TRIBUTE TO ELECTROPAC’S 20TH ANNIVERSARY

Mr. SMITH. Mr. President, I rise today to pay tribute to Electropac, a New Hampshire company, in honor of their 20th anniversary. On September 19th and 20th, a number of employees, individuals, and organizations will gather together at Electropac’s corporate headquarters in Manchester, NH, to celebrate their 20th year of business. I would like to congratulate everyone who helped this technology company grow to become the success it is today. The dedication and hard work, as evidenced by the growth that Electropac has experienced over the years, is truly unparalleled.

Electropac is an independently owned, small to mid-sized company that specializes in manufacturing high-tech printed circuit boards for the computer, telecommunication, medical instrumentation, and military industries. The circuit boards they produce are state of the art, double sided, multilayered boards.

The Manchester office of Electropac has served as Electropac’s corporate headquarters and center of manufacturing operations since 1980. In addition to being located in Manchester, Electropac has expanded with a prototype facility in Londonderry, and with circuit board companies in Montreal, Canada, and St. Catharines, Ontario. At these locations, Electropac employs over 400 people and brings in over $33 million in business. This is an enormous increase considering the company’s founder and president, Raymond Boissoaneau, established Electropac with only one employee and $1,000 in cash.

Electropac has been included on a regular basis as one of the top 50 and the top 75 privately owned companies in the State of New Hampshire. Just this past year, Electropac designed a program with the Manchester School of Technology that brings students into the company and allows Electropac to become their classroom, thus providing students with hands-on experience and training in high-tech manufacturing. Electropac has been a number one organization throughout the State of New Hampshire including the N.H. Job Training Council, the Manchester Chamber of Commerce, the Made in New Hampshire Expo, the Merrimack Youth Association, and the Merrimack Rotary and Lions Clubs. Among numerous other awards, Raymond Boissoaneau has received the New Hampshire High Technology Council’s Entrepreneur of the Year Award. It is not hard to see how this company has grown, and we should feel great measure to the company’s prosperity.

Electropac’s success over the years can be attributed to a number of factors. One factor is the emphasis placed on the level of service and quality, rather than on quantity and growth. By maintaining several medium sized operations, Electropac diversifies itself, providing its customers with efficient and cost-effective service specialities. Flexibility is the key to their success in sensitive markets, because they are able to adapt their products quickly to the technological growth of today’s industry. Also, Electropac is the first manufacturer in the United States and only the second in the world to provide a beta site. A beta site essentially is a test site for outside companies. Electropac opens their manufacturing operations and allows various companies to test new technical products, that are not on the market yet, using all of Electropac’s facilities and machinery.

Mr. President, I commend Electropac and its employees for their support of New Hampshire, and for their contributions as a whole to the industry of America. Electropac is an excellent example of a truly successful and dynamic New Hampshire company. Congratulations to Raymond Boissoaneau and his dedicated employees who have made Electropac so competitive in today’s technology industry. May you experience continued growth and success.

CONGRATULATIONS TO JOSEPH J. FRANK

Mr. BOND. Mr. President, today I congratulate my fellow Missourian, Joseph J. Frank, on his election as national commander of the American Legion, at the 78th national convention, on September 9th. I am very proud that the Legion, the Nation’s largest veterans’ organization, comprised of over 3 million members, will be represented by an individual with the kind of dedication, integrity, and commitment that has been Mr. Frank’s hallmark.

My State is proud of our military heritage, and we revere native military leaders such as John J. Pershing, the first six star general since George Washington. Joe Frank, born and raised in St. Louis County, MO, has achieved another first: he’s the first Missourian and first Vietnam veteran to command the American Legion. I am sure both of these firsts will bring new insights and perspectives to the post.

Mr. Frank served in Vietnam in 1968. He was wounded severely and continues to cope each day with the paralysis which resulted, but these wounds have not dampened his patriotism or his commitment to serving his fellow Americans. Immediately after recovering from the wounds he sustained in Vietnam, Mr. Frank founded the Creutwoud Memorial American Legion Post 777, renamed in memory of his father. Since founding the post, Mr. Frank has gone on to serve as post commander, district commander, and state commander. He has also held several previous leadership positions on the national level, including national vice commander, chairman of the national economic commission, and chairman of the foreign relations commission.

Joe Frank’s service radiates well beyond the American Legion. He has dedicated himself to helping individuals with disabilities through his positions on the Executive Board of the President’s Committee on Employment of People With Disabilities, and the Missouri Governor’s Council on Disability. Mr. Frank has also been recognized by the White House for his service to the Selective Service System.

I am confident, Mr. President, that Joe Frank, from my own great State of Missouri, will serve his fellow veterans with dignity, vigor, and direction. He already has set forth part of his agenda, by identifying three priorities: increasing membership, protecting the U.S. flag from desecration, and improving and expanding health care to our veterans. Because of my own involvement in the area of veterans health care through my chairmanship of the Senate appropriations subcommittee with jurisdiction over veterans programs, I am especially delighted to recognize Mr. Frank’s leadership in this area.

It is my honor to join with Mr. Frank’s wife, Barbara, his family, many friends, and especially his fellow American Legion members in saluting Joseph J. Frank for providing inspiration and a source of pride for veterans, Missourians, and for all Americans.

ELECTRONIC FREEDOM OF INFORMATION IMPROVEMENT ACT OF 1996

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 406, S. 1090.

THE PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report. The legislative clerk read as follows:

A bill (S. 1090) to amend section 552 of title 5, U.S. Code (commonly known as the Freedom of Information Act) to provide for public access to information in an electronic format, and for other purposes.
The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary, with an amendment to strike out after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Electronic Freedom of Information Improvement Act of 1996".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the purpose of the Freedom of Information Act is to assure that the Federal Government shall enhance agency operations under this section;

(2) in the second sentence by striking out "or staff manual or instruction" and inserting in lieu thereof "staff manual, instruction, or index or copies of records, which are made available under paragraph (3) of this subsection"; and

(3) in the third sentence by inserting "and the extent of such deletion shall be indicated on the portion of the record which is made available or reprinted at the place in the record where such deletion was made" after "explained fully in writing".

SEC. 3. PUBLIC INFORMATION AVAILABILITY.

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

(1) in the matter before subparagraph (A) by inserting "including, by computer telecommunication, or if computer telecommunication means are not available, by other electronic means," after "Federal Register";

(2) by striking out "and" at the end of subparagraph (D);

(3) by redesignating subparagraph (E) as subparagraph (D);

(4) by inserting after subparagraph (D) the following new subparagraph:

(E) a complete list of all statutes that the agency or general counsel relies upon to authorize the agency to withhold information under subsection (b)(2) of this section, together with a specific description of the scope of the information covered, and the

SEC. 4. MATERIALS MADE AVAILABLE IN ELECTRONIC FORMAT AND INDEX OF RECORDS MADE AVAILABLE TO THE PUBLIC.

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

(1) in the matter before subparagraph (A) by inserting "including, within 1 year after the date of the enactment of the Electronic Freedom of Information Improvement Act of 1996, by computer telecommunication means, except that such records are not usually maintained but are available in such form or format.

SEC. 5. HONORING FORMAT REQUESTS.

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

(1) inserting "(A)" after "(3)";

(2) inserting "(A) through (F)

SEC. 6. DELAYS.

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

(iii) If at an agency's request, the Comptroller General determines that the agency normally has either provided responsive documents or denied requests in substantial compliance with the requirements of paragraph (6)(A), one-half of the fees collected under this section shall be credited to the collecting agency and expended to offset the costs of complying with this section through staff development and acquisition of computer processing resources. The remaining fees collected under this section shall be remitted to the Treasury as general funds or miscellaneous receipts.

(b) DEMONSTRATION OF CIRCUMSTANCES FOR DELAY.—Section 552(a)(4)(E) of title 5, United States Code, is amended by—

(1) by inserting "(i)" after "(E)"; and

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

(ii) Any agency not in compliance with the time limits set forth in this subsection shall demonstrate to a court that the delay is warranted under the circumstances set forth under paragraph (6) (B) or (C) of this subsection.

(c) PERIOD FOR AGENCY DECISION TO COMPLY WITH REQUESTS FOR EXPEDITED ACCESS.—Section 552(a)(5)(A) is amended by striking out "ten days" and inserting in lieu thereof "twenty days."
"(iii) The burden of demonstrating a compelling need by a person making a request for expedited access may be met by a showing, which such person certifies under penalty of perjury to be true and correct to the best of such person's knowledge and belief, that failure to obtain the requested records within the timeframe for expedited access under this paragraph would:

(I) result in a substantial and compelling need for such information because of imminent danger to the life or safety of an individual or individuals;

(II) result in a substantial and compelling need for such information because of imminent economic or security disaster to the United States or a state or political subdivision thereof; or

(III) affect public assessment of the nature and propriety of actual or alleged governmental actions that are the subject of widespread, contemporaneous media coverage.

SEC. 7. COMPUTER REDACTION.

Section 552(b) of title 5, United States Code, is amended by inserting before the period in the sentence following paragraph (9) the following:

", and the extent of such deletion shall be indicated on the released portion of the record at the place in the record where such deletion was made".

SEC. 8. DEFINITIONS.

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

"(f) For purposes of this section—

(A) the term 'agency' as defined in section 551(1) of this title includes any executive department, military 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 independent regulatory agencies;

(B) the term 'record' means all books, papers, maps, photographs, machine-readable materials, or other information or documentary materials, regardless of physical form or characteristics, but does not include—

(A) library and museum material acquired or received and preserved solely for reference or exhibition purposes;

(B) extra copies of documents preserved solely for reference; and

(C) stocks of publications and of processed documents; or

(D) computer software which is obtained by an agency under a licensing agreement prohibiting its replication or distribution; and

"(C) the term 'search' means a manual or automated review of agency records that is conducted for the purpose of locating those records which are responsive to a request under subsection (a)(3)(A) of this section.".

Mr. McCAIN. Mr. President, I ask unanimous consent that the committee amendment, which the bill has been read the third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill appear at this point in the Record.

The committee amendment was agreed to.

The bill (S. 1090), as amended, was read the third time, and passed.

Mr. LEAHY. Mr. President: I am delighted that the Senate has today passed important amendments to the Freedom of Information Act that will bring this statute into the electronic age. Passage of these amendments are a tremendous way to mark the 30th anniversary of the Freedom of Information Act.

The FOIA has served the country well in maintaining the right of Americans to know what their government is doing—or not doing. As President Johnson said in 1966, when he signed the Freedom of Information Act into law:

This legislation springs from one of our most essential principles: A democracy works best when the people have all the information that the security of the Nation permits.

Just over the past few months, records released under the FOIA have revealed FAA actions against ValueJet before the May 11 crash in the Everglades, the government's treatment of South Vietnamese commandos who fought for the United States in the early 1960's, the high salaries paid to independent counsels, the unsafe lead content of D.C. tap water, and the types of tax cases that the IRS recommends for criminal prosecution.

In the 30 years since the Freedom of Information Act became law, technology has dramatically altered the way government handles and stores information. Gone are the days when agency records were solely on paper, stuffed into file cabinets. Instead, agencies depend on personal computers, computer databases and electronic storage media, such as CD-ROM's, to carry out their mission.

The time is long overdue to update this law to address new threats related to the increasing use of computers by federal agencies. Computers are just as ubiquitous in Federal agencies offices as in the private sector. We need to make clear that the FOIA is not just a right to know what's on paper law, but that it applies equally to electronic records.

That is why Senator BROWN, Senator KERRY, and I, with the strong support of many library, press, civil liberties, consumer and research groups, have pushed for passage of the Electronic FOIA bill. The Senate recognized the need to update the FOIA in the last Congress by passing an earlier version of this bill.

This legislation takes steps so that agencies use technology to make government more open and accountable to its citizens. Storing government information on computers should actually make it easier to provide public access to information in more meaningful formats. For example, people with sight or hearing impairments can use special computer programs to translate electronic information into braille or large print or synthetic speech output.

Electronic records also make it possible to provide dial-up access to any citizen who wants to access computer networks, such as the Internet. Those Americans living in the remotest rural area in Vermont, or in a distant State far from Federal agencies' public reading rooms here in Washington, DC, should be able to use computer networks to get direct access to the warehouse of unclassified information stored in government computer banks.

The explosion of the Internet adds enormously to the need for clarification of the status of electronic government information and the legal standing of the significance of this legislation for citizen access. These amendments to the FOIA will encourage federal agencies to use the Internet to increase access to government records for all Americans.

Ensuring public access to electronic government records is not just important for broader citizen access. Information is a valuable commodity and the Federal Government is probably the largest single producer and repository of accurate information. This government information is a national resource that commercial companies pay for under the FOIA, add value to, and then sell—creating jobs and generating revenue in the process. It is important for our economy and for American competitiveness that fast, easy access to that resource in electronic form be available.

The electronic FOIA bill would contribute to our information economy.

I would like to highlight some of how this bill would accomplish. First, sped up FOIA requests would provide records in a requested format whenever possible.

Second, the bill would encourage agencies to increase on-line access to government records that agencies currently make available in their reading rooms. These records would include copies of records that are the subject of repeated FOIA requests.

Finally, the bill would address the biggest single complaint of people making FOIA requests: delays in getting a response. I understand that at the FBI, the delays can stretch to over four years. Because of these delays, writers, students and teachers and others working under time deadlines have been frustrated in using FOIA to meet their research needs. Long delays in access can mean no access at all.

The current time limits in the FOIA are a joke. Few agencies actually respect the 10-day limit required in the law. Such routine failure to comply with the statutory time limits is bad for morale in the agencies and breeds contempt by citizens who expect government officials to abide by, not routinely break, the law.

I appreciate the budget and resource constraints under which agencies are operating. We have made every effort in this bill to make sure it works for both agencies and requestors. Some agencies, particularly those with huge backlogs of FOIA requests resulting in delays of up to four years for an agency response, are concerned that the bill requires backlogs as an automatic excuse to ignore the time limits. We should not give agencies an incentive to create backlogs. Agencies will have to show that they are taking steps to reduce their backlogs before they qualify for additional time to respond to a FOIA request.

While increased computer access to government records may necessitate an initial outlay of money and effort, as more information is made available on-line, the intensive task of physically searching and producing documents should be reduced. The net result should be increased efficiency in
satisfying agency FOIA obligations, reduced paperwork burdens, reduced errors and better service to the public.

The Electronic FOIA bill should help agencies comply with the law’s time limits by doubling the ten-day time limit and a more flexible time period for responding to FOIA requests, making more information available on-line, requiring the use of better record management techniques, such as multi-track processing, and providing better access to requestors who demonstrate a compelling need for a speedy response.

All these steps, and others in the bill, may not provide a total cure but should help reduce the endemic delay problems.

This has generally been a very partisan Congress. I commend members of the House Government Reform and Oversight Subcommittee on Government Management, Information and Technology, and, in particular, Chair-
manship of this bill, the search of computer media and formats, including public networks, to make government information more easily accessible and useful to the public.

This bill would help achieve this goal.

This section of the bill would require that materials, such as agency opinions and policy statements, which an agency must “make available for public inspection and copying,” pursuant to Section 552(a)(2), and which are created on or after November 1, 1996, be made available by computer tele-

The bill defines “search” as a “review, manually or by automated means, of ‘agency records for the purpose of locating those records responsive to a request.’” Under the FOIA, an agency is not required to create documents that do not exist. Computer records may be located in many electronic forms, such as (a)(2) materials, which are made available for public inspection and copying, as a(2) materials, which are made available for public inspection and copying, as a(2) materials, which are made available for public inspection and copying, as

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Multitrack Processing.—An agency commitment to process requests on a first-come, first-served basis has been held to satisfy the requirement that an agency exercise due diligence within each backlog of FOIA requests. Processing requests solely on a FIFO basis, however, may result in lengthy delays for simple requests due to the prior receipt of complex requests, and in increased agency backlogs. The bill would permit agencies to promulgate regulations implementing multitrack processing systems to clearly demonstrate that they should exercise due diligence within each track. Agencies would also be permitted to provide the requester with a list of tracks that limit the scope of their requests in order to qualify for processing under a faster track.

Unusual Circumstances.—The FOIA currently provides in “unusual circumstances” to extend for a maximum of 10 working days the statutory time limit for responding to a FOIA request, upon written notice to the requester setting forth the reason for such extension. The FOIA enumerates various reasons for such an extension, including the need to search for and collect records from multiple offices, the volume of records requested, and the need for consultation among components of an agency.

For unusually burdensome FOIA requests, an extra ten days still provides insufficient time for an agency to respond. The bill would implement a mechanism to extend such requests, which an agency would not be able to process even with an extra ten days. For such requests, the bill would require an agency to inform the requester that the request cannot be processed within statutory time limits and provide an opportunity for the requester to limit the scope of the request, be processed within statutory time limits, or arrange with the agency an agreed upon time frame for processing the request. In the event that the requester refuses to reasonably limit the request’s scope or agree upon a time frame and then seeks judicial review, that refusal shall be considered as a factor in determining whether “exceptional circumstances” exist under subparagraph (8)(C).

Requests should not be able to make multiple requests merely to avoid the procedures required in unusual circumstances. To avoid the potential problem of multiple requests for purely circumvention purposes, the bill would permit agencies to provide procedures to aggregate such requests made by the same requester, or group of requesters acting in concert, if the agency reasonably believes that such requests actually constitute a single request, which would otherwise satisfy the unusual circumstances specified in subparagraph (8)(B)(iii) of the bill. The bill also requires that requests must involve clearly related matters. Agencies are directed not to aggregate multiple requests involving unrelated matters.

Exceptional Circumstances.—The FOIA provides that in “exceptional circumstances,” a court may extend the statutory time limits for an agency to respond to a FOIA request, but does not specify what those circumstances are. The bill would clarify that routine, predictable agency backlogs for FOIA requests do not constitute exceptional circumstances, nor do requests for the same information on the computer unless the agency demonstrates reasonable progress in reducing its backlog of pending requests. This is consistent with the holding in Open Right by Open Right by Open Right by Open Right v. Metropolitan Washington Airports Authority, 547 F.2d 605 (D.C. Cir. 1976), where the court held that an unforeseen 3,000 per cent increase in FOIA requests in one year, which was not attributable to exigency with insufficient resources to process those requests in a timely manner, can constitute “exceptional circumstances.” Routine backlogs of requests for records under the FOIA should not give agencies an automatic excuse to ignore the time limits, since agencies do not literally clear up those backlogs. The bill also makes clear that those agencies with backlogs must make efforts to reduce that backlog before the “exceptional circumstances” will be found to exist.

Section 8. Time Period for Agency Consideration of Requests. The bill contains provisions designed to ensure that both agencies and requesters for more workable time periods for the processing of FOIA requests.

Expeditied Access.—The bill would require agencies to promulgate regulations authorizing expedited access to requesters who demonstrate a “compelling need” for a speedy response. The agency would be required to make a determination whether or not to grant the request for expedited access within ten days and then notify the requester of the decision. The requester would bear the burden of showing that expedition is appropriate by certifying in a statement that a “compelling need” is true and correct to the best of the requester’s knowledge and belief. The bill would permit only limited judicial review based on the failure to make the determination as to whether to grant expedited access.

Moreover, federal courts will not have jurisdiction to review an agency’s denial of an expedited response, unless that action has already provided a complete response to the request for records.

A “compelling need” warranting expedited access would be demonstrated by showing that failure to obtain the records within an expedited time frame would: (1) pose an imminent threat to an individual’s life or physical safety; (2) induce a public official to disclose information which may be made by a person primarily engaged in disseminating information, urgent to the public concerning actual or alleged federal government activity; or (3) be in the interest of national security or another type of “exceptional circumstances.”

Expansion of Agency Response Time. —To assist federal agencies in reducing their backlog of FOIA requests, the bill would double the time limit for an agency to respond to FOIA requests from ten days to twenty working days. Attorney General Janet Reno has acknowledged the inability of most federal agencies to comply with the ten-day rule “as a matter of fact.” The request would be made by a person primarily engaged in disseminating information, urgent to the public concerning actual or alleged federal government activity. It would be in the interest of national security or another type of “exceptional circumstances.”

The bill would require agencies to indicate the volume of any denied material and the need for which information on the computer telecommunications means. If an agency does not have the means established to make the report available on-line, then the report should be made available in some other electronic form. The Attorney General is directed to make the report available at a single electronic access point, and advise certain Members of Congress that such reports are available.

The Attorney General and the Director of the Office of Management and Budget are required to develop reporting guidelines for the annual reports by October 1, 1997.

Section 11. Reference Materials and Guides. The bill would require agencies to make publicly available, upon request, reference material or a grade for requesting record information in electronic format. This guide would include an index and description of all major information systems of an agency’s handbook for obtaining various types and categories of public information from an agency.

Section 12. Effective Date. To provide agencies an opportunity to implement the requirements of the Act, Sections 7 and 8 of the bill concerning multitrack and expedited processing, unusual and exceptional circumstances, the doubling of the statutory time period for responding to FOIA requests, and estimating the amount of material to which access is denied, will take effect 180 days after the date of enactment. The remainder of the Act will become effective one year after the date of enactment.

COMPREHENSIVE METHAMPHETAMINE CONTROL ACT OF 1996

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 596, S. 1963, which was introduced earlier by Senator HATCH.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report. A bill (S. 1963) to prevent the illegal manufacturing and use of methamphetamine is as follows:

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. HATCH. Mr. President, a number of us have spent countless hours trying to devise a plan to turn back the dreadful tide of methamphetamine abuse which is now beginning to flow westward across the United States, threatening to engulf both cities and rural areas.

We have now crafted such a plan, a bipartisan plan which meets those goals, we have introduced as S. 1965, the Comprehensive Methamphetamine Control Act of 1996. I rise to ask my colleagues’ support for this legislation and for the amendments to that bill that have allowed it to win unanimous support.