



**CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE**

April 23, 2007

S. 849

OPEN Government Act of 2007

*As ordered reported by the Senate Committee on the Judiciary
on April 12, 2007*

SUMMARY

S. 849 would make several amendments to the Freedom of Information Act (FOIA), which generally allows any person the right to obtain federal agency records protected from disclosure. Specifically, the legislation would:

- Expand FOIA's definition of the news media;
- Require time limits for agencies to act upon FOIA requests;
- Allow greater recovery of attorneys' fees and litigation costs by FOIA requestors if information is withheld by the government;
- Require agencies to provide tracking numbers for FOIA requests and status information;
- Amend the types of information that are exempt from disclosure under FOIA;
- Require federal agencies to prepare additional reports to the Congress concerning FOIA activities;
- Require new reports concerning agencies' FOIA programs from the Government Accountability Office (GAO), the Department of Justice (DOJ), the Office of the Special Counsel (OSC), and the Office of Personnel Management (OPM); and
- Establish an Office of Government Information Services (OGIS) to review FOIA policies and procedures, conduct audits, and offer mediation services.

CBO estimates that enacting this legislation would increase direct spending by \$6 million in 2008 and \$63 million over the 2008-2017 period to reimburse citizens making FOIA requests for attorneys' fees and litigation cost payments. CBO also estimates that enacting S. 849 would result in a loss of certain fees that are recorded in the budget as revenues, for a cost of less than \$500,000 annually over the 2008-2017 period.

In addition, we estimate that implementing the bill would increase costs subject to appropriation by \$9 million in 2008 and \$57 million over the 2008-2012 period to establish the OGIS and implement new agency reporting requirements. S. 849 would codify and expand Executive Order 13392 that requires agencies to improve their FOIA operations, including improving efficiency and customer services.

S. 849 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of S. 849 is shown in the following table. The costs of this legislation fall within budget function 800 (general government) and all other budget functions that include federal salaries and expenses.

BASIS OF ESTIMATE

For this estimate, CBO assumes that S. 849 will be enacted before the start of 2008, that the necessary funds will be provided for each year, and that spending will follow historical patterns for similar programs.

Enacted in 1966, FOIA was designed to enable any person—individual or corporate, regardless of citizenship status—to request, without explanation or justification, access to existing, identifiable, and unpublished executive branch records on any topic. The Office of Management and Budget issues guidelines to agencies on fees to charge for providing copies of information requested, while DOJ oversees agency compliance with FOIA. Based on information from GAO for fiscal year 2005, federal agencies (excluding the Social Security Administration) received more than 2.5 million FOIA requests. In addition, DOJ reports that in fiscal year 2005, agencies devoted about 5,000 employee-years to processing and litigating FOIA requests at a cost of over \$300 million.

	By Fiscal Year, in Millions of Dollars									
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017

CHANGES IN DIRECT SPENDING

Attorneys' Fees and Litigation Costs										
Estimated Budget Authority	6	6	6	6	7	7	7	7	7	7
Estimated Outlays	6	6	6	6	6	6	6	7	7	7

CHANGES IN REVENUES

FOIA Fees										
Estimated Revenues	*	*	*	*	*	*	*	*	*	*

CHANGES IN SPENDING SUBJECT TO APPROPRIATION

Office of Government Information Services										
Estimated Authorization Level	3	6	6	7	7	7	7	8	8	8
Estimated Outlays	3	5	6	6	7	7	7	8	8	8
FOIA Reporting Requirements										
Estimated Authorization Level	4	5	5	5	6	6	6	6	6	7
Estimated Outlays	3	5	5	5	6	6	6	6	6	7
Other Reports										
Estimated Authorization Level	3	2	1	*	*	*	*	*	*	*
Estimated Outlays	3	2	1	*	*	*	*	*	*	*
Total Changes										
Estimated Authorization Level	10	13	12	12	13	13	13	14	14	15
Estimated Outlays	9	12	12	11	13	13	13	14	14	15

NOTE: * = revenue loss or spending increase of less than \$500,000.

Direct Spending and Revenues

Attorneys' Fees and Litigation Costs. Under section 4, FOIA requestors would be entitled to recover any attorneys' fees and litigation costs incurred to receive requested information through a judicial or administrative order or because of a voluntary change in an agency's FOIA policies. Those payments would be made from the Judgment Fund (a permanent, indefinite appropriation for claims and judgments against the United States). The cost of implementing this section would depend on the number of successful challenges to FOIA requests that are either fully or partially denied and any changes in FOIA disclosure policies. Under current law, when a FOIA request is denied or partially granted, the requestor can administratively appeal the decision. If the administrative appeal is also denied, a requestor

has the right to appeal the decision in federal court. Based on a review of FOIA decisions by federal courts over the 2001-2005 period, CBO estimates that about 350 FOIA cases are presented annually, and about 6 percent of complainants subsequently challenge agency decisions and are reimbursed for attorneys' fees and litigation costs. Those payments by the Judgment Fund cost about \$3 million a year. In addition, based on information from 15 major agencies over the 2001-2005 period, including the Departments of Veterans Affairs, Treasury, Defense, Labor, State, and Justice, CBO estimates that requestors successfully appeal about 1,000 FOIA cases each year.

CBO estimates that the average cost of litigating a FOIA lawsuit or administrative appeal is about \$6,000 per case. Assuming that agencies act on about 1,000 FOIA cases each year, CBO estimates that enacting this legislation would increase direct spending from the Judgment Fund by \$30 million over the 2008-2012 period and \$63 million over the 2008-2017 period.

FOIA Fees. FOIA requests from researchers associated with academic institutions and the news media are charged fees for the duplication of records that are larger than 100 pages. All other requestors are charged fees for research time and duplication costs after the first two hours of research and 100 pages of copying. Those fees are recorded on the budget as revenues and deposited into the general fund of the Treasury. Section 3 would expand the definition of news media researchers to FOIA requestors who have no affiliation with a media outlet but have a publishing history. Based on a review of annual FOIA reports from 15 major agencies over the fiscal year 2003-2005 period, CBO estimates that agencies collect about \$4 million in FOIA fees annually. CBO expects that expanding the definition of the news media would reduce the amount of fees currently collected for retrieval of information. Based on information from some of the 15 major agencies, CBO estimates that the reduction in FOIA fees collected would be less than \$500,000 annually.

Spending Subject to Appropriation

Office of Government Information Services. Section 11 would establish an Office of Government Information Services within the Administrative Conference of the United States. The office would review FOIA policies and practices, make recommendations, offer mediation services, and conduct audits of agency's FOIA programs.

Based on information from DOJ and the cost of similar offices, CBO estimates that implementing this provision would cost \$7 million annually for additional staff to conduct audits of FOIA programs. CBO expects that the new agency would take about two years to reach that level of effort. We estimate that operations of the new office would cost \$27 million over the 2008-2012 period, assuming appropriation of the necessary amounts.

FOIA Reporting Requirements. Section 9 would add a number of additional reporting requirements to the annual FOIA reports submitted by all federal departments and agencies. This would include FOIA information on the time required to process requests, median and average processing time, expedited and appeal processing time, and the oldest pending requests. In addition, S. 849 would require each agency to provide the raw data used to compile their annual FOIA report. Based on the costs of similar reports, a review of annual reports by 15 major agencies over the 2001-2005 period, and additional information from some of those agencies, CBO estimates that those reporting requirements would cost about \$5 million annually and \$24 million over the 2008-2012 period, assuming the appropriation of the necessary amounts.

Other Reports. S. 849 would require new reports by a number of government agencies. GAO would be required to report on critical infrastructure information that is collected by the government from the private sector but is exempt from FOIA disclosure. DOJ and OSC would be required to report on legal actions related to the rejection of FOIA requests, and OPM would be required to produce a report on FOIA personnel policies. Based on the costs of similar reports, CBO estimates that implementing those provisions would cost \$6 million over the 2008-2012 period, assuming the availability of appropriated funds.

Other Provisions. Additional provisions would require providing tracking numbers for FOIA requests and would expand the provisions of Executive Order 13392 issued on December 14, 2005. That order calls upon all federal agencies to improve their FOIA operations, including customer service and assistance. Specifically, the order requires agencies to develop FOIA improvement plans, designate a Chief FOIA officer, and establish FOIA requestor centers. Based on information from DOJ and a review of annual reports by 15 major agencies over the 2001-2005 period, CBO estimates that those provisions would not significantly increase agencies' costs to implement FOIA.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

S. 849 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

PREVIOUS CBO ESTIMATE

On March 12, 2007, CBO provided a cost estimate for H.R. 1309, the Freedom of Information Act Amendments of 2007, as ordered reported by the House Committee on Oversight and Government Reform on March 8, 2007. Both bills would amend the Freedom of Information Act but have different provisions, including provisions related to the structure of the OGIS and the payment of FOIA fees. CBO cost estimates for the two bills reflect those differences.

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