

FOIA Oversight and Implementation Act of 2015 or the FOIA Act

An overview of H.R. 653:

H.R. 653 limits exemptions and creates accountability for exemption decisions

- Presumption of Openness: prohibits use of exemptions unless the agency reasonably foresees disclosure would cause specific identifiable harm to an interest protected by the exemption
- Exemption Five Limits: excludes from the deliberative process exemption – (1) controlling interpretations of law, (2) records used in policy decision making which an agency requested from an outside party, (3) guidance documents used to respond to the public, and (4) records created 25 years or more before the date of the request
- Exemption Six Narrowed: limits the personal privacy exemption to information that is actually private and clarifies that the exemption does not apply to the name of a federal employee engaged in official job duties
- Exemption Three Transparency: requires the agency to identify the statute relied upon when using exemption three (information exempt from disclosure by any other statute)
- Exemption Decision Transparency: requires the agency to identify the person who made the decision to exempt a record
- Exclusion Accountability: Agencies are allowed to consider certain documents as excluded from FOIA under specific situations, such as if the disclosure of records would reveal a confidential informant or a not-yet public criminal investigation and disclosure would interfere with enforcement proceedings.
 - As amended, H.R. 653 will require agencies to justify the decision to exclude records from FOIA to DOJ and for DOJ to maintain records of each justification.

H.R. 653 establishes penalties for violations of FOIA for agencies and individual employees

- Suspension or Removal: allows agency to suspend or remove employee for an intentional violation of FOIA
- Disciplinary Action: allows agency to discipline an employee for an unauthorized withholding of information
- Litigation Costs: requires agency to pay litigation costs when a plaintiff wins
- Limits Fee Collection: prohibits agency from collecting search or duplication fees if it fails to meet the statutory deadline, up to 3,000 pages

H.R. 653 requires multiple compliance reviews

Inspectors General are required to review FOIA compliance

- Requires an agency's IG to periodically review compliance with FOIA, including the timely processing of requests, fees and fee waivers, and the use of exemptions. CFO Act agencies must be reviewed at least every 2 years
- Requires an agency's IG to review compliance with FOIA if an agency fails to update FOIA regulations within 180 days

Chief FOIA Officers are required to review FOIA Compliance

- Requires Chief FOIA Officers to annually review compliance with FOIA and make recommendations necessary to improve practices and compliance

GAO is required to audit agencies FOIA compliance and implementation

- Requires GAO to conduct audits of compliance and implementation
- Requires GAO to catalogue exemption (b)(3) statutes
- Requires GAO to study whether agencies could feasibly switch to non-custodian records searches

H.R. 653 establishes FOIA training requirements and Performance Reviews

- Performance Reviews: Requires agencies to consider compliance with FOIA as part of performance reviews
- Agency-wide Training: Requires agencies to provide annual training to all agency employees on responsibilities to be responsive to FOIA
- Training for FOIA staff: Requires agencies to provide annual training to all FOIA employees on FOIA legal requirements

H.R. 653 strengthens the Office of Government Information Services (OGIS)

- Independence: allows OGIS to communicate directly with Congress
- Advisory Opinions: allows OGIS to issue advisory opinions in mediation
- Increased Awareness: requires agencies to notify requesters of the option to use OGIS services to settle disputes
- Systems of Records Notices: Requires agencies to submit systems of records notices so that OGIS can obtain necessary records to conduct mediations

H.R. 653 makes submitting and tracking FOIA requests easier for requesters

- Accept via email: requires agencies to accept requests via email
- Online Portal: requires OMB to develop a government-wide online portal for requesters to submit and track requests
- Contact Information: requires agencies to provide a name and contact information for a person who can assist with individual FOIA requests
- Detailed Explanation of Fees: requires agencies to provide a detailed explanation of how the fee or fee assessment was calculated
- Tracking Number: requires agencies to assign a tracking number for each request on the day the request is received

H.R. 653 increases access to public records

- Online, publically accessible records: updates FOIA by requiring agencies to make records previously required to be available for inspection and copying, publically available online
- Proactively post online: requires agencies to actively determine records that should be released in the public interest
- Frequently Requested: requires agencies to make available online any record request three or more times

H.R. 653 Clarifies responses to Congressional requests are not subject to FOIA

H.R. 653 increases access to information about FOIA progress through additional reporting requirements

- Reports on Updating Regulations: requires agencies to update regulations within 180 days and report on either progress or lack of progress
- Additional Annual Reporting: requires agencies to report on: invocations of law enforcement exclusions, use of OGIS mediation services, number of records proactively made available, and number of times the agency assessed a fee but did not comply with the 20 day time limit

H.R. 653 establishes a Chief FOIA Officers Council

Establishes a council of agency Chief FOIA Officers and other federal FOIA leaders to increase awareness of best-practices, improve coordination and idea sharing, develop recommendations for increased compliance of FOIA, and promote common performance measures.