

Union Calendar No. 433

104TH CONGRESS
2^D SESSION

H. R. 3802

[Report No. 104-795]

A BILL

To amend section 552 of title 5, United States Code, popularly known as the Freedom of Information Act, to provide for public access to information in an electronic format, and for other purposes.

SEPTEMBER 17, 1996

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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IN THE HOUSE OF REPRESENTATIVES

JULY 12, 1996

Mr. TATE (for himself, Mr. HORN, Mrs. MALONEY, and Mr. PETERSON of Minnesota) introduced the following bill; which was referred to the Committee on Government Reform and Oversight

SEPTEMBER 17, 1996

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italics]

[For text of introduced bill, see copy of bill as introduced on July 12, 1996]

A BILL

To amend section 552 of title 5, United States Code, popularly known as the Freedom of Information Act, to provide for public access to information in an electronic format, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Electronic Freedom of*
3 *Information Act Amendments of 1996”.*

4 **SEC. 2. FINDINGS AND PURPOSES.**

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

6 *(1) the purpose of section 552 of title 5, United*
7 *States Code, popularly known as the Freedom of In-*
8 *formation Act, is to require agencies of the Federal*
9 *Government to make certain agency information*
10 *available for public inspection and copying and to es-*
11 *tablish and enable enforcement of the right of any*
12 *person to obtain access to the records of such agencies,*
13 *subject to statutory exemptions, for any public or pri-*
14 *vate purpose;*

15 *(2) since the enactment of the Freedom of Infor-*
16 *mation Act in 1966, and the amendments enacted in*
17 *1974 and 1986, the Freedom of Information Act has*
18 *been a valuable means through which any person can*
19 *learn how the Federal Government operates;*

20 *(3) the Freedom of Information Act has led to*
21 *the disclosure of waste, fraud, abuse, and wrongdoing*
22 *in the Federal Government;*

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

1 (5) *Government agencies increasingly use com-*
2 *puters to conduct agency business and to store pub-*
3 *licly valuable agency records and information; and*

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

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

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

10 (2) *improve public access to agency records and*
11 *information;*

12 (3) *ensure agency compliance with statutory*
13 *time limits; and*

14 (4) *maximize the usefulness of agency records*
15 *and information collected, maintained, used, retained,*
16 *and disseminated by the Federal Government.*

17 **SEC. 3. APPLICATION OF REQUIREMENTS TO ELECTRONIC**
18 **FORMAT INFORMATION.**

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

21 “(f) *For purposes of this section, the term—*

22 “(1) ‘agency’ as defined in section 551(1) of this
23 *title includes any executive department, military de-*
24 *partment, Government corporation, Government con-*
25 *trolled corporation, or other establishment in the exec-*

1 *utive branch of the Government (including the Execu-*
2 *tive Office of the President), or any independent regu-*
3 *latory agency; and*

4 *“(2) ‘record’ and any other term used in this sec-*
5 *tion in reference to information includes any infor-*
6 *mation that would be an agency record subject to the*
7 *requirements of this section when maintained by an*
8 *agency in any format, including an electronic for-*
9 *mat.”.*

10 **SEC. 4. INFORMATION MADE AVAILABLE IN ELECTRONIC**
11 **FORMAT AND INDEXATION OF RECORDS.**

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

14 *(1) in the second sentence, by striking “or staff*
15 *manual or instruction” and inserting “staff manual,*
16 *instruction, or copies of records referred to in sub-*
17 *paragraph (D)”;*

18 *(2) by inserting before the period at the end of*
19 *the third sentence the following: “, and the extent of*
20 *such deletion shall be indicated on the portion of the*
21 *record which is made available or published, unless*
22 *including that indication would harm an interest*
23 *protected by the exemption in subsection (b) under*
24 *which the deletion is made”;*

1 (3) by inserting after the third sentence the fol-
2 lowing: “If technically feasible, the extent of the dele-
3 tion shall be indicated at the place in the record
4 where the deletion was made.”;

5 (4) in subparagraph (B), by striking “and” after
6 the semicolon;

7 (5) by inserting after subparagraph (C) the
8 following:

9 “(D) copies of all records, regardless of form or
10 format, which have been released to any person under
11 paragraph (3) and which, because of the nature of
12 their subject matter, the agency determines have be-
13 come or are likely to become the subject of subsequent
14 requests for substantially the same records; and

15 “(E) a general index of the records referred to
16 under subparagraph (D);”;

17 (6) by inserting after the fifth sentence the fol-
18 lowing: “Each agency shall make the index referred to
19 in subparagraph (E) available by computer tele-
20 communications by December 31, 1999.”; and

21 (7) by inserting after the first sentence the fol-
22 lowing: “For records created on or after November 1,
23 1996, within one year after such date, each agency
24 shall make such records available, including by com-
25 puter telecommunications or, if computer tele-

1 *communications means have not been established by*
2 *the agency, by other electronic means.”.*

3 **SEC. 5. HONORING FORM OR FORMAT REQUESTS.**

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

6 *(1) by inserting “(A)” after “(3)”;*

7 *(2) by striking “(A)” the second place it appears*
8 *and inserting “(i)”;*

9 *(3) by striking “(B)” and inserting “(ii)”;* and

10 *(4) by adding at the end the following new sub-*
11 *paragraphs:*

12 *“(B) In making any record available to a person*
13 *under this paragraph, an agency shall provide the record*
14 *in any form or format requested by the person if the record*
15 *is readily reproducible by the agency in that form or for-*
16 *mat. Each agency shall make reasonable efforts to maintain*
17 *its records in forms or formats that are reproducible for*
18 *purposes of this section.*

19 *“(C) In responding under this paragraph to a request*
20 *for records, an agency shall make reasonable efforts to*
21 *search for the records in electronic form or format, except*
22 *when such efforts would significantly interfere with the op-*
23 *eration of the agency’s automated information system.*

24 *“(D) For purposes of this paragraph, the term ‘search’*
25 *means to review, manually or by automated means, agency*

1 records for the purpose of locating those records which are
2 responsive to a request.”.

3 **SEC. 6. STANDARD FOR JUDICIAL REVIEW.**

4 Section 552(a)(4)(B) of title 5, United States Code, is
5 amended by adding at the end the following new sentence:
6 “In addition to any other matters to which a court accords
7 substantial weight, a court shall accord substantial weight
8 to an affidavit of an agency concerning the agency’s deter-
9 mination as to technical feasibility under paragraph (2)(C)
10 and subsection (b) and reproducibility under paragraph
11 (3)(B).”.

12 **SEC. 7. ENSURING TIMELY RESPONSE TO REQUESTS.**

13 (a) *MULTITRACK PROCESSING.*—Section 552(a)(6) of
14 title 5, United States Code, is amended by adding at the
15 end the following new subparagraph:

16 “(D)(i) Each agency may promulgate regulations,
17 pursuant to notice and receipt of public comment, provid-
18 ing for multitrack processing of requests for records based
19 on the amount of work or time (or both) involved in process-
20 ing requests.

21 “(ii) Regulations under this subparagraph may pro-
22 vide a person making a request that does not qualify for
23 the fastest multitrack processing an opportunity to limit
24 the scope of the request in order to qualify for faster
25 processing.

1 “(iii) *This subparagraph shall not be considered to af-*
2 *fect the requirement under subparagraph (C) to exercise due*
3 *diligence.*”.

4 (b) *UNUSUAL CIRCUMSTANCES.—Section 552(a)(6)(B)*
5 *of title 5, United States Code, is amended to read as follows:*

6 “(B)(i) *In unusual circumstances as specified in this*
7 *subparagraph, the time limits prescribed in either clause*
8 *(i) or clause (ii) of subparagraph (A) may be extended by*
9 *written notice to the person making such request setting*
10 *forth the unusual circumstances for such extension and the*
11 *date on which a determination is expected to be dispatched.*
12 *No such notice shall specify a date that would result in an*
13 *extension for more than ten working days, except as pro-*
14 *vided in clause (ii) of this subparagraph.*

15 “(ii) *With respect to a request for which a written no-*
16 *tice under clause (i) extends the time limits prescribed*
17 *under clause (i) of subparagraph (A), the agency shall no-*
18 *tify the person making the request if the request cannot be*
19 *processed within the time limit specified in that clause and*
20 *shall provide the person an opportunity to limit the scope*
21 *of the request so that it may be processed within that time*
22 *limit or an opportunity to arrange with the agency an al-*
23 *ternative time frame for processing the request or a modi-*
24 *fied request. Refusal by the person to reasonably modify the*
25 *request or arrange such an alternative time frame shall be*

1 *considered as a factor in determining whether exceptional*
2 *circumstances exist for purposes of subparagraph (C).*

3 “(iii) *As used in this subparagraph, ‘unusual cir-*
4 *cumstances’ means, but only to the extent reasonably nec-*
5 *essary to the proper processing of the particular requests—*

6 “(I) *the need to search for and collect the re-*
7 *quested records from field facilities or other establish-*
8 *ments that are separate from the office processing the*
9 *request;*

10 “(II) *the need to search for, collect, and appro-*
11 *priately examine a voluminous amount of separate*
12 *and distinct records which are demanded in a single*
13 *request; or*

14 “(III) *the need for consultation, which shall be*
15 *conducted with all practicable speed, with another*
16 *agency having a substantial interest in the deter-*
17 *mination of the request or among two or more compo-*
18 *nents of the agency having substantial subject-matter*
19 *interest therein.*

20 “(iv) *Each agency may promulgate regulations, pursu-*
21 *ant to notice and receipt of public comment, providing for*
22 *the aggregation of certain requests by the same requestor,*
23 *or by a group of requestors acting in concert, if the agency*
24 *reasonably believes that such requests actually constitute a*
25 *single request, which would otherwise satisfy the unusual*

1 *circumstances specified in this subparagraph, and the re-*
 2 *quests involve clearly related matters. Multiple requests in-*
 3 *volving unrelated matters shall not be aggregated.”.*

4 (c) *EXCEPTIONAL CIRCUMSTANCES.—Section*
 5 *552(a)(6)(C) of title 5, United States Code, is amended by*
 6 *inserting “(i)” after “(C)”, and by adding at the end the*
 7 *following new clauses:*

8 “(ii) *For purposes of this subparagraph, the term ‘ex-*
 9 *ceptional circumstances’ does not include a delay that re-*
 10 *sults from a predictable agency workload of requests under*
 11 *this section, unless the agency demonstrates reasonable*
 12 *progress in reducing its backlog of pending requests.*

13 “(iii) *Refusal by a person to reasonably modify the*
 14 *scope of a request or arrange an alternative time frame for*
 15 *processing a request (or a modified request) under clause*
 16 *(ii) after being given an opportunity to do so by the agency*
 17 *to whom the person made the request shall be considered*
 18 *as a factor in determining whether exceptional cir-*
 19 *cumstances exist for purposes of this subparagraph.”.*

20 **SEC. 8. TIME PERIOD FOR AGENCY CONSIDERATION OF**
 21 **REQUESTS.**

22 (a) *EXPEDITED PROCESSING.—Section 552(a)(6) of*
 23 *title 5, United States Code (as amended by section 7(a) of*
 24 *this Act), is further amended by adding at the end the fol-*
 25 *lowing new subparagraph:*

1 “(E)(i) *Each agency shall promulgate regulations,*
2 *pursuant to notice and receipt of public comment, provid-*
3 *ing for expedited processing of requests for records—*

4 “(I) *in cases in which the person requesting the*
5 *records demonstrates a compelling need; and*

6 “(II) *in other cases determined by the agency.*

7 “(ii) *Notwithstanding clause (i), regulations under*
8 *this subparagraph must ensure—*

9 “(I) *that a determination of whether to provide*
10 *expedited processing shall be made, and notice of the*
11 *determination shall be provided to the person making*
12 *the request, within 10 days after the date of the re-*
13 *quest; and*

14 “(II) *expeditious consideration of administrative*
15 *appeals of such determinations of whether to provide*
16 *expedited processing.*

17 “(iii) *An agency shall process as soon as practicable*
18 *any request for records to which the agency has granted*
19 *expedited processing under this subparagraph. Agency ac-*
20 *tion to deny or affirm denial of a request for expedited proc-*
21 *essing pursuant to this subparagraph, and failure by an*
22 *agency to respond in a timely manner to such a request*
23 *shall be subject to judicial review under paragraph (4), ex-*
24 *cept that the judicial review shall be based on the record*
25 *before the agency at the time of the determination.*

1 “(iv) A district court of the United States shall not
2 have jurisdiction to review an agency denial of expedited
3 processing of a request for records after the agency has pro-
4 vided a complete response to the request.

5 “(v) For purposes of this subparagraph, the term ‘com-
6 pelling need’ means—

7 “(I) that a failure to obtain requested records on
8 an expedited basis under this paragraph could rea-
9 sonably be expected to pose an imminent threat to the
10 life or physical safety of an individual; or

11 “(II) with respect to a request made by a person
12 primarily engaged in disseminating information, ur-
13 gency to inform the public concerning actual or al-
14 leged Federal Government activity.

15 “(vi) A demonstration of a compelling need by a per-
16 son making a request for expedited processing shall be made
17 by a statement certified by such person to be true and cor-
18 rect to the best of such person’s knowledge and belief.”.

19 (b) *EXTENSION OF GENERAL PERIOD FOR DETERMIN-*
20 *ING WHETHER TO COMPLY WITH A REQUEST.*—Section
21 552(a)(6)(A)(i) of title 5, United States Code, is amended
22 by striking “ten days” and inserting “20 days”.

23 (c) *ESTIMATION OF MATTER DENIED.*—Section
24 552(a)(6) of title 5, United States Code (as amended by
25 section 7 of this Act and subsection (a) of this section), is

1 *further amended by adding at the end the following new*
2 *subparagraph:*

3 “(F) *In denying a request for records, in whole or in*
4 *part, an agency shall make a reasonable effort to estimate*
5 *the volume of any requested matter the provision of which*
6 *is denied, and shall provide any such estimate to the person*
7 *making the request, unless providing such estimate would*
8 *harm an interest protected by the exemption in subsection*
9 *(b) pursuant to which the denial is made.”.*

10 **SEC. 9. COMPUTER REDACTION.**

11 *Section 552(b) of title 5, United States Code, is amend-*
12 *ed in the matter following paragraph (9) by inserting after*
13 *the period the following: “The amount of information de-*
14 *leted shall be indicated on the released portion of the record,*
15 *unless including that indication would harm an interest*
16 *protected by the exemption in this subsection under which*
17 *the deletion is made. If technically feasible, the amount of*
18 *the information deleted shall be indicated at the place in*
19 *the record where such deletion is made.”.*

20 **SEC. 10. REPORT TO THE CONGRESS.**

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

23 “(e)(1) *On or before February 1 of each year, each*
24 *agency shall submit to the Attorney General of the United*

1 *States a report which shall cover the preceding fiscal year*
2 *and which shall include—*

3 “(A) *the number of determinations made by the*
4 *agency not to comply with requests for records made*
5 *to such agency under subsection (a) and the reasons*
6 *for each such determination;*

7 “(B)(i) *the number of appeals made by persons*
8 *under subsection (a)(6), the result of such appeals,*
9 *and the reason for the action upon each appeal that*
10 *results in a denial of information; and*

11 “(ii) *a complete list of all statutes that the agen-*
12 *cy relies upon to authorize the agency to withhold in-*
13 *formation under subsection (b)(3), a description of*
14 *whether a court has upheld the decision of the agency*
15 *to withhold information under each such statute, and*
16 *a concise description of the scope of any information*
17 *withheld;*

18 “(C) *the number of requests for records pending*
19 *before the agency as of September 30 of the preceding*
20 *year, and the median number of days that such re-*
21 *quests had been pending before the agency as of that*
22 *date;*

23 “(D) *the number of requests for records received*
24 *by the agency and the number of requests which the*
25 *agency processed;*

1 “(E) the median number of days taken by the
2 agency to process different types of requests;

3 “(F) the total amount of fees collected by the
4 agency for processing requests; and

5 “(G) the number of full-time staff of the agency
6 devoted to processing requests for records under this
7 section, and the total amount expended by the agency
8 for processing such requests.

9 “(2) Each agency shall make each such report avail-
10 able to the public including by computer telecommuni-
11 cations, or if computer telecommunications means have not
12 been established by the agency, by other electronic means.

13 “(3) The Attorney General of the United States shall
14 make each report which has been made available by elec-
15 tronic means available at a single electronic access point.
16 The Attorney General of the United States shall notify the
17 Chairman and ranking minority member of the Committee
18 on Government Reform and Oversight of the House of Rep-
19 resentatives and the Chairman and ranking minority mem-
20 ber of the Committees on Governmental Affairs and the Ju-
21 diciary of the Senate, no later than April 1 of the year
22 in which each such report is issued, that such reports are
23 available by electronic means.

24 “(4) The Attorney General of the United States, in
25 consultation with the Director of the Office of Management

1 *and Budget, shall develop reporting and performance guide-*
2 *lines in connection with reports required by this subsection*
3 *by October 1, 1997, and may establish additional require-*
4 *ments for such reports as the Attorney General determines*
5 *may be useful.*

6 “(5) *The Attorney General of the United States shall*
7 *submit an annual report on or before April 1 of each cal-*
8 *endar year which shall include for the prior calendar year*
9 *a listing of the number of cases arising under this section,*
10 *the exemption involved in each case, the disposition of such*
11 *case, and the cost, fees, and penalties assessed under sub-*
12 *paragraphs (E), (F), and (G) of subsection (a)(4). Such re-*
13 *port shall also include a description of the efforts under-*
14 *taken by the Department of Justice to encourage agency*
15 *compliance with this section.”.*

16 **SEC. 11. REFERENCE MATERIALS AND GUIDES.**

17 *Section 552 of title 5, United States Code, is amended*
18 *by adding after subsection (f) the following new subsection:*

19 “(g) *The head of each agency shall prepare and make*
20 *publicly available upon request, reference material or a*
21 *guide for requesting records or information from the agency,*
22 *subject to the exemptions in subsection (b), including—*

23 “(1) *an index of all major information systems*
24 *of the agency;*

1 “(2) a description of major information and
2 record locator systems maintained by the agency; and

3 “(3) a handbook for obtaining various types and
4 categories of public information from the agency pur-
5 suant to chapter 35 of title 44, and under this sec-
6 tion.”.

7 **SEC. 12. EFFECTIVE DATE.**

8 (a) *IN GENERAL.*—Except as provided in subsection
9 (b), this Act shall take effect 180 days after the date of the
10 enactment of this Act.

11 (b) *PROVISIONS EFFECTIVE ON ENACTMENT.*—Sec-
12 tions 7 and 8 shall take effect one year after the date of
13 the enactment of this Act.