

111TH CONGRESS
2^D SESSION

H. R. 4858

To establish an advisory committee to issue nonbinding governmentwide guidelines on making public information available on the Internet, to require publicly available Government information held by the executive branch to be made available on the Internet, to express the sense of Congress that publicly available information held by the legislative and judicial branches should be available on the Internet, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 16, 2010

Mr. ISRAEL introduced the following bill; which was referred to the Committee on Oversight and Government Reform

A BILL

To establish an advisory committee to issue nonbinding governmentwide guidelines on making public information available on the Internet, to require publicly available Government information held by the executive branch to be made available on the Internet, to express the sense of Congress that publicly available information held by the legislative and judicial branches should be available on the Internet, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Public Online Informa-
3 tion Act of 2010”.

4 **SEC. 2. TABLE OF CONTENTS.**

5 The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. Definitions.
- Sec. 4. Purposes.
- Sec. 5. Findings of Congress.
- Sec. 6. Establishment of Public Online Information Advisory Committee.
- Sec. 7. Executive branch Internet publication mandate.
- Sec. 8. Legislative and judicial information.
- Sec. 9. Government Printing Office.

6 **SEC. 3. DEFINITIONS.**

7 In this Act:

8 (1) AGENCY.—The term “agency” means an
9 Executive agency or an independent regulatory agen-
10 cy.

11 (2) EXECUTIVE AGENCY.—The term “Executive
12 agency” means any of the following:

13 (A) An Executive department, as defined
14 in section 101 of title 5, United States Code.

15 (B) A military department, as defined in
16 section 102 of such title.

17 (C) A Government corporation, as defined
18 in section 103 of such title.

19 (D) Any other establishment in the execu-
20 tive branch of the Government (including the

1 Executive Office of the President), other than
2 an independent regulatory agency.

3 (3) INDEPENDENT REGULATORY AGENCY.—The
4 term “independent regulatory agency” means an
5 independent establishment, as defined in section 104
6 of title 5, United States Code.

7 (4) RECORD.—The term “record” has the
8 meaning provided the term “records” in section
9 3301 of title 44, United States Code.

10 (5) PUBLIC RECORD.—The term “public
11 record” means any record, regardless of form or for-
12 mat, that an agency discloses, publishes, dissemi-
13 nates, or makes available to the public.

14 (6) E-GOVERNMENT ADMINISTRATOR.—The
15 term “E-Government Administrator” means the Ad-
16 ministrator of the Office of Electronic Government
17 established under section 3602 of title 44, United
18 States Code.

19 **SEC. 4. PURPOSES.**

20 The purposes of this Act include the following:

21 (1) To establish an advisory committee to issue
22 nonbinding guidelines for all three branches of Gov-
23 ernment regarding making public information avail-
24 able on the Internet, with sufficient flexibility to
25 adapt to changes in technology.

1 (2) To empower the E-Government Adminis-
2 trator to establish binding rules concerning making
3 publicly available Government information held by
4 Executive agencies to be made available on the
5 Internet; and to empower independent regulatory
6 agencies to do the same.

7 (3) To express the sense of Congress that pub-
8 licly available information held by the legislative and
9 judicial branches should be available on the Internet.

10 (4) To encourage the Government Printing Of-
11 fice to make all of its publications available on the
12 Internet in the formats most useful to the public,
13 after having considered the formats identified by the
14 Public Online Information Advisory Committee.

15 **SEC. 5. FINDINGS OF CONGRESS.**

16 Congress finds the following:

17 (1) The Federal Government holds a vast re-
18 pository of public information. Throughout the Na-
19 tion's history, the Government has attempted to
20 make that information available to the public,
21 whether through the United States Postal Service,
22 the Federal Depository Library Program, the Presi-
23 dential Library System, Agency Reading Rooms,
24 under the Freedom of Information Act, or by other
25 means. Providing this information to the general

1 public is a public good: Informed citizens are in-
2 formed voters. However, even with these efforts,
3 Government information is too often hard to find,
4 difficult to understand, expensive to obtain in useful
5 formats, and available in only a few locations.

6 (2) The advent of the Internet presents the op-
7 portunity for the Government to make information
8 readily available to many more Americans. The
9 Internet is ubiquitous, turning every computer into
10 a portal to the world's largest library. The Govern-
11 ment has made some efforts to take advantage of
12 this new medium. As the public moves online, the
13 Government must do so as well.

14 (3) In addition to the traditional means of dis-
15 seminating public information, the Federal Govern-
16 ment should make all of its public information avail-
17 able on the Internet. It should do so in ways that
18 take advantage of modern technology, that antici-
19 pate the public's needs, and that provide access to
20 the greatest number of people. The Government
21 should strive to make its information available on
22 the Internet in real-time and in machine processable
23 formats.

24 (4) The creation of this vast new information li-
25 brary will empower citizens to gain a better under-

1 standing of how their Government functions and
2 what it does in their name. It will also give
3 innovators new tools to build on this information
4 and provide better goods and services to the Amer-
5 ican people. Government services will be provided
6 more efficiently, saving the taxpayers money and al-
7 lowing them to be more involved in the lives of their
8 communities.

9 (5) Accomplishing these goals requires signifi-
10 cant coordination. It also requires the creation of
11 new authorities and responsibilities within the Gov-
12 ernment, and the identification of appropriate tech-
13 nology standards.

14 **SEC. 6. ESTABLISHMENT OF PUBLIC ONLINE INFORMATION**
15 **ADVISORY COMMITTEE.**

16 (a) ESTABLISHMENT.—There is hereby established
17 an advisory committee to be known as the “Public Online
18 Information Advisory Committee” (hereafter in this Act
19 referred to as the “Advisory Committee”).

20 (b) PURPOSES.— The purposes of the Advisory Com-
21 mittee are—

22 (1) to coordinate and encourage the Govern-
23 ment’s efforts to make Government information
24 from all three branches of Government available on
25 the Internet; and

1 (2) to issue nonbinding guidelines on how the
2 Government should make public information avail-
3 able on the Internet, and update those guidelines as
4 appropriate.

5 (c) MEMBERSHIP.—

6 (1) IN GENERAL.—The Advisory Committee
7 shall be composed of 19 members (including the
8 Chair), as follows:

9 (A) Six members shall be appointed by the
10 E-Government Administrator.

11 (B) Six members shall be appointed by the
12 Director of the Administrative Office of the
13 Courts.

14 (C) Three members shall be appointed by
15 the Chairman, in consultation with the Ranking
16 Member, of the Committee on Homeland Secu-
17 rity and Governmental Affairs of the Senate.

18 (D) Three members shall be appointed by
19 the Chair, in consultation with the Ranking
20 Member, of the Committee on Oversight and
21 Government Reform of the House of Represent-
22 atives.

23 (E) The Chair shall be appointed by the
24 Administrator of General Services, after confer-
25 ring with the E-Government Administrator, the

1 Director of the Administrative Office of the
2 Courts, the Chairman of the Committee on
3 Homeland Security and Governmental Affairs
4 of the Senate, and the Chair of the Committee
5 on Oversight and Government Reform of the
6 House of Representatives.

7 (2) VICE CHAIR.—A Vice Chair shall be se-
8 lected from among the members of the Advisory
9 Committee by the Chair.

10 (3) LIMITATION ON GOVERNMENT EMPLOYEE
11 MEMBERS.—Not more than six members of the Ad-
12 visory Committee may be Government employees.

13 (4) TERMS OF OFFICE.—Each member of the
14 Advisory Committee shall be appointed for a renew-
15 able term of five years, except that one-third of the
16 members initially appointed shall be appointed for a
17 three-year term, one-third of such members shall be
18 appointed for a four-year term, and one-third of
19 such members and the Chair shall be appointed for
20 a five-year term.

21 (5) INITIAL APPOINTMENTS.—The initial ap-
22 pointments of members of the Advisory Committee
23 shall be made not later than 90 days after the date
24 of the enactment of this Act.

1 (6) MEETINGS.—The Advisory Committee shall
2 meet no fewer than six times per year.

3 (d) POWERS OF ADVISORY COMMITTEE.—

4 (1) IN GENERAL.—From time to time, the Ad-
5 visory Committee shall examine its legislative char-
6 ter, structure, and funding, and shall make rec-
7 ommendations to Congress, the President, and the
8 Courts regarding how it could be restructured to
9 better accomplish its mission of making Government
10 information available to the public on the Internet.
11 The recommendations shall be published in print
12 and on the Internet.

13 (2) SPECIFIC POWERS.—In order to carry out
14 its purposes, the Advisory Committee is authorized
15 to do the following:

16 (A) Hold hearings.

17 (B) Issue recommendations to Congress.

18 (C) Issue recommendations to agencies.

19 (D) Issue reports, guidelines, and memo-
20 randa.

21 (E) Articulate guidelines on how the Gov-
22 ernment should make public records available
23 on the Internet, update those guidelines as ap-
24 propriate, and inquire into Government compli-
25 ance with those guidelines.

1 (F) Hold or host conferences and
2 symposia.

3 (G) Enter into cooperative agreements
4 with outside experts to obtain relevant advice or
5 expertise, and oversee staff.

6 (H) Establish subcommittees.

7 (I) Establish rules of procedure.

8 (3) RELATIONSHIP TO FACA.—The Advisory
9 Committee shall not be subject to the control of any
10 advisory committee management officer designated
11 under section 8(b)(1) of the Federal Advisory Com-
12 mittee Act.

13 (e) OPERATIONS.—

14 (1) OPEN GOVERNMENT PROCEDURES.—In ad-
15 dition to the rules in the Federal Advisory Com-
16 mittee Act (5 U.S.C. App.), in the interest of im-
17 proving transparency, the Advisory Committee shall
18 adhere to the following rules that supplement and
19 modify such Act (in accordance with section 4(a) of
20 such Act):

21 (A) Subcommittees shall have the same du-
22 ties and obligations as the full committee as de-
23 lineated under sections 10 through 13 of such
24 Act. Subcommittees shall similarly be bound by
25 the terms of this section.

1 (B) All information made available on the
2 Internet shall be done so by state-of-the-art
3 methods.

4 (C) Information required to be made avail-
5 able on the Internet shall be done so in a timely
6 fashion.

7 (D) Notice of all meetings shall be avail-
8 able on the Advisory Committee's website, with
9 agendas available on the Internet at least 3
10 days prior to any meeting.

11 (E) All records available for public copying
12 under section 10 of the Act shall also be made
13 available on the website of the Advisory Com-
14 mittee.

15 (F) The Advisory Committee shall make
16 available on the Internet and to any person, at
17 no cost, transcripts of Advisory Committee pro-
18 ceedings.

19 (G) Videos recordings of proceedings shall
20 be made available on the Internet.

21 (H) Documents submitted to the Advisory
22 Committee shall be made publicly available un-
23 less the Advisory Committee determines that
24 those materials would disclose matters de-

1 scribed in section 552(b) of title 5, United
2 States Code.

3 (I) The Advisory Committee shall make
4 publicly available the names and brief biog-
5 raphies of its members.

6 (J) All members of the Advisory Com-
7 mittee shall file financial disclosure forms,
8 which shall be made available on the Advisory
9 Committee website after redactions to remove
10 personally identifiable information, such as so-
11 cial security numbers.

12 (K) All members of the Advisory Com-
13 mittee shall have to state and publicly disclose
14 conflicts of interest. These statements must be
15 updated whenever new conflicts arise or on an
16 annual basis, whichever is more frequent. These
17 disclosures shall be placed on the Internet.

18 (2) SUPPORT SERVICES.—The General Services
19 Administration shall be responsible for providing all
20 support services to the Advisory Committee, includ-
21 ing quarters and staff, and for requesting funds
22 from Congress on behalf of the Advisory Committee.
23 Nothing in this section shall prevent the Advisory
24 Committee from communicating with Congress di-
25 rectly regarding funding or other matters.

1 (3) DURATION.—The Advisory Committee is a
2 continuing body and is not subject to termination as
3 provided in section 14 of the Federal Advisory Com-
4 mittee Act (5 U.S.C. App.).

5 (4) APPLICATION OF FACA.—Except as other-
6 wise provided in this section, the Federal Advisory
7 Committee Act (5 U.S.C. App.) shall apply to the
8 Advisory Committee.

9 (f) REPORTS.—The Advisory Committee shall issue
10 a report on its activities every two years, or as appro-
11 priate, whichever is more frequent.

12 (g) AUTHORIZATION.—There is authorized to be ap-
13 propriated to the General Services Administration such
14 sums as may be necessary for the operations of the Advi-
15 sory Committee.

16 **SEC. 7. EXECUTIVE BRANCH INTERNET PUBLICATION MAN-**
17 **DATE.**

18 (a) ONLINE PUBLICATION REQUIREMENTS.—

19 (1) FREE AVAILABILITY.—

20 (A) Except as provided in subparagraph
21 (B), the Government shall make public records
22 available on the Internet at no charge (includ-
23 ing a charge for recovery of costs) to the public.

1 (B) Subparagraph (A) shall not apply in
2 the case of a charge imposed by Federal law be-
3 fore the date of the enactment of this Act.

4 (2) PERMANENCE.—Public records shall be per-
5 manently available on the Internet.

6 (3) CURRENT TECHNOLOGY.—Current informa-
7 tion technology capabilities shall be applied to the
8 means by which records are made available on the
9 Internet, and the formats in which they are avail-
10 able.

11 (4) SEARCHABLE LIST.—Each agency shall
12 publish on the Internet a comprehensive, searchable,
13 machine processable list of all records it makes pub-
14 licly available. With respect to those records, the list
15 shall include at least the following information:

16 (A) Where the records can be found.

17 (B) Whether the records are available to
18 the public at no cost or for a fee (and the
19 amount of the fee, if applicable).

20 (C) Brief descriptions of the records.

21 (b) RULEMAKING AUTHORITY.—

22 (1) IN GENERAL.—Nothing in the grant of au-
23 thority in this subsection shall be construed to limit
24 the Government's obligation to make records pub-
25 licly available as required by law.

1 (2) EXECUTIVE AGENCIES.—

2 (A) The Director of the Office of Manage-
3 ment and Budget shall delegate to the E-Gov-
4 ernment Administrator the authority to admin-
5 ister all functions under this section, except
6 that any such delegation shall not relieve the
7 Director of responsibility for the administration
8 of such functions.

9 (B) The E-Government Administrator,
10 after consulting with the Office of Information
11 and Regulatory Policy, shall promulgate such
12 regulations as are necessary to ensure that all
13 public records held by Executive agencies are
14 available on the Internet in the formats and by
15 the means the E-Government Administrator
16 designates. In promulgating the regulations, the
17 E-Government Administrator shall consider the
18 guidelines issued by the Public Online Informa-
19 tion Advisory Committee.

20 (C) In the regulations promulgated under
21 subparagraph (B), the E-Government Adminis-
22 trator shall include—

23 (i) rules on how Executive agencies
24 shall publish records on the Internet, in-
25 cluding the format and timeframe; and

1 (ii) procedures through which Execu-
2 tive agencies may object to placing public
3 records on the Internet, in accordance with
4 the exceptions under paragraph (4), and a
5 method by which the objections can be re-
6 viewed.

7 (D) The regulations promulgated under
8 subparagraph (B) shall not preclude Executive
9 agencies from making additional records avail-
10 able on the Internet beyond those required by
11 the regulations, or in additional formats beyond
12 those required by the regulations, or on a more
13 rapid timeframe than required by the regula-
14 tions. In addition, each Executive agency head
15 shall designate a person within the agency re-
16 sponsible for Internet publication of public
17 records.

18 (E) The Director of the Office of Manage-
19 ment and Budget shall ensure that the E-Gov-
20 ernment Administrator has adequate staff and
21 resources to properly fulfill all the Administra-
22 tor's functions under this Act.

23 (3) INDEPENDENT REGULATORY AGENCIES.—

24 (A) A Chief Information Officer of an
25 independent regulatory agency (hereafter in this

1 section referred to as a “CIO”) or an official
2 designated by the head of an independent regu-
3 latory agency shall promulgate such regulations
4 as are necessary to ensure that public records
5 are available on the Internet in the formats and
6 by the means the CIO designates. In promul-
7 gating the regulations, the CIO or other official
8 shall consider the guidelines issued by the Pub-
9 lic Online Information Advisory Committee, as
10 well as regulations promulgated by the E-Gov-
11 ernment Administrator under paragraph (1).

12 (B) The regulations promulgated under
13 subparagraph (A) shall not preclude the heads
14 of offices within an independent regulatory
15 agency from making additional records available
16 on the Internet beyond those required by the
17 regulations, or in additional formats beyond
18 those required by the regulations, or on a more
19 rapid timeframe than required by the regula-
20 tions.

21 (C) The head of the independent regu-
22 latory agency shall ensure that the CIO or the
23 official designated by the head of the inde-
24 pendent regulatory agency has adequate staff

1 and resources to properly fulfill all of the CIO's
2 functions under this Act.

3 (4) EXCEPTIONS.—

4 (A) IN GENERAL.—The regulations pro-
5 mulgated under this subsection may contain ex-
6 ceptions, in accordance with this paragraph, to
7 the requirement that all public records be made
8 available on the Internet.

9 (B) SCOPE OF EXCEPTIONS.—The excep-
10 tions may be no broader than the exceptions
11 recognized under section 552 of title 5, United
12 States Code (popularly referred to as the
13 “Freedom of Information Act”).

14 (C) ADDITIONAL EXCEPTIONS BY RE-
15 QUEST.—In addition to the exceptions provided
16 under subparagraph (B), the regulations shall
17 provide for the E-Government Administrator or,
18 in the case of an independent regulatory agen-
19 cy, the CIO or official designated by the head
20 of the agency, to grant narrow case-by-case ex-
21 ceptions to the Internet publication requirement
22 if an agency requests an exception and the
23 agency demonstrates that—

1 (i) there is a clear and convincing rea-
2 son for the record to not be made available
3 on the Internet; and

4 (ii) on balance, the harm cause by dis-
5 closure significantly outweighs the public's
6 interest in having the record available on
7 the Internet.

8 (D) AVAILABILITY OF SEGREGABLE POR-
9 TIONS.—If the E-Government Administrator,
10 CIO, or official designated by the head of an
11 independent regulatory agency approves a re-
12 quest for an exception with respect to a public
13 record under subparagraph (C), any reasonably
14 segregable portion of the public record shall be
15 made available on the Internet in a timely fash-
16 ion after deletion of the portions that are sub-
17 ject to the exception. The amount of informa-
18 tion deleted shall be indicated on the portion of
19 the record that is made available on the Inter-
20 net, unless including that indication would sig-
21 nificantly harm the interest protected by the ex-
22 ception. If technically feasible, the amount of
23 the information deleted shall be indicated at the
24 place in the record where such deletion is made.

1 (E) DISCLOSURE OF WITHHELD
2 RECORDS.—The E-Government Administrator,
3 CIO, or official designated by the head of an
4 independent regulatory agency shall maintain a
5 list of records not made available on the Inter-
6 net by reason of an exception under subpara-
7 graph (C) and publish such list on the Internet,
8 excluding any records the identification of
9 which would significantly harm the interest pro-
10 tected by the exception.

11 (5) PUBLICATION.—Regulations promulgated
12 under this subsection shall be published in the Fed-
13 eral Register and on the relevant agency website.

14 (6) APPLICABILITY.—Regulations promulgated
15 under this subsection shall apply only to public
16 records generated, updated, or released after the
17 date of the enactment of this Act.

18 (7) EFFECTIVE DATE.—Regulations promul-
19 gated under this subsection shall take effect no
20 sooner than 3 years after the date of the enactment
21 of this Act.

22 (c) REPORTS TO CONGRESS.—At least once every
23 four years, the E-Government Administrator and each
24 independent regulatory agency CIO shall review the excep-
25 tions provided under subsection (b)(4) to making public

1 records available on the Internet and, if warranted, make
2 recommendations to the President and to Congress re-
3 garding whether Federal law should be changed. The re-
4 port shall be made publicly available, including being pub-
5 lished on the Internet.

6 (d) INSPECTOR GENERAL REVIEWS.—The Inspector
7 General of each agency shall conduct periodic reviews re-
8 garding agency compliance with Internet publication re-
9 quirements, no less often than once every four years. The
10 reviews shall be published on the Internet.

11 (e) ENFORCEMENT OF PUBLIC ACCESS BY PRIVATE
12 INDIVIDUALS OR ORGANIZATIONS.—

13 (1) REQUESTS.—Private individuals or organi-
14 zations may request that an Executive agency place
15 public records on the Internet, including the com-
16 prehensive searchable list of publicly available
17 records referred to in section 7(a)(4), in accordance
18 with Federal regulations. An agency has 30 days to
19 respond to the request in writing or to place the
20 record on the Internet. If an agency denies the re-
21 quest in whole or in part, the private individual or
22 organization may file a complaint in Federal court.

23 (2) JURISDICTION.—(A) On complaint, the dis-
24 trict court of the United States in the district in
25 which the complainant resides, or has his principal

1 place of business, or in which the agency records are
2 situated, or in the District of Columbia, has jurisdic-
3 tion to enjoin the agency from refusing to publish
4 agency records on the Internet, or refusing to pub-
5 lish it in an appropriate format, and to order the
6 Internet online publication of any agency records im-
7 properly withheld. In such a case the court shall de-
8 termine the matter de novo, and may examine the
9 contents of such agency records in camera to deter-
10 mine whether such records or any part thereof shall
11 be withheld under any of the exceptions provided
12 under subsection (b)(4), and the burden is on the
13 agency to sustain its action.

14 (B) Notwithstanding any other provision of law,
15 the defendant shall serve an answer or otherwise
16 plead to any complaint made under this subsection
17 within 30 days after service upon the defendant of
18 the pleading in which such complaint is made, unless
19 the court otherwise directs for good cause shown.

20 (3) ATTORNEY FEES.—The court may assess
21 against the United States reasonable attorney fees
22 and other litigation costs reasonably incurred in any
23 case under this subsection in which the complainant
24 has substantially prevailed.

1 (4) SPECIAL COUNSEL.—Whenever the court
2 orders the production of any agency records improperly
3 withheld from the complainant and assesses
4 against the United States reasonable attorney fees,
5 litigation costs, and interest, and the court additionally
6 issues a written finding that the circumstances
7 surrounding the withholding raise questions whether
8 agency personnel acted arbitrarily or capriciously
9 with respect to the withholding, a Special Counsel
10 shall promptly initiate a proceeding to determine
11 whether disciplinary action is warranted against the
12 officer or employee who was primarily responsible
13 for the withholding. A Special Counsel, after investigation
14 and consideration of the evidence submitted,
15 shall submit his findings and recommendations to
16 the administrative authority of the agency concerned
17 and shall send copies of the findings and recommendations
18 to the officer or employee or his representative. The administrative
19 authority shall take the corrective action that the Special Counsel
20 recommends.
21

22 (5) CONTEMPT.—In the event of noncompliance
23 with the order of the court, the district court may
24 punish for contempt the responsible employee, and

1 in the case of a uniformed service, the responsible
2 member.

3 **SEC. 8. LEGISLATIVE AND JUDICIAL INFORMATION.**

4 It is the sense of Congress that judicial and legislative
5 agencies (within the meaning of section 3701 of title 31,
6 United States Code) should adopt or adapt the rec-
7 ommendations of the Advisory Committee for their own
8 use. In addition, judicial and legislative agencies are en-
9 couraged to consider the guidelines issued by the Public
10 Online Information Advisory Committee and the regula-
11 tions promulgated by the E-Government Administrator.

12 **SEC. 9. GOVERNMENT PRINTING OFFICE.**

13 It is the sense of Congress that the Government
14 Printing Office should make all of its publications perma-
15 nently available on the Internet in a multiplicity of for-
16 mats that best meet the needs of the public. In doing so,
17 the Government Printing Office is strongly encouraged to
18 consider the recommendations of the Public Online Infor-
19 mation Advisory Committee and the E-Government Ad-
20 ministrator.

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