

99TH CONGRESS
1ST SESSION

H. R. 3319

To amend the Freedom of Information Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 17, 1985

Mr. KLECZKA (for himself and Mr. ENGLISH) introduced the following bill; which was referred to the Committee on Government Operations

A BILL

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 "Freedom of Information
5 Public Improvements Act of 1985".

6 **SEC. 2. FINDINGS.**

7 The Congress finds that—

8 (1) the Freedom of Information Act has served an
9 essential role in informing the public on the activities
10 of the Federal Government; identifying and deterring
11 Government waste, abuse, wrongdoing, and misman-

1 agement; and disclosing significant information regard-
2 ing public health and safety, and the environment;

3 (2) the cost to the Federal Government of compli-
4 ance with the Freedom of Information Act has been far
5 outweighed by the public benefits resulting from the
6 Act;

7 (3) executive actions unreasonably limiting the
8 public disclosure of information generated, collected,
9 and maintained by the Federal Government have in-
10 creased the need for a strong and effective Freedom of
11 Information Act; and

12 (4) amendments are needed to make the Freedom
13 of Information Act simpler and less expensive for non-
14 commercial interests and news organizations to use, to
15 provide for more meaningful sanctions for its violation,
16 to minimize delays in processing requests under the
17 Act, to discourage misuse of the Act's exemptions by
18 agencies and agency personnel, to eliminate exemp-
19 tions from the Act that serve no legitimate governmen-
20 tal purpose, to provide for more effective Congressional
21 review of proposed exemptions to the Act, and other-
22 wise to ensure and enhance the effectiveness of the
23 Act.

1 TITLE I—AMENDMENTS TO THE FREEDOM OF
2 INFORMATION ACT

3 SEC. 101. RECORDKEEPING REQUIREMENTS.

4 (a) LOG OF REQUESTS AND RESPONSES.—Section
5 552(a) of title 5, United States Code, is amended by adding
6 at the end thereof the following new paragraph:

7 “(7) Each agency shall maintain for public inspection
8 (A) a log of requests received; (B) a current list of pending
9 requests showing the status of progress made toward compli-
10 ance; and (C) an index of all records disclosed pursuant to
11 this section.”.

12 (b) ACCESS AND RETRIEVAL OF RECORDS.—Section
13 552 of title 5, United States Code, is amended by adding at
14 the end thereof the following new subsection:

15 “(f) Each agency shall organize and maintain its records
16 in a manner which will—

17 “(1) make records easily accessible for convenient
18 use under this section; and

19 “(2) minimize the cost and difficulty of identifying
20 and retrieving records under this section.”.

21 SEC. 102. FEES AND WAIVERS.

22 Paragraph (4)(A) of section 552(a) of title 5, United
23 States Code, is amended to read as follows:

24 “(4)(A)(i) In order to carry out the provisions of this
25 section, each agency shall promulgate regulations, pursuant

1 to notice and receipt of public comment, specifying the sched-
2 ule of fees applicable to the processing of requests under this
3 section and establishing procedures and guidelines for deter-
4 mining when such fees should be waived or reduced. Such
5 schedule shall conform to the guidelines which shall be pro-
6 mulgated, pursuant to notice and receipt of public comment,
7 by the Archivist of the United States and which shall provide
8 for a uniform schedule of fees for all agencies.

9 “(fi) Such agency regulations shall provide that—

10 “(I) fees shall be limited to reasonable standard
11 charges for document duplication when records are not
12 sought for commercial use and the request is made by
13 or on behalf of an individual, or an educational or non-
14 commercial scientific institution, whose purpose is
15 scholarly or scientific research; a representative of the
16 news media; or a nonprofit group that intends to make
17 the information available to the news media, any
18 branch or agency of Federal, State, or local govern-
19 ment, or the general public; and

20 “(II) for any request not described in clause (I),
21 fees shall be limited to reasonable standard charges for
22 document search and duplication.

23 “(iii) Documents shall be furnished without any charge
24 or at a charge reduced below the fees established under
25 clause (ii) if (I) disclosure of the information is likely to con-

1 tribute significantly to public understanding of the operations
2 or activities of the government and is not primarily in the
3 commercial interest of the requester; (II) the information re-
4 lates to a violation of law, inefficiency, or administrative
5 error by an agency; or (III) the waiver or reduction of the fee
6 is in the public interest because furnishing the information
7 primarily benefits the general public.

8 “(iv) Fee schedules shall provide for the recovery of
9 only the direct costs of search and duplication. No fee may be
10 charged by any agency under this section—

11 “(I) if the costs of routine collection and process-
12 ing of the fee are likely to equal or exceed the amount
13 of the fee; or

14 “(II) for the first two hours of search time or for
15 the first one hundred pages of duplication.

16 “(v) No agency may require advance payment of any fee
17 unless the requester has previously failed to pay fees in a
18 timely fashion, or the agency has determined that the fee will
19 exceed \$250.

20 “(vi) In any action by a requester regarding the reduc-
21 tion or waiver of fees under this section, the court shall deter-
22 mine the matter de novo.”.

1 SEC. 103. PENALTIES FOR AGENCY DELAY OR AGENCY FAIL-
2 URE TO COMPLY.

3 (a) PAYMENT OF REQUESTER'S EXPENSES.—Section
4 552(a)(4)(E) of title 5, United States Code, is amended by
5 adding at the end thereof the following new sentence: "The
6 court may assess against the United States all out-of-pocket
7 expenses incurred by the requester, and reasonable attorney
8 fees incurred in the administrative process, subsequent to the
9 failure of any agency to comply with the applicable time limit
10 provisions of paragraph (6) of this subsection."

11 (b) CIVIL PENALTY FOR DELAY.—Such section is fur-
12 ther amended—

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

14 (2) by adding at the end thereof the following:

15 "(ii) Any agency not in compliance with the time limits
16 set forth in this subsection shall demonstrate to a court upon
17 motion by a requester in the venue of the requester of the
18 information that the delay is warranted under the circum-
19 stances. The court may assess against the United States rea-
20 sonable attorney fees and other litigation costs reasonably in-
21 curred in any case under this section in which the Govern-
22 ment fails to sustain this burden. In addition, it shall be
23 within the discretion of the court to award the requester an
24 amount not to exceed twenty-five dollars for each day that
25 the agency's response to his request exceeded the time limits
26 set forth in paragraph (6) of this section.

1 SEC. 104. SANCTIONS FOR AGENCY FAILURE TO COMPLY.

2 Paragraph (4)(F) of section 552(a) of title 5, United
3 States Code, is amended to read as follows:

4 "(F) Whenever the court issues a written finding that
5 circumstances raise questions whether agency personnel
6 acted arbitrarily or capriciously with respect to (i) the with-
7 holding, destruction, removal, or alteration of a record that
8 was requested under this section, (ii) an estimate or amount
9 of a fee or the denial of a fee waiver or reduction, or (iii) the
10 denial of a request for expedited access, the Special Counsel
11 shall promptly initiate a proceeding to determine whether
12 disciplinary action is warranted against the officer or employ-
13 ee who was primarily responsible. After investigation and
14 consideration of the evidence submitted, the Special Counsel
15 shall, within six months, submit his findings and recommen-
16 dations to the head administrative authority of the agency
17 concerned and shall send copies of the findings and recom-
18 mendations to the officer or employee or his representative,
19 the court, the requester, the Committee on Government Op-
20 erations of the House of Representatives, and the Committee
21 on the Judiciary of the Senate. The administrative authority
22 shall promptly take the corrective action that the Special
23 Counsel recommends and file a report with each such
24 Committee."

1 **SEC. 105. EXPEDITED ACCESS.**

2 Paragraph (6) of section 552(a) of title 5, United States
3 Code, is amended by adding at the end thereof the following
4 new subparagraph:

5 “(D) Each agency shall promulgate regulations, pursu-
6 ant to notice and receipt of public comment, providing that
7 upon receipt of a request for expedited access to records and
8 upon demonstration by the requester of a compelling need for
9 expedited access to records, the agency shall determine
10 within five days (excepting Saturdays, Sundays, and legal
11 public holidays) after the receipt of such a request for expe-
12 dited access whether to comply with such request and shall
13 immediately notify the person making such request of such
14 determination and the reasons therefor, and of the right of
15 such person to appeal to the head of the agency any adverse
16 determination. A requester whose request for expedited
17 access has not been decided within five days of its receipt by
18 the agency or has been denied shall not be required to ex-
19 haust administrative remedies. An agency failing to comply
20 with this time limitation shall be subject to the provisions of
21 section 552(a)(4)(E)(ii).”

22 **SEC. 106. SEPARATE QUEUES FOR PROCESSING REQUESTS.**

23 Paragraph (6) of section 552(a) of title 5, United States
24 Code, is further amended by adding at the end thereof the
25 following new subparagraph:

1 “(E) Each agency shall include, as part of the regula-
2 tions implementing this section, pursuant to notice and re-
3 ceipt of public comment, a detailed description of the proce-
4 dures used in the processing of requests under this section. If
5 a separate queue or a special procedure is used in the proc-
6 essing of some categories of requests, the description shall
7 identify the queue or procedure and shall specify the criteria
8 used for differentiating between requests.”.

9 **SEC. 107. REVISION OF EXEMPTIONS.**

10 **(a) REVISION OF CLASSIFIED INFORMATION EXEMP-**
11 **TION.**—Paragraph (1) of section 552(b) of title 5, United
12 States Code, is amended to read as follows:

13 “(1) specifically authorized under criteria estab-
14 lished by an Executive order to be kept secret in the
15 interest of national defense or foreign policy and are—

16 “(A) in fact properly classified pursuant to
17 such Executive order,

18 “(B) matters the disclosure of which could
19 reasonably be expected to cause identifiable
20 damage to the national defense or foreign policy
21 interests of the United States, and

22 “(C) matters in which the need to protect
23 the information outweighs the public interest in
24 disclosure.”

1 (b) REVISION OF EXEMPTION FOR INTERNAL PERSON-
2 NEL RULES AND PRACTICES.—Paragraph (2) of such sec-
3 tion is amended to read as follows:

4 “(2) law enforcement manuals that are predomi-
5 nantly internal in nature to the extent that disclosure
6 significantly risks circumvention of an agency investi-
7 gation, a regulation or a statute;”

8 (c) REVISION OF FINANCIAL REPORTS EXEMPTION.—
9 Paragraph (8) of such section is amended to read as follows:

10 “(8) contained in or related to examination, oper-
11 ating, or condition reports prepared by, on behalf of, or
12 for the use of an agency responsible for the regulation
13 or supervision of financial institutions if disclosure
14 would directly injure the financial stability of an insti-
15 tution; or”

16 (d) REPORTING ON USE OF STATUTORY EXEMPTIONS
17 UNDER SUBSECTION (b)(3).—Paragraph (1) of section 552(a)
18 of title 5, United States Code, is amended—

19 (1) by striking out “and” at the end of subpara-
20 graph (D);

21 (2) by striking out the period at the end of sub-
22 paragraph (E) and inserting in lieu thereof “; and”;
23 and

24 (3) by adding at the end thereof the following new
25 subparagraph:

1 “(F) a complete list of all statutes that the agency
2 head or general counsel has determined authorize the
3 agency to withhold information under subsection (b)(3)
4 of this section, together with a specific description of
5 the scope of the information covered.”.

6 (e) **REPORTING ON PROPOSED STATUTORY EXEMP-**
7 **TIONS.**—Section 552 of title 5, United States Code, is
8 amended by adding at the end thereof the following new sub-
9 section:

10 “(f) An agency, upon receipt of notification of the intro-
11 duction of any bill or resolution into the Senate or House of
12 Representatives constituting authority for that agency to
13 withhold information under subsection (b)(3) of this section
14 shall promptly notify the Committee on Government Oper-
15 ations of the House of Representatives and the Committee on
16 the Judiciary of the Senate, unless the agency determines
17 that written notice has otherwise been given to each such
18 Committee.”.

19 **SEC. 108. PROHIBITION ON USE OF ACT TO WITHHOLD INFOR-**
20 **MATION TO CONCEAL VIOLATIONS OF LAW, IN-**
21 **EFFICIENCY, OR ADMINISTRATIVE ERROR.**

22 Section 552(c) of title 5, United States Code, is amend-
23 ed by adding at the end thereof the following new sentence:
24 “This section is not authority to withhold information in

1 order to conceal violations of law, inefficiency, or administra-
2 tive error by an agency.”.

3 **SEC. 109. OVERSIGHT OF AGENCY COMPLIANCE.**

4 Subsection (d) of section 552 of title 5, United States
5 Code, is amended to read as follows:

6 “(d)(1) The Archivist of the United States shall super-
7 vise agency compliance with the Freedom of Information
8 Act. The Archivist may issue interpretations binding on other
9 agencies pursuant to this section and provide advisory opin-
10 ions to agencies and requesters.

11 “(2) On or before December 1 of each calendar year,
12 each agency shall, in accordance with standards promulgated
13 by the Archivist, submit a report covering the preceding
14 fiscal year to the Speaker of the House of Representatives
15 and the President of the Senate for referral to the appropriate
16 committees of the Congress. The report shall include—

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

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

1 “(C) the names and titles or positions of each
2 person responsible for the denial of records requested
3 under this section, and the number of instances of par-
4 ticipation for each;

5 “(D) the results of each proceeding conducted
6 pursuant to subsection (a)(4)(E), including a report of
7 the disciplinary action taken, or an explanation of why
8 disciplinary action was not taken;

9 “(E) a copy of every change in any rule made by
10 such agency regarding this section;

11 “(F) the total amount of fees collected by the
12 agency for making records available under this section;

13 “(G) the number of fee waivers requested and the
14 number of fee waiver requests granted;

15 “(H) the number of requests received, processed,
16 and pending at the end of the year;

17 “(I) the average length of time to comply with a
18 request and with an appeal;

19 “(J) the number of requests and appeals that were
20 responded to within the time limits specified in this
21 section and the number that were not;

22 “(K) other information required by the Archivist;

23 “(L) any other information indicating efforts to
24 administer fully this section; and

1 “(M) if an agency maintains a separate queue for
2 some categories of requests, a separate statement of
3 the information required by subparagraphs (H), (I), (J),
4 and (K) of this paragraph shall be included with re-
5 spect to each such queue.

6 “(3) The Archivist shall submit an annual report on or
7 before December 1 of each calendar year which shall include,
8 for the prior fiscal year, a listing of the number of cases aris-
9 ing under this section, the exemption involved in each case,
10 the disposition of such case, and the cost, fees, and penalties
11 assessed under subsections (a)(4)(E) and (F). Such report
12 shall also include an explanation of the interpretations issued
13 during the preceding year pursuant to paragraph (1) of this
14 subsection and a description of the efforts undertaken by the
15 National Archives and Records Administration to encourage
16 agency compliance with this section.”.

17 (b) Notwithstanding the amendment made by subsection
18 (a) of this section, the reports required by section 552(d) of
19 title 5, United States Code—

20 (1) shall be submitted on March 1, 1986, and
21 shall cover the preceding calendar year; and

22 (2) shall be submitted on December 1, 1986, and
23 shall cover the period from January 1, 1986, through
24 September 30, 1986.

1 **SEC. 110. DEFINITIONS.**

2 Subsection (e) of section 552 of title 5, United States
3 Code, is amended to read as follows:

4 “(e) For purposes of this section—

5 “(1) the term ‘agency’ includes any executive de-
6 partment, military department, Government corpora-
7 tion, Government controlled corporation, or other es-
8 tablishment in the executive branch of the Government
9 (including the Executive Office of the President), any
10 independent regulatory agency and includes the Smith-
11 sonian Institution, the Council of Economic Advisors,
12 and Administrative Office of the United States Courts;

13 “(2) the term ‘record’ includes an appointment
14 calendar and a telephone log of an officer or employee
15 of an agency unless such calendar or such log is per-
16 sonally maintained by the officer or employee solely for
17 his own use.”

18 **TITLE II—RECOVERY OF WRONGFULLY**

19 **REMOVED AGENCY FILES**

20 **SEC. 201. PRIVATE CIVIL ACTIONS TO RECOVER AGENCY**
21 **RECORDS REMOVED IN VIOLATION OF CHAP-**
22 **TER 29 OF TITLE 44, UNITED STATES CODE.**

23 Section 2905 of title 44, United States Code, is amend-
24 ed by designating the existing paragraph as subsection (a)
25 and by adding at the end thereof the following new

1 “(b)(1) Except as provided in paragraphs (2) and (3),
2 any person may commence a civil action on his own behalf
3 against any person (including the United States and any
4 other governmental instrumentality or agency to the extent
5 permitted by the eleventh amendment to the Constitution)
6 who is alleged to be in possession of any records removed
7 from an agency in violation of the provisions of this chapter
8 or of standards, procedures, or guidelines promulgated pursu-
9 ant to such provisions. The district courts shall have jurisdic-
10 tion, without regard to the amount in controversy or the citi-
11 zenship of the parties, to order the return of any such records
12 or to issue any other orders necessary to obtain compliance
13 with such provisions, standards, procedures, or guidelines.

14 “(2) No action may be commenced under paragraph (1)
15 prior to sixty days after the plaintiff has given notice of the
16 alleged violation (A) to the Archivist, (B) to the head of the
17 agency from which such records are alleged to have been
18 removed, (C) to the Attorney General, and (D) to the person
19 who is alleged to have custody of such records.

20 “(3) No action may be commenced under paragraph (1)
21 if, within sixty days after receipt of the notice required by
22 paragraph (2), the Attorney General commences and is dili-
23 gently prosecuting an action for the recovery of the records
24 to which such notice pertains, but if such an action is institut-

1 ed the person giving such notice may intervene as a matter of
2 right in such action.

3 “(4) In any action under this subsection, the Archivist,
4 if not a party, may intervene as a matter of right.

5 “(5) The court, in issuing any final order in any action
6 brought pursuant to paragraph (1) of this subsection, may
7 award costs of litigation (including reasonable attorney fees)
8 to any party, whenever the court determines such award is
9 appropriate.”.

10 **SEC. 202. PRIVATE CIVIL ACTIONS TO RECOVER AGENCY**
11 **RECORDS REMOVED IN VIOLATION OF CHAP-**
12 **TER 31 OF TITLE 44, UNITED STATES CODE.**

13 Section 3106 of title 44, United States Code, is amend-
14 ed by designating the existing paragraph as subsection (a)
15 and by adding at the end thereof the following new
16 subsection:

17 “(b)(1) Except as provided in paragraphs (2) and (3),
18 any person may commence a civil action on his own behalf
19 against any person (including the United States and any
20 other governmental instrumentality or agency to the extent
21 permitted by the eleventh amendment to the Constitution)
22 who is alleged to be in possession of any records removed
23 from an agency in violation of the provisions of this chapter
24 or of standards, procedures, or guidelines promulgated pursu-
25 ant to such provisions. The district courts shall have jurisdic-

1 tion, without regard to the amount in controversy or the citi-
2 zenship of the parties, to order the return of any such records
3 or to issue any other orders necessary to obtain compliance
4 with such provisions, standards, procedures, or guidelines.

5 “(2) No action may be commenced under paragraph (1)
6 prior to sixty days after the plaintiff has given notice of the
7 alleged violation (A) to the Archivist, (B) to the head of the
8 agency from which such records are alleged to have been
9 removed, (C) to the Attorney General, and (D) to the person
10 who is alleged to have custody of such records.

11 “(3) No action may be commenced under paragraph (1)
12 if, within sixty days after receipt of the notice required by
13 paragraph (2), the Attorney General commences and is dili-
14 gently prosecuting an action for the recovery of the records
15 to which such notice pertains, but if such an action is institut-
16 ed the person giving such notice may intervene as a matter of
17 right in such action.

18 “(4) In any action under this subsection, the Archivist,
19 if not a party, may intervene as a matter of right.

20 “(5) The court, in issuing any final order in any action
21 brought pursuant to paragraph (1) of this subsection, may
22 award costs of litigation (including reasonable attorney fees)
23 to any party, whenever the court determines such award is
24 appropriate.”.

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