[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 was referred to 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 Representatives 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 Implementation Act of 2013” or the “FOIA Act”.

5
SEC. 2. FREEDOM OF INFORMATION ACT AMENDMENTS.

(a) ELECTRONIC ACCESSIBILITY.—Section 552 of title 5, United States Code is amended—

(1) in subsection (a)—

(A) in paragraph (2), by striking “for public inspection and copying” and inserting “in an electronic, publicly accessible format”;

(B) by striking subparagraph (E) and inserting the follow new subparagraphs:

“(E) copies of all records, regardless of form or format, that have been released three or more times under paragraph (3); and

“(F) a general index of the records referred to under subparagraphs (D) and (E);”;

(C) in the matter proceeding subparagraph (F) (as added by subparagraph (B) of this paragraph)—

(i) by striking “subparagraph (D)” and inserting “subparagraphs (D) and (E)”;

(ii) by striking “subparagraph (E)” and inserting “subparagraph (F)”;

(2) in subsection (g), by striking “make publicly available upon request” and inserting “make available in an electronic, publicly accessible format”; and
(3) in subsection (i), by striking “the implementation” and inserting “compliance with and implementation of the requirements”.

(b) Presumption of Openness.—Section 552(b) of title 5, United States Code, is amended in the matter preceding paragraph (1), by inserting “that would cause foreseeable harm and” after “matters”.

(c) The Office of Government Information Services.—Section 552 of title 5, United States Code is amended—

(1) in subsection (a)(4)(A)(i), by striking “the Director of the Office of Management and Budget” and inserting “the Director of the Office of Management and Budget, in consultation with the Director of the Office of Government Information Services,”;

and

(2) subsection (h) is amended to read as follows:

“(h) The Office of Government Information Services.—

“(1) Establishment.—There is established the Office of Government Information Services within the National Archives and Records Administration. The head of the Office is the Director of the Office of Government Information Services.
“(2) Review of FOIA Policy, Procedure, and Compliance.—The Office of Government Information Services shall—

“(A) review policies and procedures of agencies under this section;

“(B) review compliance with this section by agencies; and

“(C) identify methods that improve compliance under this section that may include—

“(i) the timely processing of requests submitted to agencies under this section;

“(ii) the system for assessing fees and fee waivers under this section; and

“(iii) the use of any exemption under subsection (b); and

“(D) review and provide guidance to agencies on the use of fees and fee waivers.

“(3) Mediation Services.—The Office of Government Information Services shall offer mediation services to resolve disputes between persons making requests under this section and agencies as a non-exclusive alternative to litigation and, at the discretion of the Office, may issue advisory opinions if mediation has not resolved the dispute.

“(4) Submission of Report.—
“(A) IN GENERAL.—The Office of Government Information Services shall not less than annually submit to the committees described in subparagraph (C) and the President a report on the findings from the information reviewed and identified under paragraph (2) and legislative and regulatory recommendations to improve the administration of this section.

“(B) ELECTRONIC AVAILABILITY OF REPORTS.—The Office shall make available any report submitted under paragraph (A) in a publicly accessible format.

“(C) CONGRESSIONAL SUBMISSION OF REPORT.—The committees described in this subparagraph are the following:

“(i) The Committee on Oversight and Government Reform of the House of Representatives.


“(D) DIRECT SUBMISSION OF REPORT.—Any report submitted under paragraph (A) shall be submitted directly to the committees and the President, without any requirement
that any officer or employee outside of the Office of Government Information Services, including the Archivist of the United States and the Director of the Office of Management and Budget, review such report.

“(5) Submission of additional information.—The Director of the Office of Government Information Services may submit additional information to Congress and the President that the Director determines to be appropriate.

“(6) Annual meeting required.—Not less than once a year, the Office of Government Information Services shall hold a meeting that is open to the public on the review and reports by the Office and permit interested persons to appear and present oral or written statements at such meeting.”.

(d) Public Resources.—Section 552(a)(6)(A) of title 5, United States Code, is amended—

(1) in clause (i), by striking “such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and” and inserting the following new subclauses:

“(I) such determination and the reasons therefor;
“(II) the right of such person to seek assistance from the agency FOIA Public Liaison; and

“(III) the right of such person to appeal to the head of the agency any adverse determination, not later than 90 days after the receipt of such adverse determination; and”; and

(2) in clause (ii), by striking the period and inserting the following: “and the right of such person to seek dispute resolution services from the agency FOIA Public Liaison or the Office of Government Information Services.”

(e) ADDITIONAL DISCLOSURE OF INFORMATION REQUIREMENTS.—Section 552(a) of title 5, United States Code, is amended—

(1) in paragraph (7)—

(A) in subparagraph (A), by striking “that will take longer than ten days to process”; and

(B) in subparagraph (B), by inserting “automated” after “provides”; and

(2) by adding at the end the following new paragraphs:
“(8) Disclosure of information for increased public understanding of the Government.—Each agency shall—

“(A) review the records of such agency to determine whether the release of the records would be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government;

“(B) for records determined to be in the public interest under subparagraph (A), reasonably segregate and redact any information exempted from disclosure under subsection (b); and

“(C) make available in an electronic, publicly accessible format, any records identified in subparagraph (A), as modified pursuant to subparagraph (B).

“(9) Increased disclosure of information.—Each agency shall—

“(A) make information public to the greatest extent possible through modern technology to—
“(i) inform the public of the operations and activities of the Government; and
“(ii) ensure timely disclosure of information; and
“(B) establish procedures for identifying categories of records that may be disclosed regularly and additional records of interest to the public that are appropriate for public disclosure, and for posting such records in an electronic, publicly accessible format.”.

(f) AGENCY FOIA REPORT.—Section 552(e) of title 5, United States Code, is amended—
(1) in paragraph (1)—
(A) by inserting “and to the Director of the Office of Government Information Services” after “the Attorney General of the United States”;
(B) in subparagraph (N), by striking “; and” and inserting a semicolon;
(C) in subparagraph (O), by striking the period and inserting a semicolon; and
(D) by adding at the end the following new subparagraphs:
“(P) the number of times the agency invoked a law enforcement exclusion under subsection (c);

“(Q) the number of times the agency engaged in dispute resolution with the assistance of the Office of Government Information Services or the FOIA Public Liaison; and

“(R) the number of records that were made available in an electronic, publicly accessible format under subsection (a)(2).”;

(2) by amending paragraph (3) to read as follows:

“(3) Each agency shall make each such report available in an electronic, publicly accessible format. In addition, each agency shall make the raw statistical data used in its reports available in a timely manner in an electronic, publicly accessible format. Such data shall be—

“(A) made available without charge, license, or registration requirement;

“(B) capable of being searched and aggregated; and

“(C) permitted to be downloaded and downloaded in bulk.”;

(3) in paragraph (4)—
(A) by striking “Committee on Government Reform and Oversight” and inserting “Committee on Oversight and Government Reform”; and

(B) by striking “Governmental Affairs” and inserting “Homeland Security and Governmental Affairs”;

(4) in paragraph (5)—

(A) by inserting “and the Director of the Office of Government Information Services” after “the Director of the Office of Management and Budget”; and

(B) by striking “by October 1, 1997”; and

(5) by amending paragraph (6) to read as follows:

“(6) ATTORNEY GENERAL FOIA REPORT.—

“(A) IN GENERAL.—The Attorney General of the United States shall submit to Congress and the President an annual report on or before April 1 of each calendar year which shall include for the prior calendar year—

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

“(ii) each subsection under this section, each paragraph of the subsection, and
any exemption, if applicable, involved in
each case, the disposition of such case, and
the cost, fees, and penalties assessed under
subparagraphs (E), (F), and (G) of sub-
section (a)(4); and
“(iii) a description of the efforts un-
dertaken by the Department of Justice to
courage agency compliance with this sec-
tion.
“(B) ELECTRONIC AVAILABILITY.—The
Attorney General of the United States—
“(i) shall make each report described
under subparagraph (A) available in an
electronic, publicly accessible format; and
“(ii) shall make the raw statistical
data used in each report available in an
electronic, publicly accessible format, which
shall be—
“(I) made available without
charge, license, or registration re-
quirement;
“(II) capable of being searched
and aggregated; and
“(III) permitted to be
downloaded, including downloaded in
bulk.”.

(g) GOVERNMENT ACCOUNTABILITY OFFICE.—Sub-
section (i) of section 552 of title 5, United States Code,
is amended to read as follows:

“(i) GOVERNMENT ACCOUNTABILITY OFFICE.—The
Government Accountability Office shall—

“(1) conduct audits of administrative agencies
on the implementation of this section and issue re-
ports detailing the results of such audits; and

“(2) catalog the number of exemptions under
subsection (b)(3) and agency use of such exemp-
tions.”.

(h) CHIEF FOIA OFFICER RESPONSIBILITIES;
COUNCIL; REVIEW.—Section 552 of title 5, United States
Code is amended—

(1) by striking subsections (j) and (k);

(2) by inserting after subsection (i), the fol-
lowing new subsections:

“(j) CHIEF FOIA OFFICER.—

“(1) DESIGNATION.—Each agency shall des-
ignate a Chief FOIA Officer who shall be a senior
official of such agency (at the Assistant Secretary or
equivalent level).
“(2) DUTIES.—The Chief FOIA Officer of each agency shall, subject to the authority of the head of the agency—

“(A) have agency-wide responsibility for efficient and appropriate compliance with this section;

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

“(C) recommend to the head of the agency such adjustments to agency practices, policies, personnel, and funding as may be necessary to improve its implementation of this section;

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

“(E) facilitate public understanding of the purposes of the statutory exemptions of this section by including concise descriptions of the exemptions in both the agency’s handbook
issued under subsection (g), and the agency’s annual report on this section, and by providing an overview, where appropriate, of certain general categories of agency records to which those exemptions apply; and

“(F) designate one or more FOIA Public Liaisons.

“(3) COMPLIANCE REVIEW REQUIRED.—The Chief FOIA Officer of each agency shall—

“(A) review, not less than annually, all aspects of the agency’s administration of this section to ensure compliance with the requirements of this section, including—

“(i) agency regulations;

“(ii) disclosure of records required under paragraphs (2), (8), and (9) of subsection (a);

“(iii) assessment of fees and determination of eligibility for fee waivers;

“(iv) the timely processing of requests for information under this section;

“(v) the use of exemptions under subsection (b); and

“(vi) dispute resolution services with the assistance of the Office of Government
Information Services or the FOIA Public Liaison; and
“(B) make recommendations as necessary to improve agency practices and compliance with this section.

“(k) CHIEF FOIA OFFICERS COUNCIL.—
“(1) ESTABLISHMENT.—There is established in the executive branch the Chief FOIA Officers Council (in this subsection, referred to as the ‘Council’).
“(2) MEMBERS.—The Council shall consist of the following members:
“(A) The Deputy Director for Management of the Office of Management and Budget.
“(B) The Director of the Office of Information Policy at the Department of Justice.
“(C) The Director of the Office of Government Information Services at the National Archives and Records Administration.
“(D) The Chief FOIA Officer of each agency.
“(E) Any other officer or employee of the United States as designated by the Co-Chairs.
“(3) CO-CHAIRS.—The Director of the Office of Information Policy at the Department of Justice and the Director of the Office of Government Informa-
tion Services at the National Archives and Records Administration shall be the Co-Chairs of the Council.

“(4) SUPPORT SERVICES.—The Administrator of General Services shall provide administrative and other support for the Council.

“(5) CONSULTATION.—In performing its duties, the Council shall consult regularly with members of the public who make requests under this section.

“(6) DUTIES.—The duties of the Council include the following:

“(A) Develop recommendations for increasing compliance and efficiency under this section.

“(B) Disseminate information about agency experiences, ideas, best practices, and innovative approaches related to this section.

“(C) Identify, develop, and coordinate initiatives to increase transparency and compliance with this section.

“(D) Promote the development and use of common performance measures for agency compliance with this section.

“(7) MEETINGS.—
“(A) Regular Meetings.—The Council shall meet regularly and such meetings shall be open to the public unless the Council determines to close the meeting for reasons of national security or to discuss information exempt under subsection (b).

“(B) Annual Meetings.—Not less than once a year, the Council shall hold a meeting that shall be open to the public and permit interested persons to appear and present oral and written statements to the Council.

“(C) Notice.—Not later than 10 business days before a meeting of the Council, notice of such meeting shall be published in the Federal Register.

“(D) Public Availability of Council Records.—Except as provided in subsection (b), the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents that were made available to or prepared for or by the Council shall be made publicly available.

“(E) Minutes.—Detailed minutes of each meeting of the Council shall be kept and shall contain a record of the persons present, a com-
plete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the Council.”; and

(3) by adding at the end the following new subsection:

“(m) FOIA Website Required.—Not later than one year after the date of enactment of this subsection, the Office of Management and Budget shall ensure the existence and operation of a single website, accessible by the public at no cost to access, that allows the public to—

“(1) submit requests for records under subsection (a)(3); and

“(2) receive automated information about the status of a request under subsection (a)(7).”.

(i) Regulations.—

(1) Revision of Regulations.—Not later than 180 days after the date of the enactment of this Act, the head of each agency shall review the regulations of such agency and shall issue regulations, if necessary, on procedures for the disclosure of records under section 552 of title 5, United States Code, in accordance with the amendments made by this section. The regulations of each agency shall include—
(A) procedures for engaging in dispute resolution; and

(B) procedures for engaging with the Office of Government Information Services.

(2) Office of Government Information Services Report.—Not later than 270 days after the date of the enactment of this Act, the Office of Government Information Services shall submit to Congress a report on agency compliance with the requirements of section 552 of title 5, United States Code, as amended by this Act.

(3) Report on Noncompliance.—The head of any agency that does not meet the requirements of paragraph (1) shall submit to Congress a report on the reason for noncompliance not later than 270 days after the date of the enactment of this Act.

(4) Inspector General Review for Noncompliance.—Any agency that fails to comply with the requirements of this subsection shall be reviewed by the Office of Inspector General of such agency for compliance with section 552 of title 5, United States Code.

(5) Agency Defined.—In this section, the term “agency” has the meaning given such term in section 552(f) of title 5, United States Code.
SEC. 3. PILOT PROGRAM.

(a) Establishment.—The Director of the Office of Management and Budget shall establish a pilot program for 3 years to review the benefits of FOIAonline to process requests and release information under section 552 of title 5, United States Code (commonly known as the Freedom of Information Act).

(b) Plan Required.—Not later than 90 days after the date of the enactment of this Act, the Director of the Office of Management and Budget shall establish a plan to evaluate FOIAonline at no less than 3 agencies that have not previously participated in FOIAonline, including at least one of the following:

(1) An agency that receives more than 50,000 requests annually for information under section 552 of title 5, United States Code.

(2) An agency that receives between 25,000 and 50,000 requests annually for information under such section.

(3) An agency that receives 25,000 or fewer requests annually for information under such section.

(c) Agency Use of Website.—Each agency selected under subsection (b) shall use FOIAonline to—

(1) receive requests under section 552 of title 5, United States Code;
(2) process requests received under such section;
(3) track the status of requests submitted under such section; and
(4) make records released available publicly on FOIAonline.

(d) REVIEW REQUIRED.—The Director of the Office of Management and Budget shall, in consultation with the Attorney General, the Office of Government Information Services, and the head of each agency participating in the pilot program, review the benefits of FOIAonline, including—

(1) any cost saving, resource saving, or efficiency gained through the use of FOIAonline;
(2) any change in the amount of requests received under section 552 of title 5, United States Code;
(3) any increase in transparency and accessibility to Government information; and
(4) any changes in the ability to access and compile information needed for agency annual reports required under section 552 of title 5, United States Code.

(e) REPORT REQUIRED.—Not later than 3 months after the completion of the pilot program, the head of each
agency participating in the program shall submit to Con-
gress a report on the impact of the pilot program on agen-
cy processes under section 552 of title 5, United States
Code, whether the agency will continue to participate in
FOIAonline, and any recommendations the head of the
agency considers appropriate to continue the use of
FOIAonline.

(f) DEFINITIONS.—In this section:

(1) AGENCY.—The term “agency” has the
meaning given such term in section 552(f) of title 5,
United States Code.

(2) FOIAONLINE.—The term “FOIAonline”
means the electronic online portal
FOIAonline.regulations.gov.