12 (5) by redesignating subparagraphs (F) and
13 (G) as subparagraphs (N) and (O), respectively, and
14 inserting after subparagraph (E) the following new
15 subparagraphs:

16 “(F) the average number of days for the agency
17 to respond to requests beginning on the date on
18 which each request was initially received by the
19 agency, the median number of days for the agency
20 to respond to such requests, and the range in num-
21 ber of days for the agency to respond to such re-
22 quests;

23 “(G) based on the number of business days that
24 have elapsed since each request was initially received
25 by the agency—

1 “(i) the number of requests for records to
2 which the agency has responded with a deter-
3 mination within a period greater than 1 day
4 and less than 201 days, stated in 20-day incre-
5 ments;

6 “(ii) the number of requests for records to
7 which the agency has responded with a deter-
8 mination within a period greater than 200 days
9 and less than 301 days;

10 “(iii) the number of requests for records to
11 which the agency has responded with a deter-
12 mination within a period greater than 300 days
13 and less than 401 days; and

14 “(iv) the number of requests for records to
15 which the agency has responded with a deter-
16 mination within a period greater than 400 days;

17 “(H) the average number of days for the agen-
18 cy to provide the granted information beginning on
19 the date on which each request was initially received
20 by the agency, the median number of days for the
21 agency to provide the granted information, and the
22 range in number of days for the agency to provide
23 the granted information;

24 “(I) the median and average number of days
25 for the agency to respond with a determination to

1 administrative appeals based on the date on which
2 each appeal was initially received by the agency; the
3 highest number of business days taken by the agen-
4 cy to respond to an administrative appeal; and the
5 lowest number of business days taken by the agency
6 to respond to an administrative appeal;

7 “(J) data on the 10 active requests with the
8 earliest filing dates pending at the agency, including
9 the amount of time that has elapsed since each re-
10 quest was initially received by the agency;

11 “(K) data on the 10 active administrative ap-
12 peals with the earliest filing dates pending at the
13 agency as of September 30 of the preceding year, in-
14 cluding the number of business days that have
15 elapsed since each request was initially received by
16 the agency;

17 “(L) the number of expedited review requests
18 received by the agency, the number that were grant-
19 ed and the number that were denied, the average
20 and median number of days for adjudicating expe-
21 dited review requests, and the number of requests
22 that adjudicated within the required 10 days;

23 “(M) the number of fee waiver requests that
24 were granted and the number that were denied, and

1 the average and median number of days for adjudi-
2 cating fee waiver determinations;”.

3 (b) AVAILABILITY OF RAW STATISTICAL DATA.—

4 Section 552(e)(2) of title 5, United States Code, is amend-
5 ed by adding after the period the following: “In addition,
6 each agency shall make the raw statistical data used in
7 its reports available electronically to the public upon re-
8 quest.”.

9 **SEC. 10. OPENNESS OF AGENCY RECORDS MAINTAINED BY**

10 **A PRIVATE ENTITY.**

11 Section 552(f) of title 5, United States Code, is
12 amended by striking paragraph (2) and inserting the fol-
13 lowing:

14 “(2) ‘record’ and any other term used in this
15 section in reference to information includes—

16 “(A) any information that would be an
17 agency record subject to the requirements of
18 this section when maintained by an agency in
19 any format, including an electronic format; and

20 “(B) any information described under sub-
21 paragraph (A) that is maintained for an agency
22 by an entity under a contract between the agen-
23 cy and the entity.”.

1 **SEC. 11. OFFICE OF GOVERNMENT INFORMATION SERV-**
2 **ICES.**

3 (a) IN GENERAL.—Chapter 21 of title 44, United
4 States Code, is amended by inserting after section 2119
5 the following new section:

6 **“§ 2120. Office of Government Information Services**

7 “(a) IN GENERAL.—There is established in the Na-
8 tional Archives an office to be known as the ‘Office of Gov-
9 ernment Information Services’.

10 “(b) NATIONAL INFORMATION ADVOCATE.—

11 “(1) IN GENERAL.—The Office of Government
12 Information Services shall be under the supervision
13 and direction of an official to be known as the ‘Na-
14 tional Information Advocate’ who shall report di-
15 rectly to the Archivist of the United States.

16 “(2) FUNCTIONS OF OFFICE.—

17 “(A) GUIDANCE FOR REQUESTERS.—

18 “(i) IN GENERAL.—The Office of Gov-
19 ernment Information Services shall pro-
20 vide, as a non-exclusive alternative to liti-
21 gation, guidance to FOIA requesters.

22 “(ii) TYPES OF GUIDANCE.—In pro-
23 viding such guidance, the Office shall pro-
24 vide informal guidance to requesters and
25 may provide fact-finding reviews and opin-
26 ions to requesters. All reviews and opinions

1 shall be non-binding and shall be initiated
2 only on the request of FOIA requesters.

3 “(iii) AVAILABILITY.—Any written
4 opinion issued pursuant to this section
5 shall be available on the Internet in an in-
6 dexed, readily accessible format.

7 “(iv) FOIA REQUESTERS.—In this
8 paragraph, the term ‘FOIA requester’ or
9 ‘requester’ means a person who has made
10 a request under section 552 of this title
11 and who has been denied records or has
12 not received a timely response to the re-
13 quest or to an administrative appeal.

14 “(B) ANALYSES OF AGENCY OPER-
15 ATIONS.—The Office of Government Informa-
16 tion Services shall—

17 “(i) review policies and procedures of
18 administrative agencies under section 552
19 of this title and compliance with that sec-
20 tion by administrative agencies; and

21 “(ii) recommend policy changes to
22 Congress and the President to improve the
23 administration of section 552 of this title,
24 including whether agencies are receiving

1 and expending adequate funds to ensure
2 compliance with that section.

3 “(3) IMPACT ON REQUESTER ACCESS TO LITI-
4 GATION.—Nothing in this section shall affect the
5 right of requesters to seek judicial review as de-
6 scribed in section 552 of this title.”.

7 (b) TECHNICAL AND CONFORMING AMENDMENT.—
8 The table of sections for chapter 21 of title 44, United
9 States Code, is amended by inserting after the item relat-
10 ing to section 2119 the following:

 “2120. Office of Government Information Services.”.

11 **SEC. 12. ACCESSIBILITY OF CRITICAL INFRASTRUCTURE**
12 **INFORMATION.**

13 (a) IN GENERAL.—Not later than January 1 of each
14 of the 3 years following the date of the enactment of this
15 Act, the Comptroller General of the United States shall
16 submit to Congress a report on the implementation and
17 use of section 214 of the Homeland Security Act of 2002
18 (6 U.S.C. 133), including—

19 (1) the number of persons in the private sector,
20 and the number of State and local agencies, that vol-
21 untarily furnished records to the Department under
22 this section;

23 (2) the number of requests for access to records
24 granted or denied under this section;

1 (B) enhance the stature of officials admin-
2 istering that section within the executive
3 branch;

4 (2) whether performance of compliance with
5 section 552 of title 5, United States Code, should be
6 included as a factor in personnel performance eval-
7 uations for any or all categories of Federal employ-
8 ees and officers;

9 (3) whether an employment classification series
10 specific to compliance with sections 552 and 552a of
11 title 5, United States Code, should be established;

12 (4) whether the highest level officials in par-
13 ticular agencies administering such sections should
14 be paid at a rate of pay equal to or greater than a
15 particular minimum rate;

16 (5) whether other changes to personnel policies
17 can be made to ensure that there is a clear career
18 advancement track for individuals interested in de-
19 voting themselves to a career in compliance with
20 such sections; and

21 (6) whether the executive branch should require
22 any or all categories of Federal employees to under-
23 take awareness training of such sections.

1 **SEC. 14. PROMOTION OF PUBLIC DISCLOSURE.**

2 Section 552 of title 5, United States Code, is amend-
3 ed by adding at the end the following:

4 “(h)(1) The policy of the Federal Government is to
5 release information to the public in response to a request
6 under this section—

7 “(A) if such release is required by law; or

8 “(B) if such release is allowed by law and the
9 agency concerned does not reasonably foresee that
10 disclosure would be harmful to an interest protected
11 by an applicable exemption.

12 “(2) All guidance provided to Federal Government
13 employees responsible for carrying out this section shall
14 be consistent with the policy set forth in paragraph (1).”.

15 **SEC. 15. REQUIREMENT TO DESCRIBE EXEMPTIONS AU-**
16 **THORIZING DELETIONS OF MATERIAL PRO-**
17 **VIDED UNDER FOIA.**

18 *Section 552(b) of title 5, United States Code, is amend-*
19 *ed in the matter appearing after paragraph (9)—*

20 *(1) in the second sentence, by inserting after*
21 *“amount of information deleted” the following: “, and*
22 *the exemption under which the deletion is made,”;*
23 *and*

24 *(2) in the third sentence, by inserting after*
25 *“amount of the information deleted” the following: “,*

1 *and the exemption under which the deletion is*
2 *made,”.*

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