

104TH CONGRESS  
2D SESSION

# H. R. 3802

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.

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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

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## 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,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Electronic Freedom  
5       of Information Amendments of 1996”.

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

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

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

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

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

18           (4) the Freedom of Information Act has led to  
19 the identification of unsafe consumer products,  
20 harmful 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

1           (6) Government agencies should use new tech-  
2 nology to enhance public access to agency records  
3 and information.

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

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

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

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

11           (4) maximize the usefulness of agency records  
12 and information collected, maintained, used, re-  
13 tained, and disseminated by the Federal Govern-  
14 ment.

15 **SEC. 3. APPLICATION OF REQUIREMENTS TO ELECTRONIC**  
16 **FORMAT INFORMATION.**

17           Section 552(f) of title 5, United States Code, is  
18 amended—

19           (1) by redesignating such section as section  
20 (f)(1);

21           (2) by striking the period at the end and insert-  
22 ing “; and”; and

23           (3) by adding at the end the following:

24           “(2) For purposes of this section, ‘information’,  
25 ‘record’, and any other term used in this section in ref-

1 erence to information includes such information main-  
2 tained in an electronic format.”.

3 **SEC. 4. 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 out “(A)” the second place it  
8 appears and inserting “(i)”;

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

10 and

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

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

20 “(C) In responding under this paragraph to a request  
21 for records, an agency shall make reasonable efforts to  
22 search for the records in electronic form or format.

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

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

3 **SEC. 5. STANDARD FOR JUDICIAL REVIEW.**

4 Section 552(a)(4)(B) of title 5, United States Code,  
5 is amended by adding at the end the following new sen-  
6 tence: “A court shall accord substantial weight to an affi-  
7 davit of an agency concerning the agency’s determination  
8 as to technical feasibility under paragraph (2)(C) and sub-  
9 section (b) and reproducibility under paragraph (3)(B).”.

10 **SEC. 6. ENSURING TIMELY RESPONSE TO REQUESTS.**

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

14 “(D)(i) Each agency may promulgate regulations,  
15 pursuant to notice and receipt of public comment, provid-  
16 ing for multitrack processing of requests for records or  
17 information.

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

23 “(iii) This subparagraph shall not be considered to  
24 affect the requirement under subparagraph (C) to exercise  
25 due diligence.”.

1           (b)           UNUSUAL           CIRCUMSTANCES.—Section  
2 552(a)(6)(B) of title 5, United States Code, is amended  
3 to read as follows:

4           “(B)(i) In unusual circumstances as specified in this  
5 subparagraph, the time limits prescribed in either clause  
6 (i) or clause (ii) of subparagraph (A) may be extended  
7 by written notice to the person making such request set-  
8 ting forth the unusual circumstances for such extension  
9 and the date on which a determination is expected to be  
10 dispatched. No such notice shall specify a date that would  
11 result in an extension for more than ten working days,  
12 unless the person making the request has (I) agreed upon  
13 a longer timeframe for processing the request, or (II) re-  
14 fused to reasonably modify the request. In the event that  
15 the person making the request refuses to agree upon a  
16 reasonable timeframe for processing the request or to rea-  
17 sonably modify the request, the agency may offer such re-  
18 fusal as evidence of exceptional circumstances under sub-  
19 paragraph (C).

20           “(ii) As used in this subparagraph, ‘unusual cir-  
21 cumstances’ means, but only to the extent reasonably nec-  
22 essary to the proper processing of the particular re-  
23 quests—

24                   “(I) the need to search for and collect the re-  
25           requested records from field facilities or other estab-

1        lishments that are separate from the office process-  
2        ing the request;

3            “(II) the need to search for, collect, and appro-  
4        priately examine a voluminous amount of separate  
5        and distinct records which are demanded in a single  
6        request; or

7            “(III) the need for consultation, which shall be  
8        conducted with all practicable speed, with another  
9        agency having a substantial interest in the deter-  
10       mination of the request or among two or more com-  
11       ponents of the agency having substantial subject-  
12       matter interest therein.”.

13        (c)        EXCEPTIONAL        CIRCUMSTANCES.—Section  
14        552(a)(6)(C) of title 5, United States Code, is amended  
15        by inserting “(i)” after “(C)”, and by adding at the end  
16        the following new clauses:

17            “(ii) For purposes of this subparagraph, the term ‘ex-  
18        ceptional circumstances’ does not include a delay that re-  
19        sults from a predictable agency workload of requests  
20        under this section.

21            “(iii) If a person refuses to reasonably modify the  
22        scope of a request under this section after being requested  
23        to do so by the agency to whom the person made the re-  
24        quest, such refusal may be considered evidence of excep-  
25        tional circumstances.

1       “(iv) In determining whether exceptional cir-  
2 cumstances exist, a court may consider the efforts by an  
3 agency to reduce the number of pending requests under  
4 this section.”.

5 **SEC. 7. TIME PERIOD FOR AGENCY CONSIDERATION OF RE-**  
6 **QUESTS.**

7       (a) EXPEDITED PROCESSING.—Section 552(a)(6) of  
8 title 5, United States Code (as amended by section 6(a)  
9 of this Act), is further amended by adding at the end the  
10 following new subparagraph:

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

14               “(I) in cases in which the person requesting the  
15 records demonstrates a compelling need; and

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

17       “(ii) Notwithstanding subparagraph (A)(i), regula-  
18 tions under this subparagraph must ensure—

19               “(I) that a determination of whether to provide  
20 expedited processing shall be made, and notice of the  
21 determination shall be provided to the person mak-  
22 ing the request, within 10 days after the date of the  
23 request; and

1           “(II) expeditious consideration of administrative  
2           appeals of such determinations of whether to provide  
3           expedited processing.

4           “(iii) Agency action to deny or affirm denial of a re-  
5           quest for expedited processing pursuant to this subpara-  
6           graph, and failure by an agency to respond timely to such  
7           a request—

8           “(I) may only be for cause; and

9           “(II) shall be subject to judicial review under  
10          paragraph (4), except that the judicial review shall  
11          be based on the record before the agency at the time  
12          of the determination.

13          “(iv) For purposes of this subparagraph, the term  
14          ‘compelling need’ means—

15          “(I) that a failure to obtain requested records  
16          on an expedited basis under this paragraph could  
17          reasonably be expected to pose an imminent threat  
18          to the life or physical safety of an individual; or

19          “(II) with respect to a request made by a per-  
20          son engaged in disseminating information, compel-  
21          ling urgency to the public.”.

22          (b) EXTENSION OF GENERAL PERIOD FOR DETER-  
23          MINING WHETHER TO COMPLY WITH A REQUEST.—Sec-  
24          tion 552(a)(6)(A)(i) of title 5, United States Code, is  
25          amended by striking “ten days” and inserting “20 days”.

1           (c) ESTIMATION OF MATTER DENIED.—Section  
2 552(a)(6) of title 5 United States Code (as amended by  
3 section 6 of this Act and subsection (a) of this section),  
4 is further amended by adding at the end the following new  
5 subparagraph:

6           “(F) In denying a request for records, in whole or  
7 in part, an agency shall make a reasonable effort to esti-  
8 mate the volume of any requested matter the provision of  
9 which is denied, and provide any such estimate to the per-  
10 son making the request.”.

11 **SEC. 8. COMPUTER REDACTION.**

12           Section 552(b) of title 5, United States Code, is  
13 amended in the matter following paragraph (9) by striking  
14 the period and inserting the following: “The deletions shall  
15 be indicated on the released portion of the record. If tech-  
16 nically feasible, each deletion shall be indicated at the  
17 place in the record where such deletion was made.”.

18 **SEC. 9. AGENCY REPORTS.**

19           (a) CONTENTS OF ANNUAL REPORTS.—Section  
20 552(e) of title 5, United States Code, is amended—

21                 (1) in paragraph (6), by striking “and” after  
22                 the semicolon;

23                 (2) by redesignating paragraph (7) as para-  
24                 graph (10); and

1           (3) by inserting after paragraph (6) the follow-  
2           ing new paragraphs:

3           “(7) a complete list of all statutes relied on by  
4           the agency to authorize the agency to withhold infor-  
5           mation, and a description of the scope of informa-  
6           tion withholdable;

7           “(8) the time estimated to be necessary for the  
8           agency to complete requests for information of dif-  
9           ferent categories of size and complexity in the fu-  
10          ture;

11          “(9) reference materials and guides made avail-  
12          able by the agency under subsection (g); and”.

13          (b) ELECTRONIC AVAILABILITY.—Section 552 of title  
14          5, United States Code, is amended by redesignating sub-  
15          section (f) as subsection (h), and by inserting after sub-  
16          section (e) the following new subsection:

17          “(f)(1) The head of each agency shall make informa-  
18          tion contained in the reports of the agency under sub-  
19          section (e) available to the public—

20                 “(A) by means of computer telecommunications;

21                 or

22                 “(B) if computer telecommunications means  
23                 have not been established by an agency, by other  
24                 electronic means.

1       “(2) The Administrator of the Office of Information  
2 and Regulatory Affairs in the Office of Management and  
3 Budget shall establish a single electronic access point for  
4 all agency reports under subsection (e). The Administrator  
5 may delegate this responsibility to the head of any other  
6 appropriate agency.

7       “(3) This subsection shall apply to agency reports  
8 under subsection (e) submitted after the conclusion of the  
9 first fiscal year beginning after the date of the enactment  
10 of the Electronic Freedom of Information Amendments of  
11 1996.”.

12 **SEC. 10. REFERENCE MATERIALS AND GUIDES.**

13       Section 552 of title 5, United States Code, as amend-  
14 ed by section 9(b) of this Act, is further amended by in-  
15 serting after subsection (f) the following new subsection:

16       “(g) The head of each agency shall make available  
17 to the public, reference material or a guide for requesting  
18 records or information from the agency, including—

19               “(1) an index of all major information systems  
20               of the agency; and

21               “(2) a description of major information and  
22               record locator systems maintained by the agency.”.

1 **SEC. 11. EFFECTIVE DATE.**

2 (a) IN GENERAL.—Except as provided in subsection  
3 (b), this Act shall take effect 90 days after the date of  
4 the enactment of this Act.

5 (b) PROVISIONS EFFECTIVE ON ENACTMENT.—Sec-  
6 tions 6 and 7 shall take effect one year after the date  
7 of the enactment of this Act.

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