

104TH CONGRESS
2^D SESSION

H. R. 3802

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 18, 1996

Received

AN ACT

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
3 of 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 agen-
13 cies, subject to statutory exemptions, for any public
14 or private purpose;

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

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

23 (4) the Freedom of Information Act has led to
24 the identification of unsafe consumer products,
25 harmful 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
6 and information.

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

8 (1) foster democracy by ensuring public access
9 to 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, re-
16 tained, and disseminated by the Federal
17 Government.

18 **SEC. 3. APPLICATION OF REQUIREMENTS TO ELECTRONIC**

19 **FORMAT INFORMATION.**

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

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

23 “(1) ‘agency’ as defined in section 551(1) of
24 this title includes any executive department, military
25 department, Government corporation, Government

1 controlled corporation, or other establishment in the
2 executive branch of the Government (including the
3 Executive Office of the President), or any independ-
4 ent regulatory agency; and

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

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

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

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

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

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

5 (4) in subparagraph (B), by striking “and”
6 after 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
11 under paragraph (3) and which, because of the na-
12 ture of their subject matter, the agency determines
13 have become or are likely to become the subject of
14 subsequent requests for substantially the same
15 records; and

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

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

22 (7) by inserting after the first sentence the fol-
23 lowing: “For records created on or after November
24 1, 1996, within one year after such date, each agen-
25 cy shall make such records available, including by

1 computer telecommunications or, if computer tele-
2 communications means have not been established by
3 the agency, by other electronic means.”.

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

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

7 (1) by inserting “(A)” after “(3)”;

8 (2) by striking “(A)” the second place it ap-
9 pears and inserting “(i)”;

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

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, except
23 when such efforts would significantly interfere with the op-
24 eration of the agency’s automated information system.

1 “(D) For purposes of this paragraph, the term
2 ‘search’ means to review, manually or by automated
3 means, agency records for the purpose of locating those
4 records which are responsive to a request.”.

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

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

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

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

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

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

1 the scope of the request in order to qualify for faster
2 processing.

3 “(iii) This subparagraph shall not be considered to
4 affect the requirement under subparagraph (C) to exercise
5 due diligence.”.

6 (b) UNUSUAL CIRCUMSTANCES.—Section
7 552(a)(6)(B) of title 5, United States Code, is amended
8 to read as follows:

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

18 “(ii) With respect to a request for which a written
19 notice under clause (i) extends the time limits prescribed
20 under clause (i) of subparagraph (A), the agency shall no-
21 tify the person making the request if the request cannot
22 be processed within the time limit specified in that clause
23 and shall provide the person an opportunity to limit the
24 scope of the request so that it may be processed within
25 that time limit or an opportunity to arrange with the agen-

1 cy an alternative time frame for processing the request
2 or a modified request. Refusal by the person to reasonably
3 modify the request or arrange such an alternative time
4 frame shall be considered as a factor in determining
5 whether exceptional circumstances exist for purposes of
6 subparagraph (C).

7 “(iii) As used in this subparagraph, ‘unusual cir-
8 cumstances’ means, but only to the extent reasonably nec-
9 essary to the proper processing of the particular re-
10 quests—

11 “(I) the need to search for and collect the re-
12 quested records from field facilities or other estab-
13 lishments that are separate from the office process-
14 ing the request;

15 “(II) the need to search for, collect, and appro-
16 priately examine a voluminous amount of separate
17 and distinct records which are demanded in a single
18 request; or

19 “(III) the need for consultation, which shall be
20 conducted with all practicable speed, with another
21 agency having a substantial interest in the deter-
22 mination of the request or among two or more com-
23 ponents of the agency having substantial subject-
24 matter interest therein.

1 “(iv) Each agency may promulgate regulations, pur-
2 suant to notice and receipt of public comment, providing
3 for the aggregation of certain requests by the same request-
4 tor, or by a group of requestors acting in concert, if the
5 agency reasonably believes that such requests actually con-
6 stitute a single request, which would otherwise satisfy the
7 unusual circumstances specified in this subparagraph, and
8 the requests involve clearly related matters. Multiple re-
9 quests involving unrelated matters shall not be aggreg-
10 gated.”.

11 (c) EXCEPTIONAL CIRCUMSTANCES.—Section
12 552(a)(6)(C) of title 5, United States Code, is amended
13 by inserting “(i)” after “(C)”, and by adding at the end
14 the following new clauses:

15 “(ii) For purposes of this subparagraph, the term ‘ex-
16 ceptional circumstances’ does not include a delay that re-
17 sults from a predictable agency workload of requests
18 under this section, unless the agency demonstrates reason-
19 able progress in reducing its backlog of pending requests.

20 “(iii) Refusal by a person to reasonably modify the
21 scope of a request or arrange an alternative time frame
22 for processing a request (or a modified request) under
23 clause (ii) after being given an opportunity to do so by
24 the agency to whom the person made the request shall
25 be considered as a factor in determining whether excep-

1 tional circumstances exist for purposes of this subpara-
2 graph.”.

3 **SEC. 8. TIME PERIOD FOR AGENCY CONSIDERATION OF**
4 **REQUESTS.**

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

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

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

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

15 “(ii) Notwithstanding clause (i), regulations under
16 this subparagraph must ensure—

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

22 “(II) expeditious consideration of administrative
23 appeals of such determinations of whether to provide
24 expedited processing.

1 “(iii) An agency shall process as soon as practicable
2 any request for records to which the agency has granted
3 expedited processing under this subparagraph. Agency ac-
4 tion to deny or affirm denial of a request for expedited
5 processing pursuant to this subparagraph, and failure by
6 an agency to respond in a timely manner to such a request
7 shall be subject to judicial review under paragraph (4),
8 except that the judicial review shall be based on the record
9 before the agency at the time of the determination.

10 “(iv) A district court of the United States shall not
11 have jurisdiction to review an agency denial of expedited
12 processing of a request for records after the agency has
13 provided a complete response to the request.

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

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

20 “(II) with respect to a request made by a per-
21 son primarily engaged in disseminating information,
22 urgency to inform the public concerning actual or al-
23 leged Federal Government activity.

24 “(vi) A demonstration of a compelling need by a per-
25 son making a request for expedited processing shall be

1 made by a statement certified by such person to be true
2 and correct to the best of such person's knowledge and
3 belief.”.

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

8 (c) ESTIMATION OF MATTER DENIED.—Section
9 552(a)(6) of title 5, United States Code (as amended by
10 section 7 of this Act and subsection (a) of this section),
11 is further amended by adding at the end the following new
12 subparagraph:

13 “(F) In denying a request for records, in whole or
14 in part, an agency shall make a reasonable effort to esti-
15 mate the volume of any requested matter the provision of
16 which is denied, and shall provide any such estimate to
17 the person making the request, unless providing such esti-
18 mate would harm an interest protected by the exemption
19 in subsection (b) pursuant to which the denial is made.”.

20 **SEC. 9. COMPUTER REDACTION.**

21 Section 552(b) of title 5, United States Code, is
22 amended in the matter following paragraph (9) by insert-
23 ing after the period the following: “The amount of infor-
24 mation deleted shall be indicated on the released portion
25 of the record, unless including that indication would harm

1 an interest protected by the exemption in this subsection
2 under which the deletion is made. If technically feasible,
3 the amount of the information deleted shall be indicated
4 at the place in the record where such deletion is made.”.

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

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

8 “(e)(1) On or before February 1 of each year, each
9 agency shall submit to the Attorney General of the United
10 States a report which shall cover the preceding fiscal year
11 and which shall include—

12 “(A) the number of determinations made by the
13 agency not to comply with requests for records made
14 to such agency under subsection (a) and the reasons
15 for each such determination;

16 “(B)(i) the number of appeals made by persons
17 under subsection (a)(6), the result of such appeals,
18 and the reason for the action upon each appeal that
19 results in a denial of information; and

20 “(ii) a complete list of all statutes that the
21 agency relies upon to authorize the agency to with-
22 hold information under subsection (b)(3), a descrip-
23 tion of whether a court has upheld the decision of
24 the agency to withhold information under each such

1 statute, and a concise description of the scope of any
2 information withheld;

3 “(C) the number of requests for records pend-
4 ing before the agency as of September 30 of the pre-
5 ceding year, and the median number of days that
6 such requests had been pending before the agency as
7 of that date;

8 “(D) the number of requests for records re-
9 ceived by the agency and the number of requests
10 which the agency processed;

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

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

15 “(G) the number of full-time staff of the agency
16 devoted to processing requests for records under this
17 section, and the total amount expended by the agen-
18 cy for processing such requests.

19 “(2) Each agency shall make each such report avail-
20 able to the public including by computer telecommuni-
21 cations, or if computer telecommunications means have
22 not been established by the agency, by other electronic
23 means.

24 “(3) The Attorney General of the United States shall
25 make each report which has been made available by elec-

1 tronic means available at a single electronic access point.
2 The Attorney General of the United States shall notify
3 the Chairman and ranking minority member of the Com-
4 mittee on Government Reform and Oversight of the House
5 of Representatives and the Chairman and ranking minor-
6 ity member of the Committees on Governmental Affairs
7 and the Judiciary of the Senate, no later than April 1 of
8 the year in which each such report is issued, that such
9 reports are available by electronic means.

10 “(4) The Attorney General of the United States, in
11 consultation with the Director of the Office of Manage-
12 ment and Budget, shall develop reporting and perform-
13 ance guidelines in connection with reports required by this
14 subsection by October 1, 1997, and may establish addi-
15 tional requirements for such reports as the Attorney Gen-
16 eral determines may be useful.

17 “(5) The Attorney General of the United States shall
18 submit an annual report on or before April 1 of each cal-
19 endar year which shall include for the prior calendar year
20 a listing of the number of cases arising under this section,
21 the exemption involved in each case, the disposition of
22 such case, and the cost, fees, and penalties assessed under
23 subparagraphs (E), (F), and (G) of subsection (a)(4).
24 Such report shall also include a description of the efforts

1 undertaken by the Department of Justice to encourage
2 agency compliance with this section.”.

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

4 Section 552 of title 5, United States Code, is amend-
5 ed by adding after subsection (f) the following new sub-
6 section:

7 “(g) The head of each agency shall prepare and make
8 publicly available upon request, reference material or a
9 guide for requesting records or information from the agen-
10 cy, subject to the exemptions in subsection (b), includ-
11 ing—

12 “(1) an index of all major information systems
13 of the agency;

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

17 “(3) a handbook for obtaining various types
18 and categories of public information from the agency
19 pursuant to chapter 35 of title 44, and under this
20 section.”.

21 **SEC. 12. EFFECTIVE DATE.**

22 (a) IN GENERAL.—Except as provided in subsection
23 (b), this Act shall take effect 180 days after the date of
24 the enactment of this Act.

1 (b) PROVISIONS EFFECTIVE ON ENACTMENT.—Sec-
2 tions 7 and 8 shall take effect one year after the date
3 of the enactment of this Act.

Passed the House of Representatives September 17,
1996.

Attest:

ROBIN H. CARLE,
Clerk.