Restoration of Freedom of Information Act ("Restore FOIA")
Sectional Analysis

Sec. 1. Short title. This section gives the bill the short title, the "Restoration of Freedom of Information Act."

Sec. 2. Protection of Voluntarily Furnished Confidential Information. This section strikes subtitle B (secs. 211-215) of the Homeland Security Act ("HSA")(P.L. 107-296) and inserts a new section 211.

Sections to be repealed from the HSA: These sections contain an exemption to the Freedom of Information Act (FOIA) that (1) exempt from disclosure critical infrastructure information voluntarily submitted to the new department that was designated as confidential by the submitter unless the submitter gave prior written consent; (2) provide civil immunity for use of such information in civil actions against the company; (3) preempt state sunshine laws if the designated information is shared with state or local government agencies; and (4) impose criminal penalties of up to one year imprisonment on government employees who disclosed the designated information.

Provisions that would replace the repealed sections of the HAS: The Restore FOIA bill inserts a new section 211 to the HSA that would exempt from the FOIA certain records pertaining to critical infrastructure threats and vulnerabilities that are furnished voluntarily to the new Department and designated by the provider as confidential and not customarily made available to the public. Notably, the Restore FOIA bill makes clear that the exemption covers "records" from the private sector, not all "information" provided by the private sector, as in the enacted version of the HSA. The Restore FOIA bill ensures that portions of records that are not covered by the exemption would be released pursuant to FOIA requests. It does not provide any civil liability immunity or preempt state or local sunshine laws, and it does not criminalize whistleblower activity.

Specifically, this section of the Restore FOIA bill includes the following:

- A definition of "critical infrastructure": This term is given the meaning adopted in section 1016(e) the USA Patriot Act (42 U.S.C. 5195c(e)) which reads, "critical infrastructure means systems and assets, whether physical or virtual, so vital to United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters." This definition is commonly understood to mean facilities such as bridges, dams, ports, nuclear power plants, or chemical plants.
- A definition of the term "furnished voluntarily": This term signifies documents provided to the Department of Homeland Security (DHS) that are not formally required by the department and that are provided to it to satisfy any legal requirement. The definition excludes any document that is provided to DHS with a permit or grant

application or to obtain any other benefit from DHS, such as a loan, agency forbearance, or modification of a penalty.

- An exemption from FOIA of records that pertain to vulnerabilities of and threats to critical infrastructure that are furnished voluntarily to DHS. This exemption is made available where the provider of the record certifies that the information is confidential and would not customarily be released to the public.
- A requirement that other government agencies that have obtained such records from DHS withhold disclosure of the records and refer any FOIA requests to DHS for processing.
- A requirement that reasonably segregable portions of requested documents be disclosed, as is well-established under FOIA.
- An allowance to agencies that obtain critical infrastructure records from a source other than DHS to release requested records consistent with FOIA, regardless of whether DHS has an identical record in its possession.
- An allowance to providers of critical infrastructure records to withdraw the confidentiality designation of records voluntarily submitted to DHS, thereby making the records subject to disclosure under FOIA.
- A direction to the Secretary of Homeland Security to establish procedures to receive, designate, store, and protect the confidentiality of records voluntarily submitted and certified as critical infrastructure records.
- A clarification that the bill would not preempt state or local information disclosure laws.
- A requirement for the Comptroller General to report to the House and Senate Judiciary Committees, the House Governmental Reform Committee and the Senate Governmental Affairs Committee the number of private entities and government agencies that submit records to DHS under the terms of the bill. The report would also include the number of requests for access to records that were granted or denied. Finally, the Comptroller General would make recommendations to the committees for modifications or improvements to the collection and analysis of critical infrastructure information.

Sec. 3. Technical and conforming amendment. This section amends the table of contents of the Homeland Security Act.