

FOIA IMPROVEMENT ACT OF 2014
(LEAHY-CORNYN)
SECTION-BY-SECTION ANALYSIS

Sec. 1. Short Title. FOIA Act of 2014.

Sec. 2. Amendments to FOIA.

- **Electronic Accessibility** - This section amends the existing requirements that certain records and reports be made available for public inspection to mandate that such records be made available in an electronic format in order to ease public access.
- **Frequently Requested Records** - The current law requires that Federal agencies post “frequently requested” records sought under FOIA. This section clarifies “frequently requested” documents to include any document that has been released under the FOIA and has been requested three times.
- **Fees Clarification** - This section clarifies that agencies may not charge search or duplications fees when the agency fails to meet the notice requirements and time limits set by existing law. Agencies have been prohibited from charging fees in these cases since passage of the OPEN Government Act of 2007, but an ambiguity in the language has permitted agencies to continue to charge fees in cases where agencies have not met the requirements of the law. These changes would remove that ambiguity.
- **Presumption of Openness** - This section codifies the presumption of openness the Obama Administration established for releasing government information under FOIA. The standard mandates that an agency may withhold information only if it reasonably foresees a specific identifiable harm to an interest protected by an exemption, or if disclosure is prohibited by law.
- **Exemption 5** - This section amends subsection (b)(5) of 5 U.S.C. §552—which exempts inter- and intra-agency documents that would be exempt from discovery in civil or criminal litigation—to include a public-interest balancing test. In the case of deliberative process privilege and attorney work-product privilege, the test would mandate disclosure when a public interest in disclosure outweighed the agency’s interest in protecting the records or information. In the case of attorney-client privilege, a *compelling* public interest would need to outweigh the agency’s interest in nondisclosure. Additionally, this section would sunset the application of Exemption 5 to documents created more than 25 years ago.
- **Office of Government Information Services Independence** - This section provides additional independence for the Office of Government Information Services (OGIS), created by the Open Government Act of 2007. It gives OGIS the ability to report directly to the Congress and the President and issue advisory opinions at its discretion at the completion of mediation.
- **Dispute Resolution Services** - This section requires agencies to notify requesters of the right to seek dispute resolution services from OGIS or the agency’s FOIA public liaison.

- **Government Accountability Office** - This section requires the GAO, in addition to its current responsibility of auditing agency compliance with the FOIA, to also catalog the statutory exemptions to FOIA that exist outside of 5 U.S.C. §552 (these external exemptions are incorporated into the FOIA through Exemption 3 (5 U.S.C. §552(b)(3)) and how those exemptions have been used by agencies.
- **Chief FOIA Officer Council** - This section will create a council to develop recommendations for increasing agency FOIA compliance and efficiency, disseminate information about agency best practices, and coordinate initiatives to increase transparency and open government. The Council is modeled after the currently existing Chief Information Officers Council.
- **FOIA Reports** - Requires agencies to include in their annual FOIA reports (a) the number of times documents have been exempted from disclosure as part of an ongoing criminal investigation under 5 U.S.C. §552(c); (b) the number of times the agency has engaged in dispute resolution with OGIS or the FOIA public liaison; and (c) the number of records the agency proactively discloses as required by 5 U.S.C. §552(a)(2).

Sec. 3. Revision and Issuance of Regulations. This section requires agencies to review and issue regulations on the procedures for disclosure of records under section 552 of Title 5, including procedures for dispute resolution and engaging with the Office of Government Information Services.

Sec. 4. Proactive Disclosure through Records Management. This section amends section 3102 of Title 44 of the United States Code to make proactive disclosure an ongoing part of agency record management by requiring the heads of agencies to include in an agency's records management system procedures for identifying records of general interest or use to the public that are appropriate for public disclosure, and for making such records publicly available in an electronic format.

Sec. 5. No Additional Funds Authorized. No additional funds are authorized to carry out the requirements of this Act and the amendments made by this Act. Such requirements shall be carried out using amounts otherwise authorized or appropriated.