

AMENDMENT NO. _____

Calendar No. _____

Purpose: to improve the bill.

IN THE SENATE OF THE UNITED STATES – 110th Cong., 1st Sess.

S.849

To promote accessibility, accountability, and 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.

Referred to the committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by Mr. KYL.

Viz:

The bill is amended as follows:

(a) NEWS-MEDIA STATUS.— At page 4, strike lines 4 through 15 and insert:

“The term “a representative of the news media” means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term “news” means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of “news”) who make their products available for purchase by or subscription by or free distribution to the

general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the Government may also consider the past publication record of the requester in making such a determination.”

(b) ATTORNEYS’ FEES.— At page 5, strike lines 1 through 7 and insert:

“(I) a judicial order, or an enforceable written agreement or consent decree;
or
(II) a voluntary or unilateral change in position by the agency, provided that the complainant’s claim is not insubstantial.”

(c) COMMENCEMENT OF 20-DAY PERIOD AND TOLLING.— At page 6, lines 1 through 7 and insert:

“(1) IN GENERAL.— Section 552(a)(6)(A)(i) of title 5, United States Code, is amended by striking “determination;” and inserting:

“determination. The 20-day period shall commence on the date on which the request is first received by the appropriate component of the agency, but in any event no later than ten days after the request is first received by any component of the agency that is designated in the agency’s FOIA regulations to receive FOIA requests. The 20-day period shall not be tolled by the agency except (I) that the agency may make one request to the requester for information and toll the 20-day period while it is awaiting such information that it has reasonably requested from the FOIA requester or (II) if necessary to clarify with the requester issues regarding fee assessment. In

either case, the agency’s receipt of the requester’s response to the agency’s request for information or clarification ends the tolling period;”

(d) COMPLIANCE WITH TIME LIMITS.— At page 6, strike line 11 and all that follows through page 7, line 4, and insert:

“(b) COMPLIANCE WITH TIME LIMITS.—

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

“(viii) An agency shall not assess search fees under this subparagraph if the agency fails to comply with any time limit under paragraph (6), provided that no unusual or exceptional circumstances (as those terms are defined for purposes of paragraphs (6)(B) and (C), respectively) apply to the processing of the request.”

(B) Section 552(a)(6)(B)(ii) of title 5, United States Code, is amended by inserting between the first and second sentences the following:

“To aid the requester, each agency shall make available its FOIA Public Liaison, who shall assist in the resolution of any disputes between the requester and the agency.”

(e) STATUS OF REQUESTS.— At page 7:

(1) strike lines 17 through 22 and insert:

“(A) establish a system to assign an individualized tracking number for each request received that will take longer than ten days to process and provide to each person making a request the tracking number assigned to the request; and”

(2) at line 23, strike “(C)” and insert “(B)”.

(f) CLEAR STATEMENT FOR EXEMPTIONS.— At page 8, strike line 19 and all that follows through the end of the section and insert:

“(A) if enacted prior to the date of enactment of the OPEN Government Act of 2007, requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or establishes particular criteria for withholding or refers to particular types of matters to be withheld; or

“(B) if enacted after the date of enactment of the OPEN Government Act of 2007, specifically cites to the Freedom of Information Act.”

(g) PRIVATE RECORDS MANAGEMENT.— At page 13, lines 14 through 15, strike “a contract between the agency and the entity.” and insert “Government contract, for the purposes of records management.”.

(h) POLICY REVIEWS, AUDITS, AND CHIEF FOIA OFFICERS AND PUBLIC LIAISONS.— Strike section 11 and insert the following:

“SEC. 11. OFFICE OF GOVERNMENT INFORMATION SERVICES.

“(a) IN GENERAL— Section 552 of title 5, United States Code, is amended by adding at the end the following:

“(h) There is established the Office of Government Information Services within the National Archives and Records Administration. The Office of Government Information Services shall review policies and procedures of administrative agencies under section 552, shall review compliance with section 552 by administrative agencies, and shall recommend policy changes to Congress and the President to improve the administration of section 552. The Office of Government Information Services shall offer mediation services to resolve disputes between persons making requests under section 552 and administrative 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.

“(i) The Government Accountability Office shall conduct audits of administrative agencies on the implementation of section 552 and issue reports detailing the results of such audits.

“(j) Each agency shall—

“(1) Designate a Chief FOIA Officer who shall be a senior official of such agency (at the Assistant Secretary or equivalent level).

General 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 the FOIA;

“(B) monitor FOIA implementation 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 the FOIA;

“(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 the FOIA;

“(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 the FOIA; and

“(E) facilitate public understanding of the purposes of the FOIA’s statutory exemptions by including concise descriptions of the exemptions in both the agency’s FOIA handbook issued under section 552(g) of title 5, United States Code, and the agency’s annual FOIA report, and by providing an overview, where appropriate, of certain general categories of agency records to which those exemptions apply.”

“(2) Designate one or more FOIA Public Liaisons who shall be appointed by the Chief FOIA Officer.

General Duties— FOIA Public Liaisons shall report to the agency Chief FOIA Officer and shall serve as supervisory officials to whom a FOIA requester can raise concerns about the service the FOIA requester has received from the FOIA Requester Center, following an initial response from the FOIA Requester Center staff. FOIA Public Liaisons shall be responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.”

“(b) EFFECTIVE DATE— The amendments made by this section shall take effect on the date of enactment of this Act.”

(i) CRITICAL INFRASTRUCTURE INFORMATION.— Strike section 12 of the bill.