

118TH CONGRESS
1ST SESSION

S. 488

To modify the Freedom of Information Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 16, 2023

Mr. RUBIO (for himself and Mr. COTTON) introduced the following bill; which
was read twice and referred to the Committee on the Judiciary

A BILL

To modify the Freedom of Information Act, and for other
purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “First Opportunity for
5 Information to Americans Act of 2023” or the “FOIA Fix
6 Act of 2023”.

7 **SEC. 2. FOIA REQUESTS.**

8 Section 552 of title 5, United States Code, is amend-
9 ed—

10 (1) in subsection (a)—

1 (A) in paragraph (3)(A), by inserting “or
 2 paragraph (9)” after “subparagraph (E)”; and

3 (B) by adding at the end the following:

4 “(9)(A) Except as provided in subparagraph (D), an
 5 agency may not make any record available under this sub-
 6 section to any requester that—

7 “(i) is an individual who is not a citizen of the
 8 United States or an alien lawfully admitted for per-
 9 manent residence;

10 “(ii) is an entity that does not have a principal
 11 place of business or headquarters located in a State,
 12 the District of Columbia, or any territory or posses-
 13 sion of the United States; or

14 “(iii) is an entity that is a subsidiary of an enti-
 15 ty with a principal place of business or headquarters
 16 located in—

17 “(I) the People’s Republic of China;

18 “(II) the Russian Federation;

19 “(III) the Democratic People’s Republic of
 20 Korea;

21 “(IV) the Islamic Republic of Iran;

22 “(V) the Republic of Cuba;

23 “(VI) the Syrian Arab Republic; or

24 “(VII) the regime of Nicolás Maduro in
 25 Venezuela.

1 “(B) Knowingly assisting, conspiring, or abetting a
2 request for information under this section on behalf of an
3 individual or entity that is prohibited from receiving the
4 information under subparagraph (A) is punishable by a
5 fine of up \$10,000 per violation and not more than 1 year
6 in prison.

7 “(C) Each agency shall promulgate regulations as
8 necessary to carry out subparagraph (A).

9 “(D) Subparagraph (A) shall not apply to a requester
10 that is seeking official copies of the immigration court pro-
11 ceedings of the requester.

12 “(10) Notwithstanding any other provision of this
13 section, an agency may determine the manner in which
14 a request is fulfilled under this subsection if the agency
15 has a reasonable belief that fulfilling the request in the
16 manner requested by the requester—

17 “(A) is likely to result in the exposure of mate-
18 rial or information that is not responsive to the re-
19 quest, including any data describing the structure,
20 data elements, interrelationships, or other character-
21 istics of electronic records otherwise responsive to
22 the request; or

23 “(B) poses a material security risk to the agen-
24 cy or another entity in the Federal Government.”;
25 and

1 (2) in subsection (b)—

2 (A) in paragraph (8), by striking “or” at
3 the end; and

4 (B) in paragraph (9), by striking the pe-
5 riod at the end and inserting “; or”; and

6 (C) by adding at the end the following:

7 “(10) records or information, such as blue-
8 prints, schematics, formulae, technical expertise, or
9 other similar information that is susceptible to re-
10 verse engineering—

11 “(A) the disclosure of which is likely to
12 damage the interests of the United States;

13 “(B) that is materially related to the study
14 of an emerging or foundational technology iden-
15 tified by the Department of Commerce; and

16 “(C) for which the interest of the public in
17 disclosure does not outweigh the interests de-
18 scribed in subparagraph (A).”.

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