Last week, Mayor Rudolph W. Giuliani of New York announced that he and his staff had recently become aware of section 434 of the new welfare law, and planned to challenge it in court.

An alien who witnesses a crime should feel free to report it to the police without fear of being deported. Just as an alien ought to be able to get emergency medical attention without fear of deportation. Mr. President, section 434 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 poses a serious threat to health and safety in New York City and elsewhere. It should be repealed.●

## 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 Boissoneau, 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 supports a number of organizations 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 Boissoneau has received the New Hampshire High Technology Council's Entrepreneur of the Year Award. It is through his leadership and inspiration that has caused Electropac to rise to be the success that it is today. Raymond Boissoneau places the responsibility of the company with the employees, which adds 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 such a competitive market 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 Boissoneau 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 5, 1996.

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 Crestwood Memorial American Legion Post 777, now the Joseph L. Frank Memorial 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.

But 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 all 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 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. PUBLIC INFORMATION AVAILABILITY.***

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

*(1) in the matter before subparagraph (A) by inserting ''including by computer telecommunications, or if computer telecommunications 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 (F); and*

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

*''(E) a complete list of all statutes that the agency head or general counsel relies upon to authorize the agency to withhold information under subsection (b)(3) of this section, together with a specific description of the scope of the information covered; and''.*

***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 telecommunications, or if computer telecommunications means are not available, by other electronic means,'' after ''copying'';*

*(2) in subparagraph (B) by striking out ''and'' after the semicolon;*

*(3) by adding after subparagraph (C) the following new subparagraphs:*

*''(D) an index of all major information systems containing agency records regardless of form or format unless such an index is provided as otherwise required by law;*

*''(E) a description of any new major information system with a statement of how such system shall enhance agency operations under this section;*

*''(F) an index of all records which are made available to any person under paragraph (3) of this subsection; and*

*''(G) copies of all records, regardless of form or format, which because of the nature of their subject matter, have become or are likely to become the subject of subsequent requests for substantially the same records under paragraph (3) of this subsection;'';*

*(4) 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*

*(5) 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 published at the place in the record where such deletion was made'' after ''explained fully in writing''.*

***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)'' after ''under paragraphs (1) and (2)'';*

*(3) striking out ''(A) reasonably'' and inserting in lieu thereof ''(i) reasonably'';*

*(4) striking out ''(B)'' and inserting in lieu thereof ''(ii)''; and*

*(5) adding at the end thereof the following new subparagraphs:*

*''(B) An agency shall, as requested by any person, provide records in any form or format in which such records are maintained by that agency.*

*''(C) An agency shall make reasonable efforts to search for records in electronic form or format and provide records in the form or format requested by any person, including in an electronic form or format, even where such records are not usually maintained but are available in such form or format.''.*

***SEC. 6. DELAYS.***

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

*''(viii) If at an agency's request, the Comptroller General determines that the agency annually 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 additional request 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—*

*(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 REQUEST.—Section 552(a)(6)(A)(i) is amended by striking out ''ten days'' and inserting in lieu thereof ''twenty days''.*

*(d) AGENCY BACKLOGS.—Section 552(a)(6)(C) of title 5, United States Code, is amended by inserting after the second sentence the following: ''As used in this subparagraph, for requests submitted pursuant to paragraph (3) after the date of the enactment of the Electronic Freedom of Information Improvement Act of 1996, the term 'exceptional circumstances' means circumstances that are unforeseen and shall not include delays that result from a predictable workload, including any ongoing agency backlog, in the ordinary course of processing requests for records.''.*

*(e) NOTIFICATION OF DENIAL.—The last sentence of section 552(a)(6)(C) of title 5, United States Code, is amended to read: ''Any notification of any full or partial denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request and the total number of denied records and pages considered by the agency to have been responsive to the request.''.*

*(f) MULTITRACK FIFO PROCESSING AND EXPEDITED ACCESS.—Section 552(a)(6) of title 5, United States Code, is amended by adding at the end thereof the following new subparagraphs:*

*''(D)(i) Each agency shall adopt a first-in, first-out (hereafter in this subparagraph referred to as FIFO) processing policy in determining the order in which requests are processed. The agency may establish separate processing tracks for simple and complex requests using FIFO processing within each track.*

*''(ii) For purposes of such a multitrack system—*

*''(I) a simple request shall be a request requiring 10 days or less to make a determination on whether to comply with such a request; and*

*''(II) a complex request shall be a request requiring more than 10 days to make a determination on whether to comply with such a request.*

*''(iii) A multitrack system shall not negate a claim of due diligence under subparagraph (C), if FIFO processing within each track is maintained and the agency can show that it has reasonably allocated resources to handle the processing for each track.*

*''(E)(i) Each agency shall promulgate regulations, pursuant to notice and receipt of public comment, providing that upon receipt of a request for expedited access to records and a showing by the person making such request of a compelling need for expedited access to records, the agency determine within 10 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such a request, whether to comply with such request. A request for records to which the agency has granted expedited access shall be processed as soon as practicable. A request for records to which the agency has denied expedited access shall be processed within the time limits under paragraph (6) of this subsection.*

*''(ii) A person whose request for expedited access has not been decided within 10 days of its receipt by the agency or has been denied shall be required to exhaust administrative remedies. A request for expedited access which has not been decided may be appealed to the head of the agency within 15 days (excepting Saturdays, Sundays, and legal public holidays) after its receipt by the agency. A request for expedited access that has been denied by the agency may be appealed to the head of the agency within 5 days (excepting Saturdays, Sundays, and legal public holidays) after the person making such request receives notice of the agency's denial. If an agency head has denied, affirmed a denial, or failed to respond to a timely appeal of a request for expedited access, a court which would have jurisdiction of an action under paragraph (4)(B) of this subsection may, upon complaint, require the agency to show cause why the request for expedited access should not be granted, except that such review shall be limited to the record before the agency.*

*''(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) threaten an individual's life or safety;*

*''(II) result in the loss of substantial due process rights and the information sought is not otherwise available in a timely fashion; 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—*

*''(1) 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 agency;*

*''(2) 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 convenience of reference;*

*''(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*

*''(3) 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 be agreed to, the bill be deemed 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 deemed 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 in a CIA-sponsored army 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 issues related to the increased use of computers by federal agencies. Computers are just as ubiquitous in Federal agency 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 accessible 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 can use 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 records under the FOIA and 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 what this bill would accomplish. First, it would require agencies to 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 put in their public 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 respond to FOIA requests within 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 removes 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 online, the labor 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 to give agencies a more realistic 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 expedited 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, Chairman STEPHEN HORN, ranking member CAROLYN MALONEY, and Representatives RANDY TATE and COLLIN PETERSON, for rising above the partisan fray and moving this legislation in the House. They saw this bill for what it is: a good government issue, not a partisan one. We have worked diligently to sort out any differences in the House and Senate bills, and we can all be proud of the final product reflected in both the Substitute amendment to S. 1090 and the final version of the bill passed by the House.

Even as we have worked on this legislation, new issues about the coverage of the FOIA have surfaced. I refer specifically to the D.C. Court of Appeals case, decided on August 2, 1996, that the National Security Council is not an ''agency'' subject to the FOIA, despite the fact that the NSC has complied with the FOIA for years under both Republican and Democratic Presidents. Litigation on this matter continues and the case may now go to the U.S. Supreme Court. Clarification of which offices within the White House are ''agencies'' subject to the FOIA may be a matter requiring congressional attention in the next Congress.

As the Federal Government increasingly maintains its records in electronic form, we need to make sure that this information is available to citizens on the same basis as information in paper files. Doing so will fulfill the promise first made thirty years ago in the FOIA that citizens have a right to know and a right to see the records the government collects with their tax dollars.

I ask unanimous consent that a section-by-section analysis of that amendment be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SUMMARY OF SUBSTITUTE TO LEAHY-BROWN-KERRY ELECTRONIC FOIA IMPROVEMENT ACT (S. 1090)

Section 1. Short Title. The Act may be cited as the ''Electronic Freedom of Information Act Amendments of 1996.''

Section 2. Findings and Purposes. The findings make clear that Congress enacted the FOIA to require Federal agencies to make records available to the public through public inspection and upon the request of any person for any public or private use. The findings also acknowledge the increase in the government's use of computers and exhorts agencies to use new technology to enhance public access to government information.

The purposes of the bill include improving public access to government information and records, and reducing the delays in agencies' responses to requests for records under the Freedom of Information Act.

Section 3. Application of Requirements to Electronic Format Information. The bill would add a definition of ''record'' to the FOIA to address electronically stored information. There is little disagreement that the FOIA covers all government records, regardless of the form in which they are stored by the agency. The Department of Justice agrees that computer database records are agency records subject to the FOIA. See ''Department of Justice Report on 'Electronic Record' Issues Under the Freedom of Information Act,'' S. Hrg. 102–1098, 102d Cong., 2d Sess. 33 (1992). The bill would define ''record'' to ''include any information that would be an agency record subject to the requirements of this section when maintained by an agency in any format, including an electronic format.''

Section 4. Information Made Available in Electronic Format and Indexation of Records. The Office of Management and Budget has directed agencies to use electronic media and formats, including public networks, to make government information more easily accessible and useful to the public. This bill will help effectuate 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 telecommunications, as well as in hard copy, within 1 year after the date of enactment. If an agency does not have the means established to make these materials available on-line, then the information should be made available in some other electronic form, e.g., CD–ROM or disc. The bill would thus treat (a)(2) materials in the same manner as it treats (a)(1) materials, which under the Government Printing Office Electronic Information Access Enhancement Act of 1993 (''GPO Access Act''), Pub. Law 103–40, are required, via the Federal Register, to be made available on-line.

This section would also increase the information made available under Section 552(a)(2). Specifically, agencies would be required to make available for public inspection and copying, in the same manner as other materials required to be made available under Section 552(a)(2), copies of records released in response to FOIA requests that the agency determines have been or will likely be the subject of additional requests. In addition, they would be required to make available a general index of these prior-released records. By December 31, 1999, this index should be made available by computer telecommunications. Since not all individuals have access to computer networks or are near agency public reading rooms, however, requesters would still be able to access previously-released FOIA records through the normal FOIA process.

As a practical matter, this would mean that copies of prior-released records on a popular topic, such as the assassinations of public figures, would subsequently be treated as (a)(2) materials, which are made available for public inspection and copying. This would help to reduce the number of multiple FOIA requests for the same records requiring separate agency responses. Likewise, the general index would assist requesters in determining which records have been the subject of prior FOIA requests. Since requests for prior-released records are more readily identified by the agency without the need for new searches, this index would assist agencies in complying with the FOIA time limits.

This section would make clear that to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes the index and copies of prior-released records.

Finally, this section would require, consistent with the ''Computer Redaction'' requirement in Section 9 of the bill, an agency to indicate the extent of any deletion from the prior-released records and, where technically feasible, to indicate the deletion at the place on the record where the deletion was made. Such indication need not be included when doing so would harm an interest protected by the exemption in subsection (b) under which the deletion was made.

Section 5. Honoring Form or Format Requests. Section 5 would require agencies to assist requesters by providing information in the form requested, including requests for the electronic form of records, if the agency is able to reproduce it in that form. This section would overrule *Dismukes* v. *Department of the Interior*, 603 F. Supp. 760, 763 (D.D.C. 1984), which held that an agency ''has no obligation under the FOIA to accommodate plaintiff's preference [but] need only provide responsive, nonexempt information in a reasonably accessible form.''

This section would also require agencies to make reasonable efforts to search for records that are maintained in electronic form or format, unless such search efforts would significantly interfere with the operation of the agency's automated information systems.

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 located in a database rather than in a file cabinet may require the application of codes or some form of programming to retrieve the information. Under the definition of ''search'' in the bill, the search of computerized records would not amount to the creation of records. Otherwise, it would be virtually impossible to get records that are maintained completely in an electronic form, like computer database information, because some manipulation of the information likely would be necessary to search the records.

Section 6. Standard for Judicial Review. Section 6 would require a court to accord substantial weight to an agency's determination as to both the technical feasibility of redacting nonreleasable material at the place on the record where the deletion was made, under paragraphs (2)(C) and subsection (b), as amended by this Act, and the reproducibility of the requested form or format of records, under paragraph (3)(B), as amended by this Act. Such deference is warranted since an agency is familiar with the availability of technical resources within the agency to process, redact and reproduce records.

Section 7. Ensuring Timely Response to Requests. The bill addresses the single most frequent complaint about the operation of the FOIA, namely, agency delays in responding to FOIA requests by encouraging agencies to employ better records management systems.

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 in dealing with backlogs of FOIA requests. Processing requests solely on a FIFO basis, however, may result in lengthy delays for simple requested due to the prior receipt and processing of complex requests, and in increased agency backlogs. The bill would permit agencies to promulgate regulations implementing multitrack processing systems, and make clear that agencies should exercise due diligence within each track. Agencies would also be permitted to provide requesters with the opportunity to limit the scope of their requests in order to qualify for processing under a faster track.

Unusual Circumstances.—The FOIA currently permits an agency 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 requested 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 provide a mechanism to deal with 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 so that it may 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 (6)(C).

Requesters should not be able to make multiple requests merely to avoid the procedures otherwise applicable in unusual circumstances. To avoid the potential problem of multiple requests for purely circumvention purposes, the bill would permit agencies to promulgate regulations to aggregate 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 (6)(B)(iii) of the bill. The aggregated 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 for purposes of the Act, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests. This is consistent with the holding in *Open America* v. *Watergate Special Prosecution Force,* 547 F.2d 605 (D.C. Cir. 1976), where the court held that an unforeseen 3,000 percent increase in FOIA requests in one year, which created a massive backlog in an agency 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 this provides a disincentive for agencies to clear up those backlogs. The bill also makes clear that those agencies with backlogs must make efforts to reduce that backlog before exceptional circumstances will be found to exist.

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

Expedited 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 the demonstration of 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 same record before the agency of the determination whether to grant expedited access. Moreover, federal courts will not have jurisdiction to review an agency's denial of an expedited access request if the agency 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: (I) pose an imminent threat to an individual's life or physical safety; 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.'' Agencies are also permitted to provide for expedited processing in other cases as they may determine.

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 days. Attorney General Janet Reno has acknowledged the inability of most federal agencies to comply with the ten-day rule ''as a serious problem'' stemming principally from ''too few resources in the face of too heavy a workload.''

Estimation of Matter Denied.—The bill would require agencies when denying a FOIA request to make reasonable efforts to estimate the volume of any denied material and provide that estimate to the requester, unless doing so would harm an interest protected by an exemption pursuant to which the denial is made.

Section 9. Computer Redaction. The ease with which information on the computer may be redacted makes the determination of whether a few words or 30 pages have been withheld by an agency at times impossible. The bill would require agencies to indicate deletions of the released portion of the record and, where technically feasible, to indicate the deletion at the place on the record where the deletion was made, unless including that indication would harm an interest protected by an exemption pursuant to which the deletion is made.

Section 10. Report to the Congress. This section would add to the information an agency is already required to publish as part of its annual report. Specifically, agencies would be required to publish in its annual reports information regarding denials of requested records, appeals, a complete list of statutes upon which the agency relies to withhold information under Section 552(b)(3), which exempts information that is specifically exempted from disclosure by other statutes, the number of backlogged FOIA requests, the number of days taken to process requests, the amount of fees collected, and staff devoted to processing FOIA requests. The annual reports would be required to be made available to the public, including by 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 required to make each 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 records or information from an agency. This guide would include an index and description of all major information systems of an agency, and a handbook for obtaining various types and categories of public information from an agency.

Section 12. Effective Date. To provide agencies time to implement new requirements under 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, and 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. 566, S. 1965, which was introduced earlier by Senator HATCH.

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

The clerk will report.

A bill (S. 1965) to prevent the illegal manufacturing and use of methamphetamine.

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 near unanimous support.