



*President Obama signs the FOIA Improvement Act of 2016 on June 30, 2016*

**Law Includes Presumption of Disclosure; Deliberative Process Sunset**

**Bipartisan Bill Fixes Problems Identified by Archive Audits**

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One Hundred Fourteenth Congress  
of the  
United States of America

AT THE SECOND SESSION

Began and held at the City of Washington on Monday,  
the fourth day of January, two thousand and sixteen

An Act

To improve the Freedom of Information Act.

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 Improvement Act of 2016".

SEC. 2. AMENDMENTS TO FOIA.

Section 552 of title 5, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (2)—

(i) in the matter preceding subparagraph (A), by  
striking "for public inspection and copying" and  
inserting "for public inspection in an electronic format";

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

"(D) copies of all records, regardless of form or format—  
"(i) that have been released to any person under para-  
graph (3); and

"(ii) that because of the nature of their subject  
matter, the agency determines have become or are likely  
to become the subject of subsequent requests for substan-  
tially the same records; or

"(iii) that have been requested 3 or more times; and";

and

(iii) in the undesignated matter following subpara-  
graph (E), by striking "public inspection and copying  
current" and inserting "public inspection in an elec-  
tronic format current";

(B) in paragraph (4)(A), by striking clause (viii) and  
inserting the following:

"(viii)(I) Except as provided in subclause (II), an agency  
shall not assess any search fees (or in the case of a  
requester described under clause (ii)(II) of this subpara-  
graph, duplication fees) under this subparagraph if the  
agency has failed to comply with any time limit under  
paragraph (6).

"(ii)(aa) If an agency has determined that unusual  
circumstances apply (as the term is defined in paragraph  
(6)(B)) and the agency provided a timely written notice  
to the requester in accordance with paragraph (6)(B), a  
failure described in subclause (I) is excused for an addi-  
tional 10 days. If the agency fails to comply with the  
extended time limit, the agency may not assess any search

At 4:00 PM today President Barack Obama signed the FOIA Improvement Act of 2016 ([S. 337](#)) into law.

The bipartisan, bicameral bill – introduced by Senators John Cornyn, Chuck Grassley, and Patrick Leahy, and supported by Representatives Jason Chaffetz and Elijah Cummings in the House – will improve FOIA in several meaningful ways and reflects many of the findings of the National Security Archive's FOIA audits and litigation.

The legislation mandates a 25-year sunset for the "[wildly misused](#)" FOIA exemption (b)(5), an exemption that currently has no time limit and is often called the "withhold it because you want to" exemption. The CIA recently successfully hid a draft history of its [53-year-old Bay of Pigs invasion](#) by invoking an overly-broad interpretation of the exemption. Thanks to President Obama and FOIA lions in the Senate and the House, the new FOIA bill will curtail such senseless secrecy.

Agencies are now required to update their FOIA regulations within 180 days after the passage of the bill. [A National Security Archive audit shows](#) that too many federal agencies have not updated their regulations to comply with the 2007 Open Government FOIA improvements. By neglecting to update their "FOIA handbooks," agencies are essentially ignoring Congress's FOIA reforms.

Today's signing also codifies the presumption of openness. Archive audits [going back to 2009](#) show that most federal agencies have continued to ignore President Obama's "[presumption of disclosure](#)" guidance that he issued on his first day in office. The new bill codifies this presumption, mirrors the [Obama administration's](#) and the [Department of Justice's](#) (non binding) instructions on FOIA, thereby requiring that records be released unless there is a foreseeable harm or legal requirement to withhold them.

The law will also improve public digital access to released records, and strengthen and increase the independence of the FOIA Ombuds Office – the Office of Government Information Services (OGIS).

But the bill did not fulfill all of the public's openness asks. It does not include a public interest balancing test to force the release of information which can technically be withheld under the law; it also does not establish a government commission or mechanism which can overturn bad agency FOIA decisions.

"This is an important improvement to the US Freedom of Information Act," said Archive director Tom Blanton, "but there are several large leaps the US law still needs to make to catch up with international Freedom of Information norms and standards."

The signing of today's legislation comes just before the law – [signed begrudgingly by LBJ on July 4, 1966](#) – turns 50.

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