

# **H.R.1309**

## **Freedom of Information Act Amendments of 2007 (Introduced in House)**

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

(a) Short Title- This Act may be cited as the `Freedom of Information Act Amendments of 2007'.

(b) Table of Contents- The table of contents for 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. 2. FINDINGS.**

Congress finds that--

(1) the Freedom of Information Act was signed into law on July 4, 1966, because the American people believe that--

(A) our constitutional democracy, our system of self-government, and our commitment to popular sovereignty depends upon the consent of the governed;

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

(C) as Justice Black noted in his concurring opinion in *Barr v. Matteo* (360 U.S. 564 (1959)), 'The effective functioning of a free government like ours depends largely on the force of an informed public opinion. This calls for the widest possible understanding of the quality of government service rendered by all elective or appointed public officials or employees.';

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

(3) the Freedom of Information Act establishes a 'strong presumption in favor of disclosure' as noted by the United States Supreme Court in *United States Department of State v. Ray* (502 U.S. 164 (1991)), a presumption that applies to all agencies governed by that Act;

(4) 'disclosure, not secrecy, is the dominant objective of the Act,' as noted by the United States Supreme Court in *Department of Air Force v. Rose* (425 U.S. 352 (1976));

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

(6) Congress should regularly review section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act), in order to determine whether further changes and improvements are necessary to ensure that the Government remains open and accessible to the American people and is always based not upon the 'need to know' but upon the fundamental 'right to know'.

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

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

'In making a determination of a representative of the news media under subclause (II), an agency may not deny that status solely on the basis of the absence of institutional associations of the requester, but shall consider the prior publication history of the requester. Prior publication history shall include books, magazine and newspaper articles, newsletters, television and radio broadcasts, and Internet publications. If the requestor has no prior publication history or current affiliation, the agency shall consider the requestor's stated intent at the time the request is made to distribute information to a reasonably broad audience.'

### **SEC. 4. RECOVERY OF ATTORNEY FEES AND LITIGATION COSTS.**

Section 552(a)(4)(E) of title 5, United State Code, is amended by adding at the end the following: 'For purposes of this section only, a complainant has substantially prevailed if the complainant has obtained relief through either--

'(i) a judicial order, administrative action, or an enforceable written agreement or consent decree; or

`(ii) a voluntary or unilateral change in position by the opposing party, in a case in which the complainant's claim or defense was not frivolous.'.

## **SEC. 5. DISCIPLINARY ACTIONS FOR ARBITRARY AND CAPRICIOUS REJECTIONS OF REQUESTS.**

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

(1) by inserting `(i)' after `(F)'; and

(2) by adding at the end the following:

`(ii) The Attorney General shall--

`(I) notify the Special Counsel of each civil action described under the first sentence of clause (i); and

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

`(iii) The Special Counsel shall annually submit a report to Congress on the actions taken by the Special Counsel under clause (i).'

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

(a) Time Limits-

(1) IN GENERAL- Section 552(a)(6)(A)(i) of title 5, United States Code, is amended by striking `determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request' and inserting `within the 20-day period commencing on the date on which the request is first received by the agency (excepting Saturdays, Sundays, and legal public holidays), which shall not be tolled without the consent of the party filing the request, determine'.

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

(b) Applicability of Agency Fees-

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

`(vii) An agency may not charge any fees under this subparagraph if the agency fails to comply with any time limit that applies under paragraph (6).'

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

## **SEC. 7. INDIVIDUALIZED TRACKING NUMBERS FOR REQUESTS AND STATUS INFORMATION.**

(a) In General- Section 552(a) of title 5, United States Code, is amended by adding at the end the following:

`(7) Each agency shall--

`(A) establish a system to assign an individualized tracking number for each request for information under this section;

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

`(C) establish a telephone line or Internet service that provides information about the status of a request to the person making the request using the assigned tracking number, including--

`(i) the date on which the agency originally received the request; and

`(ii) an estimated date on which the agency will complete action on the request.'.

(b) Effective Date and Application- The amendment made by this section shall take effect 1 year after the date of enactment of this Act and apply to requests for information under section 552 of title 5, United States Code, filed on or after that effective date.

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

Section 552(b) of title 5, United States Code, is amended by striking paragraph (3) and inserting the following:

`(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute--

`(A) if enacted after the date of enactment of the Freedom of Information Act Amendments of 2007, specifically cites to this section; and

`(B)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

`(ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;'.

#### **SEC. 9. REPORTING REQUIREMENTS.**

(a) Annual Report Requirements- Section 552(e)(1) of title 5, United States Code, is amended--

(1) in the matter preceding subparagraph (A) by striking `fiscal year and which' and inserting `fiscal year. Information in the report shall be expressed in terms of each principal component of the agency and for the agency overall, and';

(2) in subparagraph (B)(ii), by inserting after the first comma the following, `the number of occasions on which each statute was relied upon,';

(3) in subparagraph (C), by inserting after `median' the following: `and average';

(4) in subparagraph (E), by inserting before the semicolon the following: `, based on the date on which each request was initially received by the agency'; and

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

`(F) the average number of days for the agency to respond to requests beginning on the date on which each request was initially received by the agency, the median number of days for the agency to respond to such requests, and the range in number of days for the agency to respond to such requests;

`(G) based on the number of business days that have elapsed since each request was initially received by the agency--

`(i) the number of requests for records to which the agency has responded with a determination within a period greater than 1 day and less than 201 days, stated in 20-day increments;

`(ii) the number of requests for records to which the agency has responded with a determination within a period greater than 200 days and less than 301 days;

`(iii) the number of requests for records to which the agency has responded with a determination within a period greater than 300 days and less than 401 days; and

`(iv) the number of requests for records to which the agency has responded with a determination within a period greater than 400 days;

`(H) the average number of days for the agency to provide the granted information beginning on the date on which each request was initially received by the agency, the median number of days for the agency to provide the granted information, and the range in number of days for the agency to provide the granted information;

`(I) the median and average number of days for the agency to respond with a determination to administrative appeals based on the date on which each appeal was initially received by the agency; the highest number of business days taken by the agency to respond to an administrative appeal; and the lowest number of business days taken by the agency to respond to an administrative appeal;

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

`(K) data on the 10 active administrative appeals with the earliest filing dates pending at the agency as of September 30 of the preceding year, including the number of business days that have elapsed since each request was initially received by the agency;

`(L) the number of expedited review requests received by the agency, the number that were granted and the number that were denied, the average and median number of days for adjudicating expedited review requests, and the number of requests that adjudicated within the required 10 days;

`(M) the number of fee waiver requests that were granted and the number that were denied, and the average and median number of days for adjudicating fee waiver determinations;'

(b) Availability of Raw Statistical Data- Section 552(e)(2) of title 5, United States Code, is amended by adding after the period the following: 'In addition, each agency shall make the raw statistical data used in its reports available electronically to the public upon request.'

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

Section 552(f) of title 5, United States Code, is amended by striking paragraph (2) and inserting the following:

(2) 'record' and any other term used in this section in reference to information includes--

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

(B) any information described under subparagraph (A) that is maintained for an agency by an entity under a contract between the agency and the entity.'

#### **SEC. 11. OFFICE OF GOVERNMENT INFORMATION SERVICES.**

(a) In General- Chapter 21 of title 5, United States Code, is amended by inserting after section 2119 the following new section:

Sec. 2120. Office of Government Information Services

(a) In General- There is established in the National Archives an office to be known as the 'Office of Government Information Services'.

(b) National Information Advocate-

(1) IN GENERAL- The Office of Government Information Services shall be under the supervision and direction of an official to be known as the 'National Information Advocate' who shall report directly to the Archivist of the United States.

(2) FUNCTIONS OF OFFICE-

(A) GUIDANCE FOR REQUESTERS-

(i) IN GENERAL- The Office of Government Information Services shall provide, as a non-exclusive alternative to litigation, guidance to FOIA requesters.

(ii) TYPES OF GUIDANCE- In providing such guidance, the Office shall provide informal guidance to requesters and may provide fact-finding reviews and opinions to requesters. All reviews and opinions shall be non-binding and shall be initiated only on the request of FOIA requesters.

(iii) AVAILABILITY- Any written opinion issued pursuant to this section shall be available on the Internet in an indexed, readily accessible format.

(iv) FOIA REQUESTERS- In this paragraph, the term 'FOIA requester' or 'requester' means a person who has made a request under section 552 of this title and who has been denied records or has not received a timely response to the request or to an administrative appeal.

`(B) ANALYSES OF AGENCY OPERATIONS- The Office of Government Information Services shall--

`(i) review polices and procedures of administrative agencies under section 552 of this title and compliance with that section by administrative agencies; and

`(ii) recommend policy changes to Congress and the President to improve the administration of section 552 of this title, including whether agencies are receiving and expending adequate funds to ensure compliance with that section.

`(3) IMPACT ON REQUESTER ACCESS TO LITIGATION- Nothing in this section shall affect the right of requesters to seek judicial review as described in section 552 of this title.'

(b) Technical and Conforming Amendment- The table of sections for chapter 21 of title 5, United States Code, is amended by inserting after the item relating to section 2119 the following:

`2120. Office of Government Information Services.'

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

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

(1) the number of persons in the private sector, and the number of State and local agencies, that voluntarily furnished records to the Department under this section;

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

(3) such recommendations as the Comptroller General considers appropriate regarding improvements in the collection and analysis of sensitive information held by persons in the private sector, or by State and local agencies, relating to vulnerabilities of and threats to critical infrastructure, including the response to such vulnerabilities and threats; and

(4) an examination of whether the nondisclosure of such information has led to the increased protection of critical infrastructure.

(b) Form- The report shall be submitted in unclassified form, but may include a classified annex.

## **SEC. 13. REPORT ON PERSONNEL POLICIES RELATED TO FOIA.**

Not later than 1 year after the date of enactment of this Act, the Office of Personnel Management shall submit to Congress a report that examines--

(1) whether changes to executive branch personnel policies could be made that would--

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

(B) enhance the stature of officials administering that section within the executive branch;

(2) whether performance of compliance with section 552 of title 5, United States Code, should be included as a factor in personnel performance evaluations for any or all categories of Federal employees and officers;

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

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

(5) whether other changes to personnel policies can be made to ensure that there is a clear career advancement track for individuals interested in devoting themselves to a career in compliance with such sections; and

(6) whether the executive branch should require any or all categories of Federal employees to undertake awareness training of such sections.

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

Section 552 of title 5, United States Code, is amended by adding at the end the following:

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

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

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

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