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.

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 Com-
mittee on Government Reform and Oversight

A BILL

To amend section 552 of title 5, United States Code, popu-
larly known as the Freedom of Information Act, to pro-
vide 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) the purpose of section 552 of title 5, United States Code, popularly known as the Freedom of Information Act, is to require agencies of the Federal Government to make certain agency information available for public inspection and copying and to establish and enable enforcement of the right of any person to obtain access to the records of such agencies, subject to statutory exemptions, for any public or private purpose;

(2) since the enactment of the Freedom of Information Act in 1966, and the amendments enacted in 1974 and 1986, the Freedom of Information Act has been a valuable means through which any person can learn how the Federal Government operates;

(3) the Freedom of Information Act has led to the disclosure of waste, fraud, abuse, and wrongdoing in the Federal Government;

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

(5) Government agencies increasingly use computers to conduct agency business and to store publicly valuable agency records and information; and
(6) Government agencies should use new technology to enhance public access to agency records and information.

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

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

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

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

(4) maximize the usefulness of agency records and information collected, maintained, used, retained, and disseminated by the Federal Government.

SEC. 3. APPLICATION OF REQUIREMENTS TO ELECTRONIC FORMAT INFORMATION.

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

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

(2) by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following:

“(2) For purposes of this section, ‘information’, ‘record’, and any other term used in this section in ref-
erence to information includes such information main-
tained in an electronic format.”.

SEC. 4. HONORING FORM OR FORMAT REQUESTS.

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

(1) by inserting “(A)” after “(3)”;

(2) by striking out “(A)” the second place it
appears and inserting “(i)”;

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

and

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

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

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

“(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.”.

SEC. 5. STANDARD FOR JUDICIAL REVIEW.

Section 552(a)(4)(B) of title 5, United States Code, is amended by adding at the end the following new sentence: “A court shall accord substantial weight to an affidavit of an agency concerning the agency’s determination as to technical feasibility under paragraph (2)(C) and subsection (b) and reproducibility under paragraph (3)(B).”.

SEC. 6. 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 or information.

“(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.

“(iii) This subparagraph shall not be considered to affect the requirement under subparagraph (C) to exercise due diligence.”.
(b) UNUSUAL CIRCUMSTANCES.—Section 552(a)(6)(B) of title 5, United States Code, is amended to read as follows:

“(B)(i) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days, unless the person making the request has (I) agreed upon a longer timeframe for processing the request, or (II) refused to reasonably modify the request. In the event that the person making the request refuses to agree upon a reasonable timeframe for processing the request or to reasonably modify the request, the agency may offer such refusal as evidence of exceptional circumstances under subparagraph (C).

“(ii) As used in this subparagraph, ‘unusual circumstances’ means, but only to the extent reasonably necessary to the proper processing of the particular requests—

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

“(III) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.”.

(e) Exceptional Circumstances.—Section 552(a)(6)(C) of title 5, United States Code, is amended by inserting “(i)” after “(C)”, and by adding at the end the following new clauses:

“(ii) For purposes of this subparagraph, the term ‘exceptional circumstances’ does not include a delay that results from a predictable agency workload of requests under this section.

“(iii) If a person refuses to reasonably modify the scope of a request under this section after being requested to do so by the agency to whom the person made the request, such refusal may be considered evidence of exceptional circumstances.
“(iv) In determining whether exceptional circumstances exist, a court may consider the efforts by an agency to reduce the number of pending requests under this section.”.

SEC. 7. TIME PERIOD FOR AGENCY CONSIDERATION OF REQUESTS.

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

“(E)(i) Each agency shall promulgate regulations, pursuant to notice and receipt of public comment, providing for expedited processing of requests for records—

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

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

“(ii) Notwithstanding subparagraph (A)(i), regulations under 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
“(II) expeditious consideration of administrative appeals of such determinations of whether to provide expedited processing.

“(iii) Agency action to deny or affirm denial of a request for expedited processing pursuant to this subparagraph, and failure by an agency to respond timely to such a request—

“(I) may only be for cause; and

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

“(iv) For purposes of this subparagraph, the term ‘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 engaged in disseminating information, compelling urgency to the public.”.

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

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(c) Estimation of Matter Denied.—Section 552(a)(6) of title 5 United States Code (as amended by section 6 of this Act and subsection (a) of this section), is further amended by adding at the end the following new subparagraph:

“(F) In denying a request for records, in whole or in part, an agency shall make a reasonable effort to estimate the volume of any requested matter the provision of which is denied, and provide any such estimate to the person making the request.”.

SEC. 8. COMPUTER REDACTION.

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

SEC. 9. AGENCY REPORTS.

(a) Contents of Annual Reports.—Section 552(e) of title 5, United States Code, is amended—

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

(2) by redesignating paragraph (7) as paragraph (10); and
(3) by inserting after paragraph (6) the following new paragraphs:

“(7) a complete list of all statutes relied on by the agency to authorize the agency to withhold information, and a description of the scope of information withholdable;

“(8) the time estimated to be necessary for the agency to complete requests for information of different categories of size and complexity in the future;

“(9) reference materials and guides made available by the agency under subsection (g); and”.

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

“(f)(1) The head of each agency shall make information contained in the reports of the agency under subsection (e) available to the public—

“(A) by means of computer telecommunications;

or

“(B) if computer telecommunications means have not been established by an agency, by other electronic means.
“(2) The Administrator of the Office of Information and Regulatory Affairs in the Office of Management and Budget shall establish a single electronic access point for all agency reports under subsection (e). The Administrator may delegate this responsibility to the head of any other appropriate agency.

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

SEC. 10. REFERENCE MATERIALS AND GUIDES.

Section 552 of title 5, United States Code, as amended by section 9(b) of this Act, is further amended by inserting after subsection (f) the following new subsection:

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

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

“(2) a description of major information and record locator systems maintained by the agency.”
SEC. 11. EFFECTIVE DATE.

(a) In General.—Except as provided in subsection (b), this Act shall take effect 90 days after the date of the enactment of this Act.

(b) Provisions Effective on Enactment.—Sections 6 and 7 shall take effect one year after the date of the enactment of this Act.