## [DISCUSSION DRAFT]

March 11, 2013

113TH CONGRESS 1ST SESSION

H.R.

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

Mr.	Issa introduced	the following	bill; which	n was refe	erred to t	the Committee
	on	·				

# 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".

1	SEC. 2. FREEDOM OF INFORMATION ACT AMENDMENTS.
2	(a) Electronic Accessibility.—Section 552 of
3	title 5, United States Code is amended—
4	(1) in subsection (a)—
5	(A) in paragraph (2), by striking "for pub-
6	lic inspection and copying" and inserting "in an
7	electronic, publicly accessible format";
8	(B) by striking subparagraph (E) and in-
9	serting the follow new subparagraphs:
10	"(E) copies of all records, regardless of
11	form or format, that have been released three
12	or more times under paragraph (3); and
13	"(F) a general index of the records re-
14	ferred to under subparagraphs (D) and (E);";
15	(C) in the matter proceeding subparagraph
16	(F) (as added by subparagraph (B) of this
17	paragraph)—
18	(i) by striking "subparagraph (D)"
19	and inserting "subparagraphs (D) and
20	(E)"; and
21	(ii) by striking "subparagraph (E)"
22	and inserting "subparagraph (F)";
23	(2) in subsection (g), by striking "make publicly
24	available upon request" and inserting "make avail-
25	able in an electronic, publicly accessible format";
26	and

1	(3) in subsection (i), by striking "the implemen-
2	tation" and inserting "compliance with and imple-
3	mentation of the requirements".
4	(b) Presumption of Openness.—Section 552(b) of
5	title 5, United States Code, is amended in the matter pre-
6	ceding paragraph (1), by inserting "that would cause fore-
7	seeable harm and" after "matters".
8	(c) The Office of Government Information
9	SERVICES.—Section 552 of title 5, United States Code is
10	amended—
11	(1) in subsection (a)(4)(A)(i), by striking "the
12	Director of the Office of Management and Budget"
13	and inserting "the Director of the Office of Manage-
14	ment and Budget, in consultation with the Director
15	of the Office of Government Information Services,";
16	and
17	(2) subsection (h) is amended to read as fol-
18	lows:
19	"(h) The Office of Government Information
20	Services.—
21	"(1) Establishment.—There is established
22	the Office of Government Information Services with-
23	in the National Archives and Records Administra-
24	tion. The head of the Office is the Director of the
25	Office of Government Information Services.

1	"(2) Review of foia policy, procedure,
2	AND COMPLIANCE.—The Office of Government In-
3	formation Services shall—
4	"(A) review policies and procedures of
5	agencies under this section;
6	"(B) review compliance with this section
7	by agencies; and
8	"(C) identify methods that improve compli-
9	ance under this section that may include—
10	"(i) the timely processing of requests
11	submitted to agencies under this section;
12	"(ii) the system for assessing fees and
13	fee waivers under this section; and
14	"(iii) the use of any exemption under
15	subsection (b); and
16	"(D) review and provide guidance to agen-
17	cies on the use of fees and fee waivers.
18	"(3) Mediation services.—The Office of
19	Government Information Services shall offer medi-
20	ation services to resolve disputes between persons
21	making requests under this section and agencies as
22	a non-exclusive alternative to litigation and, at the
23	discretion of the Office, may issue advisory opinions
24	if mediation has not resolved the dispute.
25	"(4) Submission of Report.—

1	"(A) In General.—The Office of Govern-
2	ment Information Services shall not less than
3	annually submit to the committees described in
4	subparagraph (C) and the President a report on
5	the findings from the information reviewed and
6	identified under paragraph (2) and legislative
7	and regulatory recommendations to improve the
8	administration of this section.
9	"(B) ELECTRONIC AVAILABILITY OF RE-
10	PORTS.—The Office shall make available any
11	report submitted under paragraph (A) in a pub-
12	licly accessible format.
13	"(C) Congressional submission of re-
14	PORT.—The committees described in this sub-
15	paragraph are the following:
16	"(i) The Committee on Oversight and
17	Government Reform of the House of Rep-
18	resentatives.
19	"(ii) The Committees on Homeland
20	Security and Governmental Affairs and the
21	Judiciary of the Senate.
22	"(D) Direct submission of report.—
23	Any report submitted under paragraph (A)
24	shall be submitted directly to the committees
25	and the President, without any requirement

1	that any officer or employee outside of the Of-
2	fice of Government Information Services, in-
3	cluding the Archivist of the United States and
4	the Director of the Office of Management and
5	Budget, review such report.
6	"(5) Submission of additional informa-
7	TION.—The Director of the Office of Government
8	Information Services may submit additional informa-
9	tion to Congress and the President that the Director
10	determines to be appropriate.
11	"(6) Annual meeting required.—Not less
12	than once a year, the Office of Government Informa-
13	tion Services shall hold a meeting that is open to the
14	public on the review and reports by the Office and
15	permit interested persons to appear and present oral
16	or written statements at such meeting.".
17	(d) Public Resources.—Section 552(a)(6)(A) of
18	title 5, United States Code, is amended—
19	(1) in clause (i), by striking "such determina-
20	tion and the reasons therefor, and of the right of
21	such person to appeal to the head of the agency any
22	adverse determination; and" and inserting the fol-
23	lowing new subclauses:
24	"(I) such determination and the
25	reasons therefor;

1	"(II) the right of such person to
2	seek assistance from the agency FOIA
3	Public Liaison; and
4	"(III) the right of such person to
5	appeal to the head of the agency any
6	adverse determination, not later than
7	90 days after the receipt of such ad-
8	verse determination; and"; and
9	(2) in clause (ii), by striking the period and in-
10	serting the following: "and the right of such person
11	to seek dispute resolution services from the agency
12	FOIA Public Liaison or the Office of Government
13	Information Services."
14	(e) Additional Disclosure of Information Re-
15	QUIREMENTS.—Section 552(a) of title 5, United States
16	Code, is amended—
17	(1) in paragraph (7)—
18	(A) in subparagraph (A), by striking "that
19	will take longer than ten days to process"; and
20	(B) in subparagraph (B), by inserting
21	"automated" after "provides"; and
22	(2) by adding at the end the following new
23	paragraphs:

1	"(8) Disclosure of information for in-
2	CREASED PUBLIC UNDERSTANDING OF THE GOVERN-
3	MENT.—Each agency shall—
4	"(A) review the records of such agency to
5	determine whether the release of the records
6	would be in the public interest because it is
7	likely to contribute significantly to public un-
8	derstanding of the operations or activities of the
9	Government;
10	"(B) for records determined to be in the
11	public interest under subparagraph (A), reason-
12	ably segregate and redact any information ex-
13	empted from disclosure under subsection (b);
14	and
15	"(C) make available in an electronic, pub-
16	licly accessible format, any records identified in
17	subparagraph (A), as modified pursuant to sub-
18	paragraph (B).
19	"(9) Increased disclosure of informa-
20	TION.—Each agency shall—
21	"(A) make information public to the great-
22	est extent possible through modern technology
23	to—

1	"(i) inform the public of the oper-
2	ations and activities of the Government;
3	and
4	"(ii) ensure timely disclosure of infor-
5	mation; and
6	"(B) establish procedures for identifying
7	categories of records that may be disclosed reg-
8	ularly and additional records of interest to the
9	public that are appropriate for public disclo-
10	sure, and for posting such records in an elec-
11	tronic, publicly accessible format.".
12	(f) AGENCY FOIA REPORT.—Section 552(e) of title
13	5, United States Code, is amended—
	(1)
14	(1) in paragraph (1)—
14 15	(1) in paragraph (1)—  (A) by inserting "and to the Director of
15	(A) by inserting "and to the Director of
15 16	(A) by inserting "and to the Director of the Office of Government Information Services"
15 16 17	(A) by inserting "and to the Director of the Office of Government Information Services" after "the Attorney General of the United
15 16 17 18	(A) by inserting "and to the Director of the Office of Government Information Services" after "the Attorney General of the United States";
15 16 17 18	<ul> <li>(A) by inserting "and to the Director of the Office of Government Information Services" after "the Attorney General of the United States";</li> <li>(B) in subparagraph (N), by striking ";</li> </ul>
115 116 117 118 119 220	<ul> <li>(A) by inserting "and to the Director of the Office of Government Information Services" after "the Attorney General of the United States";</li> <li>(B) in subparagraph (N), by striking "; and" and inserting a semicolon;</li> </ul>
115 116 117 118 119 220 221	<ul> <li>(A) by inserting "and to the Director of the Office of Government Information Services" after "the Attorney General of the United States";</li> <li>(B) in subparagraph (N), by striking "; and" and inserting a semicolon;</li> <li>(C) in subparagraph (O), by striking the</li> </ul>

1	"(P) the number of times the agency in-
2	voked a law enforcement exclusion under sub-
3	section (c);
4	"(Q) the number of times the agency en-
5	gaged in dispute resolution with the assistance
6	of the Office of Government Information Serv-
7	ices or the FOIA Public Liaison; and
8	"(R) the number of records that were
9	made available in an electronic, publicly acces-
10	sible format under subsection (a)(2).";
11	(2) by amending paragraph (3) to read as fol-
12	lows:
13	"(3) Each agency shall make each such report
14	available in an electronic, publicly accessible format.
15	In addition, each agency shall make the raw statis-
16	tical data used in its reports available in a timely
17	manner in an electronic, publicly accessible format.
18	Such data shall be—
19	"(A) made available without charge, li-
20	cense, or registration requirement;
21	"(B) capable of being searched and aggre-
22	gated; and
23	"(C) permitted to be downloaded and
24	downloaded in bulk.";
25	(3) in paragraph (4)—

1	(A) by striking "Committee on Govern-
2	ment Reform and Oversight" and inserting
3	"Committee on Oversight and Government Re-
4	form"; and
5	(B) by striking "Governmental Affairs"
6	and inserting "Homeland Security and Govern-
7	mental Affairs";
8	(4) in paragraph (5)—
9	(A) by inserting "and the Director of the
10	Office of Government Information Services"
11	after "the Director of the Office of Manage-
12	ment and Budget"; and
13	(B) by striking "by October 1, 1997"; and
14	(5) by amending paragraph (6) to read as fol-
15	lows:
16	"(6) Attorney general foia report.—
17	"(A) IN GENERAL.—The Attorney General
18	of the United States shall submit to Congress
19	and the President an annual report on or before
20	April 1 of each calendar year which shall in-
21	clude for the prior calendar year—
22	"(i) a listing of the number of cases
23	arising under this section;
24	"(ii) each subsection under this sec-
25	tion, each paragraph of the subsection, and

1	any exemption, if applicable, involved in
2	each case, the disposition of such case, and
3	the cost, fees, and penalties assessed under
4	subparagraphs (E), (F), and (G) of sub-
5	section (a)(4); and
6	"(iii) a description of the efforts un-
7	dertaken by the Department of Justice to
8	encourage agency compliance with this sec-
9	tion.
10	"(B) ELECTRONIC AVAILABILITY.—The
11	Attorney General of the United States—
12	"(i) shall make each report described
13	under subparagraph (A) available in an
14	electronic, publicly accessible format; and
15	"(ii) shall make the raw statistical
16	data used in each report available in an
17	electronic, publicly accessible format, which
18	shall be—
19	"(I) made available without
20	charge, license, or registration re-
21	quirement;
22	"(II) capable of being searched
23	and aggregated; and

1	"(III) permitted to be
2	downloaded, including downloaded in
3	bulk.".
4	(g) GOVERNMENT ACCOUNTABILITY OFFICE.—Sub-
5	section (i) of section 552 of title 5, United States Code,
6	is amended to read as follows:
7	"(i) GOVERNMENT ACCOUNTABILITY OFFICE.—The
8	Government Accountability Office shall—
9	"(1) conduct audits of administrative agencies
10	on the implementation of this section and issue re-
11	ports detailing the results of such audits; and
12	"(2) catalog the number of exemptions under
13	subsection (b)(3) and agency use of such exemp-
14	tions.".
15	(h) CHIEF FOIA OFFICER RESPONSIBILITIES;
16	Council; Review.—Section 552 of title 5, United States
17	Code is amended—
18	(1) by striking subsections (j) and (k);
19	(2) by inserting after subsection (i), the fol-
20	lowing new subsections:
21	"(j) CHIEF FOIA OFFICER.—
22	"(1) Designation.—Each agency shall des-
23	ignate a Chief FOIA Officer who shall be a senior
24	official of such agency (at the Assistant Secretary or
25	equivalent level).

1	"(2) Duties.—The Chief FOIA Officer of each
2	agency shall, subject to the authority of the head of
3	the agency—
4	"(A) have agency-wide responsibility for ef-
5	ficient and appropriate compliance with this
6	section;
7	"(B) monitor implementation of this sec-
8	tion throughout the agency and keep the head
9	of the agency, the chief legal officer of the
10	agency, and the Attorney General appropriately
11	informed of the agency's performance in imple-
12	menting this section;
13	"(C) recommend to the head of the agency
14	such adjustments to agency practices, policies,
15	personnel, and funding as may be necessary to
16	improve its implementation of this section;
17	"(D) review and report to the Attorney
18	General, through the head of the agency, at
19	such times and in such formats as the Attorney
20	General may direct, on the agency's perform-
21	ance in implementing this section;
22	"(E) facilitate public understanding of the
23	purposes of the statutory exemptions of this
24	section by including concise descriptions of the
25	exemptions in both the agency's handbook

1	issued under subsection (g), and the agency's
2	annual report on this section, and by providing
3	an overview, where appropriate, of certain gen-
4	eral categories of agency records to which those
5	exemptions apply; and
6	"(F) designate one or more FOIA Public
7	Liaisons.
8	"(3) Compliance review required.—The
9	Chief FOIA Officer of each agency shall—
10	"(A) review, not less than annually, all as-
11	pects of the agency's administration of this sec-
12	tion to ensure compliance with the requirements
13	of this section, including—
14	"(i) agency regulations;
15	"(ii) disclosure of records required
16	under paragraphs (2), (8), and (9) of sub-
17	section (a);
18	"(iii) assessment of fees and deter-
19	mination of eligibility for fee waivers;
20	"(iv) the timely processing of requests
21	for information under this section;
22	"(v) the use of exemptions under sub-
23	section (b); and
24	"(vi) dispute resolution services with
25	the assistance of the Office of Government

1	Information Services or the FOIA Public
2	Liaison; and
3	"(B) make recommendations as necessary
4	to improve agency practices and compliance
5	with this section.
6	"(k) CHIEF FOIA OFFICERS COUNCIL.—
7	"(1) Establishment.—There is established in
8	the executive branch the Chief FOIA Officers Coun-
9	cil (in this subsection, referred to as the 'Council').
10	"(2) Members.—The Council shall consist of
11	the following members:
12	"(A) The Deputy Director for Manage-
13	ment of the Office of Management and Budget.
14	"(B) The Director of the Office of Infor-
15	mation Policy at the Department of Justice.
16	"(C) The Director of the Office of Govern-
17	ment Information Services at the National Ar-
18	chives and Records Administration.
19	"(D) The Chief FOIA Officer of each
20	agency.
21	"(E) Any other officer or employee of the
22	United States as designated by the Co-Chairs.
23	"(3) Co-chairs.—The Director of the Office of
24	Information Policy at the Department of Justice and
25	the Director of the Office of Government Informa-

1	tion Services at the National Archives and Records
2	Administration shall be the Co-Chairs of the Coun-
3	cil.
4	"(4) Support services.—The Administrator
5	of General Services shall provide administrative and
6	other support for the Council.
7	"(5) Consultation .—In performing its du-
8	ties, the Council shall consult regularly with mem-
9	bers of the public who make requests under this sec-
10	tion.
11	"(6) Duties.—The duties of the Council in-
12	clude the following:
13	"(A) Develop recommendations for increas-
14	ing compliance and efficiency under this sec-
15	tion.
16	"(B) Disseminate information about agen-
17	cy experiences, ideas, best practices, and inno-
18	vative approaches related to this section.
19	"(C) Identify, develop, and coordinate ini-
20	tiatives to increase transparency and compli-
21	ance with this section.
22	"(D) Promote the development and use of
23	common performance measures for agency com-
24	pliance with this section.
25	"(7) Meetings.—

1	"(A) Regular meetings.—The Council
2	shall meet regularly and such meetings shall be
3	open to the public unless the Council deter-
4	mines to close the meeting for reasons of na-
5	tional security or to discuss information exempt
6	under subsection (b).
7	"(B) ANNUAL MEETINGS.—Not less than
8	once a year, the Council shall hold a meeting
9	that shall be open to the public and permit in-
10	terested persons to appear and present oral and
11	written statements to the Council.
12	"(C) Notice.—Not later than 10 business
13	days before a meeting of the Council, notice of
14	such meeting shall be published in the Federal
15	Register.
16	"(D) Public availability of council
17	RECORDS.—Except as provided in subsection
18	(b), the records, reports, transcripts, minutes,
19	appendixes, working papers, drafts, studies,
20	agenda, or other documents that were made
21	available to or prepared for or by the Council
22	shall be made publicly available.
23	"(E) MINUTES.—Detailed minutes of each
24	meeting of the Council shall be kept and shall
25	contain a record of the persons present, a com-

1	plete and accurate description of matters dis-
2	cussed and conclusions reached, and copies of
3	all reports received, issued, or approved by the
4	Council."; and
5	(3) by adding at the end the following new sub-
6	section:
7	"(m) FOIA Website Required.—Not later than
8	one year after the date of enactment of this subsection,
9	the Office of Management and Budget shall ensure the
10	existence and operation of a single website, accessible by
11	the public at no cost to access, that allows the public to—
12	"(1) submit requests for records under sub-
13	section $(a)(3)$ ; and
14	"(2) receive automated information about the
15	status of a request under subsection (a)(7).".
16	(i) Regulations.—
17	(1) REVISION OF REGULATIONS.—Not later
18	than 180 days after the date of the enactment of
19	this Act, the head of each agency shall review the
20	regulations of such agency and shall issue regula-
21	tions, if necessary, on procedures for the disclosure
22	of records under section 552 of title 5, United
23	States Code, in accordance with the amendments
24	made by this section. The regulations of each agency
25	shall include—

1	(A) procedures for engaging in dispute res-
2	olution; and
3	(B) procedures for engaging with the Of-
4	fice of Government Information Services.
5	(2) Office of Government information
6	SERVICES REPORT.—Not later than 270 days after
7	the date of the enactment of this Act, the Office of
8	Government Information Services shall submit to
9	Congress a report on agency compliance with the re-
10	quirements of section 552 of title 5, United States
11	Code, as amended by this Act.
12	(3) Report on noncompliance.—The head
13	of any agency that does not meet the requirements
14	of paragraph (1) shall submit to Congress a report
15	on the reason for noncompliance not later than 270
16	days after the date of the enactment of this Act.
17	(4) Inspector general review for non-
18	COMPLIANCE.—Any agency that fails to comply with
19	the requirements of this subsection shall be reviewed
20	by the Office of Inspector General of such agency
21	for compliance with section 552 of title 5, United
22	States Code.
23	(5) AGENCY DEFINED.—In this section, the
24	term "agency" has the meaning given such term in
25	section 552(f) of title 5, United States Code.

## 1 SEC. 3. PILOT PROGRAM.

2	(a) Establishment.—The Director of the Office of
3	Management and Budget shall establish a pilot program
4	for 3 years to review the benefits of FOIAonline to process
5	requests and release information under section 552 of title
6	5, United States Code (commonly known as the Freedom
7	of Information Act).
8	(b) Plan Required.—Not later than 90 days after
9	the date of the enactment of this Act, the Director of the
10	Office of Management and Budget shall establish a plan
11	to evaluate FOIAonline at no less than 3 agencies that
12	have not previously participated in FOIAonline, including
13	at least one of the following:
14	(1) An agency that receives more than 50,000
15	requests annually for information under section 552
16	of title 5, United States Code.
17	(2) An agency that receives between 25,000 and
18	50,000 requests annually for information under such
19	section.
20	(3) An agency that receives 25,000 or fewer re-
21	quests annually for information under such section.
22	(c) Agency Use of Website.—Each agency se-
23	lected under subsection (b) shall use FOIAonline to—
24	(1) receive requests under section 552 of title 5,
25	United States Code;

1	(2) process requests received under such sec-
2	tion;
3	(3) track the status of requests submitted
4	under such section; and
5	(4) make records released available publicly on
6	FOIAonline.
7	(d) REVIEW REQUIRED.—The Director of the Office
8	of Management and Budget shall, in consultation with the
9	Attorney General, the Office of Government Information
10	Services, and the head of each agency participating in the
11	pilot program, review the benefits of FOIAonline, includ-
12	ing—
13	(1) any cost saving, resource saving, or effi-
14	ciency gained through the use of FOIAonline;
15	(2) any change in the amount of requests re-
16	ceived under section 552 of title 5, United States
17	Code;
18	(3) any increase in transparency and accessi-
19	bility to Government information; and
20	(4) any changes in the ability to access and
21	compile information needed for agency annual re-
22	ports required under section 552 of title 5, United
23	States Code.
24	(e) Report Required.—Not later than 3 months
25	after the completion of the pilot program, the head of each

- 1 agency participating in the program shall submit to Con-
- 2 gress a report on the impact of the pilot program on agen-
- 3 cy processes under section 552 of title 5, United States
- 4 Code, whether the agency will continue to participate in
- 5 FOIAonline, and any recommendations the head of the
- 6 agency considers appropriate to continue the use of
- 7 FOIAonline.
- 8 (f) Definitions.—In this section:
- 9 (1) AGENCY.—The term "agency" has the
- meaning given such term in section 552(f) of title 5,
- 11 United States Code.
- 12 (2) FOIAONLINE.—The term "FOIAonline"
- 13 means the electronic online portal
- 14 FOIAonline.regulations.gov.