

118TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

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

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IN THE SENATE OF THE UNITED STATES

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

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**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).”.