

and a showing by the person making such request of a compelling need for expedited access to records, the agency shall determine within 5 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such a request, whether to comply with such request. No more than one day after making such determination the agency shall notify the person making a request for expedited access of such determination, the reasons therefor, and of the right to appeal to the head of the agency. 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 5 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 7 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 2 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; 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.”.

ELECTRONIC FOIA IMPROVEMENT ACT OF 1995 SUMMARY

SECTION 1. SHORT TITLE

The Act may be cited as the Electronic Freedom of Information Improvement Act of 1995.

SECTION 2. FINDINGS AND PURPOSES

This section clarifies 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. This section also acknowledges the increase in the government’s use of computers and specifies that agencies should use new technology to enhance public access to government information.

The purposes of this bill are to improve public access to government information and records, and to reduce the delays in agencies’ responses to requests for records under the Freedom of Information Act.

SECTION 3. PUBLIC INFORMATION AVAILABILITY

This section requires agencies to publish a complete list of statutes that the agency relies upon to withhold information under subsection (b)(3) of the Act. Exemption (b)(3) covers information that is specifically exempted from disclosure by other statutes. These exemptions currently appear in non-FOIA bills and decrease information available to the public without review by the Judiciary Committee. In order to prevent ill-considered exemptions to the access mandate of the FOIA, this section would place specific limitations on an agency’s ability to rely on the authority of (b)(3) exemption statutes when they have not passed through prescribed legislative channels and have not been previously brought to public attention through publication in the Federal Register.

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. (OMB Circular A-130, Revised, July 1994). To effectuate this goal, section 3 of the bill requires that information, such as agency regulations, which under the FOIA must be published in the Federal Register, should be accessible by computer telecommunications. The Government Printing Office Electronic Information Access Enhancement Act of 1993 (“GPO Act”), Pub. Law 103-40, already requires that the Federal Register and certain other congressional publications, be made available online. If an agency cannot make these materials available online, then the information should be made available in some other electronic form, such as CD-ROM or on disc.

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

The first part of this section would require that materials, such as agency opinions and policy statements, which an agency must “make available for public inspection and copying” pursuant to paragraph (a)(2) of Section 552, be made available electronically, as well as in hard copy. If an agency cannot make these materials available online, then the information should be made available in some other electronic form, such as CD-ROM or on disc. The bill would thus treat (a)(2) materials in the same manner as it treats (a)(1) materials, which under the GPO Act are required, via the Federal Register, to be made available online.

The second part of this section would require agencies to publish in the Federal Register an index of all major information systems containing agency records and a description of any new major information system with a statement of how it will enhance agency FOIA operations.

The third part of this section would require that an index of any records released as the result of “requests” for records pursuant to paragraph (a)(3) of Section 552 must be made available for public inspection and copying under paragraph (a)(2). This would assist requesters in determining which records have been the subject of prior FOIA requests. Since requests for records provided in response to prior requests are more readily identified by the agency without the need for new searches, this index will assist agencies in complying with the FOIA time limits.

Under the fourth part of this section, copies of records disclosed in response to FOIA requests that the agency determines have been or will likely be the subject of additional requests, must be made available for public inspection and copying in basically the same manner as the materials required to be made available under paragraph (a)(2). As a practical matter, this would mean that copies of records released in response to FOIA requests 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 reduce the number of multiple FOIA requests for the same records requiring separate agency responses.

The fifth part of 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 records released in response to FOIA requests, as required under the third and fourth parts of section 4 of this bill.

The final part of this section would, consistent with the “Computer Redaction” requirement in Section 7 of the bill, require that any deletions made in electronic records be indicated at the place where such deletion was made.

SECTION 5. HONORING FORMAT REQUESTS

This section would require agencies to assist requesters by providing information in the form requested, if the agency has the information available in that form. In other words, requests for the electronic format of records, which are usually not maintained or stored in electronic form, should be honored when the records nevertheless exist and are available in the requested electronic 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.”

SECTION 6. DELAYS

Fees.—In an effort to decrease the delays experienced by FOIA requesters, the bill would authorize agencies to retain one-half of the fees they collect if the agency complies with the statutory time limits for responding to requests. The fee retention provisions of the bill would reward agencies that meet the statutory time limits and should diminish the burdens on agencies with particularly heavy FOIA workloads. It will be very important to structure the compliance criteria so that the reward system operates effectively and without favoring any class of requesters over other classes.

Payment of the Expenses of the Person Making A Request.—The current statute allows for the award of attorneys’ fees and