

110TH CONGRESS  
1ST SESSION

# H. R. 1309

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.

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## 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

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## 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,*

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

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

6 (b) TABLE OF CONTENTS.—The table of contents for  
7 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.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

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

6 (A) our constitutional democracy, our sys-  
 7 tem of self-government, and our commitment to  
 8 popular sovereignty depends upon the consent  
 9 of the governed;

10 (B) such consent is not meaningful unless  
 11 it is informed consent; and

12 (C) as Justice Black noted in his concur-  
 13 ring opinion in *Barr v. Matteo* (360 U.S. 564  
 14 (1959)), “The effective functioning of a free  
 15 government like ours depends largely on the  
 16 force of an informed public opinion. This calls  
 17 for the widest possible understanding of the  
 18 quality of government service rendered by all

1 elective or appointed public officials or employ-  
2 ees.”;

3 (2) the American people firmly believe that our  
4 system of government must itself be governed by a  
5 presumption of openness;

6 (3) the Freedom of Information Act establishes  
7 a “strong presumption in favor of disclosure” as  
8 noted by the United States Supreme Court in  
9 United States Department of State v. Ray (502 U.S.  
10 164 (1991)), a presumption that applies to all agen-  
11 cies governed by that Act;

12 (4) “disclosure, not secrecy, is the dominant ob-  
13 jective of the Act,” as noted by the United States  
14 Supreme Court in Department of Air Force v. Rose  
15 (425 U.S. 352 (1976));

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

18 (6) Congress should regularly review section  
19 552 of title 5, United States Code (commonly re-  
20 ferred to as the Freedom of Information Act), in  
21 order to determine whether further changes and im-  
22 provements are necessary to ensure that the Govern-  
23 ment remains open and accessible to the American  
24 people and is always based not upon the “need to  
25 know” but upon the fundamental “right to know”.

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

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

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

16 **SEC. 4. RECOVERY OF ATTORNEY FEES AND LITIGATION**  
17 **COSTS.**

18 Section 552(a)(4)(E) of title 5, United State Code,  
19 is amended by adding at the end the following: “For pur-  
20 poses of this section only, a complainant has substantially  
21 prevailed if the complainant has obtained relief through  
22 either—

23 “(i) a judicial order, administrative action,  
24 or an enforceable written agreement or consent  
25 decree; or

1           “(ii) a voluntary or unilateral change in  
2           position by the opposing party, in a case in  
3           which the complainant’s claim or defense was  
4           not frivolous.”.

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

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

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

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

11          “(ii) The Attorney General shall—

12                 “(I) notify the Special Counsel of each civil ac-  
13                 tion described under the first sentence of clause (i);  
14                 and

15                 “(II) annually submit a report to Congress on  
16                 the number of such civil actions in the preceding  
17                 year.

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

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

22          (a) TIME LIMITS.—

23                 (1) IN GENERAL.—Section 552(a)(6)(A)(i) of  
24                 title 5, United States Code, is amended by striking  
25                 “determine within 20 days (excepting Saturdays,

1 Sundays, and legal public holidays) after the receipt  
2 of any such request” and inserting “within the 20-  
3 day period commencing on the date on which the re-  
4 quest is first received by the agency (excepting Sat-  
5 urdays, Sundays, and legal public holidays), which  
6 shall not be tolled without the consent of the party  
7 filing the request, determine”.

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

11 (b) APPLICABILITY OF AGENCY FEES.—

12 (1) LIMITATION.—Section 552(a)(4)(A) of title  
13 5, United States Code, is amended by adding at the  
14 end the following:

15 “(vii) An agency may not charge any  
16 fees under this subparagraph if the agency  
17 fails to comply with any time limit that ap-  
18 plies under paragraph (6).”.

19 (2) EFFECTIVE DATE AND APPLICATION.—The  
20 amendment made by this subsection shall take effect  
21 1 year after the date of enactment of this Act and  
22 shall apply to requests for information under section  
23 552 of title 5, United States Code, filed on or after  
24 that effective date.

1 **SEC. 7. INDIVIDUALIZED TRACKING NUMBERS FOR RE-**  
2 **QUESTS AND STATUS INFORMATION.**

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

6 “(7) Each agency shall—

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

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

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

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

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

21 (b) EFFECTIVE DATE AND APPLICATION.—The  
22 amendment made by this section shall take effect 1 year  
23 after the date of enactment of this Act and apply to re-  
24 quests for information under section 552 of title 5, United  
25 States Code, filed on or after that effective date.

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

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

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

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

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

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

18 **SEC. 9. REPORTING REQUIREMENTS.**

19 (a) **ANNUAL REPORT REQUIREMENTS.**—Section  
20 552(e)(1) of title 5, United States Code, is amended—

21 (1) in the matter preceding subparagraph (A)  
22 by striking “fiscal year and which” and inserting  
23 “fiscal year. Information in the report shall be ex-  
24 pressed in terms of each principal component of the  
25 agency and for the agency overall, and”;

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

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

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

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

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

21           “(G) based on the number of business days  
22 that have elapsed since each request was ini-  
23 tially received by the agency—

24           “(i) the number of requests for  
25 records to which the agency has responded

1 with a determination within a period great-  
2 er than 1 day and less than 201 days, stat-  
3 ed in 20-day increments;

4 “(ii) the number of requests for  
5 records to which the agency has responded  
6 with a determination within a period great-  
7 er than 200 days and less than 301 days;

8 “(iii) the number of requests for  
9 records to which the agency has responded  
10 with a determination within a period great-  
11 er than 300 days and less than 401 days;  
12 and

13 “(iv) the number of requests for  
14 records to which the agency has responded  
15 with a determination within a period great-  
16 er than 400 days;

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

1           “(I) the median and average number of  
2 days for the agency to respond with a deter-  
3 mination to administrative appeals based on the  
4 date on which each appeal was initially received  
5 by the agency; the highest number of business  
6 days taken by the agency to respond to an ad-  
7 ministrative appeal; and the lowest number of  
8 business days taken by the agency to respond  
9 to an administrative appeal;

10           “(J) data on the 10 active requests with  
11 the earliest filing dates pending at the agency,  
12 including the amount of time that has elapsed  
13 since each request was initially received by the  
14 agency;

15           “(K) data on the 10 active administrative  
16 appeals with the earliest filing dates pending at  
17 the agency as of September 30 of the preceding  
18 year, including the number of business days  
19 that have elapsed since each request was ini-  
20 tially received by the agency;

21           “(L) the number of expedited review re-  
22 quests received by the agency, the number that  
23 were granted and the number that were denied,  
24 the average and median number of days for ad-  
25 judicating expedited review requests, and the

1 number of requests that adjudicated within the  
2 required 10 days;

3 “(M) the number of fee waiver requests  
4 that were granted and the number that were  
5 denied, and the average and median number of  
6 days for adjudicating fee waiver determina-  
7 tions;”.

8 (b) AVAILABILITY OF RAW STATISTICAL DATA.—  
9 Section 552(e)(2) of title 5, United States Code, is amend-  
10 ed by adding after the period the following: “In addition,  
11 each agency shall make the raw statistical data used in  
12 its reports available electronically to the public upon re-  
13 quest.”.

14 **SEC. 10. OPENNESS OF AGENCY RECORDS MAINTAINED BY**  
15 **A PRIVATE ENTITY.**

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

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

21 “(A) any information that would be an  
22 agency record subject to the requirements of  
23 this section when maintained by an agency in  
24 any format, including an electronic format; and

1           “(B) any information described under sub-  
 2           paragraph (A) that is maintained for an agency  
 3           by an entity under a contract between the agen-  
 4           cy and the entity.”.

5 **SEC. 11. OFFICE OF GOVERNMENT INFORMATION SERV-**  
 6           **ICES.**

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

10 **“§ 2120. Office of Government Information Services**

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

14           “(b) NATIONAL INFORMATION ADVOCATE.—

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

20           “(2) FUNCTIONS OF OFFICE.—

21           “(A) GUIDANCE FOR REQUESTERS.—

22           “(i) IN GENERAL.—The Office of Gov-  
 23 ernment Information Services shall pro-  
 24 vide, as a non-exclusive alternative to liti-  
 25 gation, guidance to FOIA requesters.

1           “(ii) TYPES OF GUIDANCE.—In pro-  
2           viding such guidance, the Office shall pro-  
3           vide informal guidance to requesters and  
4           may provide fact-finding reviews and opin-  
5           ions to requesters. All reviews and opinions  
6           shall be non-binding and shall be initiated  
7           only on the request of FOIA requesters.

8           “(iii) AVAILABILITY.—Any written  
9           opinion issued pursuant to this section  
10          shall be available on the Internet in an in-  
11          dexed, readily accessible format.

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

19          “(B) ANALYSES OF AGENCY OPER-  
20          ATIONS.—The Office of Government Informa-  
21          tion Services shall—

22                 “(i) review policies and procedures of  
23                 administrative agencies under section 552  
24                 of this title and compliance with that sec-  
25                 tion by administrative agencies; and



1           untarily furnished records to the Department under  
2           this section;

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

5                   (3) such recommendations as the Comptroller  
6           General considers appropriate regarding improve-  
7           ments in the collection and analysis of sensitive in-  
8           formation held by persons in the private sector, or  
9           by State and local agencies, relating to  
10          vulnerabilities of and threats to critical infrastruc-  
11          ture, including the response to such vulnerabilities  
12          and threats; and

13                   (4) an examination of whether the nondisclo-  
14          sure of such information has led to the increased  
15          protection of critical infrastructure.

16          (b) FORM.—The report shall be submitted in unclas-  
17          sified form, but may include a classified annex.

18       **SEC. 13. REPORT ON PERSONNEL POLICIES RELATED TO**

19                               **FOIA.**

20          Not later than 1 year after the date of enactment  
21          of this Act, the Office of Personnel Management shall sub-  
22          mit to Congress a report that examines—

23                   (1) whether changes to executive branch per-  
24          sonnel policies could be made that would—

1 (A) provide greater encouragement to all  
2 Federal employees to fulfill their duties under  
3 section 552 of title 5, United States Code; and

4 (B) enhance the stature of officials admin-  
5 istering that section within the executive  
6 branch;

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

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

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

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

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

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

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

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

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

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

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

○