

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 3394

To amend title 5, United States Code, to require disclosure of information by the Congress.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 27, 1993

Mr. KLUG (for himself, Mr. BOEHNER, Mr. BONILLA, Mr. GRAMS, Mr. GREENWOOD, Mr. GILCHREST, Mrs. JOHNSON of Connecticut, Mr. RAMSTAD, Mr. ROBERTS, Mr. SANTORUM, Mr. SHAYS, Mr. SMITH of Texas, and Mr. ZIMMER) introduced the following bill; which was referred jointly to the Committee on House Administration and Government Operations

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## A BILL

To amend title 5, United States Code, to require disclosure of information by the Congress.

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. APPLICATION OF INFORMATION DISCLOSURE**

4 **REQUIREMENTS TO CONGRESS.**

5 (a) IN GENERAL.—Notwithstanding any other provi-  
6 sion of law, and subject to the amendments made by this  
7 Act, the provisions of section 552 of title 5, United States

1 Code (popularly known as the “Freedom of Information  
2 Act”), shall apply to the legislative branch.

3 (b) CONFORMING AMENDMENT.—Section 551(1)(A)  
4 of title 5, United States Code (relating to the exclusion  
5 of the Congress from, among other matters, laws requiring  
6 the disclosure of public information), is amended to read  
7 as follows:

8 “(A) except as that term is used in section  
9 552, the Congress;”.

10 **SEC. 2. SPECIAL RULES REGARDING APPLICATION OF IN-**  
11 **FORMATION DISCLOSURE REQUIREMENTS**  
12 **TO LEGISLATIVE BRANCH.**

13 (a) AUTHORITY TO DECIDE COMPLAINTS.—Section  
14 552(a)(4) of title 5, United States Code, is amended—

15 (1) in subparagraph (B) in the first sentence by  
16 inserting before the period the following: “, except  
17 that in the case of a complaint against an agency in  
18 the legislative branch a member of the Disclosure  
19 Review Board selected under subsection (g)(2) shall  
20 have that jurisdiction”;

21 (2) in subparagraph (E) by striking “The  
22 court” and inserting “The court or member of the  
23 Disclosure Review Board”; and

1           (3) by striking “the court” each place it ap-  
2           pears and inserting “the court or member of the  
3           Disclosure Review Board”.

4           (b) PROCEDURES FOR DECIDING COMPLAINTS.—  
5           Section 552 of title 5, United States Code (relating to the  
6           disclosure of public information), is amended by adding  
7           at the end the following new subsections:

8           “(g)(1) There is established in the legislative branch  
9           of the Federal Government a board to be known as the  
10          Disclosure Review Board. Each member of the Board shall  
11          have the jurisdiction to hear and determine claims cer-  
12          tified under subsection (i)(4)(B) to the Board and referred  
13          to such member, in accordance with rules issued under  
14          subsection (m), for hearing and determination.

15          “(2)(A) Members of the Board shall be appointed  
16          from among individuals who are retired from Federal serv-  
17          ice as administrative law judges appointed under section  
18          3105, as follows:

19                 “(i) 3 members shall be appointed by the  
20                 Speaker of the House of Representatives.

21                 “(ii) 3 members shall be appointed by the mi-  
22                 nority leader of the House of Representatives.

23                 “(iii) 3 members shall be appointed by the ma-  
24                 jority leader of the Senate.

1           “(iv) 3 members shall be appointed by the mi-  
2           nority leader of the Senate.

3           “(B) Any individual so appointed shall serve on the  
4 Board for a term of 2 years and may be reappointed to  
5 the Board. Any member of the board who is hearing and  
6 determining any claim under this section at the time the  
7 term of such member expires may continue to serve as  
8 a member of the Board until such individual concludes the  
9 determination of such claim.

10          “(3)(A) For any claim in a complaint under sub-  
11 section (b)(4)(B) filed with the Disclosure Review Board  
12 alleging a failure by a Member of Congress or any individ-  
13 ual on the personal staff of a Member of Congress to make  
14 available information, records, or other material required  
15 by this section to be made available, one of the members  
16 of the Board shall be selected as follows to hear and deter-  
17 mine the claims alleged in such complaint which are cer-  
18 tified under subsection (i)(4)(B):

19           “(i) If such Member of Congress belongs to the  
20 majority party of the House of Congress to which  
21 such Member belongs, then the minority leader of  
22 such House of Congress shall select the member of  
23 the Board to hear and determine such claim.

24           “(ii) If such Member of Congress belongs to the  
25 minority party of the House of Congress to which

1 such Member belongs, then the Speaker of the  
2 House of Representatives (if such Member belongs  
3 to the House of Representatives) or the majority  
4 leader of the Senate (if such Member belongs to the  
5 Senate) shall select the member of the Board to hear  
6 and determine such claim.

7 “(B) If a claim in a complaint filed under subsection  
8 (b) alleges that a committee of Congress (other than a  
9 joint committee), an agency established in a House of  
10 Congress, or any individual on the staff of such committee  
11 or agency has failed to make available information,  
12 records, or other material required by this section to be  
13 made available, then one of the members of the Board  
14 shall be selected as follows to hear and determine the  
15 claims alleged in such complaint which are certified under  
16 subsection (i)(4)(B):

17 “(i) If such committee or agency is established  
18 in the House of Representatives, then the Speaker  
19 of the House of Representatives shall select the  
20 member of the Board to hear and determine such  
21 claim.

22 “(ii) If such committee or agency is established  
23 in the Senate, then the majority leader of the Senate  
24 shall select a member of the Board to hear and de-  
25 termine such claim.

1       “(C) If a claim in a complaint filed under subsection  
2 (b) alleges that a joint committee of Congress, an agency  
3 established in the legislative branch of the Federal Gov-  
4 ernment (other than an agency established in a House of  
5 Congress), or any individual on the staff of such commit-  
6 tee or agency has failed to make available information,  
7 records, or other material required by this section to be  
8 made available, then the Speaker of the House of Rep-  
9 resentatives shall select a member of the Board to hear  
10 and determine such claim.

11       “(4) The offices of the Board shall be in the District  
12 of Columbia. There shall be detailed to the Board such  
13 employees of the Congress as the Board may require to  
14 carry out its duties under this section.

15       “(h)(1) The Board shall designate one of its members  
16 (other than any Special Hearing Member) to serve for a  
17 term of 1 year as the Complaint Referral Officer. The  
18 Complaint Referral Officer may not hear or determine any  
19 claim in a complaint referred under paragraph (2) to such  
20 Officer.

21       “(2) Except as provided in subparagraph (B), each  
22 complaint filed with the Board in accordance with sub-  
23 section (b) shall be referred immediately to the Complaint  
24 Referral Officer.

1       “(3) Not later than 15 days after a complaint filed  
2 in accordance with subsection (b)(4) is received by the  
3 Board, the Complaint Referral Officer shall appoint an in-  
4 dividual (other than a member of the Board) to serve as  
5 the Investigating Counsel with respect to such complaint  
6 and shall refer such complaint to such Investigating Coun-  
7 sel.

8       “(i)(1) Each individual appointed under subsection  
9 (d)(3) as Investigating Counsel shall meet the qualifica-  
10 tions for appointment as a United States magistrate speci-  
11 fied in subsections (b), (c), and (d) of section 631 of title  
12 28.

13       “(2)(A) An Investigating Counsel shall comply with  
14 the requirements for service applicable to part-time United  
15 States magistrates specified in section 632(b) of title 28.

16       “(B) If the appointment of an Investigating Counsel  
17 is terminated by reason of resignation, death, or removal  
18 from office, the Complaint Referral Officer shall appoint  
19 another individual as Investigating Counsel to complete  
20 the work of the Investigating Counsel who so resigned,  
21 died, or was removed.

22       “(C) An Investigating Counsel may be removed from  
23 office only by the Complaint Referral Officer and only for  
24 good cause, physical disability, mental incapacity, or any

1 other condition that substantially impairs the performance  
2 of such Investigating Counsel's duties.

3       “(3) Not earlier than 45 days, and not later than 90  
4 days, after receiving a complaint referred under paragraph  
5 (2), the Investigating Counsel involved shall conduct a  
6 thorough investigation of each unresolved claim therein al-  
7 leging a failure to make available material required by this  
8 section to be made available and shall determine whether  
9 there is reasonable cause to believe any such claim is true.  
10 For purposes of conducting such investigation, such Inves-  
11 tigating Counsel shall have investigative powers of the  
12 types vested in the Equal Employment Opportunity Com-  
13 mission by section 709(a) of the Civil Rights Act of 1964.

14       “(4)(A) If such Investigating Counsel determines  
15 that there is reasonable cause to believe any such claim  
16 is true, then such Investigating Counsel shall attempt to  
17 secure from the defendant and the person that filed the  
18 complaint making the claim, during the 30-day period be-  
19 ginning on the date of such determination, an agreement  
20 to make available the material that is the subject of the  
21 complaint.

22       “(B) If such Investigating Counsel is unable to secure  
23 such agreement with respect to any such claim, then such  
24 Investigating Counsel shall certify to the Board for hear-

1 ing and determination each claim with respect to which  
2 such reasonable cause is found.

3 “(5)(A) Each Investigating Counsel appointed under  
4 this subsection shall be paid at the daily equivalent of the  
5 annual rate of basic pay payable from time to time for  
6 level IV of the Executive Schedule under section 5315 for  
7 each day (including traveltime) during which such Inves-  
8 tigating Counsel is engaged in the actual performance of  
9 duties under this subsection.

10 “(B)(i) If the complaint with respect to which an In-  
11 vestigating Counsel is appointed is based on an alleged  
12 failure by the Congress to make available material, then  
13 the Investigating Counsel shall be paid compensation in  
14 connection with such complaint from the contingent fund  
15 of the House of Congress (upon vouchers approved by the  
16 Clerk of the House of Representatives or the Secretary  
17 of the Senate in which the failure occurred.

18 “(ii) If the complaint with respect to which an Inves-  
19 tigating Counsel is appointed is based on an alleged failure  
20 to make available material by an agency or unit of the  
21 legislative branch of the Federal Government (other than  
22 the Congress), then the Investigating Counsel shall be  
23 paid compensation in connection with such complaint by  
24 such agency or unit from funds available to such agency  
25 or unit.

1       “(j)(1) The member of the Board, to whom a claim  
2 is referred under subsection (g) for hearing and deter-  
3 mination shall make such determination as promptly as  
4 possible and, insofar as practicable, not later than 180  
5 days after the date the Board received the complaint in-  
6 volved.

7       “(2)(A) Each determination made by the Board or  
8 a member of the Board shall be in writing. In the case  
9 of a determination made by a member of the Board to  
10 dispose of any claim in such complaint, such member shall  
11 file with the Board a written report containing such mem-  
12 ber’s findings of fact and conclusions of law with respect  
13 to such claim.

14       “(B) If such member finds that the defendant has  
15 failed to make available material that is required by this  
16 section to be made available, then such member shall sub-  
17 mit to the Board, and the Board shall issue, an order for  
18 relief which compels the defendant to do one or more of  
19 the following, as appropriate, for the benefit of the person  
20 that filed the complaint:

21               “(i) Make available the information, record, or  
22 other material that is the subject of the complaint,  
23 on such terms and conditions as determined to be  
24 appropriate.

25               “(ii) Pay compensatory damages.

1           “(iii) Pay the fees and allowances of witnesses  
2           in the same manner as is provided in section 1821  
3           of title 28, and pay a reasonable attorney’s fee.

4           “(C) Any payment ordered under subparagraph (B)  
5           with respect to a violation of this section by a Member  
6           of Congress, a committee of Congress, or an officer or em-  
7           ployee of Congress shall be paid from the contingent fund  
8           of the appropriate House of Congress, upon vouchers ap-  
9           proved by the Clerk of the House of Representatives or  
10          the Secretary of the Senate, as the case may be.

11          “(3)(A) Any member of the Board may issue subpoe-  
12          nas requiring the attendance and testimony of witnesses  
13          and the production of any evidence that relates to a com-  
14          plaint pending before the Board. Such attendance of wit-  
15          nesses and production of evidence may be required from  
16          any place within the United States. Any member of the  
17          Board may administer oaths and affirmations.

18          “(B) If a person issued a subpoena under subpara-  
19          graph (A) refuses to obey such subpoena or is guilty of  
20          contumacy, the district court of the United States for the  
21          District of Columbia or the district court of the United  
22          States for the judicial district within which such person  
23          is found or resides, or transacts business may, upon appli-  
24          cation by the Board, order such person to appear before  
25          the appropriate member of the Board to produce evidence

1 or to give testimony relating to such complaint. Any fail-  
2 ure to obey such order of the court may be punished by  
3 such court as a contempt thereof.

4 “(C) Subpoenas issued by members of the Board  
5 shall be served in the manner provided for subpoenas is-  
6 sued by a United States district courts under the Federal  
7 Rules of Civil Procedure.

8 “(D) All process of any court to which application  
9 may be made under this subsection may be served in the  
10 judicial district in which the person required to be served  
11 resides, is found, or transacts business.

12 “(E) For purposes of sections 6002 and 6004 of title  
13 18, the Board shall be considered to be an agency of the  
14 United States.

15 “(4)(A) Except as otherwise provided in this section,  
16 rules 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21,  
17 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 36, 37, 43,  
18 and 50 of the Federal Rules of Civil Procedure shall apply  
19 with respect to complaints filed under subsection (b)(1).

20 “(B) The Federal Rules of Evidence shall apply with  
21 respect to the hearing and determination of claims by the  
22 Board.

23 “(5)(A) Notwithstanding any other provision of law,  
24 none of the records of the Board relating to a complaint  
25 filed under subsection (b)(1) may be disclosed to the pub-

1 lic by the Board or by any court or agency of the United  
2 States until the conclusion of any judicial review of the  
3 order issued by the Board disposing of such complaint or  
4 the expiration of any period allowed by law to seek such  
5 review, whichever occurs later.

6 “(B) No determination made by the Supreme Court  
7 of the United States, the Court of Appeals for the District  
8 of Columbia Circuit, the Board (or any member of the  
9 Board), or the Investigating Counsel with respect to any  
10 claim alleging a violation of this section is admissible in  
11 evidence in any administrative or judicial proceeding other  
12 than a proceeding authorized by law to review a deter-  
13 mination made under this section by the Board (or any  
14 member of the Board) or the Court of Appeals for the  
15 District of Columbia Circuit.

16 “(6)(A) Any person who files a complaint under sub-  
17 section (b)(4)(B) may attend, and may be represented by  
18 an attorney at, any hearing conducted under this sub-  
19 section with respect to such complaint.

20 “(B)(i) Except as provided in clause (ii), if such indi-  
21 vidual resides more than 100 miles from the place where  
22 such hearing is held, then such individual shall be reim-  
23 bursed by the defendant for any actual and reasonable  
24 costs incurred by such individual to attend such hearing.

1       “(ii) If such complaint is filed with respect to a fail-  
2 ure by the Congress to make available materials, then such  
3 reimbursement shall be paid from the contingent fund of  
4 the appropriate House of Congress, upon vouchers ap-  
5 proved by the Clerk of the House of Representatives or  
6 the Secretary of the Senate, as the case may be.

7       “(k)(1) Chapter 7 shall apply with respect to judicial  
8 review of orders of the Board.

9       “(2) The United States Court of Appeals for the Dis-  
10 trict of Columbia Circuit shall have jurisdiction to review  
11 and to enjoin, set aside, suspend, modify, and enforce the  
12 orders of the Board.

13       “(3) Any person who is a party to a proceeding in  
14 which the Board issues an order may seek review of such  
15 order by filing in the United States Court of Appeals for  
16 the District of Columbia Circuit (hereinafter in this sub-  
17 section referred to as the ‘court’), not later than 60 days  
18 after the date such order is entered by the Board, a writ-  
19 ten petition for review. A copy of the petition shall be  
20 transmitted by the clerk of the court to the Board, and,  
21 upon receipt of such copy the Board shall file with the  
22 court the record in the proceeding, in the manner provided  
23 in section 2112 of title 28.

24       “(4)(A) In any judicial proceeding to review an order  
25 of the Board, if any party—

1           “(i) applies to the court for leave to adduce ad-  
2           ditional evidence; and

3           “(ii) shows to the satisfaction of the court  
4           that—

5                   “(I) such additional evidence is material;  
6           and

7                   “(II) reasonable grounds exist for the fail-  
8           ure to adduce such evidence in the proceeding  
9           before the Board;

10 the court may order such additional evidence (and evi-  
11 dence in rebuttal thereof) to be taken before the Board,  
12 in such manner and upon such terms as the court consid-  
13 ers to be appropriate.

14           “(B) The Board may modify its findings of fact, or  
15 make new findings of fact, by reason of the additional evi-  
16 dence so taken, and shall file any such modified or new  
17 findings, together with any recommendations for the modi-  
18 fication or setting aside of the original order of the Board.

19           “(C) The findings of fact of the Board may be set  
20 aside only if not supported by substantial evidence.

21           “(5) In any judicial proceeding to review an order of  
22 the Board, the court may remand, on its own motion, the  
23 case to the Board for such further action as the court may  
24 require.

1       “(6) In any action or proceeding under this section  
2 the court, in its discretion, may allow the prevailing party,  
3 a reasonable attorney’s fee as part of the costs, and the  
4 United States shall be liable for costs the same as a pri-  
5 vate person.

6       “(l) Each member of the Board appointed under this  
7 section shall submit written reports at least annually to  
8 the Committee on Standards of Official Conduct of the  
9 House of Representatives and to the Senate Select Com-  
10 mittee on Ethics describing the pending complaints re-  
11 ferred to such member for determination and any deter-  
12 minations made by such member disposing of complaints  
13 during the reporting period involved.

14       “(m) The Board may issue rules of practice and pro-  
15 cedure to carry out this section.

16       “(n)(1) Any right to relief under this section shall  
17 be in addition to, and not in lieu of, any right to relief  
18 under any other law.

19       “(2) No claim arising with respect to conduct which  
20 if true would constitute a violation of this section may pro-  
21 ceed in any court of the United States if with respect to  
22 such conduct a claim by the same claimant then is pending  
23 before the Board.”.

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