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Dated: 2015.04.27

**Memorandum for**

All Members of the U.S. Senate

All Members of the U.S. House of Representatives

**Subject:** National Integrity and Free Speech Protection Act (NIFSPA)—Proposed Bill for U.S. Congress

**A Proposed Bill**

A Bill to Re-Establish the National Integrity and to Protect Freedom of Speech,  
and the Freedom of the Press

*Be it enacted by the Senate and House of Representatives of the United States of  
America in Congress assembled,*

**Section 1.** Short Title.

This Act may be cited as the “National Integrity and Free Speech Protection Act of  
2015.”

**Sec. 2.** Amendments to the Freedom of Information Act.

Section 552 of title 5, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (2)—

(i) in the matter preceding paragraph (A), by striking “for public  
inspection and copying” and inserting “for public inspection in an electronic format”;

(ii) by striking subparagraph (D) and inserting the following:

“(D) copies of all records, regardless of form or format—

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“(i) that have been released to any person under paragraph (3); and

“(ii)(I) that because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records; or

“(II) that have been requested 3 or more times; and”; and

(iii) in the designated matter following subparagraph (E) by striking “public inspection and copying current” and inserting “public inspection in an electronic format current”;

(B) in paragraph (4)(A), by striking clause (viii) and inserting the following:

“(viii)(I) Except as provided in subclause (II), an agency shall not assess any search fees (or in the case of a requester described under clause (ii)(II) of this subparagraph, duplication fees) under this subparagraph if the agency has failed to comply with any time limit under paragraph (6)

“(II)(aa) If an agency has determined that unusual circumstances apply (as the term is defined in paragraph (6)(B) of this section) and the agency provided a timely written notice to the requester in accordance with paragraph (6)(B), a failure described in subclause (I) is excused for an additional 10 days. If the agency fails to comply with the extended time limit, the agency may not assess any search fees (or in the case of a requester described under clause (ii)(II) of this subparagraph, duplication fees).

“(bb) If an agency has determined that unusual circumstances apply and more than 50,000 pages are necessary to respond to the request, an agency may charge search fees (or in the case of a requester described under clause (ii) of this subparagraph, duplication

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fees) if the agency has provided a timely written notice to the requester in accordance with paragraph (6)(B) and the agency has discussed with the requester via written mail, electronic mail, or telephone (or not made less than 3 good-faith attempts to do so) how the requestor could effectively limit the scope of the request in accordance with paragraph (6)(B)(ii).

“(cc) If a court has determined that exceptional circumstances exist (as that term is defined in paragraph (6)(C)), a failure described in subclause (I) shall be excused for the length of time provided by the court order.”;

(C) in paragraph (6)—

(i) in subparagraph (A)(i), by striking “making such request” and all that follows through “determination; and” and inserting the following: “making such request of—

“(I) such determination and the reasons therefore;

“(II) the right of such person to seek assistance from the FOIA Public Liaison of the agency; and

“(III) in the case of an adverse determination—

“(aa) the right of such person to appeal to the head of the agency, within a period determined by the head of the agency that is not less than 90 days after the date of such adverse determination; and

“(bb) the right of such person to seek dispute resolution services from the FOIA Public Liaison of the agency or the Office of Government Information Services; and”;

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(ii) in subparagraph (B)(ii), by striking “the agency.” and inserting “the agency, and notify the requester of the right of the requester to seek dispute resolution services from the Office of Government Information Services.” And

(D) by adding at the end of the following:

“(8)(A) An agency—

“(i) shall—

“(I) withhold information under this section only if—

“(aa) the agency reasonably foresees that disclosure would harm an interest protected by an exemption described in subsection (b) or other provision of law; or

“(bb) disclosure is prohibited by law; and

“(II)(aa) consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible; and

“(bb) take reasonable steps necessary to segregate and release nonexempt information; and

“(ii) may not—

“(I) withhold information requested under this section merely because the agency can demonstrate, as a technical matter, that the records fall within the scope of an exemption described in subsection (b); or

“(II) withhold information requested under this section merely because disclosure of the information may be embarrassing to the agency or because of speculative or abstract concerns.

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“(B) Nothing in this paragraph requires disclosure of information that is otherwise prohibited from disclosure by statute, or otherwise exempted from disclosure under subsection (b)(3).”;

(2) in subsection (b)—

(A) by amending paragraph (5) to read as follows:

“(5) inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency, if the requested record or information was created less than 20 years before the date on which the request was made;” and

(B) by striking paragraph (9);

(3) in subsection (e)—

(A) in paragraph (1)—

(i) in the matter preceding subparagraph (A), by inserting “and to the Director of the Office of Government Information Services” after “United States”;

(ii) in subparagraph (N), by striking “and” at the end;

(iii) in subparagraph (O), by striking the period at the end and inserting a semicolon; and

(iv) by adding at the end of the following:

“(P) the number of times the agency denied a request for records under subsection (c); and

“(Q) the number of records that were made available for public inspection in an electronic format under subsection (a)(2).”;

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(B) by striking paragraph (3) and inserting the following:

“(3) Each agency shall make each such report available for public inspection in an electronic format, which shall be made available—

“(A) without charge, license, or registration requirement;

“(B) in an aggregated, search format; and

“(C) in a format that may be downloaded in bulk.”;

(C) in paragraph (4)—

(i) by striking “Government Reform and Oversight” and inserting “Oversight and Government Reform”;

(ii) by inserting “Homeland Security and” before “Governmental Affairs”; and

(iii) by striking “April” and inserting “March”; and

(D) by striking paragraph (6) and inserting the following:

“(6)(A) The Attorney General of the United States shall submit to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on the Judiciary of the Senate, and the President a report on or before March 1 of each calendar year, which shall include for the prior calendar year—

“(i) a listing of the number of cases arising under this section;

“(ii) a listing of—

“(I) each subsection, and any exemption, if applicable, involved in each case arising under this section;

“(II) the disposition of each case arising under this section; and

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“(III) the cost, fees, and penalties assessed under subparagraphs (E), (F), and (G) of subsection (a)(4); and

“(iii) a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

“(B) The Attorney General of the United States shall make—

“(i) each report submitted under subparagraph (A) available for public inspection in an electronic format; and

“(ii) the raw statistical data used in each report submitted under subparagraph (A) available for public inspection in an electronic format, which shall be made available—

“(I) without charge, license, or registration requirement;

“(II) in an aggregated, searchable format; and

“(III) in a format that may be downloaded in bulk.”;

(4) in subsection (g), in the matter preceding paragraph (1), by striking “publicly available upon request” and inserting “available for public inspection in an electronic format”;

(5) in subsection (h)—

(A) in paragraph (1), by adding at the end of the following: “The head of the Office shall be the Director of the Office of Government Information Services.”;

(B) in paragraph (2), by striking subparagraph (C) and inserting the following:

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“(C) identify procedures and methods for improving compliance under this section.”;

(C) by striking paragraph (3) and inserting the following:

“(3) The Office of Government Information Services shall offer mediation services to resolve disputes between person making requests under this section and administration agencies as a non-exclusive alternative to litigation and may issue advisory opinions at the discretion of the Office or upon request of any party to a dispute.”; and

(D) by adding at the end of the following:

“(4)(A) Not less frequently than annually, the Director of the Office of Government Information Services shall submit to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on the Judiciary of the Senate, and the President—

“(i) a report on the findings of the information reviewed and identified under paragraph (2);

“(ii) a summary of the activities of the Office of Government Information Services under paragraph (3), including—

“(I) any advisory opinions issued; and

“(II) the number of times each agency engaged in dispute resolution with the assistance of the Office of Government Information Services or the FOIA Public Liaison; and

“(iii) legislative and regulatory recommendations, if any, to improve the administration of this section.



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“(B) The Director of the Office of Government Information Services shall make each report submitted under subparagraph (A) available for public inspection in an electronic format.

“(C) The Director of the Office of Government Information Services shall not be required to obtain the prior approval, comment, or review of any officer or agency of the United States, including the Department of Justice, the Archivist of the United States, or the Office of Management and Budget before submitting to Congress, or any committee or subcommittee thereof, any reports, recommendations, testimony, or comments, if such submission include a statement indicating that the views expressed therein are those of the Director and do not necessarily represent the views of the President or any other government agency.

“(5) The Director of the Office of Government Information Services may directly submit additional information to Congress and the President as the Director determines to be appropriate.

“(6) Not less frequently than annually, the Office of Government Information Services shall conduct a meeting that is open to the public on the review and reports by the Office and shall allow interested persons to appear and present oral or written statements at the meeting.”;

(6) by striking subsections (i), (j), and (k), and inserting the following:

“(i) The Government Accountability Office shall—

“(1) not later than 1 year after the date of enactment of the National Integrity and Free Speech Protection Act of 2015 and every 2 years thereafter, conduct audits of 3 or

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More administrative agencies on compliance with and implementation of the requirements of this section and issue reports detailing the results of such audits;

“(2) not later than 1 year after the date of enactment of the National Integrity and Free Speech Protection Act of 2015 and every 2 years thereafter, issue a report cataloging the number of exemptions described in paragraphs (3), (5), and (7) of subsection (b) and the use of such exemptions by each agency;

“(3) not later than 1 year after the date of enactment of the National Integrity and Free Speech Protection Act of 2015, conduct a study on the methods Federal agencies use to reduce the backlog of requests under this section and issue a report on the effectiveness of those methods; and

“(4) submit copied of all reports and audits described in this subsection to the Committee on Oversight and Government Reform of the House of Representatives and the Committee on the Judiciary of the Senate.

“(j)(1) Each agency shall designate a Chief FOIA Officer who shall be a senior official of such agency (at the Assistant Secretary or equivalent level).

“(2) The Chief FOIA Officer of each agency shall, subject to the authority of the head of the agency—

“(A) have agency-wide responsibility for efficient and appropriate compliance with this section;

“(B) monitor implementation of this section throughout the agency and keep the head of the agency, the chief legal officer of the agency, and the Attorney General appropriately informed of the agency’s performance in implementing this section;

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“(C) recommend to the head of the agency such adjustments to agency practices, policies, personnel, and funding as may be necessary to improve its implementation of this section;

“(D) review and report to the Attorney General, through the head of the agency, at such times and in such formats as the Attorney General may direct on the agency’s performance in implementing this section;

“(E) facilitate public understanding of the purposes of the statutory exemptions of this section by including concise descriptions of the exemptions in both the agency’s handbook issued under subsection (g), and the agency’s annual report on this section and by providing an overview, where appropriate, of certain general categories of agency records to which those exemptions apply;

“(F) offer training to agency staff regarding their responsibilities under this section;

“(G) serve as the primary agency liaison with the Office of Government Information Services and the Office of Information Policy; and

“(H) designate 1 or more FOIA Public Liaisons.

“(3) The Chief FOIA Officer of each agency shall review, not less frequently than annually, all aspects of the administration of this section by the agency to ensure compliance with the requirements of this section, including—

“(A) agency regulations;

“(B) disclosure of records required under paragraphs (2) and (8) of subsection (a);

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“(C) assessment of fees and determination of eligibility for fee waivers;

“(D) the timely processing of requests for information under this section;

“(E) the use of exemptions under subsection (b); and

“(F) dispute resolution services with the assistance of the Office of

Government Information Services or the FOIA Public Liaison.

“(k)(1) There is established in the executive branch the Chief FOIA Officers Council (referred to in this subsection as the ‘Council’).

“(2) The Council shall be comprised of the following members:

“(A) The Deputy Director for Management of the Office of Management and Budget.

“(B) The Director of the Office of Information Policy at the Department of Justice.

“(C) The Director of the Office of Government Information Services.

“(D) The Chief FOIA Officer of each agency.

“(E) Any other officer or employee of the United States as designated by the Co-Chairs.

“(3) The Director of the Office of Information Policy at the Department of Justice and the Director of the Office of Government Information Services shall be the Co-Chairs of the Council.

“(4) The Administrator of General Services shall provide administrative and other support for the Council.

“(5)(A) The duties of the Council shall include the following:

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“(i) Develop recommendations for increasing compliance and efficiency of this section.

“(ii) Disseminate information about agency experiences, ideas, best practices, and innovative approaches related to this section.

“(iii) Identify, develop, and coordinate initiatives to increase transparency and compliance with this section.

“(B) in performing the duties described in subparagraph (A), the Council shall consult on a regular basis with members of the public who make requests under this section.

“(6)(A) The Council shall meet regularly and such meetings shall be open to the public unless the Council determines to close the meeting for reasons of national security or to discuss information exempt under subsection (b).

“(B) Not less frequently than annually, the Council shall hold a meeting that shall be open to the public and permit interested persons to appear and present oral and written statements to the Council.

“(C) Not later than 10 business days before a meeting of the Council, notice of such meeting shall be published in the Federal Register.

“(D) Except as provided in subsection (b), the records, reports, transcripts, minutes, appendices, working papers, drafts, studies, agenda, or other documents that were made available to or prepared for or by the Council shall be made publicly available.

“(E) Detailed minutes of each meeting of the Council shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed

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and conclusions reached, and copies of all reports received, issued or approved by the Council. The minutes shall be redacted as necessary and made publicly available.”; and

(7) by adding at the end the following:

“(m)(1) The Director of the Office of Management and Budget, in consultation with the Attorney General, shall ensure the operation of a consolidated online request portal that allows a member of the public to submit a request for records under subsection (a) to any agency from a single website. The portal may include any additional tools the Director of the Office of Management and Budget finds will improve the implementation of this section.

“(2) This subsection shall not be construed to alter the power of any other agency or create or maintain an independent online portal for the submission of a request for records under this section. The Director of the Office of Management and Budget shall establish standards for interoperability between the portal required under paragraph (1) and other request processing software by agencies subject to this section.”.

**Sec. 3.** Amendments to the Uniform Code of Military Justice.

(1) Section 904 of title 10, United States Code, is amended by striking the section and section heading and inserting the following:

“§ 904. Art. 104. Aiding the enemy

“Any person subject to this chapter who in time of war—

“(1) aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or thing; or

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“(2) without proper authority, knowingly and intentionally harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly;

“(3) shall suffer death or such other punishment as a court-martial may direct. This section does not apply to a military commission established under chapter 47A of this title.

“§ 904a. Art. 104A. Treason”

“Any person subject to this chapter who levies war with the United States or adheres to the enemy, giving them aid and comfort within the United States or elsewhere, is guilty of treason and shall suffer death or such other punishment as a court-martial may direct, but not less than five years of imprisonment, and shall be incapable of holding any office under the United States.

“§ 904b. Art. 104B. Misprison of treason”

“Any person subject to this chapter who, having knowledge of the commission of any treason against the United States, conceals and does not, as soon as may be, disclose and make known the same to a superior officer, the President, or some judge of the United States, or to the governor or to some judge or justice of a particular state, is guilty of misprison of treason and shall be punished as a court-martial may direct.”;

(2) Section 948d of title 10, United States Code, is amended by striking “sections 904 and 906 of this title (articles 104 and 106 of the Uniform Code of Military Justice)” and inserting “section 906 of this title (article 106 of the Uniform Code of Military Justice)”;

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(3) Section 8312 of title 5, United States Code, is amended in subsection (b) paragraph (2) by striking subparagraph (A) and inserting:

“(A) article 104 (aiding the enemy), article 104a (treason), article 104b (misprison of treason), article 106 (spies), or article 106a (espionage) of the Uniform Code of Military Justice (chapter 47 of title 10); or”.

**Sec. 4.** Amendments to the Espionage Act

Section 793 of title 18, United States Code, is amended—

(1) by striking paragraph (d) and inserting the following:

“(d) Whoever—

“(1) lawfully having possession of, access to, control over, or being entrusted with any

“(A) document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance or note relating to the national defense which the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, or

“(B) information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation,

“(2) willfully, and with intent to harm, extort, blackmail, or defraud any person or the United States, or with intent to sell to any person, or with intent to provide to any foreign government, or with intent to further any acts or plans of international or domestic terrorism (as defined by section 2331 of this title),



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“(A) communicates, delivers, transmits, or causes to be communicated, delivered or transmitted, or

“(B) attempts to communicate, deliver, transmit or cause to be communicated, delivered or transmitted the same to any person not entitled to receive it, or

“(C) retains the same and fails to deliver it on demand to the officer or employee of the United States entitled to receive it; or”;

(2) by striking paragraph (e) and inserting the following:

“(e) Whoever—

“(1) having unauthorized possession of, access to, or control over any

“(A) document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance or note relating to the national defense which the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, or

“(B) information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation,

“(2) willfully, and with intent to harm, extort, blackmail, or defraud any person or the United States, or with intent to sell to any person, or with intent to provide to any foreign government, or with intent to further any acts or plans of international or domestic terrorism (as defined by section 2331 of this title),

“(A) communicates, delivers, transmits, or causes to be communicated, delivered or transmitted, or

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“(B) attempts to communicate, deliver, transmit or cause to be communicated, delivered or transmitted the same to any person not entitled to receive it, or

“(C) retains the same and fails to deliver it on demand to the officer or employee of the United States entitled to receive it; or”;

**Sec. 5.** Amendments to the Computer Fraud and Abuse Act.

Section 1030 of title 18, United States Code, is amended in paragraph (a) by striking subparagraph (1) and inserting the following:

“(1) having knowingly accessed a computer without authorization, and by means of such conduct having obtained information that has been determined by the United States Government pursuant to an Executive order or statute or require protection against unauthorized disclosure for reasons of national defense or foreign relations, or any restricted data (as defined in paragraph (y) of section 2014 of title 42 (The Atomic Energy Act of 1954)), with reason to believe that such information so obtained could be used to the injury of the United States or to the advantage of any foreign nation—

“(A) willfully, and with intent to harm, extort, blackmail, or defraud any person or the United States, or with intent to sell to any person, or with intent to provide to any foreign government, or with intent to further any acts or plans of international or domestic terrorism (as defined by section 2331 of this title)—

“(i) communicates, delivers, transmits or causes to be communicated;

“(ii) attempts to communicate, deliver, transmit or cause to be communicated, delivered or transmitted the same to any person not entitled to receive it, or;

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“(iii) retains the same and fails to deliver it on demand to the officer or employee of the United States entitled to receive it; or”;

**Sec. 6.** Federal Disclosure Rules for Journalists.

Title 18, United States Code, is amended by inserting after section 1828 the following:

“§ 1829. Compelled Disclosure for Journalists

“(a) Definitions.—

“(1) Journalism. The term journalism shall mean—

“(A) the gathering or seeking of news or information, with the primary intent to investigate issues or events or procure material in order to disseminate to the public news or information concerning local, national, or international events or other matters of public interest, or to regularly conduct interviews, review documents, capture images of events, or directly observe events; or

“(B) the gathering, preparation, collection, photographing, recording, writing, editing, reporting, or publishing on such matters by conducting interviews; making direct observations of events; or collecting, reviewing, or analyzing original writings, statements, communications, reports, memoranda, records, transcripts, documents, photographs, recordings, tapes, materials, or other information whether in paper, electronic, or other form; or

“(C) the obtaining of news or information in order to disseminate it by means of a newspaper; nonfiction book; wire service (whether distributed digitally or

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otherwise); news program; magazine or other periodical, whether in print, electronic or other format; or through television or radio broadcast, multichannel video programming distributor (as defined in section 522 of title 47 (Communications Act of 1934)), or motion picture for public showing;

“(2) Covered Person. The term “covered person”—

“(A) shall mean any person who—

“(i) is, or on the relevant date, was, an employee, independent contractor, or agent of an entity or service that distributes news or information by means of journalism as defined in this section;

“(ii) with the primary intent to investigate events and procure material in order to disseminate to the public news or information concerning local, national, or international events or other matters of public interest, engages, or as of the relevant date engaged, in journalism as defined in this section;

“(iii) had such intent at the inception of the process of gathering the news or information sought; and

“(iv) obtained the news or information sought in order to disseminate the news or information to the public; or

“(B) shall mean any person who—

“(i) at the inception of the process of journalism;

“(ii) obtained the news or information sought in order to disseminate it by any means described in subparagraph (1)(C) of this subsection; and

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“(iii) either—

“(aa) would have been included in the definition in subparagraph (A) of this paragraph for any continuous one-year period within the 20 years prior to the relevant date or any continuous three-month period within the 5 years prior to the relevant date;

“(bb) had substantially contributed, as an author, editor, photographer, or producer, to a significant number of articles, stories, programs, or publications by any means described in subparagraph (1)(C) of this subsection within 5 years prior to the relevant date; or

“(cc) was a student participating in journalism at an institution of higher education (as defined in section 1002 of title 20 (Higher Education Act of 1965)) on the relevant date; and

“(C) shall include any person or entity that is a supervisor, editor, employer, parent company, or affiliate of any person described in subparagraphs (1)(B) and (1)(C) of this subsection; and

“(D) shall not include any person or entity who, by clear and convincing evidence, is or is likely to be—

“(i) a foreign power or an agent of a foreign power (as defined in section 1801 of title 50 (Foreign Intelligence and Surveillance Act));

“(ii) an affiliate of a terrorist organization designated under section 1189(a) of title 8, United States Code (Immigration and Nationality Act);

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“(iii) a terrorist organization as that term is defined in section 1182(a)(3)(b)(vi) of title 8, United States Code (Immigration and Nationality Act);

“(iv) committing or attempting to commit a crime of terrorism, as that offense is described in section 2331(5) or 2332b(g)(5) of title 18, United States Code;

“(v) committing or attempting to commit the crime of providing material support or resources, as that term is defined in section 2339a(b)(1), to a terrorist organization; or

“(vi) aiding, abetting or conspiring in a serious crime with a person or organization describe in clauses (i) through (v) of this subparagraph.

“(3) Covered Service Provider. The term “covered service provider” shall mean—

“(A) any person that transmits information of the customer’s choosing by electronic means;

“(B) a telecommunications carrier or an information service, as defined in section 153 of title 47 (Communications Act of 1934);

“(C) an interactive computer service or information content provider, as defined in section 230 of title 47 (Communications Act of 1934);

“(D) a remote computing service, as defined in section 2711 of title 18;

“(E) an electronic communications service, as defined in section 2510 of title 18; or

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“(F) any commercial entity that maintains records related to a covered person;

“(4) Record. The term “record” in this section shall mean any writings, recordings, photographs, and any other means of storing information, including in electronic form.

“(5) Federal Entity. The term “federal entity” in this section shall mean an entity or employee of the judicial or executive branch or administrative agency of the federal government with the power to issue a subpoena or issue other compulsory process.

“(6) Protected Information. The term “protected information” in this section shall mean—

“(A) information identifying a source who provided information under a promise or agreement of confidentiality made by a covered person as part of engaging in journalism; or

“(B) any records, contents of a communication, documents, or information that a covered person obtained or created—

“(i) as part of engaging in journalism; and

“(ii) upon a promise or agreement that such records, contents of a communication, documents, or information would be confidential.

“(7) Relevant Date. The term “relevant date” in this section shall mean the date on which the protected information sought was obtained or created by the person asserting protection under this section.

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“(b) Judicial Discretion. In the case of a person that does not fit within the definition of a “covered person” described in subparagraph (a)(2)(A) or clause (a)(2)(B)(i) of this section, a judge of the United States (as defined by section 451 of this title) may exercise discretion to avail the person of the protections provided in this section if, based on specific facts contained in the record, the judge determines that such protections would be in the interest of justice and necessary to protect lawful and legitimate news-gathering activities under the specific circumstances of the case.

“(c) Notice and Opportunity Afforded to Covered Person. A judge of the United States (as defined by section 451 of this title) may compel the disclosure of a document or other information described in this section only after the covered person from whose account the document or other information is sought has been given—

“(1) notice from the party seeking the document or information through a subpoena or other compulsory request, not later than the time at which such subpoena or request is issued to the covered service provider; and

“(2) an opportunity to be heard before a judge of the United States before compelling testimony or the disclosure of a document.

“(d) Conditions for Compelled Disclosure. In any matter arising under federal law, a federal entity may not compel a covered person to comply with a subpoena, court order, testimony, or other compulsory legal process seeking to compel disclosure of protected information, unless a judge of the United States (as defined by section 451 of this title) in the jurisdiction where the subpoena, court order, or other compulsory legal process has



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been or would be issued determines after providing notice and an opportunity to be heard to such covered person—

“(1) that the party seeking to compel production of such testimony or records has exhausted all reasonable alternative sources, other than the covered person, of the testimony or record; and

“(2) that—

“(A) in a criminal investigation or prosecution—

“(i) based on public information or information obtained from a person other than the covered person, that there are reasonable grounds to believe that a serious crime has occurred; and

“(ii) based on public information or information obtained from a source other than the covered person, there are clear and convincing grounds to believe that the protected information sought is essential to the investigation, or to the prosecution, or to the defense against the prosecution;

“(iii) the Attorney General personally certifies the decision to request compelled disclosure; and

“(iv) the covered person has not, by a preponderance of the evidence, established that the disclosure of the protected information would be contrary to the public interest, taking into account both the public interest in gathering and disseminating the records or information at issue and the public interest in compelling disclosure;

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“(B) in a matter other than a criminal investigation or prosecution, based on public information or information obtained from a source other than the covered person—

“(i) the protected information is essential to the resolution of the matter; and

“(ii) the party seeking to compel disclosure of the protected information has established, by clear and convincing evidence, that the interest in compelling disclosure clearly outweighs the public interest in gathering and disseminating the information or news at issue.

“(e) Notice to the Covered Service Provider. In all cases in which notice is required to be provided to the covered person under this section, a copy of such notice shall be provided simultaneously to the covered service provider from whom disclosure is sought. Once it has received such notice, the covered service provider shall not comply with the request for disclosure unless and until disclosure is either ordered by the court or authorized in writing by the covered person.

“(f) Limitations on Content of Information. A subpoena, court order, or other compulsory legal process seeking to compel disclosure of protected information under subsection (b) of this section shall, to the extent possible, be narrowly tailored in purpose, subject matter, and period of time covered in order to avoid compelling disclosure of peripheral, nonessential, or speculative information.

“(g) Exceptions.—

“(1) Subsection (b) of this section shall not apply—

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“(A) to any records, documents, information, or items obtained as the result of eyewitness observations of, alleged serious criminal misconduct by the covered person, including any physical evidence or visual or audio recording of the conduct; or

“(B) to any protected information that is reasonably necessary to stop, prevent, or mitigate an urgent and specific case of—

“(i) death;

“(ii) kidnapping;

“(iii) substantial bodily harm; or

“(iv) conduct that constitutes a criminal offense that is a specified offense against a minor (as those terms are defined in section 16911 of title 42, (Adam Walsh Protection and Safety Act of 2006); and

“(2) This subsection shall not apply if the alleged serious misconduct is, or is related to, the act of receiving or communicating the documents or information at issue.

“(h) Procedures for Review and Appeal. With regard to any determination made by a judge of the United States under this section—

“(1) upon a showing of good cause, that the judge of the United States may receive and consider submissions from the parties in camera or under seal, and if the court determines it is necessary, ex parte;

“(2) a judge of the United States may find a covered person to be in civil or criminal contempt if the covered person fails to comply with an order of a judge of the United States compelling disclosure of the protected information; or

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“(3) that judge of the United States, to the extent practicable, shall make that determination not later than 20 days after the date of receiving a motion requesting that the court make that determination.

“(i) Expedited Appeal.—

“(1) The courts of appeal shall have jurisdiction—

“(A) of appeals by a federal entity or covered person of an interlocutory order of a judge of the United States under this section; and

“(B) in an appeal of a final decision of a judge of the United States by a federal entity or covered person, to review any determination of a judge of the United States under this section.

“(2) It shall be the duty of a federal court to which an appeal is made under this subsection to advance on the docket and to expedite to the greatest extent possible the disposition of that appeal.

“(j) Nothing in this act shall supersede, dilute, or preclude any law or court decision compelling or not compelling disclosure by a covered person or covered service provider of—

“(1) information identifying a source who provided information without a promise or agreement of confidentiality made by the covered person as part of engaging in journalism; or

“(2) records, other information, or contents of a communication obtained without a promise or agreement that such records, other information, or contents of a communication would be confidential.”.

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**Sec. 7.** Proactive Disclosure Through Records Management.

Section 3102 of title 44, is amended—

(1) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4); and

(2) by inserting after paragraph (1) the following:

“(2) procedures for identifying records of general interest or use to the public that are appropriate for public disclosure, and for posting such records in a publicly accessible electronic format;”.

**Sec. 8.** Review and Issuance of Regulations for the Freedom of Information Act.

(a) In General.—Not later than 180 days after the date of enactment of this Act, the head of each agency (as defined in section 551 of title 5, United States Code) shall review the regulations on procedures for the disclosure of records under section 552 of title 5, United States Code, in accordance with the amendments made by section 2 of this Act.

(b) Requirements.—The regulations of each agency shall include procedures for engaging in dispute resolution through the FOIA Public Liaison and the Office of Government Information Services.

**Sec. 9.** Audit of Federal Disclosure Rules for Journalists.

(a) In General.—The Inspector General of the Department of Justice shall perform a comprehensive audit of the use of section 6 of this Act during the period beginning on the date of enactment of this Act and ending on December 31, 2018. The audit shall include an examination of each instance in which a court failed to compel the disclosure of protected information under section 6 of this Act, and whether section 6 of this Act has created any

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Procedural impediments that have had a detrimental impact on the activities of the Federal Bureau of Investigation.

(b) Report.—Not later than June 30, 2019, the Inspector General shall submit to the Committee on the Judiciary and the Select Committee on Intelligence of the Senate and the Committee on the Judiciary and the Permanent Select Committee on Intelligence in the House of Representatives a report containing the results of the audit conducted under subsection (a).

(c) Review.—Not later than 30 days before the submission of the report under subsection (b), the Inspector General of the Department of Justice shall provide the report to the Attorney General and the Director of National Intelligence. The Attorney General or the Director of National Intelligence may provide such comments to be included in the report submitted under subsection (b) as the Attorney General or the Director of National Intelligence may consider necessary.

(d) Form.—The report submitted under subsection (b) and any comments included under subsection (c) shall be in unclassified form, but may include a classified annex.

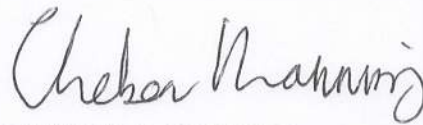
**Sec 10.** Additional Funds for the Office of Government Information Services

(a) The sum of \$40,000,000 is appropriated, out of any money in the Treasury not otherwise appropriated, for the Office of Government Information Services for the fiscal year ending September 30, 2015, for additional staffing, training, and equipment in order to more effectively carry out the statutory functions provided section 552 of title 5, United States Code, and the provisions in sections 2, 7 and 8 of this Act.

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(b) No other additional funds are authorized to carry out the requirements of this Act and the amendments made by this Act. Such requirements shall be carried out using amounts otherwise authorized or appropriated.

Respectfully Submitted,

A handwritten signature in black ink that reads "Chelsea Manning". The signature is written in a cursive, flowing style.

CHELSEA E. MANNING

## **Memorandum for Unlimited Distribution**

**Subject:** Section-by-Section Analysis of the Proposed National Integrity and Free Speech Protection Act (NIFSPA)

**Sec. 1.** Short Title. National Integrity and Free Speech Protection Act of 2015.

**Sec. 2.** Amendments to the Freedom of Information Act.<sup>1</sup>

- **Electronic Accessibility.** This section amends the existing requirements that certain records and reports be made available for public inspection to mandate that such records be made available in electronic format in order to ease public access.
- **Frequently Requested Records.** The current law requires that federal agencies post “frequently requested” records sought under the existing Freedom of Information Act (FOIA). This section clarifies “frequently requested” records to include any that have been released under the FOIA three (3) or more times.
- **Fees Clarification.** This section clarifies that agencies may not charge search or duplication fees when the agency fails to meet the notice requirements and time limits set by existing law. Agencies have been prohibited from charging fees in these cases since the passage of the OPEN Government Act of 2007, but confusion from the language has permitted agencies to continue to charge fees in cases where agencies have not met the requirements of the law. These changes would prevent further confusion.
- **Presumption of Openness.** This section codifies the existing presumption of openness that the administration established for releasing government information under the existing FOIA. The standard mandates that an agency may withhold information only if it reasonable foresees a specific identifiable harm to an interest protected by an exemption, or if disclosure is prohibited by law.
- **Exemption 5.** This section amends paragraph (b)(5) of the existing FOIA, which exempts inter- and intra-agency documents that would be exempt from discovery in civil or criminal litigation, to include a public-interest balancing test. In the case of deliberative process and attorney work product privileges, the test would mandate disclosure when a public interest in disclosure outweighed the agency’s interest in protecting the records or information. In the case of attorney-client privilege, a compelling interest would need to outweigh the agency’s interest in non-disclosure. Additionally, this section would create a sunset clause for the application of Exemption 5 to documents created more than twenty (20) years ago.
- **Office of Government Information Services Independence.** This section provides for additional autonomy for the Office of Government Information Services (OGIS), created by the OPEN Government Act of 2007. It gives the OGIS the ability to report directly to the Congress and the President, and to issue advisory opinions at its discretion after any mediation.

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<sup>1</sup> See “FOIA Improvement Act of 2015” bill, (S. 337)



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- **Government Accountability Office.** This section requires the Government Accountability Office (GAO), in addition to its current responsibility of auditing agency compliance with the FOIA, to also catalog the statutory exemptions to the existing FOIA that exist outside of the statute (these external exemptions are normally incorporated into FOIA through Exemptions 4, and sometimes under interpretations of Exemptions 5 and 7) and how those exemptions are used by agencies.
- **Chief FOIA Officer Council.** This section will create a statutory council to develop recommendations for increasing agency FOIA compliance and efficiency, disseminate information about agency best practices, and coordinate initiatives to increase transparency and open government. The Council is modeled after the currently existing Chief Information Officers Council.
- **FOIA Reports.** Requires agencies to include in their annual FOIA reports:
  - (a) the number of times documents have been exempted from disclosure as part of an ongoing criminal investigation under subsection (c);
  - (b) the number of times the agency has engaged in dispute resolution services with OFIC or the FOIA public liaison; and
  - (c) the number of records the agency proactively discloses as required by paragraph (a)(2).
- **Exemption 9.** Eliminates paragraph (b)(9) covering maps and geographical information.

**Sec. 3.** Amendments to the Uniform Code of Military Justice.

- **Aiding the Enemy.** This section amends the Uniform Code of Military Justice (UCMJ) by making the military offense of “aiding the enemy” a war-time offense, and by limiting its application to those who fall under the UCMJ.
- **Treason and Misprison of Treason.** This section, based on the existing offenses of “treason” and “misprison of treason” under title 18, United States Code, creates an explicit military offense for waging war against the United States, or adhering to the enemies of the United States, and failing to report such actions.

**Sec. 4.** Amendments to the Espionage Act. This section alters section 793 of title 18, United States Code by requiring the government to prove that the intention and motive of the accused in transmitting or communicating sensitive documents or information was to harm the government or someone else. It also requires that the government prove that an accused must have reason to believe that documents could be used to the injury of the United States or to the advantage of any foreign nation.

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**Sec. 5.** Amendments to the Computer Fraud and Abuse Act. This section alters paragraph (a)(1) of section 1030, title 18, United States Code by requiring the government to prove that access to a computer system is unauthorized, and that the intention and motive of the accused in transmitting or communicating sensitive documents or information was to harm the government or someone else.

**Sec. 6.** Federal Disclosure Rules for Journalists.

- Prohibits a federal entity (an entity or employee of the judicial or executive branch or an administrative agency of the federal government with the power to issue a subpoena or other compulsory process), in any proceeding or in connection with any issue arising under federal law, from compelling a journalist (“covered person”) to disclose protected information, unless a US judge in the jurisdiction where the testimony or information being compelled determines, after providing notice an opportunity for the journalist to be heard, that all reasonable alternative sources have been exhausted and that separate specified conditions have been met depending on whether the matter is a criminal investigation or prosecution. This effectively establishes a privilege for journalists to withhold confidential information unless and until a judge makes a through determination to compel disclosure under conditions that require a high burden of evidence in both criminal and civil matters.
- Defines “journalism” as (1) the gathering or seeking of news or information, with the primary intent to investigate issues or events, to procure material in order to disseminate material to the public news or information concerning local, national, or international events or other matters of public interest, or to regularly conduct interviews, review documents, capture images of events, or directly observe events; (2) the gathering, preparation, collection, photographing, recording, writing, editing, reporting, or publishing on such matters by conducting interviews, making direct observations of events, or collecting, reviewing, or analyzing a broad range of original and secondary materials; or (3) the obtaining of news or information in order to disseminate it by means of a newspaper, non-fiction book, wire service, news program, magazine or other periodical, whether in print, electronic or other format, or through television or radio broadcasting, cable provider, or documentaries and movies.
- Defines a “covered person” as any person who (1) is or was an employee, independent contractor, or agent of an entity or service that distributes news or information by means of journalism, with the primary intent to investigate events and procure material in order to disseminate to the public news or information concerning local, national or international events or other matters of public interest, had such intent at the inception of the process of gathering the news or information sought and obtained it in order to disseminate the news or

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information to the public; or (2) at the inception of the process of journalism obtained the news or information sought in order to disseminate it by journalistic means and would either have been included in this definition for any continuous one year period within the twenty years prior, or any continuous three month period within the five years prior to the date in question.

- Provides for supervisors, editors, employers, parent companies, subsidiaries or affiliates of such people to be treated as covered persons.
- Defines “protected information” as information identifying a source who provided information under a promise or agreement of confidentiality made by a covered person as a part of engaging in journalism, or any records, contents of a communication, documents, or information that a covered person obtained as part of engaging in journalism and upon a promise or agreement of confidentiality.
- Excludes from the definition of a “covered person” specified foreign powers or agents of foreign powers, or members or affiliates of a terrorist organization likely to commit, attempt to commit, or provide direct support for terrorism.
- Defines a “covered service provider” as any person that transmits information of the customers choosing by electronic means; a telecommunications carrier, information service, interactive computer service, or information content provider; a remote computing or electronic communications service; or any commercial entity that maintains records related to a covered person.
- Requires a covered person to be given notice, and an opportunity to be heard, before a judge may compel disclosure from such service providers, without any vague exceptions for unilateral invocations of “national security”.
- Authorizes a judge to provide the protections of this Act to a person who does not meet the definition of a covered person if such protections will be in the interest of justice and necessary to protect lawful and legitimate news-gathering activities.
- Provides an exception from such judicial determination requirements, and thereby makes the qualified privilege inapplicable, for compelled disclosures of information or items obtained as the result of the eye-witness observations of, or obtained during the course of, alleged serious criminal conduct by the covered person, including any physical evidence or visual or audio recording of the conduct.

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- Prohibits such exception from applying and instead requires the appropriate judicial determinations for a compelled disclosure, subject to the other exceptions, if the alleged criminal conduct is the actual act of communicating or receiving of the documents or information at issue.
- Provides an additional exception from judicial determination requirement, thereby making the privilege inapplicable for compelled disclosures of protected information that are necessary to stop, prevent, or mitigate an urgent and specific case of death, kidnapping, substantial bodily harm, or certain offenses against minors.
- Allows a judge to (1) receive and consider submissions from the parties in camera or under seal and, if necessary, ex parte; and (2) find a covered person to be in civil or criminal contempt for a failure to comply with an order compelling disclosure of the protected information.
- Prohibits this Act from superseding, diluting, or precluding any law or court decision addressed compelled disclosure by a covered person or service provider for (1) information identifying a source who provided information without a promise or agreement of confidentiality made by the covered person as part of engaging in journalism; or (2) records, other information, or contents of a communication obtained without a promise or agreement of confidentiality.
- Requires courts of appeal to provide an expedited appeal process.
- Does not have an exception for vaguely defined “national security” information and circumstances in order to prevent any chilling of free speech and a free press.

**Sec. 7.** Proactive Disclosure Through Records Management.<sup>2</sup> This section amends section 3102 of title 44, United States Code to make proactive disclosure an ongoing part of agency record management by requiring the heads of agencies to include in an agency’s records management system procedures for identifying records of general interest or use to the public that are appropriate for public disclosure, and for making such records publicly available in electronic format.

**Sec. 8.** Revision and Issuance of Regulations for the Freedom of Information Act.<sup>3</sup> This section requires agencies to review and issue regulations on the procedures for disclosure

<sup>2</sup> See “FOIA Improvement Act of 2015” bill, (S. 337)

<sup>3</sup> See *Id.*

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of records under the FOIA, including procedures for dispute resolution and engaging with OGIS.

**Sec. 9.** Audit of Federal Disclosure Rules for Journalists. This section requires the Inspector General of the Department of Justice to audit the disclosure rules provided under Sec. 6 of this Act from the date of enactment to December 31, 2018.

**Sec. 10.** Additional Funds for the Office of Government Information Services. This section provides for additional funding for the OGIS, and specifies that no other funds are authorized to carry out any other requirements or amendments made by this Act.