

S 394

OPEN Government Act of 2005

Congress: 109 (2005–2007, Ended)

Chamber: Senate

Policy Area: Government Operations and Politics

Introduced: Feb 16, 2005

Current Status: Placed on Senate Legislative Calendar under General Orders. Calendar No. 628.

Latest Action: Placed on Senate Legislative Calendar under General Orders. Calendar No. 628. (Sep 21, 2006)

Official Text: <https://www.congress.gov/bill/109th-congress/senate-bill/394>

Sponsor

Name: Sen. Cornyn, John [R-TX]

Party: Republican • State: TX • Chamber: Senate

Cosponsors (6 total)

Cosponsor	Party / State	Role	Date Joined
Sen. Leahy, Patrick J. [D-VT]	D · VT		Feb 16, 2005
Sen. Isakson, Johnny [R-GA]	R · GA		Mar 14, 2005
Sen. Alexander, Lamar [R-TN]	R · TN		Mar 16, 2005
Sen. Nelson, Ben [D-NE]	D · NE		Apr 5, 2005
Sen. Feingold, Russell D. [D-WI]	D · WI		Apr 26, 2005
Sen. Johnson, Tim [D-SD]	D · SD		Sep 29, 2006

Committee Activity

Committee	Chamber	Activity	Date
Judiciary Committee	Senate	Hearings By (subcommittee)	Mar 15, 2005

Subjects & Policy Tags

Policy Area:

Government Operations and Politics

Related Bills

Bill	Relationship	Last Action
109 HR 867	Identical bill	Sep 27, 2006: Forwarded by Subcommittee to Full Committee (Amended) by Voice Vote .

**(This measure has not been amended since it was introduced. The summary has been expanded because action occurred on the measure.)**

Openness Promotes Effectiveness in our National Government Act of 2005 or OPEN Government Act of 2005 - (Sec. 3) Amends the Freedom of Information Act (FOIA), with respect to document duplication fees, to prohibit a federal agency from denying news media status to a news media representative solely on the absence of institutional associations of the requester and requires consideration of the requester's prior publication history. Requires an agency, if a requester has no prior publication history or current affiliation, to consider the requester's stated intent at the time the request is made to distribute information to a reasonably broad audience.

(Sec. 4) Provides that, for purposes of recovery of attorney fees and other litigation costs, a complainant has substantially prevailed if : (1) the complainant has obtained a substantial part of its requested relief through a judicial or administrative order or an enforceable written agreement; or (2) the complainant's pursuit of a nonfrivolous claim or defense has been a catalyst for a voluntary or unilateral change in position by the opposing party that provides a substantial part of the requested relief.

(Sec. 5) Directs the Attorney General to: (1) notify the Special Counsel of civil actions taken for arbitrary and capricious rejections of requests for agency records; and (2) annually submit reports on the number of such actions taken. Requires the Special Counsel to annually submit reports to Congress on the actions taken by the Special Counsel regarding civil actions taken for such rejections of requests for agency records.

(Sec. 6) Provides for the commencement of the 20-day time limit within which agencies shall determine whether to comply with a request for agency records on the day in which the request is first received. Prohibits agencies from tolling a request without the consent of the party filing the request.

Prohibits an agency, if the agency fails to comply with the applicable time limit provisions of the FOIA with respect to a request, from asserting any exemption to that request, unless disclosure: (1) would endanger U.S. national security; (2) would disclose personal private information protected by the Privacy Act of 1974 or proprietary information; or (3) is otherwise prohibited by law. Permits a court to waive the application of such amendment if the agency demonstrates by clear and convincing evidence that there was good cause for the failure to comply with the applicable time limit provisions. Makes such amendment effective one year after enactment of this Act.

(Sec. 7) Requires agencies to establish: (1) a system to assign tracking numbers for requests for information; and (2) telephone or Internet service that provides the status of requests. Makes such amendment effective one year after enactment of this Act.

(Sec. 8) Prohibits requiring an agency to make public matters that are specifically exempted from disclosure by statute provided that such statute, if enacted after the date of enactment of this Act, specifically states that the exemption applies.

(Sec. 9) Revises reporting requirements for annual agency reporting to the Attorney General concerning FOIA requests to require additional information.

(Sec. 10) Redefines "record" under the FOIA to include any information that is maintained by a contractor for an agency.

(Sec. 11) Establishes the Office of Government Information Services within the U.S. Administrative Conference to: (1) review section FOIA policies and procedures by administrative agencies; (2) conduct audits of administrative agencies on such policies and compliance and issue reports detailing the results of such audits; (3) recommend policy changes to Congress and the President to improve the administration of the FOIA, including whether agencies are receiving and spending adequate funds to ensure compliance with the FOIA; and (4) offer mediation services between persons making requests under the FOIA and administrative agencies as a non-exclusive alternative to litigation and, at the discretion of the Office, issue advisory opinions if mediation has not resolved the dispute. Makes such amendments effective one year after enactment of this Act.

(Sec. 12) Requires the Comptroller General each of the three years after enactment of this Act, to report on implementation of provisions for the protection of voluntarily shared critical infrastructure information under the Homeland Security Act of 2002, including: (1) the number of persons in the private sector and the number of state and local agencies that voluntarily furnished records to the Department of Homeland Security; (2) the number of requests for access to records granted or denied; (3) such recommendations considered appropriate regarding improvements in the collection and analysis of sensitive information held by persons in the private sector, or by state and local agencies, related to vulnerabilities of and threats to critical infrastructure, including the response to such vulnerabilities and threats; and (4) an examination of whether the nondisclosure of such information has led to increased protection of critical infrastructure. Requires that such reports be submitted in unclassified form and permits them to include a classified annex.

(Sec. 13) Requires the Office of Personnel Management (OPM) to report on personnel policies related to FOIA.

## **Actions Timeline**

---

- **Sep 21, 2006:** Committee on the Judiciary. Ordered to be reported without amendment favorably.
- **Sep 21, 2006:** Committee on the Judiciary. Reported by Senator Specter without amendment. Without written report.
- **Sep 21, 2006:** Committee on the Judiciary. Reported by Senator Specter without amendment. Without written report.
- **Sep 21, 2006:** Placed on Senate Legislative Calendar under General Orders. Calendar No. 628.
- **Mar 15, 2005:** Committee on the Judiciary Subcommittee on Terrorism, Technology and Homeland Security. Hearings held.
- **Feb 16, 2005:** Introduced in Senate
- **Feb 16, 2005:** Sponsor introductory remarks on measure. (CR S1520-1524)
- **Feb 16, 2005:** Read twice and referred to the Committee on the Judiciary. (text of measure as introduced: CR S1524-1525)