

103D CONGRESS
1ST SESSION

S. 1782

To amend title 5, United States Code, to provide for public access to information in an electronic format, to amend the Freedom of Information Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 22, 1993

Mr. LEAHY (for himself and Mr. BROWN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 5, United States Code, to provide for public access to information in an electronic format, to amend 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 “Electronic Freedom
5 of Information Improvement Act of 1993”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—The Congress finds that—

8 (1) since the enactment of the Freedom of In-
9 formation Act in 1966, and the amendments enacted

1 in 1974 and 1986, the Freedom of Information Act
2 has been a valuable means through which any per-
3 son can learn how the Federal Government operates;

4 (2) the Freedom of Information Act ensures ac-
5 cess to information held by the Government, which
6 is a valuable national resource;

7 (3) the Freedom of Information Act has led to
8 the disclosure of waste, fraud, abuse, and wrong-
9 doing in the Federal Government;

10 (4) the Freedom of Information Act has led to
11 the identification of unsafe consumer products,
12 harmful drugs, and serious health hazards;

13 (5) Government agencies increasingly use com-
14 puters to conduct agency business and to store pub-
15 licly valuable information; and

16 (6) Government agencies should use new tech-
17 nology to enhance public access to information.

18 (b) PURPOSES.—The purposes of this Act are to—

19 (1) foster democracy by ensuring access to pub-
20 lic information;

21 (2) improve public access to agency records and
22 information;

23 (3) ensure agency compliance with statutory
24 time limits; and

1 (4) maximize the usefulness of agency records
2 and information collected, maintained, used, re-
3 tained, and disseminated by the Federal Govern-
4 ment.

5 **SEC. 3. PUBLIC INFORMATION AVAILABILITY.**

6 Section 552(a)(1) of title 5, United States Code, is
7 amended—

8 (1) in the first sentence by inserting “electroni-
9 cally by computer telecommunications, and by other
10 means,” after “Federal Register”;

11 (2) by striking out “and” at the end of sub-
12 paragraph (D);

13 (3) by redesignating subparagraph (E) as sub-
14 paragraph (H); and

15 (4) by inserting after subparagraph (D) the fol-
16 lowing new subparagraphs:

17 “(E) an index of all information retrievable or
18 stored in an electronic form by the agency;

19 “(F) a description of any new database or
20 database system with a statement of how such
21 database or system shall enhance agency operations
22 under this section;

23 “(G) a complete list of all statutes that the
24 agency head or general counsel relies upon to au-
25 thorize the agency to withhold information under

1 subsection (b)(3) of this section, together with a spe-
2 cific description of the scope of the information cov-
3 ered; and”.

4 **SEC. 4. HONORING FORMAT REQUESTS.**

5 Section 552(a)(3) of title 5, United States Code, is
6 amended by—

7 (1) inserting “(A)” after “(3)”;

8 (2) striking out “(A) reasonably” and inserting
9 in lieu thereof “(i) reasonably”;

10 (3) striking out “(B)” and inserting in lieu
11 thereof “(ii)”;

12 (4) adding the following new subparagraphs at
13 the end thereof:

14 “(B) An agency shall provide records in any form in
15 which such records are maintained by that agency as re-
16 quested by any person.

17 “(C) An agency shall make reasonable efforts to pro-
18 vide records in an electronic form requested by any person,
19 even where such records are not usually maintained in
20 such form.”.

21 **SEC. 5. DELAYS.**

22 (a) FEES.—Section 552(a)(4)(A) of title 5, United
23 States Code, is amended by adding at the end thereof the
24 following new clause:

1 “(viii) If at an agency’s request, the Comptroller Gen-
2 eral determines that the agency annually has either pro-
3 vided responsive documents or denied requests in substan-
4 tial compliance with the requirements of paragraph
5 (6)(A), one-half of the fees collected under this section
6 shall be credited to the collecting agency and expended to
7 offset the costs of complying with this section through
8 staff development and acquisition of additional request
9 processing resources. The remaining fees collected under
10 this section shall be remitted to the Treasury as general
11 funds or miscellaneous receipts.”.

12 (b) PAYMENT OF REQUESTER’S EXPENSES.—Section
13 552(a)(4)(E) of title 5, United States Code, is amended
14 by adding at the end thereof the following new sentence:
15 “The court may assess against the United States all out-
16 of-pocket expenses incurred by the requester, and reason-
17 able attorney fees incurred in the administrative process,
18 in any case in which the agency has failed to comply with
19 the time limit provisions of paragraph (6) of this sub-
20 section.”.

21 (c) CIVIL PENALTY FOR DELAY.—Section
22 552(a)(4)(E) of title 5, United States Code, is further
23 amended—

24 (1) by inserting “(i)” after “(E)”; and

1 (2) by adding at the end thereof the following
2 new clause:

3 “(ii) Any agency not in compliance with the time lim-
4 its set forth in this subsection shall demonstrate to a court
5 that the delay is warranted under the circumstances. It
6 shall be within the discretion of the court to award the
7 requester an amount not to exceed \$75 for each day that
8 the agency’s response to his request exceeded the time lim-
9 its set forth in paragraph (6) of this section.”.

10 (d) AGENCY BACKLOGS.—Section 552(a)(6)(B) of
11 title 5, United States Code, is amended in the fourth sen-
12 tence by inserting “shall not include routine agency back-
13 logs and” after “ ‘unusual circumstances’ ”.

14 (e) NOTIFICATION OF DENIAL.—The fourth sentence
15 of section 552(a)(6)(C) of title 5, United States Code, is
16 amended to read: “Any notification of any full or partial
17 denial of any request for records under this subsection
18 shall set forth the names and titles or positions of each
19 person responsible for the denial of such request and the
20 total number of denied records and pages considered by
21 the agency to have been responsive to the request.”.

22 (f) EXPEDITED ACCESS.—Section 552(a)(6) of title
23 5, United States Code, is amended by adding at the end
24 thereof the following new subparagraph:

1 “(D)(i) Each agency shall promulgate regulations,
2 pursuant to notice and receipt of public comment, provid-
3 ing that upon receipt of a request for expedited access to
4 records and a demonstration by the requester of a compel-
5 ling need for expedited access to records, the agency shall
6 determine within five days (excepting Saturdays, Sundays,
7 and legal public holidays) after the receipt of such a re-
8 quest, whether to comply with such request. No more than
9 one day after making such determination the agency shall
10 notify the requester of such determination, the reasons
11 therefor, and of the right to appeal to the head of the
12 agency.

13 “(ii) A requester whose request for expedited access
14 has not been decided within five days of its receipt by the
15 agency or has been denied shall not be required to exhaust
16 administrative remedies. An agency failing to comply with
17 this time limitation shall be subject to the provisions of
18 paragraph (4)(E)(ii).”.

19 **SEC. 6. COMPUTER REDACTION.**

20 Section 552(b) of title 5, United States Code, is
21 amended by inserting before the period in the sentence
22 following paragraph (9): “, and such deletion shall be indi-
23 cated on the released portion of the record at the place
24 where such deletion was made”.

1 **SEC. 7. DEFINITIONS.**

2 Section 552(f) of title 5, United States Code, is
3 amended to read as follows:

4 “(f) For purposes of this section—

5 “(1) the term ‘agency’ as defined in section
6 551(1) of this title includes any executive depart-
7 ment, military department, Government corporation,
8 Government controlled corporation, or other estab-
9 lishment in the executive branch of the Government
10 (including the Executive Office of the President), or
11 any independent regulatory agency;

12 “(2) the term ‘record’ includes all books, pa-
13 pers, maps, photographs, data, computer programs,
14 machine readable materials, and computerized,
15 digitized, and electronic information, regardless of
16 the medium by which it is stored, or other documen-
17 tary materials, regardless of physical form or char-
18 acteristics; and

19 “(3) the term ‘search’ includes a manual or
20 automated examination to locate records.”.

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