

**Calendar No. 594**

103D CONGRESS  
2D SESSION

**S. 1782**

**A BILL**

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

AUGUST 22 (legislative day, AUGUST 18), 1994

Reported with an amendment and an amendment to the title

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 22, 1993

Mr. LEAHY (for himself and Mr. BROWN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

AUGUST 22 (legislative day, AUGUST 18), 1994

Reported by Mr. BIDEN, with an amendment and an amendment to the title  
[Strike out all after the enacting clause and insert the part printed in *italic*]

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## A BILL

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

1        *Be it enacted by the Senate and House of Representa-*  
2        *tives of the United States of America in Congress assembled,*

3        **SECTION 1. SHORT TITLE.**

4        This Act may be cited as the “~~Electronic Freedom~~  
5        of Information Improvement Act of 1993”.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 ~~(a) FINDINGS.—The Congress finds that—~~

3 ~~(1) since the enactment of the Freedom of In-~~  
4 ~~formation Act in 1966, and the amendments enacted~~  
5 ~~in 1974 and 1986, the Freedom of Information Act~~  
6 ~~has been a valuable means through which any per-~~  
7 ~~son can learn how the Federal Government operates;~~

8 ~~(2) the Freedom of Information Act ensures ac-~~  
9 ~~cess to information held by the Government, which~~  
10 ~~is a valuable national resource;~~

11 ~~(3) the Freedom of Information Act has led to~~  
12 ~~the disclosure of waste, fraud, abuse, and wrong-~~  
13 ~~doing in the Federal Government;~~

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

17 ~~(5) Government agencies increasingly use com-~~  
18 ~~puters to conduct agency business and to store pub-~~  
19 ~~licly valuable information; and~~

20 ~~(6) Government agencies should use new tech-~~  
21 ~~nology to enhance public access to information.~~

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

23 ~~(1) foster democracy by ensuring access to pub-~~  
24 ~~lic information;~~

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

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

3           ~~(4)~~ maximize the usefulness of agency records  
4 and information collected, maintained, used, re-  
5 tained, and disseminated by the Federal Govern-  
6 ment.

7 **SEC. 3. PUBLIC INFORMATION AVAILABILITY.**

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

10           (1) in the first sentence by inserting “electroni-  
11 cally by computer telecommunications, and by other  
12 means,” after “Federal Register”;

13           (2) by striking out “and” at the end of sub-  
14 paragraph (D);

15           (3) by redesignating subparagraph (E) as sub-  
16 paragraph (H); and

17           (4) by inserting after subparagraph (D) the fol-  
18 lowing new subparagraphs:

19           “(E) an index of all information retrievable or  
20 stored in an electronic form by the agency;

21           “(F) a description of any new database or  
22 database system with a statement of how such  
23 database or system shall enhance agency operations  
24 under this section;

1           “(G) a complete list of all statutes that the  
2           agency head or general counsel relies upon to au-  
3           thorize the agency to withhold information under  
4           subsection (b)(3) of this section, together with a spe-  
5           cific description of the scope of the information cov-  
6           ered; and”.

7   **SEC. 4. HONORING FORMAT REQUESTS.**

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

10           (1) inserting “(A)” after “(3)”;

11           (2) striking out “(A) reasonably” and inserting  
12           in lieu thereof “(i) reasonably”;

13           (3) striking out “(B)” and inserting in lieu  
14           thereof “(ii)”;

15           (4) adding the following new subparagraphs at  
16           the end thereof:

17           “(B) An agency shall provide records in any form in  
18           which such records are maintained by that agency as re-  
19           quested by any person.

20           “(C) An agency shall make reasonable efforts to pro-  
21           vide records in an electronic form requested by any person,  
22           even where such records are not usually maintained in  
23           such form.”.

1 **SEC. 5. DELAYS.**

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

5 “(viii) If at an agency’s request, the Comptroller Gen-  
6 eral determines that the agency annually has either pro-  
7 vided responsive documents or denied requests in substan-  
8 tial compliance with the requirements of paragraph  
9 (6)(A), one-half of the fees collected under this section  
10 shall be credited to the collecting agency and expended to  
11 offset the costs of complying with this section through  
12 staff development and acquisition of additional request  
13 processing resources. The remaining fees collected under  
14 this section shall be remitted to the Treasury as general  
15 funds or miscellaneous receipts.”.

16 (b) PAYMENT OF REQUESTER’S EXPENSES.—Section  
17 552(a)(4)(E) of title 5, United States Code, is amended  
18 by adding at the end thereof the following new sentence:  
19 “The court may assess against the United States all out-  
20 of-pocket expenses incurred by the requester, and reason-  
21 able attorney fees incurred in the administrative process,  
22 in any case in which the agency has failed to comply with  
23 the time limit provisions of paragraph (6) of this sub-  
24 section.”.

1       (c) CIVIL PENALTY FOR DELAY.—Section  
2 552(a)(4)(E) of title 5, United States Code, is further  
3 amended—

4           (1) by inserting “(i)” after “(E)”; and

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

7       “(ii) Any agency not in compliance with the time lim-  
8 its set forth in this subsection shall demonstrate to a court  
9 that the delay is warranted under the circumstances. It  
10 shall be within the discretion of the court to award the  
11 requester an amount not to exceed \$75 for each day that  
12 the agency’s response to his request exceeded the time lim-  
13 its set forth in paragraph (6) of this section.”.

14       (d) AGENCY BACKLOGS.—Section 552(a)(6)(B) of  
15 title 5, United States Code, is amended in the fourth sen-  
16 tence by inserting “shall not include routine agency back-  
17 logs and” after “ ‘unusual circumstances’ ”.

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

1       (f) ~~EXPEDITED ACCESS.~~—Section 552(a)(6) of title  
2 5, United States Code, is amended by adding at the end  
3 thereof the following new subparagraph:

4       “(D)(i) Each agency shall promulgate regulations,  
5 pursuant to notice and receipt of public comment, provid-  
6 ing that upon receipt of a request for expedited access to  
7 records and a demonstration by the requester of a compel-  
8 ling need for expedited access to records, the agency shall  
9 determine within five days (excepting Saturdays, Sundays,  
10 and legal public holidays) after the receipt of such a re-  
11 quest, whether to comply with such request. No more than  
12 one day after making such determination the agency shall  
13 notify the requester of such determination, the reasons  
14 therefor, and of the right to appeal to the head of the  
15 agency.

16       “(ii) A requester whose request for expedited access  
17 has not been decided within five days of its receipt by the  
18 agency or has been denied shall not be required to exhaust  
19 administrative remedies. An agency failing to comply with  
20 this time limitation shall be subject to the provisions of  
21 paragraph (4)(E)(ii).”.

22 **SEC. 6. COMPUTER REDACTION.**

23       Section 552(b) of title 5, United States Code, is  
24 amended by inserting before the period in the sentence  
25 following paragraph (9): “, and such deletion shall be indi-

1 cated on the released portion of the record at the place  
2 where such deletion was made”.

3 **SEC. 7. DEFINITIONS.**

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

6 “(f) For purposes of this section—

7 “(1) the term ‘agency’ as defined in section  
8 551(1) of this title includes any executive depart-  
9 ment, military department, Government corporation,  
10 Government controlled corporation, or other estab-  
11 lishment in the executive branch of the Government  
12 (including the Executive Office of the President), or  
13 any independent regulatory agency;

14 “(2) the term ‘record’ includes all books, pa-  
15 pers, maps, photographs, data, computer programs,  
16 machine readable materials, and computerized,  
17 digitized, and electronic information, regardless of  
18 the medium by which it is stored, or other documen-  
19 tary materials, regardless of physical form or char-  
20 acteristics; and

21 “(3) the term ‘search’ includes a manual or  
22 automated examination to locate records.”.

23 **SECTION 1. SHORT TITLE.**

24 *This Act may be cited as the “Electronic Freedom of*  
25 *Information Improvement Act of 1994”.*

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) *FINDINGS.*—*The Congress finds that—*

3 (1) *the purpose of the Freedom of Information*  
4 *Act is to require agencies of the Federal Government*  
5 *to make certain agency information available for pub-*  
6 *lic inspection and copying and to establish and en-*  
7 *able enforcement of the right of any person to obtain*  
8 *access to the records of such agencies (subject to statu-*  
9 *tory exemptions) for any public or private purpose;*

10 (2) *since the enactment of the Freedom of Infor-*  
11 *mation Act in 1966, and the amendments enacted in*  
12 *1974 and 1986, the Freedom of Information Act has*  
13 *been a valuable means through which any person can*  
14 *learn how the Federal Government operates;*

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

18 (4) *the Freedom of Information Act has led to*  
19 *the identification of unsafe consumer products, harm-*  
20 *ful drugs, and serious health hazards;*

21 (5) *Government agencies increasingly use com-*  
22 *puters to conduct agency business and to store pub-*  
23 *licly valuable agency records and information; and*

24 (6) *Government agencies should use new tech-*  
25 *nology to enhance public access to agency records and*  
26 *information.*

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

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

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

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

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

11 ***SEC. 3. PUBLIC INFORMATION AVAILABILITY.***

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

14               (1) *in the first sentence by inserting “by com-*  
15 *puter telecommunications, or if computer tele-*  
16 *communications means are not available, by other*  
17 *electronic means,” after “Federal Register”;*

18               (2) *by striking out “and” at the end of subpara-*  
19 *graph (D);*

20               (3) *by redesignating subparagraph (E) as sub-*  
21 *paragraph (F); and*

22               (4) *by inserting after subparagraph (D) the fol-*  
23 *lowing new subparagraph:*

24               “(E) *a complete list of all statutes that the agen-*  
25 *cy head or general counsel relies upon to authorize the*

1       *agency to withhold information under subsection*  
2       *(b)(3) of this section, together with a specific descrip-*  
3       *tion of the scope of the information covered; and”.*

4       **SEC. 4. MATERIALS MADE AVAILABLE IN ELECTRONIC**  
5               **FORMAT.**

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

8               (1) *in the first sentence by inserting “including,*  
9               *within 1 year after the date of the enactment of the*  
10              *Electronic Freedom of Information Improvement Act*  
11              *of 1994, by computer telecommunications, or if com-*  
12              *puter telecommunications means are not available, by*  
13              *other electronic means,” after “copying”;*

14              (2) *in subparagraph (B) by striking out “and”*  
15              *after the semicolon;*

16              (3) *in subparagraph (C) by inserting “and”*  
17              *after the semicolon;*

18              (4) *by adding after subparagraph (C) the follow-*  
19              *ing new subparagraphs:*

20              “(D) *an index of all major information systems*  
21              *containing agency records regardless of form or for-*  
22              *mat unless such an index is provided as otherwise re-*  
23              *quired by law; and*

1           “(E) a description of any new major informa-  
2           tion system with a statement of how such system shall  
3           enhance agency operations under this section;”;

4           (5) in the third sentence by inserting “and the  
5           extent of such deletion shall be indicated on the por-  
6           tion of the record which is made available or pub-  
7           lished at the place in the record where such deletion  
8           was made” after “explained fully in writing”.

9   **SEC. 5. LIST OF RECORDS MADE AVAILABLE TO THE PUBLIC**

10                           **AND HONORING FORMAT REQUESTS.**

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

13           (1) inserting “(A)” after “(3)”;

14           (2) striking out “(A) reasonably” and inserting  
15           in lieu thereof “(i) reasonably”;

16           (3) striking out “(B)” and inserting in lieu  
17           thereof “(ii)”;

18           (4) adding at the end thereof the following new  
19           subparagraphs:

20           “(B) A list of all records which are made available  
21           to any person under this paragraph shall be made available  
22           for public inspection and copying as provided under para-  
23           graph (2) of this subsection. Copies of all such records, re-  
24           gardless of form or format, which because of the nature of  
25           their subject matter, have become or are likely to become

1 *the subject of subsequent requests under this paragraph for*  
2 *substantially the same records, shall be made available for*  
3 *inspection and copying as provided under paragraph (2)*  
4 *of this subsection.*

5       “(C) *An agency shall, as requested by any person, pro-*  
6 *vide records in any form or format in which such records*  
7 *are maintained by that agency.*

8       “(D) *An agency shall make reasonable efforts to pro-*  
9 *vide records in the form or format requested by any person,*  
10 *including in an electronic form or format, even where such*  
11 *records are not usually maintained but are available in*  
12 *such form or format.”.*

13 **SEC. 6. DELAYS.**

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

17       “(viii) *If at an agency’s request, the Comptroller Gen-*  
18 *eral determines that the agency annually has either pro-*  
19 *vided responsive documents or denied requests in substan-*  
20 *tial compliance with the requirements of paragraph (6)(A),*  
21 *one-half of the fees collected under this section shall be cred-*  
22 *ited to the collecting agency and expended to offset the costs*  
23 *of complying with this section through staff development*  
24 *and acquisition of additional request processing resources.*  
25 *The remaining fees collected under this section shall be re-*

1 mitted to the Treasury as general funds or miscellaneous  
2 receipts.”.

3 (b) PAYMENT OF THE EXPENSES OF THE PERSON  
4 MAKING A REQUEST.—Section 552(a)(4)(E) of title 5,  
5 United States Code, is amended by adding at the end there-  
6 of the following new sentence: “The court may assess against  
7 the United States all out-of-pocket expenses incurred by the  
8 person making a request, and reasonable attorney fees in-  
9 curred in the administrative process, in any case in which  
10 the agency has failed to comply with the time limit provi-  
11 sions of paragraph (6) of this subsection.”.

12 (c) DEMONSTRATION OF CIRCUMSTANCES FOR  
13 DELAY.—Section 552(a)(4)(E) of title 5, United States  
14 Code, is further amended—

15 (1) by inserting “(i)” after “(E)”; and

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

18 “(ii) Any agency not in compliance with the time lim-  
19 its set forth in this subsection shall demonstrate to a court  
20 that the delay is warranted under the circumstances set  
21 forth under paragraph (6) (B) or (C) of this subsection.”.

22 (d) PERIOD FOR AGENCY DECISION TO COMPLY WITH  
23 REQUEST.—Section 552(a)(6)(A)(i) is amended by striking  
24 out “ten days” and inserting in lieu thereof “twenty days”.

1           (e) *AGENCY BACKLOGS.*—Section 552(a)(6)(C) of title  
2 5, United States Code, is amended by inserting after the  
3 second sentence the following: “As used in this subpara-  
4 graph, ‘exceptional circumstances’ shall be unforeseen and  
5 shall not include delays that result from a predictable work-  
6 load, including any ongoing agency backlog, in the ordi-  
7 nary course of processing requests for records.”.

8           (f) *NOTIFICATION OF DENIAL.*—The fourth sentence of  
9 section 552(a)(6)(C) of title 5, United States Code, is  
10 amended to read: “Any notification of any full or partial  
11 denial of any request for records under this subsection shall  
12 set forth the names and titles or positions of each person  
13 responsible for the denial of such request and the total num-  
14 ber of denied records and pages considered by the agency  
15 to have been responsive to the request.”.

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

20           “(D)(i) Each agency shall adopt a first-in, first-out  
21 (hereafter in this subparagraph referred to as FIFO) proc-  
22 essing policy in determining the order in which requests  
23 are processed. The agency may establish separate processing  
24 tracks for simple and complex requests using FIFO process-  
25 ing within each track.

1       “(ii) For purposes of such a multitrack system—

2               “(I) a simple request shall be a request requiring  
3       10 days or less to make a determination on whether  
4       to comply with such a request; and

5               “(II) a complex request shall be a request requir-  
6       ing more than 10 days to make a determination on  
7       whether to comply with such a request.

8       “(iii) A multitrack system shall not negate a claim  
9       of due diligence under subparagraph (C), if FIFO process-  
10      ing within each track is maintained and the agency can  
11      show that it has reasonably allocated resources to handle  
12      the processing for each track.

13       “(E)(i) Each agency shall promulgate regulations,  
14      pursuant to notice and receipt of public comment, provid-  
15      ing that upon receipt of a request for expedited access to  
16      records and a showing by the person making such request  
17      of a compelling need for expedited access to records, the  
18      agency shall determine within 5 days (excepting Saturdays,  
19      Sundays, and legal public holidays) after the receipt of such  
20      a request, whether to comply with such request. No more  
21      than one day after making such determination the agency  
22      shall notify the person making a request for expedited access  
23      of such determination, the reasons therefor, and of the right  
24      to appeal to the head of the agency. A request for records  
25      to which the agency has granted expedited access shall be

1 *processed as soon as practicable. A request for records to*  
2 *which the agency has denied expedited access shall be proc-*  
3 *essed within the time limits under paragraph (6) of this*  
4 *subsection.*

5       “(ii) *A person whose request for expedited access has*  
6 *not been decided within 5 days of its receipt by the agency*  
7 *or has been denied shall be required to exhaust administra-*  
8 *tive remedies. A request for expedited access which has not*  
9 *been decided may be appealed to the head of the agency*  
10 *within 7 days (excepting Saturdays, Sundays, and legal*  
11 *public holidays) after its receipt by the agency. A request*  
12 *for expedited access that has been denied by the agency may*  
13 *be appealed to the head of the agency within 2 days (except-*  
14 *ing Saturdays, Sundays, and legal public holidays) after*  
15 *the person making such request receives notice of the agen-*  
16 *cy’s denial. If an agency head has denied, affirmed a denial,*  
17 *or failed to respond to a timely appeal of a request for expe-*  
18 *dited access, a court which would have jurisdiction of an*  
19 *action under paragraph (4)(B) of this subsection may, upon*  
20 *complaint, require the agency to show cause why the request*  
21 *for expedited access should not be granted, except that such*  
22 *review shall be limited to the record before the agency.*

23       “(iii) *The burden of demonstrating a compelling need*  
24 *by a person making a request for expedited access may be*  
25 *met by a showing, which such person certifies under penalty*

1 *of perjury to be true and correct to the best of such person's*  
2 *knowledge and belief, that failure to obtain the requested*  
3 *records within the timeframe for expedited access under this*  
4 *paragraph would—*

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

6 *“(II) result in the loss of substantial due process*  
7 *rights and the information sought is not otherwise*  
8 *available in a timely fashion; or*

9 *“(III) affect public assessment of the nature and*  
10 *propriety of actual or alleged governmental actions*  
11 *that are the subject of widespread, contemporaneous*  
12 *media coverage.”.*

13 **SEC. 7. COMPUTER REDACTION.**

14 *Section 552(b) of title 5, United States Code, is amend-*  
15 *ed by inserting before the period in the sentence following*  
16 *paragraph (9): “, and the extent of such deletion shall be*  
17 *indicated on the released portion of the record at the place*  
18 *in the record where such deletion was made”.*

19 **SEC. 8. DEFINITIONS.**

20 *Section 552(f) of title 5, United States Code, is amend-*  
21 *ed to read as follows:*

22 *“(f) For purposes of this section—*

23 *“(1) the term ‘agency’ as defined in section*  
24 *551(1) of this title includes any executive department,*  
25 *military department, Government corporation, Gov-*

1        *ernment controlled corporation, or other establishment*  
2        *in the executive branch of the Government (including*  
3        *the Executive Office of the President), or any inde-*  
4        *pendent regulatory agency;*

5            *“(2) the term ‘record’ means all books, papers,*  
6        *maps, photographs, machine-readable materials, or*  
7        *other information or documentary materials, regard-*  
8        *less of physical form or characteristics; and*

9            *“(3) the term ‘search’ means a manual or auto-*  
10        *mated review of agency records that is conducted for*  
11        *the purpose of locating those records which are re-*  
12        *sponsive to a request under subsection (a)(3)(A) of*  
13        *this section.”.*

Amend the title so as to read: “A bill to amend section 552 of title 5, United States Code (commonly known as the Freedom of Information Act), to provide for public access to information in an electronic format, and for other purposes.”.

○

S 1782 RS—2