



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

May 5, 2015

H.R. 653 **FOIA Act**

*As reported by the House Committee on Oversight and Government Reform
on March 25, 2015*

SUMMARY

H.R. 653 would amend the Freedom of Information Act (FOIA). FOIA generally allows any person to obtain records from federal agencies. Specifically, the legislation would: establish a single website for making FOIA requests; direct agencies to make records available in an electronic format; require courts to pay some attorney fees and other litigation costs related to FOIA disputes; reduce the number of exemptions agencies can use to withhold information from the public; clarify procedures for handling frequently requested documents and charging fees; establish the Chief FOIA Officers Council; and require agencies to prepare additional reports for the Congress.

CBO estimates that implementing H.R. 653 would cost \$22 million over the 2016-2020 period, assuming appropriation of the necessary amounts. The bill would affect direct spending by agencies not funded through annual appropriations; therefore, pay as-you-go procedures apply. CBO estimates, however, that any net increase in spending by those agencies would not be significant. Enacting the bill would not affect revenues.

H.R. 653 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 effect of H.R. 653 is shown in the following table. The costs of this legislation fall within all budget functions that contain spending for salaries and expenses.

	By Fiscal Year, in Millions of Dollars					2016- 2020
	2016	2017	2018	2019	2020	
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Administrative Provisions						
Estimated Authorization Level	2	4	4	5	5	20
Estimated Outlays	1	3	4	5	5	20
Attorney Fees and Other Litigation Costs						
Estimated Authorization Level	*	*	*	*	*	2
Estimated Outlays	*	*	*	*	*	2
Total Changes						
Estimated Authorization Level	2	4	4	5	5	22
Estimated Outlays	2	4	4	5	5	22

Note: * = less than \$500,000.

BASIS OF THE ESTIMATE

For this estimate, CBO assumes that the bill will be enacted late in fiscal year 2015, that the necessary amounts will be appropriated for each year, and that spending will follow historical patterns for FOIA activities.

Enacted in 1966, FOIA was designed to enable anyone to request, without explanation or justification, copies of existing, identifiable, and unpublished records from the executive branch. The Office of Management and Budget (OMB) issues guidelines to agencies on what fees to charge for providing information, while the Department of Justice (DOJ) oversees agency compliance with FOIA. In 2013, federal agencies received more than 730,000 FOIA requests. In addition, DOJ reports that in fiscal year 2013, agencies employed about 4,200 full-time staff to fulfill FOIA requests and spent \$446 million on related activities.

Administrative Provisions

H.R. 653 would establish a Chief FOIA Officers Council to review and improve the FOIA process and to convene an annual FOIA meeting. In addition, the legislation would impose additional reporting and administrative requirements on agencies. Thus, CBO expects that the workload of most agencies would increase under the bill. Based on the costs of similar councils and related administrative requirements as well as a review of cost information in the annual reports submitted by 15 major agencies over the past five

years, CBO estimates that implementing H.R. 653 would eventually cost \$5 million annually—a 1 percent increase in the governmentwide cost of administering FOIA. We expect that most federal agencies, however, would face additional costs of significantly less than \$0.5 million per year.

Attorney Fees and Other Litigation Costs

H.R. 653 would require courts to award attorney fees and related litigation costs to plaintiffs in all FOIA cases where the plaintiff has “substantially prevailed.” Under current law, the courts have more discretion in awarding attorney fees and related costs.

CBO reviewed FOIA cases over the 2010-2014 period. In those years agencies spent between a few hundred dollars to \$1.5 million per year on awards for plaintiffs’ attorney fees and related costs. In addition, on average there were less than 20 cases annually where attorney fees were not paid by the government when the plaintiff had prevailed on any part of the court’s decision. Based on that information, CBO estimates that under H.R. 653 additional attorney fees and related costs would total about \$300,000 per year, roughly \$2 million over the 2016-2020 period.

PAY-AS-YOU-GO CONSIDERATIONS

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. Enacting H.R. 653 could affect net direct spending by some agencies (such as the Tennessee Valley Authority) because their operating costs are covered by receipts from the sale of goods, fees, and other collections. Therefore, pay-as-you-go procedures apply. Because most of those agencies can make adjustments to the amounts collected, CBO estimates that any net changes in direct spending by those agencies would not be significant. Enacting the bill would not affect revenues.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 653 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 February 17, 2015, CBO transmitted a cost estimate for S. 337, the FOIA Improvement Act of 2015, as ordered reported by the Senate Committee on the Judiciary on February 9, 2015. H.R. 653 would require courts to order agencies to pay attorney and other litigation costs in FOIA disputes when the plaintiff substantially prevails, while the Senate bill would not. That difference is reflected in the cost estimates.

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