

## ***Electronic Freedom of Information Act Amendments of 1996***

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One Hundred Fourth Congress

of the

United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Wednesday,

the third day of January, one thousand nine hundred and ninety-six

An Act

To amend section 552 of title 5, United States Code, popularly known as the Freedom of Information Act, to provide for public access to information in an electronic format, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

### **SECTION 1. SHORT TITLE.** ➡

This Act may be cited as the `Electronic Freedom of Information Act Amendments of 1996'.

### **SEC. 2. FINDINGS AND PURPOSES.** ➡

(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 to read as follows:

`(f) For purposes of this section, the term--

`(1) `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; and

`(2) `record' and any other term used in this section in reference to information includes 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.'

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

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

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

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

(3) by inserting after the third sentence the following: 'If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made.';

(4) in subparagraph (B), by striking 'and' after the semicolon;

(5) by inserting after subparagraph (C) the following:

'(D) copies of all records, regardless of form or format, which have been released to any person under paragraph (3) and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records; and

'(E) a general index of the records referred to under subparagraph (D);';

(6) by inserting after the fifth sentence the following: 'Each agency shall make the index referred to in subparagraph (E) available by computer telecommunications by December 31, 1999.'; and

(7) by inserting after the first sentence the following: 'For records created on or after November 1, 1996, within one year after such date, each agency shall make such records available, including by computer telecommunications or, if computer telecommunications means have not been established by the agency, by other electronic means.'

#### **SEC. 5. 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 '(A)' the second place it appears and inserting '(i)';

(3) by striking '(B)' and inserting '(ii)'; and

(4) by adding at the end the following new subparagraphs:

'(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 reproducible 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, except when such efforts would significantly interfere with the operation of the agency's automated information system.

`(D) For purposes of this paragraph, the term `search' means to review, manually or by automated means, agency records for the purpose of locating those records which are responsive to a request.'.

## **SEC. 6. 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: `In addition to any other matters to which a court accords substantial weight, 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. 7. ENSURING TIMELY RESPONSE TO REQUESTS. ➡**

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

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

`(ii) Regulations under this subparagraph may provide a person making a request that does not qualify for the fastest multitrack processing an opportunity to limit the scope of the request in order to qualify for faster processing.

`(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, except as provided in clause (ii) of this subparagraph.

`(ii) With respect to a request for which a written notice under clause (i) extends the time limits prescribed under clause (i) of subparagraph (A), the agency shall notify the person making the request if the request cannot be processed within the time limit specified in that

clause and shall provide the person an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. Refusal by the person to reasonably modify the request or arrange such an alternative time frame shall be considered as a factor in determining whether exceptional circumstances exist for purposes of subparagraph (C).

`(iii) 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 establishments that are separate from the office processing the request;

`(II) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

`(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.

`(iv) Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for the aggregation of certain requests by the same requestor, or by a group of requestors 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 this subparagraph, and the requests involve clearly related matters. Multiple requests involving unrelated matters shall not be aggregated.'

(c) 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, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests.

`(iii) Refusal by a person to reasonably modify the scope of a request or arrange an alternative time frame for processing a request (or a modified request) under clause (ii) after being given an opportunity to do so by the agency to whom the person made the request shall be considered as a factor in determining whether exceptional circumstances exist for purposes of this subparagraph.'

## **SEC. 8. TIME PERIOD FOR AGENCY CONSIDERATION OF REQUESTS.**



(a) EXPEDITED PROCESSING- Section 552(a)(6) of title 5, United States Code (as amended by section 7(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 clause (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) An agency shall process as soon as practicable any request for records to which the agency has granted expedited processing under this subparagraph. Agency action to deny or affirm denial of a request for expedited processing pursuant to this subparagraph, and failure by an agency to respond in a timely manner to such a request 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) A district court of the United States shall not have jurisdiction to review an agency denial of expedited processing of a request for records after the agency has provided a complete response to the request.

`(v) 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 primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

`(vi) A demonstration of a compelling need by a person making a request for expedited processing shall be made by a statement certified by such person to be true and correct to the best of such person's knowledge and belief.'.

(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'.

(c) ESTIMATION OF MATTER DENIED- Section 552(a)(6) of title 5, United States Code (as amended by section 7 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 shall provide any such estimate to the person making the request, unless providing such estimate would harm an interest protected by the exemption in subsection (b) pursuant to which the denial is made.'.

## **SEC. 9. COMPUTER REDACTION.** ➡

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

## **SEC. 10. REPORT TO THE CONGRESS.** ➡

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

`(e)(1) On or before February 1 of each year, each agency shall submit to the Attorney General of the United States a report which shall cover the preceding fiscal year and which shall include--

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

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

`(ii) a complete list of all statutes that the agency relies upon to authorize the agency to withhold information under subsection (b)(3), a description of whether a court has upheld the decision of the agency to withhold information under each such statute, and a concise description of the scope of any information withheld;

`(C) the number of requests for records pending before the agency as of September 30 of the preceding year, and the median number of days that such requests had been pending before the agency as of that date;

`(D) the number of requests for records received by the agency and the number of requests which the agency processed;

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

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

`(G) the number of full-time staff of the agency devoted to processing requests for records under this section, and the total amount expended by the agency for processing such requests.

`(2) Each agency shall make each such report available to the public including by computer telecommunications, or if computer telecommunications means have not been established by the agency, by other electronic means.

`(3) The Attorney General of the United States shall make each report which has been

made available by electronic means available at a single electronic access point. The Attorney General of the United States shall notify the Chairman and ranking minority member of the Committee on Government Reform and Oversight of the House of Representatives and the Chairman and ranking minority member of the Committees on Governmental Affairs and the Judiciary of the Senate, no later than April 1 of the year in which each such report is issued, that such reports are available by electronic means.

`(4) The Attorney General of the United States, in consultation with the Director of the Office of Management and Budget, shall develop reporting and performance guidelines in connection with reports required by this subsection by October 1, 1997, and may establish additional requirements for such reports as the Attorney General determines may be useful.

`(5) The Attorney General of the United States shall submit an annual report on or before April 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subparagraphs (E), (F), and (G) of subsection (a)(4). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.'

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

Section 552 of title 5, United States Code, is amended by adding after subsection (f) the following new subsection:

`(g) The head of each agency shall prepare and make publicly available upon request, reference material or a guide for requesting records or information from the agency, subject to the exemptions in subsection (b), including--

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

`(2) a description of major information and record locator systems maintained by the agency; and

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

## **SEC. 12. EFFECTIVE DATE.**

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

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

Speaker of the House of Representatives.

Vice President of the United States and

President of the Senate.