119TH CONGRESS
1ST SESSION

S. _____

To amend title 5, United States Code, to address the availability of information, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. CORNYN introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend title 5, United States Code, to address the availability of information, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''FOIA Clarification Act''.

SEC. 2. AMENDMENTS TO THE FREEDOM OF INFORMATION ACT.

Section 552 of title 5, United States Code (commonly known as the ''Freedom of Information Act''), is amended—

(1) in subsection (a)—

(A) in paragraph (2)—

(i) in the matter preceding subparagraph (A), by inserting ''that is machine-readable, where feasible, and within 1 month after becoming subject to this paragraph'' after ''electronic format'';

(ii) in subparagraph (D)(ii)(II), by striking ''and'' at the end; and

(iii) by inserting after subparagraph (E) the following:

''(F) agency organization charts;

''(G) documentation of lobbying activities, such as form SF–LLL or any successor form;

''(H) logs of requests received under paragraph (3) in a searchable format;

''(I) calendars of agency heads, including, at a minimum, all scheduled events, meetings, and telephone calls as those items are maintained by the agency;

''(J) the 10 largest contracts, task orders, and grants by dollar value and all contracts, task orders, or grants valued at or above $100,000,000;

''(K) all records of agency visitors the agency maintains, including, at a minimum, records of visitors to agency heads; and

''(L) unclassified Inspector General reports, which may be satisfied by the Inspector General of the agency publishing the reports of the Inspector General on oversight.gov or a successor website managed by the Council of the Inspectors General on Integrity and Efficiency;'';

(B) in paragraph (3)(C), by inserting ''and produce'' after ''search for'';

(C) by striking paragraph (4)(B) and inserting the following:

''(B)(i) A person aggrieved by the failure of an agency to comply with any requirement of this section may bring an action against the agency. The district courts of the United States shall have original jurisdiction of all actions arising under this section. Venue over such an action is proper in the district in which the complainant resides, the district in which the complainant has a principal place of business, the district in which the agency records that are the subject of the action are situated, or the Dis-

trict of Columbia. The court in such an action shall have remedial authority to—

"(I) enjoin the agency from withholding agency records;

"(II) order the agency to publish records in the Federal Register, as required by paragraph (1), and to require such publication on a continuing basis;

"(III) order the agency to make records available for public inspection in an electronic format, as required by paragraph (2), and to require such public access on a continuing basis;

"(IV) order the agency to produce agency records in response to a request under paragraph (3);

"(V) provide relief to resolve any dispute over—

"(aa) the validity of a request under paragraph (3), including whether a request reasonably describes the records sought or has been submitted in accordance with rules and procedures published by an agency;

"(bb) the interpretation by an agency of the scope of a request under paragraph (1), (2), or (3);

"(cc) the validity of an agency determination under paragraph (6);

"(dd) the reasonableness of the search for records by an agency;

"(ee) the ability of an agency to reproduce a record in a particular form or format;

"(ff) the definition of a record under subsection (f)(2); and

"(gg) any fee issue, including the denial by an agency of a request for the waiver or reduction of fees;

"(VI) enjoin the agency from maintaining or applying any policy or practice that impairs lawful access to records or otherwise fails to abide by the terms of this section;

"(VII) issue a declaratory judgment, to the extent authorized by section 2201 of title 28; and

"(VIII) provide any other appropriate equitable relief to remedy a violation of this section.

''(ii) In any action brought under this section, the court shall determine the matter de novo. The court may examine the contents of agency records in camera to determine whether such records or any part of any such record shall be withheld under any of the exemptions set forth under subsection (b). The burden shall be on the agency to sustain its action. In addition to any other matters to which a court accords substantial weight, a court shall accord substantial weight to an affidavit of an agency concerning the determination by the agency as to technical feasibility under the flush text following paragraph (2)(L) and under subsection (b) and reproducibility under paragraph (3)(B).''; and

(D) in paragraph (8)—

(i) in subparagraph (A)(i)—

(I) in subclause (I), by inserting ''and that harm outweighs the public interest in access to the information'' after ''subsection (b)''; and

(II) in subclause (II), by striking ''law'' and inserting ''statute''; and

(ii) by striking subparagraph (B) and inserting the following:

''(B) Examples of public interest for the purposes of subparagraph (A)(i)(I) include—

''(i) furthering public understanding of the operations or decision making of an agency or Government official;

''(ii) facilitating the ability of the public to make informed decisions with respect to electoral or democratic processes;

''(iii) investigating any reasonable suspicion of governmental wrongdoing;

''(iv) furthering public health or safety; and

''(v) other relevant public interests.

''(C) Nothing in this paragraph requires disclosure of information that is otherwise prohibited from disclosure by statute, or otherwise exempted from disclosure under subsection (b)(3). For purposes of this paragraph, a disclosure of information shall not be deemed to be otherwise prohibited by section 1905 of title 18.'';

(2) in subsection (e), by adding at the end the following:

''(7) On or before May 1 of each year, the Director of the Office of Information Policy of the Department of Justice shall submit to the Committee on the Judiciary

of the Senate and the Committee on Oversight and Government Reform of the House of Representatives, and make publicly available, a report on the information collected and identified under this section with the goal of assessing and making recommendations on—

''(A) the usefulness of the information collected;

''(B) reducing the reporting burden on agencies; and

''(C) additional key information for agencies to collect to understand and address emerging challenges and risks including—

''(i) litigation causes and effects on processing and backlogs; and

''(ii) the number of requests for which unusual circumstances apply.''; and

(3) in subsection (j)(2)(D), by striking the semicolon at the end and inserting the following: '', each of which shall include—

''(i) a detailed description of the 5 most requested categories of agency records;

''(ii) a detailed analysis concerning the feasibility of making the categories of records identified under clause (i) subject to disclosure in their entirety, and if the agency has determined to not make such a category of records subject

to proactive disclosure, a detailed justification for that determination;

''(iii) a detailed description of all steps taken by the agency during the preceding year to design or format agency information or records, such that the agency information or records may be made available for public inspection without the need for the agency to conduct a review of the agency information or records for the purpose of determining potential harm to an interest protected by the exemptions under subsection (b);

''(iv) the number of record requests the agency found to be not reasonably described or unduly burdensome; and

''(v) the number of record requests for which the agency determined that the agency could neither confirm nor deny the existence of responsive records;''.

SEC. 3. PROTECTIONS AGAINST RETALIATION FOR LAWFUL USE OF FEDERAL RECORDS BY FEDERAL EMPLOYEES.

(a) IN GENERAL.—Section 2302(b)(9) of title 5, United States Code, is amended—

(1) in subparagraph (C), by striking ''or'' at the end; and

(2) by adding at the end the following:

''(E) making a request for information pursuant to section 552 (commonly referred to as the 'Freedom of Information Act') or subsection (d) of section 552a (commonly referred to as the 'Privacy Act of 1974') of this title; or

''(F) pursuing any administrative or judicial action with respect to a request described in subparagraph (E), including seeking assistance or to engage in dispute resolution, as described in section 552;''.

(b) CONFORMING AMENDMENTS.—

(1) TITLE 5, UNITED STATES CODE.—Sections 1214, 1215(a)(3)(B), 1221, 2302, and 7703 of title 5, United States Code, are amended by striking ''or (D)'' each place the term appears and inserting ''(D), (E), or (F)''.

(2) WHISTLEBLOWER PROTECTION ENHANCEMENT ACT OF 2012.—Section 116(b)(1)(A) of the Whistleblower Protection Enhancement Act of 2012 (31 U.S.C. 1116 note) is amended by striking ''or (D)'' and inserting ''(D), (E), or (F)''.