AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

104TH CONGRESS
2D SESSION

S. 1090

AN ACT

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.

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 ''Electronic Freedom of Information Improvement Act of 1996''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the purpose of the Freedom of Information Act is to require agencies of the Federal Government to make certain agency information available for public inspection and copying and to establish and enable enforcement of the right of any person to obtain access to the records of such agencies (subject to statutory exemptions) for any public or private purpose;

(2) since the enactment of the Freedom of Information Act in 1966, and the amendments enacted in 1974 and 1986, the Freedom of Information Act has been a valuable means through which any person can learn how the Federal Government operates;

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

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

(5) Government agencies increasingly use computers to conduct agency business and to store publicly valuable agency records and information; and

(6) Government agencies should use new technology to enhance public access to agency records and information.

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

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

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

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

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

SEC. 3. PUBLIC INFORMATION AVAILABILITY.

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

(1) in the matter before subparagraph (A) by inserting ''including by computer telecommunications, or if computer telecommunications means are not available, by other electronic means,'' after ''Federal Register'';

(2) by striking out ''and'' at the end of subparagraph (D);

(3) by redesignating subparagraph (E) as subparagraph (F); and

(4) by inserting after subparagraph (D) the following new subparagraph:

''(E) a complete list of all statutes that the agency head or general counsel relies upon to authorize the agency to withhold information under subsection (b)(3) of this section, together with a specific description of the scope of the information covered; and''.

SEC. 4. MATERIALS MADE AVAILABLE IN ELECTRONIC FORMAT AND INDEX OF RECORDS MADE AVAILABLE TO THE PUBLIC.

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

(1) in the matter before subparagraph (A) by inserting '', including, within 1 year after the date of the enactment of the Electronic Freedom of Information Improvement Act of 1996, by computer telecommunications, or if computer telecommunications means are not available, by other electronic means,'' after ''copying'';

(2) in subparagraph (B) by striking out ''and'' after the semicolon;

(3) by adding after subparagraph (C) the following new subparagraphs:

"(D) an index of all major information systems containing agency records regardless of form or format unless such an index is provided as otherwise required by law;

"(E) a description of any new major information system with a statement of how such system shall enhance agency operations under this section;

"(F) an index of all records which are made available to any person under paragraph (3) of this subsection; and

"(G) copies of all records, regardless of form or format, which because of the nature of their subject matter, have become or are likely to become the subject of subsequent requests for substantially the same records under paragraph (3) of this subsection;";

(4) in the second sentence by striking out "or staff manual or instruction" and inserting in lieu thereof "staff manual, instruction, or index or copies of records, which are made available under paragraph (3) of this subsection"; and

(5) in the third sentence by inserting ''and the extent of such deletion shall be indicated on the portion of the record which is made available or published at the place in the record where such deletion was made'' after ''explained fully in writing''.

SEC. 5. HONORING FORMAT REQUESTS.

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

(1) inserting ''(A)'' after ''(3)'';

(2) inserting ''(A) through (F)'' after ''under paragraphs (1) and (2)'';

(3) striking out ''(A) reasonably'' and inserting in lieu thereof ''(i) reasonably'';

(4) striking out ''(B)'' and inserting in lieu thereof ''(ii)''; and

(5) adding at the end thereof the following new subparagraphs:

''(B) An agency shall, as requested by any person, provide records in any form or format in which such records are maintained by that agency.

''(C) An agency shall make reasonable efforts to search for records in electronic form or format and provide records in the form or format requested by any person, including in an electronic form or for-

mat, even where such records are not usually maintained but are available in such form or format.''.

SEC. 6. DELAYS.

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

''(viii) If at an agency's request, the Comptroller General determines that the agency annually has either provided responsive documents or denied requests in substantial compliance with the requirements of paragraph (6)(A), one-half of the fees collected under this section shall be credited to the collecting agency and expended to offset the costs of complying with this section through staff development and acquisition of additional request processing resources. The remaining fees collected under this section shall be remitted to the Treasury as general funds or miscellaneous receipts.''.

(b) DEMONSTRATION OF CIRCUMSTANCES FOR DELAY.—Section 552(a)(4)(E) of title 5, United States Code, is amended—

(1) by inserting ''(i)'' after ''(E)''; and

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

''(ii) Any agency not in compliance with the time limits set forth in this subsection shall dem-

onstrate to a court that the delay is warranted under the circumstances set forth under paragraph (6) (B) or (C) of this subsection.''.

(c) PERIOD FOR AGENCY DECISION TO COMPLY WITH REQUEST.—Section 552(a)(6)(A)(i) is amended by striking out ''ten days'' and inserting in lieu thereof ''twenty days''.

(d) AGENCY BACKLOGS.—Section 552(a)(6)(C) of title 5, United States Code, is amended by inserting after the second sentence the following: ''As used in this subparagraph, for requests submitted pursuant to paragraph (3) after the date of the enactment of the Electronic Freedom of Information Improvement Act of 1996, the term 'exceptional circumstances' means circumstances that are unforeseen and shall not include delays that result from a predictable workload, including any ongoing agency backlog, in the ordinary course of processing requests for records.''.

(e) NOTIFICATION OF DENIAL.—The last sentence of section 552(a)(6)(C) of title 5, United States Code, is amended to read: ''Any notification of any full or partial denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request and the

total number of denied records and pages considered by the agency to have been responsive to the request.''.

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

''(D)(i) Each agency shall adopt a first-in, first-out (hereafter in this subparagraph referred to as FIFO) processing policy in determining the order in which requests are processed. The agency may establish separate processing tracks for simple and complex requests using FIFO processing within each track.

''(ii) For purposes of such a multitrack system—

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

''(II) a complex request shall be a request requiring more than 10 days to make a determination on whether to comply with such a request.

''(iii) A multitrack system shall not negate a claim of due diligence under subparagraph (C), if FIFO processing within each track is maintained

and the agency can show that it has reasonably allocated resources to handle the processing for each track.

''(E)(i) Each agency shall promulgate regulations, pursuant to notice and receipt of public comment, providing that upon receipt of a request for expedited access to records and a showing by the person making such request of a compelling need for expedited access to records, the agency determine within 10 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such a request, whether to comply with such request. A request for records to which the agency has granted expedited access shall be processed as soon as practicable. A request for records to which the agency has denied expedited access shall be processed within the time limits under paragraph (6) of this subsection.

''(ii) A person whose request for expedited access has not been decided within 10 days of its receipt by the agency or has been denied shall be required to exhaust administrative remedies. A request for expedited access which has not been decided may be appealed to the head of the agency within 15 days (excepting Saturdays, Sundays, and legal pub-

lic holidays) after its receipt by the agency. A request for expedited access that has been denied by the agency may be appealed to the head of the agency within 5 days (excepting Saturdays, Sundays, and legal public holidays) after the person making such request receives notice of the agency's denial. If an agency head has denied, affirmed a denial, or failed to respond to a timely appeal of a request for expedited access, a court which would have jurisdiction of an action under paragraph (4)(B) of this subsection may, upon complaint, require the agency to show cause why the request for expedited access should not be granted, except that such review shall be limited to the record before the agency.

''(iii) The burden of demonstrating a compelling need by a person making a request for expedited access may be met by a showing, which such person certifies under penalty of perjury to be true and correct to the best of such person's knowledge and belief, that failure to obtain the requested records within the timeframe for expedited access under this paragraph would—

''(I) threaten an individual's life or safety;

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

"(III) affect public assessment of the nature and propriety of actual or alleged governmental actions that are the subject of widespread, contemporaneous media coverage.".

SEC. 7. COMPUTER REDACTION.

Section 552(b) of title 5, United States Code, is amended by inserting before the period in the sentence following paragraph (9) the following: ", and the extent of such deletion shall be indicated on the released portion of the record at the place in the record where such deletion was made".

SEC. 8. DEFINITIONS.

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

"(f) For purposes of this section—

"(1) the term 'agency' as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency;

"(2) the term 'record' means all books, papers, maps, photographs, machine-readable materials, or other information or documentary materials, regardless of physical form or characteristics, but does not include—

"(A) library and museum material acquired or received and preserved solely for reference or exhibition purposes;

"(B) extra copies of documents preserved solely for convenience of reference;

"(C) stocks of publications and of processed documents; or

"(D) computer software which is obtained by an agency under a licensing agreement prohibiting its replication or distribution; and

"(3) the term 'search' means a manual or automated review of agency records that is conducted for the purpose of locating those records which are responsive to a request under subsection (a)(3)(A) of this section.".

Passed the Senate September 17, 1996.

Attest:

Secretary.

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