# <sup>104TH CONGRESS</sup> 2D 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

23 (4) the Freedom of Information Act has led to 24 the identification of unsafe consumer products, 25 harmful drugs, and serious health hazards;

doing in the Federal Government;

2

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

controlled corporation, or other establishment in the
 executive branch of the Government (including the
 Executive Office of the President), or any independ 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.".

# SEC. 4. INFORMATION MADE AVAILABLE IN ELECTRONIC FORMAT AND INDEXATION OF RECORDS.

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

(1) in the second sentence, by striking "or staff
manual or instruction" and inserting "staff manual,
instruction, or copies of records referred to in subparagraph (D)";

(2) by inserting before the period at the end of
the third sentence the following: ", and the extent of
such deletion shall be indicated on the portion of the
record which is made available or published, unless
including that indication would harm an interest
protected by the exemption in subsection (b) under
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-(1) by inserting "(A)" after "(3)"; 7 (2) by striking "(A)" the second place it ap-8 pears and inserting "(i)"; 9 (3) by striking "(B)" and inserting "(ii)"; and 10 11 (4) by adding at the end the following new sub-12 paragraphs: 13 "(B) In making any record available to a person under this paragraph, an agency shall provide the record 14 15 in any form or format requested by the person if the record is readily reproducible by the agency in that form 16 or format. Each agency shall make reasonable efforts to 17 18 maintain its records in forms or formats that are reproducible for purposes of this section. 19

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. "(D) For purposes of this paragraph, the term
 'search' means to review, manually or by automated
 means, agency records for the purpose of locating those
 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 substantial weight to an affidavit of an agency concerning the 10 agency's determination as to technical feasibility under 11 12 paragraph (2)(C) and subsection (b) and reproducibility under paragraph (3)(B).". 13

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

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

"(D)(i) Each agency may promulgate regulations,
pursuant to notice and receipt of public comment, providing for multitrack processing of requests for records based
on the amount of work or time (or both) involved in processing requests.

"(ii) Regulations under this subparagraph may provide a person making a request that does not qualify for
the fastest multitrack processing an opportunity to limit

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

18 "(ii) With respect to a request for which a written notice under clause (i) extends the time limits prescribed 19 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 agency an alternative time frame for processing the request
 or a modified request. Refusal by the person to reasonably
 modify the request or arrange such an alternative time
 frame shall be considered as a factor in determining
 whether exceptional circumstances exist for purposes of
 subparagraph (C).

7 "(iii) As used in this subparagraph, 'unusual cir8 cumstances' means, but only to the extent reasonably nec9 essary to the proper processing of the particular re10 quests—

"(I) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

"(II) the need to search for, collect, and appropriately examine a voluminous amount of separate
and distinct records which are demanded in a single
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 reques-4 tor, or by a group of requestors acting in concert, if the 5 agency reasonably believes that such requests actually constitute a single request, which would otherwise satisfy the 6 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 aggre-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 'exceptional circumstances' does not include a delay that re-16 17 sults from a predictable agency workload of requests under this section, unless the agency demonstrates reason-18 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 exceptional circumstances exist for purposes of this subpara 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, provid11 ing for expedited processing of requests for records—

12 "(I) in cases in which the person requesting the13 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—

"(I) that a determination of whether to provide
expedited processing shall be made, and notice of the
determination shall be provided to the person making the request, within 10 days after the date of the
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 an agency to respond in a timely manner to such a request 6 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.

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

14 "(v) For purposes of this subparagraph, the term15 'compelling need' means—

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

"(II) with respect to a request made by a person primarily engaged in disseminating information,
urgency to inform the public concerning actual or alleged 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 true2 and correct to the best of such person's knowledge and3 belief.".

4 (b) EXTENSION OF GENERAL PERIOD FOR DETER-5 MINING WHETHER TO COMPLY WITH A REQUEST.—Section 552(a)(6)(A)(i) of title 5, United States Code, is 6 amended by striking "ten days" and inserting "20 days". 7 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), is further amended by adding at the end the following new 11 subparagraph: 12

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.

Section 552(b) of title 5, United States Code, is amended in the matter following paragraph (9) by inserting after the period the following: "The amount of information deleted shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this subsection
 under which the deletion is made. If technically feasible,
 the amount of the information deleted shall be indicated
 at the place in the record where such deletion is made.".
 SEC. 10. REPORT TO THE CONGRESS.

6 Section 552(e) of title 5, United States Code, is7 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—

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

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

"(ii) a complete list of all statutes that the
agency relies upon to authorize the agency to withhold information under subsection (b)(3), a description of whether a court has upheld the decision of
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-

tronic means available at a single electronic access point. 1 The Attorney General of the United States shall notify 2 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 minority member of the Committees on Governmental Affairs 6 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 20a 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 undertaken by the Department of Justice to encourage
 agency compliance with this section.".

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

4 Section 552 of title 5, United States Code, is amend5 ed by adding after subsection (f) the following new sub6 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 agen10 cy, subject to the exemptions in subsection (b), includ11 ing—

12 "(1) an index of all major information systems13 of the agency;

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

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

#### 21 SEC. 12. EFFECTIVE DATE.

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

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

Passed the House of Representatives September 17, 1996.

Attest:

ROBIN H. CARLE, *Clerk*.