

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4917

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.

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## IN THE HOUSE OF REPRESENTATIVES

AUGUST 8, 1994

Ms. CANTWELL (for herself, Mr. CONDIT, Ms. ESHOO, Ms. SHEPHERD, Mr. FINGERHUT, and Ms. WOOLSEY) introduced the following bill; which was referred to the Committee on Government Operations

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## 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.

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 1994”.

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

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

1           (1) the purpose of the Freedom of Information  
2 Act is to require agencies of the Federal Govern-  
3 ment to make certain agency information available  
4 for public inspection and copying and to establish  
5 and enable enforcement of the right of any person  
6 to obtain access to the records of such agencies  
7 (subject to statutory exemptions) for any public or  
8 private purpose;

9           (2) since the enactment of the Freedom of In-  
10 formation Act in 1966, and the amendments enacted  
11 in 1974 and 1986, the Freedom of Information Act  
12 has been a valuable means through which any per-  
13 son can learn how the Federal Government operates;

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

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

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

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

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

2 (1) foster democracy by ensuring public access  
3 to 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, re-  
10 tained, and disseminated by the Federal Govern-  
11 ment.

12 **SEC. 3. PUBLIC INFORMATION AVAILABILITY.**

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

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

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

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

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

1           “(E) 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. MATERIALS MADE AVAILABLE IN ELECTRONIC**  
8                           **FORMAT.**

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

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

17           (2) in subparagraph (B) by striking out “and”  
18           after the semicolon;

19           (3) in subparagraph (C) by inserting “and”  
20           after the semicolon;

21           (4) by adding after subparagraph (C) the fol-  
22           lowing new subparagraphs:

23                           “(D) an index of all major information sys-  
24           tems containing agency records regardless of

1 form or format unless such an index is provided  
2 as otherwise required by law; and

3 “(E) a description of any new major infor-  
4 mation system with a statement of how such  
5 system shall enhance agency operations under  
6 this section;”; and

7 (5) in the third sentence by inserting “and the  
8 extent of such deletion shall be indicated on the por-  
9 tion of the record which is made available or pub-  
10 lished at the place in the record where such deletion  
11 was made” after “explained fully in writing”.

12 **SEC. 5. LIST OF RECORDS MADE AVAILABLE TO THE PUB-**  
13 **LIC AND HONORING FORMAT REQUESTS.**

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

16 (1) inserting “(A)” after “(3)”;

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

19 (3) striking out “(B)” and inserting in lieu  
20 thereof “(ii)”;

21 (4) adding at the end thereof the following new  
22 subparagraphs:

23 “(B) A list of all records which are made avail-  
24 able to any person under this paragraph shall be  
25 made available for public inspection and copying as

1 provided under paragraph (2) of this subsection.  
2 Copies of all such records, regardless of form or for-  
3 mat, which because of the nature of their subject  
4 matter, have become or are likely to become the sub-  
5 ject of subsequent requests under this paragraph for  
6 substantially the same records, shall be made avail-  
7 able for inspection and copying as provided under  
8 paragraph (2) of this subsection.

9 “(C) An agency shall, as requested by any per-  
10 son, provide records in any form or format in which  
11 such records are maintained by that agency.

12 “(D) An agency shall make reasonable efforts  
13 to provide records in the form or format requested  
14 by any person, including in an electronic form or  
15 format, even where such records are not usually  
16 maintained but are available in such form or for-  
17 mat.”.

18 **SEC. 6. DELAYS.**

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

22 “(viii) If at an agency’s request, the Comptroller Gen-  
23 eral determines that the agency annually has either pro-  
24 vided responsive documents or denied requests in substan-  
25 tial compliance with the requirements of paragraph

1 (6)(A), one-half of the fees collected under this section  
2 shall be credited to the collecting agency and expended to  
3 offset the costs of complying with this section through  
4 staff development and acquisition of additional request  
5 processing resources. The remaining fees collected under  
6 this section shall be remitted to the Treasury as general  
7 funds or miscellaneous receipts.”.

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

18 (c) DEMONSTRATION OF CIRCUMSTANCES FOR  
19 DELAY.—Section 552(a)(4)(E) of title 5, United States  
20 Code, is further amended—

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

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

24 “(ii) Any agency not in compliance with the time lim-  
25 its set forth in this subsection shall demonstrate to a court

1 that the delay is warranted under the circumstances set  
2 forth under paragraph (6) (B) or (C) of this subsection.”.

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

7 (e) AGENCY BACKLOGS.—Section 552(a)(6)(C) of  
8 title 5, United States Code, is amended by inserting after  
9 the second sentence the following: “As used in this sub-  
10 paragraph, ‘exceptional circumstances’ shall be unforeseen  
11 and shall not include delays that result from a predictable  
12 workload, including any ongoing agency backlog, in the  
13 ordinary course of processing requests for records.”.

14 (f) 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 (g) MULTITRACK FIFO PROCESSING AND EXPE-  
23 DITED ACCESS.—Section 552(a)(6) of title 5, United  
24 States Code, is amended by adding at the end thereof the  
25 following new subparagraphs:

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

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

8           “(I) a simple request shall be a request requir-  
9 ing 10 days or less to make a determination on  
10 whether to comply with such a request; and

11           “(II) a complex request shall be a request re-  
12 quiring more than 10 days to make a determination  
13 on whether to comply with such a request.

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

19       “(E)(i) Each agency shall promulgate regulations,  
20 pursuant to notice and receipt of public comment, provid-  
21 ing that upon receipt of a request for expedited access to  
22 records and a showing by the person making such request  
23 of a compelling need for expedited access to records, the  
24 agency shall determine within 5 days (excepting Satur-  
25 days, Sundays, and legal public holidays) after the receipt

1 of such a request, whether to comply with such request.  
2 No more than 1 day after making such determination the  
3 agency shall notify the person making a request for expedited  
4 access of such determination, the reasons therefor,  
5 and of the right to appeal to the head of the agency. A  
6 request for records to which the agency has granted expedited  
7 access shall be processed as soon as practicable. A  
8 request for records to which the agency has denied expedited  
9 access shall be processed within the time limits  
10 under paragraph (6) of this subsection.

11       “(ii) A person whose request for expedited access has  
12 not been decided within 5 days of its receipt by the agency  
13 or has been denied shall be required to exhaust administrative  
14 remedies. A request for expedited access which has  
15 not been decided may be appealed to the head of the agency  
16 within 7 days (excepting Saturdays, Sundays, and legal  
17 public holidays) after its receipt by the agency. A request  
18 for expedited access that has been denied by the agency  
19 may be appealed to the head of the agency within 2 days  
20 (excepting Saturdays, Sundays, and legal public holidays)  
21 after the person making such request receives notice of  
22 the agency’s denial. If an agency head has denied, affirmed  
23 a denial, or failed to respond to a timely appeal  
24 of a request for expedited access, a court which would have  
25 jurisdiction of an action under paragraph (4)(B) of this

1 subsection may, upon complaint, require the agency to  
2 show cause why the request for expedited access should  
3 not be granted, except that such review shall be limited  
4 to the record before the agency.

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

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

13               “(II) result in the loss of substantial due proc-  
14       ess rights and the information sought is not other-  
15       wise available in a timely fashion; or

16               “(III) affect public assessment of the nature  
17       and propriety of actual or alleged governmental ac-  
18       tions that are the subject of widespread, contem-  
19       poraneous media coverage.”.

20 **SEC. 7. COMPUTER REDACTION.**

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

1 **SEC. 8. 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’ means all books, papers,  
13 maps, photographs, machine-readable materials, or  
14 other information or documentary materials, regard-  
15 less of physical form or characteristics; and

16 “(3) the term ‘search’ means a manual or auto-  
17 mated review of agency records that is conducted for  
18 the purpose of locating those records which are re-  
19 sponsive to a request under subsection (a)(3)(A) of  
20 this section.”.

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