



SOCIAL SECURITY

“The Freedom of Information Act Amendments of 2007”

Status

- HR 1309 passed the House and has gone to the Senate (referred to Homeland Security Committee). No Further action has been taken.
- The senate companion legislation, S. 849, was approved by the Judiciary Committee and is pending on the Senate Calendar.
- If the Senate passes the bill, substantial differences between the House and Senate versions would need to be resolved at a conference

Background

- Under the Freedom of Information Act (FOIA), a person has a right to access any agency records unless the records are protected from disclosure by one of nine special exemptions. The Privacy Act, 5 U.S.C. § 552a(d), allows an individual to request his own records. However, the Department of Justice requires that all agencies treat an individual’s request for access under either law as a FOIA request. Using this definition, SSA receives over 18 million requests annually. Most are simple requests for access under the Privacy Act or for disclosure to a third party with the individual’s consent, and most are handled in the field within one business day.
- Given the nature and numbers of this workload, SSA controls and assigns a tracking number only to the more complex requests for information and records. Of the 18 million-plus requests, only 40,000 are assigned a control number and tracked at Headquarters.

Discussion

The legislation would significantly affect how SSA controls and processes FOIA requests. As noted above, at present the Agency controls about 40,000 requests but to comply with this legislation, the Agency would need to control and to track all 18 million FOIA requests, and then to provide the tracking number in an acknowledgement letter to the requester within 10 days.

- SSA would be able to comply only by creating a new tracking system, which would require routing all such requests away from the field and into Headquarters would negatively impact the timeliness of service delivery.

- SSA is in the process of development of an automated program (eFOIA), which will automatically generate an acknowledgement letter to the requestor containing a tracking number and a telephone number for status calls. This system was developed to track and maintain only those FOIA requests that come to Headquarters for resolution, and is not scalable to field offices across the nation that handle the overwhelming majority of SSA's FOIA requests.
- Even with an automated system, requests by mail would continue to be handled manually, as staff must sort, control, and scan requests, handle related data entry, and determine where to go for information. Additional staff would need to be dedicated to this process.
- Several provisions in the bills provide for a one year period after the date of enactment. To fully implement the legislation would depend on how quickly the Agency could staff this additional workload, or could deploy a technical system, such as a greatly expanded eFOIA system. Deployment highly unlikely, even with adequate resources, within one year.

The proposed legislation would greatly expand the definition of a news media requester.

- Under FOIA, news media requestors are entitled to a waiver of fees; the bill would extend "media" status to virtually everyone who claims to be a representative of the news media, even if that claim is unsupported by evidence.
- Currently SSA charges fees to a requester if that requester cannot establish media status by appropriate evidence. Current requesters who cannot show a media connection often submit very complex requests that are often costly to process.
- Under the proposed legislation, SSA would lose fees that otherwise would have been directed to the Trust Funds.

The legislation would give agencies only 20 days to respond to a given FOIA request and would bar agencies from collecting fees if they miss the time limit.

- SSA needs more than 20 days in many cases simply to locate the information, and SSA's regulations provide that the time limit starts only when the handling component gets the request, and permits fee assessments even if the time limit is not met. The legislation would, therefore, negatively impact the trust funds.
- FOIA currently allows exemptions for failing to process requests timely but the Senate version would waive those exemptions. The House legislation would provide attorney's fees from appropriated funds, not the Judgment Fund, negatively impacting the trust funds.

Summary

SSA would incur significant additional costs for staffing, equipment, and any automated system needs. SSA's current FOIA processes are not sufficient to meet the requirements of either the House or the Senate version of this bill.

SSA cannot absorb the additional work contemplated by this legislation without seriously disrupting service delivery to SSA customers.

SSA would lose its ability to collect fees for substantial FOIA workloads, adversely affecting the trust funds.