

Calendar No. 594

103D CONGRESS
2D SESSION

S. 1782

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.

AUGUST 22 (legislative day, AUGUST 18), 1994

Reported with an amendment and an amendment to the title

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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

AUGUST 22 (legislative day, AUGUST 18), 1994

Reported by Mr. BIDEN, with an amendment and an amendment to the title
[Strike out all after the enacting clause and insert the part printed in *italic*]

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”.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 ~~(a) FINDINGS.~~—The Congress finds that—

3 ~~(1)~~ since the enactment of the Freedom of In-
4 formation Act in 1966, and the amendments enacted
5 in 1974 and 1986, the Freedom of Information Act
6 has been a valuable means through which any per-
7 son can learn how the Federal Government operates;

8 ~~(2)~~ the Freedom of Information Act ensures ac-
9 cess to information held by the Government, which
10 is a valuable national resource;

11 ~~(3)~~ the Freedom of Information Act has led to
12 the disclosure of waste, fraud, abuse, and wrong-
13 doing in the Federal Government;

14 ~~(4)~~ the Freedom of Information Act has led to
15 the identification of unsafe consumer products,
16 harmful drugs, and serious health hazards;

17 ~~(5)~~ Government agencies increasingly use com-
18 puters to conduct agency business and to store pub-
19 licly valuable information; and

20 ~~(6)~~ Government agencies should use new tech-
21 nology to enhance public access to information.

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

23 ~~(1)~~ foster democracy by ensuring access to pub-
24 lic information;

25 ~~(2)~~ improve public access to agency records and
26 information;

1 (3) ensure agency compliance with statutory
2 time limits; and

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

7 **SEC. 3. PUBLIC INFORMATION AVAILABILITY.**

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

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

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

15 (3) by redesignating subparagraph (E) as sub-
16 paragraph (H); and

17 (4) by inserting after subparagraph (D) the fol-
18 lowing new subparagraphs:

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

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

1 “(G) a complete list of all statutes that the
2 agency head or general counsel relies upon to au-
3 thorize the agency to withhold information under
4 subsection (b)(3) of this section, together with a spe-
5 cific description of the scope of the information cov-
6 ered; and”.

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

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

10 (1) inserting “(A)” after “(3)”;

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

13 (3) striking out “(B)” and inserting in lieu
14 thereof “(ii)”;

15 (4) adding the following new subparagraphs at
16 the end thereof:

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

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

1 **SEC. 5. DELAYS.**

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

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

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

1 (c) CIVIL PENALTY FOR DELAY.—Section
 2 552(a)(4)(E) of title 5, United States Code, is further
 3 amended—

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

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

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

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

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

1 (f) ~~EXPEDITED ACCESS.~~—Section 552(a)(6) of title
 2 5, United States Code, is amended by adding at the end
 3 thereof the following new subparagraph:

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

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

22 **SEC. 6. COMPUTER REDACTION.**

23 Section 552(b) of title 5, United States Code, is
 24 amended by inserting before the period in the sentence
 25 following paragraph (9): “, and such deletion shall be indi-

1 cated on the released portion of the record at the place
 2 where such deletion was made”.

3 **SEC. 7. DEFINITIONS.**

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

6 “(f) For purposes of this section—

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

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

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

23 **SECTION 1. SHORT TITLE.**

24 *This Act may be cited as the “Electronic Freedom of*
 25 *Information Improvement Act of 1994”.*

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) *FINDINGS.*—*The Congress finds that—*

3 (1) *the purpose of the Freedom of Information*
4 *Act is to require agencies of the Federal Government*
5 *to make certain agency information available for pub-*
6 *lic inspection and copying and to establish and en-*
7 *able enforcement of the right of any person to obtain*
8 *access to the records of such agencies (subject to statu-*
9 *tory exemptions) for any public or private purpose;*

10 (2) *since the enactment of the Freedom of Infor-*
11 *mation Act in 1966, and the amendments enacted in*
12 *1974 and 1986, the Freedom of Information Act has*
13 *been a valuable means through which any person can*
14 *learn how the Federal Government operates;*

15 (3) *the Freedom of Information Act has led to*
16 *the disclosure of waste, fraud, abuse, and wrongdoing*
17 *in the Federal Government;*

18 (4) *the Freedom of Information Act has led to*
19 *the identification of unsafe consumer products, harm-*
20 *ful drugs, and serious health hazards;*

21 (5) *Government agencies increasingly use com-*
22 *puters to conduct agency business and to store pub-*
23 *licly valuable agency records and information; and*

24 (6) *Government agencies should use new tech-*
25 *nology to enhance public access to agency records and*
26 *information.*

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

2 (1) *foster democracy by ensuring public access to*
3 *agency records and information;*

4 (2) *improve public access to agency records and*
5 *information;*

6 (3) *ensure agency compliance with statutory*
7 *time limits; and*

8 (4) *maximize the usefulness of agency records*
9 *and information collected, maintained, used, retained,*
10 *and disseminated by the Federal Government.*

11 ***SEC. 3. PUBLIC INFORMATION AVAILABILITY.***

12 *Section 552(a)(1) of title 5, United States Code, is*
13 *amended—*

14 (1) *in the first sentence by inserting “by com-*
15 *puter telecommunications, or if computer tele-*
16 *communications means are not available, by other*
17 *electronic means,” after “Federal Register”;*

18 (2) *by striking out “and” at the end of subpara-*
19 *graph (D);*

20 (3) *by redesignating subparagraph (E) as sub-*
21 *paragraph (F); and*

22 (4) *by inserting after subparagraph (D) the fol-*
23 *lowing new subparagraph:*

24 *“(E) a complete list of all statutes that the agen-*
25 *cy head or general counsel relies upon to authorize the*

1 *agency to withhold information under subsection*
 2 *(b)(3) of this section, together with a specific descrip-*
 3 *tion of the scope of the information covered; and”.*

4 **SEC. 4. MATERIALS MADE AVAILABLE IN ELECTRONIC**
 5 **FORMAT.**

6 *Section 552(a)(2) of title 5, United States Code, is*
 7 *amended—*

8 *(1) in the first sentence by inserting “including,*
 9 *within 1 year after the date of the enactment of the*
 10 *Electronic Freedom of Information Improvement Act*
 11 *of 1994, by computer telecommunications, or if com-*
 12 *puter telecommunications means are not available, by*
 13 *other electronic means,” after “copying”;*

14 *(2) in subparagraph (B) by striking out “and”*
 15 *after the semicolon;*

16 *(3) in subparagraph (C) by inserting “and”*
 17 *after the semicolon;*

18 *(4) by adding after subparagraph (C) the follow-*
 19 *ing new subparagraphs:*

20 *“(D) an index of all major information systems*
 21 *containing agency records regardless of form or for-*
 22 *mat unless such an index is provided as otherwise re-*
 23 *quired by law; and*

1 “(E) a description of any new major informa-
 2 tion system with a statement of how such system shall
 3 enhance agency operations under this section;” and
 4 (5) in the third sentence by inserting “and the
 5 extent of such deletion shall be indicated on the por-
 6 tion of the record which is made available or pub-
 7 lished at the place in the record where such deletion
 8 was made” after “explained fully in writing”.

9 **SEC. 5. LIST OF RECORDS MADE AVAILABLE TO THE PUBLIC**
 10 **AND HONORING FORMAT REQUESTS.**

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

13 (1) inserting “(A)” after “(3)”;

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

16 (3) striking out “(B)” and inserting in lieu
 17 thereof “(ii)”;

18 (4) adding at the end thereof the following new
 19 subparagraphs:

20 “(B) A list of all records which are made available
 21 to any person under this paragraph shall be made available
 22 for public inspection and copying as provided under para-
 23 graph (2) of this subsection. Copies of all such records, re-
 24 gardless of form or format, which because of the nature of
 25 their subject matter, have become or are likely to become

1 *the subject of subsequent requests under this paragraph for*
 2 *substantially the same records, shall be made available for*
 3 *inspection and copying as provided under paragraph (2)*
 4 *of this subsection.*

5 “(C) An agency shall, as requested by any person, pro-
 6 vide records in any form or format in which such records
 7 are maintained by that agency.

8 “(D) An agency shall make reasonable efforts to pro-
 9 vide records in the form or format requested by any person,
 10 including in an electronic form or format, even where such
 11 records are not usually maintained but are available in
 12 such form or format.”.

13 **SEC. 6. DELAYS.**

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

17 “(viii) If at an agency’s request, the Comptroller Gen-
 18 eral determines that the agency annually has either pro-
 19 vided responsive documents or denied requests in substan-
 20 tial compliance with the requirements of paragraph (6)(A),
 21 one-half of the fees collected under this section shall be cred-
 22 ited to the collecting agency and expended to offset the costs
 23 of complying with this section through staff development
 24 and acquisition of additional request processing resources.
 25 The remaining fees collected under this section shall be re-

1 *mitted to the Treasury as general funds or miscellaneous*
 2 *receipts.”.*

3 (b) *PAYMENT OF THE EXPENSES OF THE PERSON*
 4 *MAKING A REQUEST.*—Section 552(a)(4)(E) of title 5,
 5 *United States Code, is amended by adding at the end there-*
 6 *of the following new sentence: “The court may assess against*
 7 *the United States all out-of-pocket expenses incurred by the*
 8 *person making a request, and reasonable attorney fees in-*
 9 *curred in the administrative process, in any case in which*
 10 *the agency has failed to comply with the time limit provi-*
 11 *sions of paragraph (6) of this subsection.”.*

12 (c) *DEMONSTRATION OF CIRCUMSTANCES FOR*
 13 *DELAY.*—Section 552(a)(4)(E) of title 5, *United States*
 14 *Code, is further amended—*

15 (1) *by inserting “(i)” after “(E)”;* and
 16 (2) *by adding at the end thereof the following*
 17 *new clause:*

18 “(ii) *Any agency not in compliance with the time lim-*
 19 *its set forth in this subsection shall demonstrate to a court*
 20 *that the delay is warranted under the circumstances set*
 21 *forth under paragraph (6) (B) or (C) of this subsection.”.*

22 (d) *PERIOD FOR AGENCY DECISION TO COMPLY WITH*
 23 *REQUEST.*—Section 552(a)(6)(A)(i) *is amended by striking*
 24 *out “ten days” and inserting in lieu thereof “twenty days”.*

1 (e) *AGENCY BACKLOGS.*—Section 552(a)(6)(C) of title
2 5, United States Code, is amended by inserting after the
3 second sentence the following: “As used in this subpara-
4 graph, ‘exceptional circumstances’ shall be unforeseen and
5 shall not include delays that result from a predictable work-
6 load, including any ongoing agency backlog, in the ordi-
7 nary course of processing requests for records.”.

8 (f) *NOTIFICATION OF DENIAL.*—The fourth sentence of
9 section 552(a)(6)(C) of title 5, United States Code, is
10 amended to read: “Any notification of any full or partial
11 denial of any request for records under this subsection shall
12 set forth the names and titles or positions of each person
13 responsible for the denial of such request and the total num-
14 ber of denied records and pages considered by the agency
15 to have been responsive to the request.”.

16 (g) *MULTITRACK FIFO PROCESSING AND EXPEDITED*
17 *ACCESS.*—Section 552(a)(6) of title 5, United States Code,
18 is amended by adding at the end thereof the following new
19 subparagraphs:

20 “(D)(i) Each agency shall adopt a first-in, first-out
21 (hereafter in this subparagraph referred to as FIFO) proc-
22 essing policy in determining the order in which requests
23 are processed. The agency may establish separate processing
24 tracks for simple and complex requests using FIFO process-
25 ing within each track.

1 “(ii) For purposes of such a multitrack system—

2 “(I) a simple request shall be a request requiring
3 10 days or less to make a determination on whether
4 to comply with such a request; and

5 “(II) a complex request shall be a request requir-
6 ing more than 10 days to make a determination on
7 whether to comply with such a request.

8 “(iii) A multitrack system shall not negate a claim
9 of due diligence under subparagraph (C), if FIFO process-
10 ing within each track is maintained and the agency can
11 show that it has reasonably allocated resources to handle
12 the processing for each track.

13 “(E)(i) Each agency shall promulgate regulations,
14 pursuant to notice and receipt of public comment, provid-
15 ing that upon receipt of a request for expedited access to
16 records and a showing by the person making such request
17 of a compelling need for expedited access to records, the
18 agency shall determine within 5 days (excepting Saturdays,
19 Sundays, and legal public holidays) after the receipt of such
20 a request, whether to comply with such request. No more
21 than one day after making such determination the agency
22 shall notify the person making a request for expedited access
23 of such determination, the reasons therefor, and of the right
24 to appeal to the head of the agency. A request for records
25 to which the agency has granted expedited access shall be

1 *processed as soon as practicable. A request for records to*
2 *which the agency has denied expedited access shall be proc-*
3 *essed within the time limits under paragraph (6) of this*
4 *subsection.*

5 “(ii) *A person whose request for expedited access has*
6 *not been decided within 5 days of its receipt by the agency*
7 *or has been denied shall be required to exhaust administra-*
8 *tive remedies. A request for expedited access which has not*
9 *been decided may be appealed to the head of the agency*
10 *within 7 days (excepting Saturdays, Sundays, and legal*
11 *public holidays) after its receipt by the agency. A request*
12 *for expedited access that has been denied by the agency may*
13 *be appealed to the head of the agency within 2 days (except-*
14 *ing Saturdays, Sundays, and legal public holidays) after*
15 *the person making such request receives notice of the agen-*
16 *cy’s denial. If an agency head has denied, affirmed a denial,*
17 *or failed to respond to a timely appeal of a request for expe-*
18 *dited access, a court which would have jurisdiction of an*
19 *action under paragraph (4)(B) of this subsection may, upon*
20 *complaint, require the agency to show cause why the request*
21 *for expedited access should not be granted, except that such*
22 *review shall be limited to the record before the agency.*

23 “(iii) *The burden of demonstrating a compelling need*
24 *by a person making a request for expedited access may be*
25 *met by a showing, which such person certifies under penalty*

1 *of perjury to be true and correct to the best of such person's*
 2 *knowledge and belief, that failure to obtain the requested*
 3 *records within the timeframe for expedited access under this*
 4 *paragraph would—*

5 “(I) threaten an individual’s life or safety;

6 “(II) result in the loss of substantial due process
 7 *rights and the information sought is not otherwise*
 8 *available in a timely fashion; or*

9 “(III) affect public assessment of the nature and
 10 *propriety of actual or alleged governmental actions*
 11 *that are the subject of widespread, contemporaneous*
 12 *media coverage.”.*

13 **SEC. 7. COMPUTER REDACTION.**

14 *Section 552(b) of title 5, United States Code, is amend-*
 15 *ed by inserting before the period in the sentence following*
 16 *paragraph (9): “, and the extent of such deletion shall be*
 17 *indicated on the released portion of the record at the place*
 18 *in the record where such deletion was made”.*

19 **SEC. 8. DEFINITIONS.**

20 *Section 552(f) of title 5, United States Code, is amend-*
 21 *ed to read as follows:*

22 “(f) For purposes of this section—

23 “(1) the term ‘agency’ as defined in section
 24 *551(1) of this title includes any executive department,*
 25 *military department, Government corporation, Gov-*

1 *ernment controlled corporation, or other establishment*
 2 *in the executive branch of the Government (including*
 3 *the Executive Office of the President), or any inde-*
 4 *pendent regulatory agency;*

5 *“(2) the term ‘record’ means all books, papers,*
 6 *maps, photographs, machine-readable materials, or*
 7 *other information or documentary materials, regard-*
 8 *less of physical form or characteristics; and*

9 *“(3) the term ‘search’ means a manual or auto-*
 10 *mated review of agency records that is conducted for*
 11 *the purpose of locating those records which are re-*
 12 *sponsive to a request under subsection (a)(3)(A) of*
 13 *this section.”.*

Amend the title so as to read: “A bill to amend section 552 of title 5, United States Code (commonly known as the Freedom of Information Act), to provide for public access to information in an electronic format, and for other purposes.”.



S 1782 RS—2