in consultation with the Secretary of the Treasury, shall complete a study on the use of administrative subpoena power by executive branch agencies or entities and shall report the findings to the Committees on the Judiciary of the Senate and the House of Representatives. Such report shall include—

"(1) a description of the sources of administrative subpoena power and the scope of such subpoena power within executive branch agencies;

"(2) a description of applicable subpoena enforcement mechanisms;

"(3) a description of any notification provisions and any other provisions relating to safeguarding privacy interests;

"(4) a description of the standards governing the issuance of administrative subpoenas; and

"(5) recommendations from the Attorney General regarding necessary steps to ensure that administrative subpoena power is used and enforced consistently and fairly by executive branch agencies.

"(b) REPORT ON FREQUENCY OF USE OF ADMINISTRATIVE SUBPOENAS.—

"(1) IN GENERAL.—The Attorney General and the Secretary of the Treasury shall report in January of each year to the Committees on the Judiciary of the Senate and the House of Representatives on the number of administrative subpoenas issued by them under this section and the identity of the agency or component of the Department of Justice or the Department of the Treasury issuing the subpoena and imposing the charges.

"(2) EXPIRATION.—The reporting requirement of this subsection shall terminate in 3 years after the date of the enactment of this section [Dec. 19, 2000]."

§ 552. Public information; agency rules, opinions, orders, records, and proceedings

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public—

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the method whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying—

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register;

(C) administrative staff manuals and instructions to staff that affect a member of the public;

(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);

unless the materials are promptly published and copies offered for sale. 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. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, staff manual, instruction, or copies of records referred to in subparagraph (D). However, in each case the justification for the deletion shall be explained fully in writing, 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. If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made. Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication. Each agency shall make the index referred to in subparagraph (E) available by computer telecommunications by December 31, 1999. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if—
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(1) it has been indexed and either made available or published as provided by this paragraph; or

(ii) the party has actual and timely notice of the terms thereof.

(3)(A) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, and except as provided in subparagraph (E), each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

(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.

(E) An agency, or part of an agency, that is an element of the intelligence community (as that term is defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))) shall not make any record available under this paragraph to—

(i) any government entity, other than a State, territory, commonwealth, or district of the United States, or any subdivision thereof; or

(ii) a representative of a government entity described in clause (i).

(4)(A)(i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.

(ii) Such agency regulations shall provide that—

(I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use.

(II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or non-commercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

(III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

In this clause, the term “a representative of the news media” means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. In this clause, the term “news” means information that is about current events or that would be of current interest to the public. Examples of news media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of “news”) who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the Government may also consider the past publication record of the requester in making such a determination.

(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. Review costs shall include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed under this section and for the purposes of withholding any portions exempt from disclosure under this section. Review costs may not include any costs incurred in resolving issues of law or policy that may be raised in the course of processing a request under this section. No fee may be charged by any agency under this section—

(I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

(II) for any request described in clause (ii), (II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

(v) No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed $250.
(vi) Nothing in this subparagraph shall super-
sede fees chargeable under a statute specifically
providing for setting the level of fees for par-
ticular types of records.

(vii) In any action by a requester regarding
the denial of fees under this section, the court
shall determine the matter de novo: Provided,
That the court’s review of the matter shall be
limited to the record before the agency.

(viii) An agency shall not assess search fees
(or in the case of a requester described under
clause (ii)(II), duplication fees) under this sub-
paragraph if the agency fails to comply with any
time limit under paragraph (6), if no unusual or
exceptional circumstances (as those terms are
defined for purposes of paragraphs (6)(B) and (C),
respectively) apply to the processing of the re-
quest.

(B) On complaint, the district court of the
United States in the district in which the com-
plainant resides, or has his principal place of
business, or in which the agency records are sit-
uated, or in the District of Columbia, has juris-
diction to enjoin the agency from withholding
agency records and to order the production of
any agency records improperly withheld from
the complainant. In such a case the court shall
determine the matter de novo, and may examine
the contents of such agency records in camera
to determine whether such records or any part
thereof shall be withheld under any of the ex-
emptions set forth in subsection (b) of this sec-
tion, and the burden is on the agency to sustain
its action. In addition to any other matters to
which a court accords substantial weight, a
court shall accord substantial weight to an affi-
vavit of an agency concerning the agency’s de-
termination as to technical feasibility under
paragraph (2)(C) and subsection (b) and repro-
ducibility under paragraph (3)(B).

(C) Notwithstanding any other provision of
law, the defendant shall serve an answer or
otherwise plead to any complaint made under
this subsection within thirty days after service
upon the defendant of the pleading in which
such complaint is made, unless the court other-
wise directs for good cause shown.

Nov. 8, 1984, 98 Stat. 3357.]

(E)(i) The court may assess against the United
States reasonable attorney fees and other litiga-
tion costs reasonably incurred in any case under
this section in which the complainant has sub-
stantially prevailed.

(ii) For purposes of this subparagraph, a
complainant has substantially prevailed if the com-
plainant has obtained relief through either—
(I) a judicial order, or an enforceable written
agreement or consent decree; or
(II) a voluntary or unilateral change in posi-
tion by the agency, if the complainant’s claim
is not insubstantial.

(F)(i) Whenever the court orders the produc-
tion of any agency records improperly withheld
from the complainant and assesses against the
United States reasonable attorney fees and
other litigation costs, and the court additional-
ly issues a written finding that the circum-
stances surrounding the withholding raise ques-
tions whether agency personnel acted arbitrar-
ily or capriciously with respect to the withhold-
ing, the Special Counsel shall promptly initiate
a proceeding to determine whether disciplinary
action is warranted against the officer or em-
ployee who was primarily responsible for the
withholding. The Special Counsel, after inves-
tigation and consideration of the evidence sub-
mitted, shall submit his findings and recom-
mendations to the administrative authority of
the agency concerned and shall send copies of
the findings and recommendations to the officer
or employee or his representative. The adminis-
trative authority shall take the corrective ac-
tion that the Special Counsel recommends.

(ii) The Attorney General shall—
(I) notify the Special Counsel of each civil
action described under the first sentence of
clause (i); and
(II) annually submit a report to Congress on
the number of such civil actions in the prece-
ding year.

(iii) The Special Counsel shall annually sub-
mit a report to Congress on the actions taken by
the Special Counsel under clause (i).

(G) In the event of noncompliance with the
order of the court, the district court may punish
for contempt the responsible employee, and in
the case of a uniformed service, the responsible
member.

(5) Each agency having more than one member
shall maintain and make available for public in-
spection a record of the final votes of each mem-
er in every agency proceeding.

[(H) Each agency, upon any request for
records made under paragraph (1), (2), or (3) of
this subsection, shall—

(i) determine within 20 days (excepting Sat-
urdays, Sundays, and legal public holidays)
after the receipt of any such request whether
to comply with such request and shall imme-
diately notify the person making such request
of such determination and the reasons there-
for, and of the right of such person to appeal
to the head of the agency any adverse deter-
mination; and

(ii) make a determination with respect to any
appeal within twenty days (excepting Sat-
urdays, Sundays, and legal public holidays)
after the receipt of such appeal. If on appeal
the denial of the request for records is in
whole or in part upheld, the agency shall not-
ify the person making such request of the
provisions for judicial review of that deter-
mination under paragraph (4) of this sub-
section.

The 20-day period under clause (i) shall com-
mence on the date on which the request is first
received by the appropriate component of the
agency, but in any event not later than ten days
after the request is first received by any compo-
ponent of the agency that is designated in the
agency’s regulations under this section to re-
cieve requests under this section. The 20-day pe-
riod shall not be tolled by the agency except—

(I) that the agency may make one request to
the requester for information and toll the 20-
day period while it is awaiting such informa-
tion that it has reasonably requested from the
requester under this section; or

(II) if necessary to clarify with the requester
issues regarding fee assessment. In either case,
the agency’s receipt of the requester’s response to the agency’s request for information or clarification ends the tolling period.

(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. To aid the requester, each agency shall make available its FOIA Public Liaison, who shall assist in the resolution of any disputes between the requester and the agency. 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 multitrack processing of requests for records based on the amount of work or time (or both) involved in processing requests.

(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.

(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. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of 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.

(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.

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(II) in other cases determined by the agency.

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(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.

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(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.
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.

(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.

(7) Each agency shall—

(A) establish a system to assign an individualized tracking number for each request received that will take longer than ten days to process and provide to each person making a request the tracking number assigned to the request; and

(B) establish a telephone line or Internet service that provides information about the status of a request to the person making the request using the assigned tracking number, including—

(i) the date on which the agency originally received the request; and

(ii) an estimated date on which the agency will complete action on the request.

(b) This section does not apply to matters that are—

(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute (other than section 552b of this title), if that statute—

(A)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld; and

(B) if enacted after the date of enactment of the OPEN FOIA Act of 2009, specifically cites to this paragraph.

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to endanger the life or physical safety of any individual;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) geological and geophysical information and data, including maps, concerning wells.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection. The amount of information deleted, and the exemption under which the deletion is made, shall be indicated at the place in the record where such deletion is made.

If a clearly unwarranted invasion of personal privacy, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to endanger the life or physical safety of any individual; and (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.

(c)(1) Whenever a request is made which involves access to records described in subsection (b)(7)(A) and—

(A) the investigation or proceeding involves a possible violation of criminal law; and

(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings,
the agency may, during only such time as that
circumstance continues, treat the records as not subject to the requirements of this section.

(2) Whenever informant records maintained by
a criminal law enforcement agency under an in-
formant’s name or personal identifier are re-
quested by a third party according to the in-
formant’s name or personal identifier, the agen-
cy may treat the records as not subject to the
requirements of this section unless the inform-
ant’s status as an informant has been officially
confirmed.

(3) Whenever a request is made which involves
access to records maintained by the Federal Bu-
reau of Investigation pertaining to foreign intel-
ligence or counterintelligence, or international
terrorism, and the existence of the records is
classified information as provided in subsection
(b)(1), the Bureau may, as long as the existence
of the records remains classified information,
treat the records as not subject to the require-
ments of this section.

(d) This section does not authorize withhold-
ing of information or limit the availability of
records to the public, except as specifically stat-
ed in this section. This section is not authority
to withhold information from Congress.

(e)(1) On or before February 1 of each year,
each agency shall submit to the Attorney Gen-
eral 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 determina-
tion;

(B)(i) the number of appeals made by persons
under subsection (a)(6), the result of such ap-
ppeals, 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),
the number of occasions on which each statute
was relied upon, 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 pend-
ing before the agency as of September 30 of the
preceding year, and the median and average
number of days that such requests had been
pending before the agency as of that date;

(D) the number of requests for records re-
ceived by the agency and the number of re-
quests which the agency processed;

(E) the median number of days taken by the
agency to process different types of requests,
based on the date on which the requests were
received by the agency;

(F) the average number of days for the agen-
cy to respond to a request beginning on the
date on which the request was received by the
agency, the median number of days for the
agency to respond to such requests, and the
range in number of days for the agency to re-
spond to such requests;

(G) based on the number of business days
that have elapsed since each request was origi-
nally received by the agency—

(i) the number of requests for records to
which the agency has responded with a de-
termination within a period up to and in-
cluding 20 days, and in 20-day increments up
to and including 200 days;

(ii) the number of requests for records to
which the agency has responded with a de-
termination within a period greater than 200
days and less than 301 days;

(iii) the number of requests for records to
which the agency has responded with a de-
termination within a period greater than 300
days and less than 401 days; and

(iv) the number of requests for records to
which the agency has responded with a de-
termination within a period greater than 400
days;

(H) the average number of days for the agen-
cy to provide the granted information begin-
ing on the date on which the request was
originally filed, the median number of days for
the agency to provide the granted information,
and the range in number of days for the
agency to provide the granted information;

(I) the median and average number of days
for the agency to respond to administrative
appeals based on the date on which the appeals
originally were received by the agency, the
highest number of business days taken by the
agency to respond to an administrative ap-
pel, and the lowest number of business days
taken by the agency to respond to an adminis-
trative appeal;

(J) data on the 10 active requests with the
earliest filing dates pending at each agency,
including the amount of time that has elapsed
since each request was originally received by
the agency;

(K) data on the 10 active administrative ap-
ppeals with the earliest filing dates pending be-
fore the agency as of September 30 of the pre-
ceding year, including the number of business
days that have elapsed since the requests were
originally received by the agency;

(L) the number of expedited review requests
that are granted and denied, the average and
median number of days for adjudicating expedi-
ted review requests, and the number adju-
dicated within the required 10 days;

(M) the number of fee waiver requests that
are granted and denied, and the average and
median number of days for adjudicating fee
waiver determinations;

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

(O) the number of full-time staff of the agen-
cy devoted to processing requests for records
under this section, and the total amount ex-
pended by the agency for processing such re-
quests.

(2) Information in each report submitted under
paragraph (1) shall be expressed in terms of each
principal component of the agency and for the
agency overall.

(3) Each agency shall make such report avail-
able to the public including by computer
telecommunications, or if computer tele-
communications means have not been established by the agency, by other electronic means. In addition, each agency shall make the raw statistical data used in its reports available electronically to the public upon request.

(4) 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.

(5) 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.

(6) 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.

(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—
(A) 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; and
(B) any information described under subparagraph (A) that is maintained for an agency by an entity under Government contract, for the purposes of records management.

(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.

(h)(1) There is established the Office of Government Information Services within the National Archives and Records Administration.
(2) The Office of Government Information Services shall—
(A) review policies and procedures of administrative agencies under this section;
(B) review compliance with this section by administrative agencies; and
(C) recommend policy changes to Congress and the President to improve the administration of this section.

(3) The Office of Government Information Services shall offer mediation services to resolve disputes between persons making requests under this section and administrative agencies as a non-exclusive alternative to litigation and, at the discretion of the Office, may issue advisory opinions if mediation has not resolved the dispute.

(i) The Government Accountability Office shall conduct audits of administrative agencies on the implementation of this section and issue reports detailing the results of such audits.

(j) Each agency shall designate a Chief FOIA Officer who shall be a senior official of such agency (at the Assistant Secretary or equivalent level).

(k) The Chief FOIA Officer of each agency shall, subject to the authority of the head of the agency—
(1) have agency-wide responsibility for efficient and appropriate compliance with this section;
(2) monitor implementation of this section throughout the agency and keep the head of the agency, the chief legal officer of the agency, and the Attorney General appropriately informed of the agency's performance in implementing this section;
(3) recommend to the head of the agency such adjustments to agency practices, policies, personnel, and funding as may be necessary to improve its implementation of this section;
(4) review and report to the Attorney General, through the head of the agency, at such times and in such formats as the Attorney General may direct, on the agency's performance in implementing this section;
(5) facilitate public understanding of the purposes of the statutory exemptions of this section by including concise descriptions of the exemptions in both the agency's handbook issued under subsection (g), and the agency's annual report on this section, and by providing an overview, where appropriate, of certain general categories of agency records to which those exemptions apply; and
(6) designate one or more FOIA Public Liaisons.

(l) FOIA Public Liaisons shall report to the agency Chief FOIA Officer and shall serve as supervisory officials to whom a requester under this section can raise concerns about the service the requester has received from the FOIA Requester Center, following an initial response from the FOIA Requester Center Staff. FOIA
Public Liaisons shall be responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.


HISTORICAL AND REVISION NOTES

1967 ACT


In subsection (a)(1)(A), the words "employees (and in the case of a uniformed service, the member)" are substituted for "officer" to retain the coverage of Public Law 89–487 and to conform to the definitions in 5 U.S.C. 2101, 2104, and 2105.

In the last sentence of subsection (a)(2), the words "A final order * * * may be relied on * * * only if" are substituted for "No final order * * * may be relied upon * * * unless"; and the words "a party other than an agency" and "the party" are substituted for "a private party" and "the private party", respectively, on authority of the definition of "private party" in 5 App. U.S.C. 1002(g).

In subsection (a)(3), the words "the responsible employee, and in the case of a uniformed service, the responsible member" are substituted for "the responsible officers" to retain the coverage of Public Law 89–487 and to conform to the definitions in 5 U.S.C. 2101, 2104, and 2105.

In subsection (a)(4), the words "shall maintain and make available for public inspection a record" are substituted for "shall keep a record * * * and that record shall be available for public inspection".

In subsection (b)(5) and (7), the words "a party other than an agency" are substituted for "a private party on authority of the definition of "private party" in 5 App. U.S.C. 1002(g).

In subsection (a)(8), the words "This section does not authorize" and "and this section is not authority" are substituted for "Nothing in this section authorizes" and "nor shall this section be authority", respectively.

5 App. U.S.C. 1002(g), defining "private party" to mean a party other than an agency, is omitted since the words "party other than an agency" are substituted for the words "private party" wherever they appear in revised 5 U.S.C. 552.

REFERENCES IN TEXT

The National Security Act of 1947, referred to in subsec. (a)(3), is act July 26, 1947, ch. 343, 61 Stat. 495, which was formerly classified principally to chapter 15 (§ 401 et seq.) of Title 50, War and National Defense, prior to editorial reclassification in chapter 44 (§ 3001 et seq.) of Title 50. Section 3 of the Act is now classified to section 3003 of Title 50. For complete classification of this Act to the Code, see Tables.

The date of enactment of the OPEN FOLIA Act of 2009, referred to in subsec. (b)(3)(B), is the date of enactment of Pub. L. 111–83, which was approved Oct. 28, 2009.

CODIFICATION

Section 552 of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 22 of Title 7, Agriculture.

AMENDMENTS

2009—Subsec. (b)(3), Pub. L. 111–83 added par. (3) and struck out former par. (3), which read as follows: "specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld.".


Subsec. (a)(4)(F). Pub. L. 110–175, § 6(a)(1), designated existing provisions as cl. (i) and added cls. (ii) and (iii).


Subsec. (a)(6)(B)(ii). Pub. L. 110–175, § 6(b)(1)(B), inserted after the first sentence "To aid the requester, each agency shall make available its FOLIA Public Liaison, who shall assist in the resolution of any disputes between the requester and the member.


Subsec. (b), Pub. L. 110–175, § 12, in concluding provisions, inserted "and" and the amount of information deleted," after "The amount of information deleted," and after "the amount of information deleted". in third sentence after "the amount of information deleted".

Subsec. (e)(1)(B)(ii). Pub. L. 110–175, § 8(a)(1), inserted "the number of occasions on which each statute was relied upon," after "the number of occasions on which each statute was relied upon," or "and average" after "median".

Subsec. (e)(1)(E). Pub. L. 110–175, § 8(a)(3), inserted before semicolon "on the date on which the requests were received by the agency".

Subsec. (e)(1)(F) to (O). Pub. L. 110–175, § 8(a)(4), (5), added subpars. (F) to (M) and redesignated former subpars. (F) and (G) as (N) and (O), respectively.


Former par. (2) redesignated (3).

Subsec. (e)(3). Pub. L. 110–175, § 8(b)(1), (c), redesignated par. (2) as (3) and inserted at end "In addition, each agency shall make the raw statistical data used in its reports available electronically to the public upon request.".

Subsec. (e)(4) to (6). Pub. L. 110–175, § 8(b)(1), redesignated paras. (3) to (5) as (4) to (6), respectively.

Subsec. (f)(2). Pub. L. 110–175, § 9, added par. (2) and struck out former par. (2) which read as follows: "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.".

Subsecs. (h) to (l). Pub. L. 110–175, § 10(a), added subsec. (h) to (i).


1996—Subsec. (a)(2). Pub. L. 104–231, § 4(4), (5), in first sentence struck out “and” at end of subpar. (B) and inserted subpars. (D) and (E).

Pub. L. 104–231, § 4(7), inserted after first sentence “worldwide 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.”

Pub. L. 104–231, § 4(1), in second sentence substituted “staff manual, instruction, or copies of records referred to in subparagraph (D)” for “or staff manual or instruction”. Pub. L. 104–231, § 4(2), inserted before period at end of third sentence “, 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.”

Pub. L. 104–231, § 4(3), inserted after third sentence “if technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made.”

Pub. L. 104–231, § 4(6), which directed the insertion of the following new sentence after the fifth sentence “Each agency shall make the index referred to in subparagraph (E) available by computer telecommunications by December 31, 1999.”, was executed by making the insertion after the sixth sentence, to reflect the probable intent of Congress and the addition of a new sentence by section 4(3) of Pub. L. 104–231.

Subsec. (a)(3). Pub. L. 104–231, § 5, inserted subpar. (A) designation after “(3)”, redesignated subpars. (A) and (B) as cls. (i) and (ii), respectively, and added subpars. (B)(D).

Subsec. (a)(4)(B). Pub. L. 104–231, § 6, inserted at end of second 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).”

Subsec. (a)(6)(A)(i). Pub. L. 104–231, § 8(b), substituted “20 days” for “ten days”.

Subsec. (a)(6)(B). Pub. L. 104–231, § 7(b), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “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 reasons for such extension and the date on which a determination is expected to be dispatched. If such notice specifies a date that would result in an extension for more than ten working days. As used in this subparagraph, ‘unusual circumstances’ means, but only to the extent reasonably necessary to the proper processing of the particular request—

(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 thereon.”

Subsec. (a)(6)(C). Pub. L. 104–231, § 7(c), designated existing provisions as cls. (i) and added cls. (ii) and (iii).


Subsec. (a)(6)(E), (F). Pub. L. 104–231, § 8(a), (c), added subpars. (E) and (F).

Subsec. (b). Pub. L. 104–231, § 9, inserted at end of closing provisions “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 was made.”

Subsec. (e). Pub. L. 104–231, § 10, amended subsec. (e) generally, revising and restating provisions relating to reports to Congress.

Subsec. (f). Pub. L. 104–231, § 3, amended subsec. (f) generally. Prior to amendment, subpar. (A) read as follows: “In order to carry out the provisions of this section, each agency shall promulgate regulations, consistent with notice and receipt of public comments, specifying a uniform schedule of fees applicable to all constituent units of such agency. Such fees shall be limited to reasonable standard charges for document search and duplication and provide for recovery of only the direct costs of such search and duplication. Documents shall be furnished without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefitting the general public.”

Subsec. (h)(7). Pub. L. 99–570, § 1802(a), amended par. (7) generally. Prior to amendment, par. (7) read as follows: “Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel.”

Subsecs. (c) to (f). Pub. L. 99–570, § 1802(b), added subsec. (c) and redesignated former subsecs. (c) to (e) as (d) to (f), respectively.


1978—Subsec. (a)(4)(F). Pub. L. 95–454 substituted references to the Special Counsel for references to the Civil Service Commission wherever appearing and reference to his findings for reference to its findings.

1976—Subsec. (b)(3). Pub. L. 94–409 inserted provision excluding section 552(b) of this title from applicability of exemption from disclosure and provision setting forth conditions for statute specifically exempting disclosure.

1974—Subsec. (a)(2). Pub. L. 93–502, § 1(a), substituted provisions relating to making available of current indexes, for provisions relating to maintenance and availability of a current index, and inserted provisions relating to publication and distribution of copies of indexes or supplements thereof.

Subsec. (a)(3). Pub. L. 93–502, § 1(b)(1), substituted provisions requiring requests to reasonably describe records for provisions requiring requests, for identifiable records, and struck out provisions setting forth procedures to enjoin agencies from withholding the requested records and ordering their production.
Subsec. (a)(4). Pub. L. 93–502, §1(b)(2), added par. (4) and redesignated former par. (4) as (5).


Subsec. (b)(1). Pub. L. 93–502, §2(a), designate existing provisions as cl. (A), substituted “authorized under criteria established by an” for “required by”, and added cl. (B).

Subsec. (b)(7). Pub. L. 93–502, §2(b), substituted provisions relating to exemption for investigatory records compiled for law enforcement purposes, for provisions relating to exemption for investigatory files compiled for law enforcement purposes.

Subsec. (b), foll. par. (9). Pub. L. 93–502, §2(c), inserted provision relating to availability of segregable portion of records.

Subsecs. (d), (e). Pub. L. 93–502, §3, added subsecs. (d) and (e).

1967—Subsec. (a). Pub. L. 90–23 substituted introductory statement requiring every agency to make available to the public certain information for former introductory provision excepting from disclosure (1) any function of the United States requiring secrecy in the public interest or (2) any matter relating to internal management of an agency, covered in subsec. (b)(1) and (2) of this section.

Subsec. (a)(1). Pub. L. 90–23 incorporated provisions of former subsec. (b)(1) in (A), inserting requirement of publication of names of officers as sources of information and provision for public to obtain decisions, and striking out publication requirement for delegations by the agency of final authority; former subsec. (b)(2), introductory part, in (B); former subsec. (b)(2), concluding part, in (C), inserting publication requirement for rules of procedure and descriptions of forms available or the places at which forms may be obtained; former subsec. (b)(3), introductory part, in (D), inserting requirement of general applicability of substantive rules and interpretations, added clause (E), substituted exemption of any person from failure to resort to any matter or from being adversely affected by any matter required to be published in the Federal Register but not so published for former subsec. (b)(3), concluding part, excepting from publication rules addressed to and served upon named persons in accordance with laws and final sentence reading “A person may not be required to resort to organization or procedure not so published” and inserted provision deeming matter, which is reasonably available, as published in the Federal Register when such matter is incorporated by reference in the Federal Register with the approval of its Director.

Subsec. (a)(2). Pub. L. 90–23 incorporated provisions of former subsec. (c), provided for public copying of records, struck out requirement of agency publication of final opinions or orders and authority for secrecy and withholding of opinions and orders required for good cause to be held confidential and not cited as precedents, latter provision now superseded by subsec. (d) of this section, designated existing subsec. (c) as clause (A), including provision for availability of concurring and dissenting opinions, inserted provisions for availability of policy statements and interpretations in clause (B) and staff manuals and instructions in clause (C), deletion of personal identifications from records to protect personal privacy with written justification therefor, and provision for indexing and prohibition of use of records not indexed against any private party without actual and timely notice of the terms thereof.

Subsec. (a)(3). Pub. L. 90–23 incorporated provisions of former subsec. (d) and substituted provisions requiring identifiable agency records to be made available to any person upon request and compliance with rules as to time, place, and procedure for inspection, and payment of fees and provisions for Federal district court proceedings de novo for enforcement by contempt of noncompliance with court’s orders with the burden on the agency and docket precedence for such proceedings for former provisions requiring records to be made available to persons properly and directly concerned except information held confidential for good cause shown, the latter provision superseded by subsec. (b) of this section.


Subsec. (b). Pub. L. 90–23 added subsec. (b) which superseded provisions excepting from disclosure any function of the United States requiring secrecy in the public interest or any matter relating to internal management of an agency, formerly contained in former subsec. (a), final opinions or orders required for good cause to be held confidential and not cited as precedents, formerly contained in subsec. (c), and information held confidential for good cause found, contained in former subsec. (d) of this section.


AMENDMENT

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999, Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–175, §6(b)(2), Dec. 31, 2007, 121 Stat. 2526, provided that: “The amendment made by this section shall take effect 1 year after the date of enactment of this Act [Dec. 31, 2007].”

Pub. L. 110–175, §6(b)(2), Dec. 31, 2007, 121 Stat. 2526, provided that: “The amendment made by this section shall take effect 1 year after the date of enactment of this Act [Dec. 31, 2007] and apply to requests for information under section 552 of title 5, United States Code, filed on or after that effective date.”

Pub. L. 110–175, §7(b), Dec. 31, 2007, 121 Stat. 2527, provided that: “The amendment made by this section shall take effect 1 year after the date of enactment of this Act [Dec. 31, 2007] and apply to requests for information under section 552 of title 5, United States Code, filed on or after that effective date.”

Pub. L. 110–175, §10(b), Dec. 31, 2007, 121 Stat. 2530, provided that: “The amendment made by this section shall take effect 1 year after the date of enactment of this Act [Dec. 31, 2007].”

EFFECTIVE DATE OF 1996 AMENDMENT


“(a) IN GENERAL.—Except as provided in subsection (b), this Act [amending this section and enacting provisions set out as notes below] shall take effect 180 days after the date of the enactment of this Act [Oct. 2, 1996].”

“(b) PROVISIONS EFFECTIVE ON ENACTMENT [sic].—Sections 7 and 8 [amending this section] shall take effect one year after the date of the enactment of this Act [Oct. 2, 1996].”

EFFECTIVE DATE OF 1986 AMENDMENT


“(a) The amendments made by section 1802 [amending this section] shall be effective on the date of enactment of this Act [Oct. 27, 1986], and shall apply with respect to any requests for records, whether or not the request was made prior to such date, and shall apply to any civil action pending on such date.

“(b) The amendments made by section 1803 [amending this section] shall be effective 180 days after the
date of enactment of this Act [Oct. 27, 1966], except that regulations to implement such amendments shall be promulgated by such 180th day.

"(2) The amendment made by section 1803 [amending this section] shall apply with respect to any requests for records, whether or not the request was made prior to such date, and shall apply to any civil action pending on such date, except that review charges applicable to records requested for commercial use shall not be applied by an agency to requests made before the effective date specified in paragraph (1) of this subsection or before the agency has finally issued its regulations."

**Effective Date of 1964 Amendment**

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 402 of Pub. L. 98–620, set out as an Effective Date note under section 1807 of Title 28, Judiciary and Judicial Procedure.

**Effective Date of 1978 Amendment**


**Effective Date of 1976 Amendment**

Amendment by Pub. L. 94–409 effective 180 days after Sept. 13, 1976, see section 6 of Pub. L. 94–409, set out as an Effective Date note under section 552b of this title.

**Effective Date of 1974 Amendment**

Pub. L. 93–502, § 4, Nov. 21, 1974, 88 Stat. 1564, provided that: "The amendments made by this Act [amending this section] shall take effect on the ninetieth day beginning after the date of enactment of this Act [Nov. 21, 1974]."

**Effective Date of 1967 Amendment**

Pub. L. 90–23, § 4, June 5, 1967, 81 Stat. 56, provided that: "This Act [amending this section] shall be effective July 4, 1967, or on the date of enactment [June 5, 1967], whichever is later."

**Short Title of 1996 Amendment**

Pub. L. 104–231, § 1, Oct. 2, 1996, 110 Stat. 3048, provided that: "This Act [amending this section and enacting provisions set out as notes under this section] may be cited as the 'Electronic Freedom of Information Act Amendments of 1996.'"

**Short Title of 1986 Amendment**


**Short Title**

This section is popularly known as the "Freedom of Information Act".

**Protected National Security Documents**

Pub. L. 111–83, title V, § 565, Oct. 28, 2009, 123 Stat. 2184, provided that: "(a) Short Title.—This section may be cited as the 'Protected National Security Documents Act of 2009'.

"(b) Notwithstanding any other provision of the law to the contrary, no protected document, as defined in subsection (c), shall be subject to disclosure under section 552 of title 5, United States Code[,] or any proceeding under that section.

"(c) Definitions.—In this section:

"(1) Protected Document.—The term 'protected document' means any record—

"(A) for which the Secretary of Defense has issued a certification, as described in subsection (d), stating that disclosure of that record would endanger citizens of the United States, members of the United States Armed Forces, or employees of the United States Government deployed outside the United States; and

"(B) that is a photograph that—

"(i) was taken during the period beginning on September 11, 2001, through January 22, 2009; and

"(ii) relates to the treatment of individuals engaged, captured, or detained after September 11, 2001, by the Armed Forces of the United States in operations outside of the United States.

"(2) Photograph.—The term 'photograph' encompasses all photographic images, whether originals or copies, including still photographs, negatives, digital images, films, video tapes, and motion pictures.

"(d) Certification.—

"(1) In General.—For any photograph described under subsection (c)(1), the Secretary of Defense shall issue a certification if the Secretary of Defense determines that disclosure of that photograph would endanger citizens of the United States, members of the United States Armed Forces, or employees of the United States Government deployed outside the United States.

"(2) Certification Expiration.—A certification and a renewal of a certification issued pursuant to subsection (d)(3) shall expire 3 years after the date on which the certification or renewal, [sic] is issued by the Secretary of Defense.

"(3) Certification Renewal.—The Secretary of Defense may issue—

"(A) a renewal of a certification at any time; and

"(B) more than 1 renewal of a certification.

"(4) Notice to Congress.—The Secretary of Defense shall provide Congress a timely notice of the Secretary's issuance of a certification and of a renewal of a certification.

"(e) Rule of Construction.—Nothing in this section shall be construed to preclude the voluntary disclosure of a protected document.

"(f) Effective Date.—This section shall take effect on the date of enactment of this Act [Oct. 28, 2009] and apply to any protected document."

**Findings**


"(1) the Freedom of Information Act [probably means Pub. L. 89–467 which amended section 1002 of former Title 5, Executive Departments and Government Officers and Employees, see Historical and Revision notes above] was signed into law on July 4, 1966, because the American people believe that—

"(A) our constitutional democracy, our system of self-government, and our commitment to popular sovereignty depends upon the consent of the governed;

"(B) such consent is not meaningful unless it is informed consent; and

"(C) as Justice Black noted in his concurring opinion in Barr v. Matteo [360 U.S. 564 (1959)], 'The effective functioning of a free government like ours depends largely on the force of an informed public opinion. This calls for the widest possible understanding of the quality of government service rendered by all elective or appointed public officials or employees.);

"(2) the American people firmly believe that our system of government must itself be governed by a presumption of openness;

"(3) the Freedom of Information Act establishes a 'strong presumption in favor of disclosure' as noted by the United States Supreme Court in United States Department of State v. Ray [502 U.S. 164 (1991)], a presumption that applies to all agencies governed by that Act;

"(4) 'disclosure, not secrecy, is the dominant objective of the Act,' as noted by the United States Supreme Court in Department of Air Force v. Rose [425 U.S. 352 (1976)];

"(5) in practice, the Freedom of Information Act has not always lived up to the ideals of that Act; and
"(6) Congress should regularly review section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act), in order to determine whether further changes and improvements are necessary to ensure that the Government remains open and accessible to the American people and is always based not upon the ‘need to know’ but upon the fundamental ‘right to know’.

LIMITATION ON AMOUNTS OBLIGATED OR EXPENDED FROM CLAIMS AND JUDGMENT FUND

Pub. L. 110–175, §4(b), Dec. 31, 2007, 121 Stat. 2525, provided that: ‘‘Notwithstanding section 1304 of title 31, United States Code, no amounts may be obligated or expended from the Claims and Judgment Fund of the United States Treasury to pay the costs resulting from fees assessed under section 552(a)(4)(E) of title 5, United States Code. Any such amounts shall be paid only from funds annually appropriated for any authorized purpose for the Federal agency against which a claim or judgment has been rendered.’’

NONDISCLOSURE OF CERTAIN PRODUCTS OF COMMERCIAL SATELLITE OPERATIONS


‘‘(a) MANDATORY DISCLOSURE REQUIREMENTS INAPPLICABLE.—The requirements to make information available under section 552 of title 5, United States Code, shall not apply to land remote sensing information.

‘‘(b) LAND REMOTE SENSING INFORMATION DEFINED.—In this section, the term ‘land remote sensing information’—

‘‘(1) means any data that—

‘‘(A) are collected by land remote sensing; and

‘‘(B) are prohibited from sale to customers other than the United States Government-approved customers for reasons of national security pursuant to the terms of an operating license issued pursuant to the Land Remote Sensing Policy Act of 1992 [(former) 15 U.S.C. 5601 et seq.] [(now 51 U.S.C. 6010 et seq.); and

‘‘(2) includes any imagery and other product that is derived from such data and which is prohibited from sale to customers other than the United States Government and United States Government-approved customers for reasons of national security pursuant to the terms of an operating license described in paragraph (1)(B).

‘‘(c) STATE OR LOCAL GOVERNMENT DISCLOSURES.—

Land remote sensing information provided by the head of a department or agency of the United States Government or tribal government may not be made available to the public general under any State, local, or tribal law relating to the disclosure of information or records.

‘‘(d) SAFEGUARDING INFORMATION.—The head of each department or agency of the United States or tribal government having land remote sensing information within that department or agency of the United States, or records.

‘‘(e) ADDITIONAL DEFINITION.—In this section, the term ‘land remote sensing’ has the meaning given such term in section 3 of the Land Remote Sensing Policy Act of 1992 [(former) 15 U.S.C. 5601] [(now 51 U.S.C. 6010)].

‘‘(f) DISCLOSURE TO CONGRESS.—Nothing in this section shall be construed to authorize the withholding of information from the appropriate committees of Congress.’’

DISCLOSURE OF ARSON, EXPLOSIVE, OR FIREARM RECORDS

Pub. L. 108–7, div. J, title VI, §644, Feb. 20, 2003, 117 Stat. 473, provided that: ‘‘No funds appropriated under this Act or any other Act with respect to any fiscal year shall be available to take any action based upon any provision of §5 U.S.C. 552 with respect to records collected or maintained pursuant to 18 U.S.C. 846(b), 922(p)(3) or 922(g)(7), or provided by Federal, State, local, or foreign law enforcement agencies in connection with arson or explosives incidents or the tracing of a firearm, except that such records may continue to be disclosed to the extent and in the manner that records so collected, maintained, or obtained have been disclosed under §5 U.S.C. 552 prior to the date of the enactment of this Act [Feb. 20, 2003].’’

DISCLOSURE OF INFORMATION ON JAPANESE IMPERIAL GOVERNMENT


‘‘SEC. 801. SHORT TITLE.

This title may be cited as the ‘Japanese Imperial Government Disclosure Act of 2000’.

‘‘SEC. 802. DESIGNATION.

‘‘(a) DEFINITIONS.—In this section:

‘‘(1) AGENCY.—The term ‘agency’ has the meaning given such term under section 551 of title 5, United States Code.

‘‘(2) INTERAGENCY GROUP.—The term ‘Interagency Group’ means the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group established under subsection (b).

‘‘(3) JAPANESE IMPERIAL GOVERNMENT RECORDS.—The term ‘Japanese Imperial Government records’ means classified records or portions of records that pertain to any person with respect to whom the United States Government, in its sole discretion, has grounds to believe ordered, incited, assisted, or otherwise participated in the experimentation on, and persecution of, any person because of race, religion, national origin, or political opinion, during the period beginning September 18, 1931, and ending on December 31, 1948, under the direction of, or in association with—

‘‘(A) the Japanese Imperial Government;

‘‘(B) any government in any area occupied by the military forces of the Japanese Imperial Government;

‘‘(C) any government established with the assistance or cooperation of the Japanese Imperial Government; or

‘‘(D) any government which was an ally of the Japanese Imperial Government.

‘‘(4) RECORD.—The term ‘record’ means a Japanese Imperial Government record.

‘‘(b) ESTABLISHMENT OF INTERAGENCY GROUP.—

‘‘(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act [Dec. 27, 2000], the President shall designate the Working Group established under the Nazi War Crimes Disclosure Act (Public Law 105–246; 5 U.S.C. 552 note) to also carry out the purposes of this title with respect to Japanese Imperial Government records, and that Working Group shall remain in existence for 6 years after the date on which this title takes effect. Such Working Group is redesignated as the ‘Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group’.

‘‘(2) MEMBERSHIP.—[Amended Pub. L. 105–246, set out as a note below.]

‘‘(c) FUNCTIONS.—Not later than 1 year after the date of the enactment of this Act [Dec. 27, 2000], the Interagency Group shall, to the greatest extent possible consistent with section 803—

‘‘(1) locate, identify, inventory, recommend for declassification, and make available to the public at the National Archives and Records Administration, all classified Japanese Imperial Government records of the United States;
"(2) coordinate with agencies and take such actions as necessary to expedite the release of such records to the public; and
"(3) submit a report to Congress, including the Committee on Government Reform [now Committee on Oversight and Government Reform] and the Permanent Select Committee on Intelligence of the House of Representatives, and the Committee on the Judiciary and the Select Committee on Intelligence of the Senate, describing all such records, the disposition of such records, and the activities of the Interagency Group and agencies under this section.
"(d) FUNDING.—There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

'SEC. 803. REQUIREMENT OF DISCLOSURE OF RECORDS.
"(a) RELEASE OF RECORDS.—Subject to subsections (b), (c), and (d), the Japanese Imperial Government Records Interagency Working Group shall release in their entirety Japanese Imperial Government records.
"(b) EXEMPTIONS.—An agency head may exempt from release under subsection (a) specific information, that would—
"(1) constitute an unwarranted invasion of personal privacy;
"(2) reveal the identity of a confidential human source, or reveal information about an intelligence source or method when the unauthorized disclosure of that source or method would damage the national security interests of the United States;
"(3) reveal information that would assist in the development or use of weapons of mass destruction;
"(4) reveal information that would impair United States cryptologic systems or activities;
"(5) reveal information that would impair the application of state-of-the-art technology within a United States weapon system;
"(6) reveal United States military war plans that remain in effect;
"(7) reveal information that would impair relations between the United States and a foreign government, or undermine ongoing diplomatic activities of the United States;
"(8) reveal information that would impair the current ability of United States Government officials to protect the President, Vice President, and other officials for whom protection services are authorized in the interest of national security;
"(9) reveal information that would impair current national security emergency preparedness plans; or
"(10) violate a treaty or other international agreement.

"(c) APPLICATIONS OF EXEMPTIONS.—
"(1) IN GENERAL.—In applying the exemptions provided in paragraphs (2) through (10) of subsection (b), there shall be a presumption that the public interest will be served by disclosure and release of the records of the Japanese Imperial Government. The exemption may be asserted only when the head of the agency that maintains the records determines that disclosure and release would be harmful to a specific interest identified in the exemption. An agency head who makes such a determination shall promptly report it to the committees of Congress with appropriate jurisdiction, including the Committee on the Judiciary and the Select Committee on Intelligence of the Senate and the Committee on Government Reform [now Committee on Oversight and Government Reform] and the Permanent Select Committee on Intelligence of the House of Representatives.

"(2) APPLICATION OF TITLE 5.—A determination by an agency head to apply an exemption provided in paragraphs (2) through (9) of subsection (b) shall be subject to the same standard of review that applies in the case of records withheld under section 552(b)(1) of title 5, United States Code.

"(d) RECORDS RELATED TO INVESTIGATIONS OR PROSECUTIONS.—This section shall not apply to records—
"(1) related to or supporting any active or inactive investigation, inquiry, or prosecution by the Office of Special Investigations of the Department of Justice; or
"(2) solely in the possession, custody, or control of the Office of Special Investigations.

'SEC. 804. EXPEDITED PROCESSING OF REQUESTS FOR JAPANESE IMPERIAL GOVERNMENT RECORDS.
"For purposes of expedited processing under section 552(a)(6)(E) of title 5, United States Code, any person who was persecuted in the manner described in section 802(a)(3) and who requests a Japanese Imperial Government record shall be deemed to have a compelling need for such record.

'SEC. 805. EFFECTIVE DATE.
"The provisions of this title shall take effect on the date that is 90 days after the date of the enactment of this Act [Dec. 27, 2000]."
“(2) coordinate with agencies and take such actions as necessary to expedite the release of such records to the public; and

“(3) submit a report to Congress, including the Committee on the Judiciary of the Senate and the Committee on Government Reform and Oversight (now Committee on Oversight and Government Reform) of the House of Representatives, describing all such records, the disposition of such records, and the activities of the Interagency Group and agencies under this section.

“If there are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

‘‘SEC. 3. REQUIREMENT OF DISCLOSURE OF RECORDS REGARDING PERSONS WHO COMMITTED NAZI WAR CRIMES.

“(a) Nazi War Criminal Records.—For purposes of this Act, the term ‘Nazi war criminal records’ means classified records or portions of records that—

“(1) pertain to any person with respect to whom the United States Government, in its sole discretion, has grounds to believe ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion, during the period beginning on March 23, 1933, and ending on May 8, 1945, by the direction of, or associated with—

“(A) the Nazi government of Germany;

“(B) any government in any area occupied by the military forces of the Nazi government of Germany;

“(C) any government established with the assistance or cooperation of the Nazi government of Germany; or

“(D) any government which was an ally of the Nazi government of Germany;

“(2) pertain to any transaction as to which the United States Government, in its sole discretion, has grounds to believe—

“(A) involved assets taken from persecuted persons during the period beginning on March 23, 1933, and ending on May 8, 1945, by the under direction of, or on behalf of, or under authority granted by the Nazi government of Germany or any nation then allied with that government; and

“(B) such transaction was completed without the assent of the owners of those assets or their heirs or assigns or other legitimate representatives.

“(b) Release of Records.—

“(1) In General.—Subject to paragraphs (2), (3), and (4), the Nazi War Criminal Records Interagency Working Group shall release in their entirety Nazi war criminal records that are described in subsection (a).

“(2) Exception for Privacy, Etc.—An agency head may exempt from release under paragraph (1) specific information, that would—

“(A) constitute a clearly unwarranted invasion of personal privacy;

“(B) reveal the identity of a confidential human source, or reveal information about the application of an intelligence source or method, or reveal the identity of a human intelligence source when the unauthorized disclosure of that source would clearly and demonstrably damage the national security interests of the United States;

“(C) reveal information that would assist in the development or use of weapons of mass destruction;

“(D) reveal information that would impair United States cryptologic systems or activities;

“(E) reveal information that would impair the application of state-of-the-art technology within a United States weapon system;

“(F) reveal actual United States military war plans that remain in effect;

“(G) reveal information that would seriously and demonstrably impair relations between the United States and a foreign government, or seriously and demonstrably undermine ongoing diplomatic activities of the United States;

“(H) reveal information that would clearly and demonstrably impair the current ability of United States Government officials to protect the President, Vice President, and other officials for whom protection services, in the interest of national security, are authorized;

“(I) reveal information that would seriously and demonstrably impair the current national security emergency preparedness plans; or

“(J) violate a treaty or international agreement.

“(3) Application of Exemptions.—

“(A) In General.—In applying the exemptions listed in subparagraphs (B) through (J) of paragraph (2), there shall be a presumption that the public interest in the release of Nazi war criminal records will be served by disclosure and release of the records. Assertion of such exemption may only be made when the agency head determines that disclosure and release would be harmful to a specific interest identified in the exemption. An agency head who makes such a determination shall promptly report it to the committees of Congress with appropriate jurisdiction, including the Committee on the Judiciary of the Senate and the Committee on Government Reform and Oversight (now Committee on Oversight and Government Reform) of the House of Representatives. The exemptions set forth in paragraph (2) shall constitute the only authority pursuant to which an agency head may exempt records otherwise subject to release under paragraph (1).

“(B) Application of Title 5.—A determination by an agency head to apply an exemption listed in subparagraphs (B) through (J) of paragraph (2) shall be subject to the same standard of review that applies in the case of records withheld under section 552(b)(1) of title 5, United States Code.

“(4) Limitation on Application.—This subsection shall not apply to records—

“(A) related to or supporting any active or inactive investigation, inquiry, or prosecution by the Office of Special Investigations of the Department of Justice; or

“(B) solely in the possession, custody, or control of that office.

“(c) Inapplicability of National Security Act of 1974 Exemption.—Section 301(a) of the National Security Act of 1947 (50 U.S.C. 431(a)(1)) (now 50 U.S.C. 3141(a)(1)) shall not apply to any operational file, or any portion of any operational file, that constitutes a Nazi war criminal record under section 3 of this Act.

‘‘SEC. 4. EXPEDITED PROCESSING OF FOIA REQUESTS FOR NAZI WAR CRIMINAL RECORDS.

“(a) Expedited Processing.—For purposes of expedited processing under section 552(a)(6)(E) of title 5, United States Code, any requester of a Nazi war criminal record shall be deemed to have a compelling need for such record.

“(b) Requester.—For purposes of this section, the term ‘requester’ means any person who was persecuted in the manner described under section 3(a)(1) of this Act who requests a Nazi war criminal record.

‘‘SEC. 5. EFFECTIVE DATE.

“This Act and the amendments made by this Act shall take effect on the date that is 90 days after the date of enactment of this Act [Oct. 8, 1998].’’

CONGRESSIONAL STATEMENT OF FINDINGS AND PURPOSE; PUBLIC ACCESS TO INFORMATION IN ELECTRONIC FORMAT

Section 2 of Pub. L. 104–231 provided that:

“(a) FINDINGS.—The Congress finds that—

“(1) the purpose of section 532 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: 

"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 identification of unsafe consumer products, harmful drugs, and serious health hazards;

"(4) Government agencies should use new technology to enhance public access to agency records and information.

"(b) Purposes.—The purposes of this Act [see Short Title of 1996 Amendment note above] 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.

FREEDOM OF INFORMATION ACT EXEMPTION FOR CERTAIN OPEN SKIES TREATY DATA

Pub. L. 103-236, title V, §533, Apr. 30, 1994, 108 Stat. 480, provided that:

"(a) IN GENERAL.—Data with respect to a foreign country collected by sensors during observation flights conducted in connection with the Treaty on Open Skies, including flights conducted prior to entry into force of the treaty, shall be exempt from disclosure under the Freedom of Information Act—

"(1) if the country has not disclosed the data to the public; and

"(2) if the country has not, acting through the Open Skies Consultative Commission or any other diplomatic channel, authorized the United States to disclose the data to the public above; or

"(b) STATUTORY CONSTRUCTION.—This section constitutes a specific exemption within the meaning of section 552(b)(3) of title 5, United States Code.

"(c) DEFINITIONS.—For the purposes of this section—

"(1) the term ‘Freedom of Information Act’ means the provisions of section 552 of title 5, United States Code;

"(2) the term ‘Open Skies Consultative Commission’ means the commission established pursuant to Article X of the Treaty on Open Skies; and


CLASSIFIED NATIONAL SECURITY INFORMATION

For provisions relating to a request to a request for information under this section when the fact of its existence or nonexistence is itself classified or when it was originally classified by another agency, see Ex. Ord. No. 13258, §3.6, Dec. 29, 2009, 75 F.R. 718, set out as a note under section 3161 of Title 50, War and National Defense.

EXECUTIVE ORDER No. 12174


Ex. Ord. No. 12090. PREDISCLOSURE NOTIFICATION PROCEDURES FOR CONFIDENTIAL COMMERCIAL INFORMATION

Ex. Ord. No. 12800, June 23, 1987, 52 F.R. 23761, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in order to provide predisclosure notification procedures under the Freedom of Information Act [5 U.S.C. §52] concerning confidential commercial information, and to make existing agency notification provisions more uniform, it is hereby ordered as follows:

Section 1. The head of each Executive department or agency subject to the Freedom of Information Act [5 U.S.C. §52] shall, to the extent permitted by law, establish procedures to notify submitters of records containing confidential commercial information as described in section 3 of this Order, when those records are requested under the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended, by a request, the responsive records, and any appeal by the requester, the department or agency determines that it may be required to disclose the records. Such notice requires that an agency use good-faith efforts to advise submitters of confidential commercial information of the procedures established under this Order. Further, where notification of a voluminous number of submitters is required, such notification may be accomplished by posting or publishing the notice in a place reasonably calculated to accomplish notification.

Section 2. For purposes of this Order, the following definitions apply:

(a) ‘Confidential commercial information’ means records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(b) ‘Submitter’ means any person or entity who provides confidential commercial information to the government. The term ‘submitter’ includes, but is not limited to, corporations, state governments, and foreign governments.

Section 3. (a) For confidential commercial information submitted prior to January 1, 1988, the head of each Executive department or agency shall, to the extent permitted by law, provide a submitter with notice pursuant to section 1 whenever:

(i) the records are less than 10 years old and the information has been designated by the submitter as confidential commercial information; or

(ii) the department or agency has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(b) For confidential commercial information submitted on or after January 1, 1988, the head of each Executive department or agency shall, to the extent permitted by law, establish procedures to permit submitters of confidential commercial information to designate, at the time the information is submitted to the Federal government, that the information is to be treated by the agency as if it had been so designated by the submitter. The head of each Executive department or agency shall, to the extent permitted by law, provide the submitter notice in accordance with section 1 of this Order whenever the department or agency determines that it may be required to disclose records:

(i) designated pursuant to this subsection; or

(ii) the disclosure of which the department or agency has reason to believe could reasonably be expected to cause substantial competitive harm.

Section 4. When notification is made pursuant to section 1, each agency’s procedures shall, to the extent permitted by law, afford the submitter a reasonable period of time in which the submitter or its designee may object to the disclosure of any specified portion of the information and to state all grounds upon which disclosure is opposed.
Sic. 5. Each agency shall give careful consideration to all such specified grounds for nondisclosure prior to making an administrative determination of the issue. In all instances when the agency determines to disclose the requested records, its procedures shall provide that the agency give the submitter a written statement briefly explaining why the submitter's objections are not sustained. Such statement shall, to the extent permitted by law, be provided a reasonable number of days prior to a specified disclosure date.

Sic. 6. Whenever a FOIA requester brings suit seeking to compel disclosure of confidential commercial information, each agency's procedures shall require that the submitter be promptly notified.

Sic. 7. The designation and notification procedures required by this Order shall be established by regulations, after notice and public comment. If similar procedures or regulations already exist, they should be reviewed for conformity and revised where necessary. Existing procedures or regulations need not be modified if they are in compliance with this Order.

Sic. 8. The notice requirements of this Order need not be followed if:
   (a) The agency determines that the information should not be disclosed;
   (b) The information has been published or has been officially made available to the public;
   (c) Disclosure of the information is required by law (other than 5 U.S.C. 552);
   (d) The disclosure is required by an agency rule that (1) was adopted pursuant to notice and public comment, (2) specifies narrow classes of records submitted to the agency that are to be released under the Freedom of Information Act [5 U.S.C. 552], and (3) provides in exceptional circumstances for notice when the submitter provides written justification, at the time the information is submitted or a reasonable time thereafter, that disclosure of the information could reasonably be expected to cause substantial competitive harm;
   (e) The information requested is not designated by the submitter as exempt from disclosure in accordance with agency regulations promulgated pursuant to section 7, when the submitter had an opportunity to do so at the time of submission of the information or a reasonable time thereafter, unless the agency has substantial reason to believe that disclosure of the information would result in competitive harm; or
   (f) The designation made by the submitter in accordance with agency regulations promulgated pursuant to section 7 appears obviously frivolous; except that, in such case, the agency must provide the submitter with written notice of any final administrative determination within a reasonable number of days prior to the specified disclosure date.

Sic. 9. Whenever an agency notifies a submitter that it must disclose information pursuant to section 1 of this Order, the agency shall also notify the requester that notice and an opportunity to comment are being provided the submitter. Whenever an agency notifies a submitter of a final decision pursuant to section 5 of this Order, the agency shall also notify the requester.

Sic. 10. This Order is intended only to improve the internal management of the Federal government, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

Ronald Reagan.

Ex. Ord. No. 13110, Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group

Ex. Ord. No. 13110, Jan. 11, 1999, 64 F.R. 2419, provided:
By the authority vested in me as President by the Constitution and the laws of the United States of America, and to ensure appropriate agency disclosure of information, and consistent with the goals of section 552 of title 5, United States Code, it is hereby ordered as follows:

SECTION 1. Establishment of Working Group. There is hereby established the Nazi War Criminal Records Interagency Working Group [now Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group] (Working Group). The function of the Group shall be to locate, inventory, recommend for declassification, and make available to the public at the National Archives and Records Administration all classified Nazi war criminal records of the United States, subject to certain designated exceptions as provided in the Act. The Working Group shall coordinate with agencies and take such actions as necessary to expedite the release of such records to the public.

Sic. 2. Schedule. The Working Group should complete its work to the greatest extent possible and report to the Congress within 1 year.

Sic. 3. Membership. (a) The Working Group shall be composed of the following members:
   (1) Archivist of the United States (who shall serve as Chair of the Working Group);
   (2) Secretary of Defense;
   (3) Attorney General;
   (4) Director of Central Intelligence;
   (5) Director of the Federal Bureau of Investigation;
   (6) Director of the United States Holocaust Memorial Museum;
   (7) Historian of the Department of State; and
   (8) Three other persons appointed by the President.
   (b) The Senior Director for Records and Access Management of the National Archives and Records Administration shall serve as the liaison to and attend the meetings of the Working Group. Members of the Working Group who are full-time Federal officials may serve on the Working Group through designees.

Sic. 4. Administration. (a) To the extent permitted by law and subject to the availability of appropriations, the National Archives and Records Administration shall provide the Working Group with funding, administrative services, facilities, staff, and other support services necessary for the performance of the functions of the Working Group.
   (b) The Working Group shall terminate 3 years from the date of this Executive order.

William J. Clinton.

Ex. Ord. No. 13392, Improving Agency Disclosure of Information

Ex. Ord. No. 13392, Dec. 14, 2005, 70 F.R. 75373, provided:
By the authority vested in me as President by the Constitution and the laws of the United States of America, and to ensure appropriate agency disclosure of information, and consistent with the goals of section 552 of title 5, United States Code, it is hereby ordered as follows:

SECTION 1. Policy.
   (a) The effective functioning of our constitutional democracy depends upon the participation in public life of a citizenry that is well informed. For nearly four decades, the Freedom of Information Act (FOIA) [5 U.S.C. 552] has provided an important means through which the public can obtain information regarding the activities of Federal agencies. Under the FOIA, the public can obtain records from any Federal agency, subject to the exemptions enacted by the Congress to protect information that must be held in confidence for the Government to function effectively or for other purposes.
   (b) FOIA requesters are seeking a service from the Federal Government and should be treated as such. Accordingly, in responding to a FOIA request, agencies shall respond courteously and appropriately. Moreover, agencies shall provide FOIA requesters, and the public in general, with citizen-centered ways to learn about the FOIA process, about agency records that are publicly available (e.g., on the agency's website), and about the status of a person's FOIA request and appropriate information about the interagency response.
   (c) Agency FOIA operations shall be both results-oriented and produce results. Accordingly, agencies shall...
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process requests under the FOIA in an efficient and appropriate manner and achieve tangible, measurable improvements in FOIA processing. When an agency’s FOIA program does not produce such results, it should be reformed, consistent with available resources appropriated by the Congress and applicable law, to increase efficiency and better reflect the policy goals and objectives of this order.

d) A citizen-centered and results-oriented approach will improve service and performance, thereby strengthening compliance with the FOIA, and will help avoid disputes and related litigation.

Snc. 2. Agency Chief FOIA Officers.

(a) Designation. The head of each agency shall designate within 30 days of the date of this order a senior official of such agency (at the Assistant Secretary or equivalent level), to serve as the Chief FOIA Officer of that agency. The head of the agency shall promptly notify the Director of the Office of Management and Budget (OMB Director) and the Attorney General of such designation and of any changes thereafter in such designation.

(b) General Duties. The Chief FOIA Officer of each agency shall, subject to the authority of the head of the agency:

(i) have agency-wide responsibility for efficient and appropriate compliance with the FOIA;

(ii) monitor FOIA implementation throughout the agency, including through the use of meetings with the public to the extent deemed appropriate by the agency’s Chief FOIA Officer, and keep the head of the agency, the chief legal officer of the agency, and the Attorney General appropriately informed of the agency’s performance in implementing the FOIA, including the extent to which the agency meets the milestones in the agency’s plan under section 3(b) of this order and training and reporting standards established consistent with applicable law and this order;

(iii) recommend to the head of the agency such adjustments to agency practices, policies, personnel, and funding as may be necessary to carry out the policy set forth in section 1 of this order;

(iv) review and report, through the head of the agency, at such times and in such formats as the Attorney General may direct, on the agency’s performance in implementing the FOIA; and

(v) facilitate public understanding of the purposes of the FOIA’s statutory exemptions by including concise descriptions of the exemptions in both the agency’s FOIA handbook issued under section 552(g) of title 5, United States Code, and the agency’s annual FOIA report, and by providing an overview, where appropriate, of certain general categories of agency records to which those exemptions apply.

(c) FOIA Requester Service Center and FOIA Public Liaisons. In order to ensure appropriate communication with FOIA requesters:

(i) Each agency shall establish one or more FOIA Requester Service Centers (Center), as appropriate, which shall serve as the first place that a FOIA requester can contact to seek information concerning the status of the person’s FOIA request and appropriate information about the agency’s FOIA response. The Center shall include appropriate staff to receive and respond to inquiries from FOIA requesters;

(ii) The agency Chief FOIA Officer shall designate one or more agency officials, as appropriate, as FOIA Public Liaisons, who may serve in the Center or who may serve in a separate office. FOIA Public Liaisons shall serve as supervisory officials to whom a FOIA requester can raise concerns about the service the FOIA requester has received from the Center, following an initial response from the Center staff. FOIA Public Liaisons shall seek to ensure a service-oriented response to FOIA requests and FOIA-related inquiries. For example, the FOIA Public Liaison shall assist, as appropriate, in reducing delays, increasing transparency and understanding of the status of requests, and resolving disputes. FOIA Public Liaisons shall report to the agency Chief FOIA Officer on their activities and shall perform their duties consistent with applicable law and agency regulations;

(iii) In addition to the services to FOIA requesters provided by the Center and FOIA Public Liaisons, the agency Chief FOIA Officer shall also consider what other FOIA-related assistance to the public should appropriately be provided by the agency;

(iv) In establishing the Centers and designating FOIA Public Liaisons, the agency shall use, as appropriate, existing agency staff and resources. A Center shall have appropriate staff to receive and respond to inquiries from FOIA requesters;

(v) As determined by the agency Chief FOIA Officer, in consultation with the FOIA Public Liaisons, each agency shall post appropriate information about its Center or Centers on the agency’s website, including contact information for its FOIA Public Liaisons. In the case of an agency without a website, the agency shall publish the information on the Firstgov.gov website or, in the case of any agency with neither a website nor the capability to post on the Firstgov.gov website, in the Federal Register; and

(vi) The agency Chief FOIA Officer shall ensure that the agency has in place a method (or methods), including through the use of the Center, to receive and respond promptly and appropriately to inquiries from FOIA requesters about the status of their requests. The Chief FOIA Officer shall also consider, in consultation with the FOIA Public Liaisons, as appropriate, whether the agency’s implementation of other means (such as tracking numbers for requests, an agency telephone or Internet hotline) would be appropriate for responding to status inquiries.

Snc. 3. Review, Plan, and Report.

(a) Review. Each agency’s Chief FOIA Officer shall conduct a review of the agency’s FOIA operations to determine whether agency practices are consistent with the policies set forth in section 1 of this order. In conducting this review, the Chief FOIA Officer shall:

(i) evaluate, with reference to numerical and statistical benchmarks where appropriate, the agency’s administration of the FOIA, including the agency’s expenditure of resources on FOIA compliance and the extent to which, if any, requests for records have not been responded to within the statutory time limit (backlog);

(ii) review the processes and practices by which the agency assists and informs the public regarding the FOIA process;

(iii) examine the agency’s:

(A) use of information technology in responding to FOIA requests, including without limitation the tracking of FOIA requests and communication with requesters;

(b) practices with respect to requests for expedited processing; and

(C) implementation of multi-track processing if used by such agency;

(iv) review the agency’s policies and practices relating to the availability of public information through websites and other means, including the use of websites to make available the records described in section 552(a)(2) of title 5, United States Code; and

(v) identify ways to eliminate or reduce its FOIA backlog, consistent with available resources and taking into consideration the volume and complexity of the FOIA requests pending with the agency.

(b) Plan.

(i) Each agency’s Chief FOIA Officer shall develop, in consultation as appropriate with the staff of the agency (including the FOIA Public Liaisons), the Attorney General, and the OMB Director, an agency-specific plan to ensure that the agency’s administration of the FOIA is in accordance with applicable law and the policies set forth in section 1 of this order. The plan, which shall be submitted to the head of the agency for approval, shall address the agency’s implementation of the FOIA during fiscal years 2006 and 2007.

(ii) The plan shall include specific activities that the agency will implement to eliminate or reduce the agency’s FOIA backlog, including (as applicable) changes...
that will make the processing of FOIA requests more streamlined and effective, as well as increased reliance on the dissemination of records that can be made available to the public through a website or other means that do not require the public to make a request for the records under the FOIA.

(iii) The plan shall also include activities to increase public awareness of FOIA processing, including as appropriate, expanded use of the agency’s Center and its FOIA Public Liaisons.

(iv) The plan shall also include, taking appropriate account of the resources available to the agency and the mission of the agency, concrete milestones, with specific timetables and outcomes to be achieved, by which the head of the agency, after consultation with the OMB Director, shall measure and evaluate the agency’s success in the implementation of the plan.

(c) Agency Reports to the Attorney General and OMB Director.

(i) The head of each agency shall submit a report, no later than 6 months from the date of this order, to the Attorney General and the OMB Director that summarizes the results of the review under section 3(a) of this order and encloses a copy of the agency’s plan under section 3(b) of this order. The agency shall publish a copy of the agency’s report on the agency’s website or, in the case of an agency without a website, on the Firstgov.gov website, or, in the case of any agency with neither a website nor the capability to publish on the Firstgov.gov website, in the Federal Register.

(ii) Each agency shall include in the agency’s annual FOIA reports for fiscal years 2006 and 2007 a report on the agency’s development and implementation of its plan under section 3(b) of this order and on the agency’s performance in meeting the milestones set forth in that plan, consistent with any related guidelines the Attorney General may issue under section 552(e) of title 5, United States Code.

(iii) If the agency does not meet a milestone in its plan, the head of the agency shall:

(A) identify this deficiency in the annual FOIA report to the Attorney General;

(B) explain in the annual report the reasons for the agency’s failure to meet the milestone;

(C) outline in the annual report the steps that the agency has already taken, and will be taking, to address the deficiency; and

(D) report this deficiency to the President’s Management Council.

Sic. 4. Attorney General.

(a) Report. The Attorney General, using the reports submitted by agencies under subsection 3(c)(1) of this order and the information submitted by agencies in their annual FOIA reports for fiscal year 2005, shall submit to the President, no later than 10 months from the date of this order, a report on agency FOIA implementation. The Attorney General shall consult the OMB Director in the preparation of the report and shall include in the report appropriate recommendations on administrative or other agency actions for continued agency dissemination and release of public information. The Attorney General shall thereafter submit two further annual reports, by June 1, 2007, and June 1, 2008, that provide the President with an update on the agencies’ implementation of the FOIA and of their plans under section 3(b) of this order.

(b) Guidance. The Attorney General shall issue such instructions and guidance to the heads of departments and agencies as may be appropriate to implement sections 3(b) and 3(c) of this order.

Sic. 5. OMB Director. The OMB Director may issue such instructions to the heads of agencies as are necessary to implement this order, other than sections 3(b) and 3(c) of this order.

Sic. 6. Definitions. As used in this order:

(a) the term “agency” has the same meaning as the term “agency” under section 552(f)(1) of title 5, United States Code; and

(b) the term “record” has the same meaning as the term “record” under section 552(f)(2) of title 5, United States Code.

Sic. 7. General Provisions.

(a) The agency reviews under section 3(a) of this order and agency plans under section 3(b) of this order shall be conducted and developed in accordance with applicable law and applicable guidance issued by the President, the Attorney General, and the OMB Director, including the laws and guidance regarding information technology and the dissemination of information.

(b) This order:

(i) shall be implemented in a manner consistent with applicable law and subject to the availability of appropriations;

(ii) shall not be construed to impair or otherwise affect the functions of the OMB Director relating to budget, legislative, or administrative proposals; and

(iii) is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its agencies, instrumentalities, or entities, its officers or employees, or any other person.

GEORGE W. BUSH.

EX. ORD. NO. 13642. MAKING OPEN AND MACHINE READABLE THE NEW DEFAULT FOR GOVERNMENT INFORMATION

EX. Ord. No. 13642, May 9, 2009, 74 F.R. 23831, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. General Principles. Openness in government strengthens our democracy, promotes the delivery of efficient and effective services to the public, and contributes to economic growth. As one vital benefit of open government, making information resources easy to find, accessible, and usable can fuel entrepreneurship, innovation, and scientific discovery that improves Americans’ lives and contributes significantly to job creation.

Decades ago, the U.S. Government made both weather data and the Global Positioning System freely available. Since that time, American entrepreneurs and innovators have utilized these resources to create navigation systems, weather newscasts and warning systems, location-based applications, precision farming tools, and much more, improving Americans’ lives in countless ways and leading to economic growth and job creation. In recent years, thousands of Government data resources across fields such as health and medicine, education, energy, public safety, global development, and finance have been posted in machine-readable form for free public use on Data.gov. American entrepreneurs and innovators have continued to develop a vast range of useful new products and businesses using these public information resources, creating good jobs in the process.

To promote continued job growth, Government efficiency, and the social good that can be gained from opening Government data to the public, the default state of new and modernized Government information resources shall be open and machine readable. Government information shall be managed as an asset throughout its life cycle to promote interoperability and openness, and, wherever possible and legally permissible, to ensure that data are released to the public in ways that make the data easy to find, accessible, and usable. In making this the new default state, executive departments and agencies (agencies) shall ensure that they safeguard individual privacy, confidentiality, and national security.

Agencies shall implement the requirements of the Open Data Policy and shall adhere to the deadlines for specific actions specified therein. When implementing the Open Data Policy, agencies shall incorporate a full analysis of privacy, con of measures to support the incorporation of these principles in the development of open data strategies and timelines, and in a spirit of cooperation, recognizing that such efforts may include developing sample requirements language, grant and contract language, and workforce tools for agency acquisition, grant, and information management and technology professionals.

Within 90 days of the issuance of the Open Data Policy, the Administrator of the OMB shall publish an online repository of tools and best practices to assist agencies in integrating the Open Data Policy into their operations. The CIO and OMB shall regularly update this online repository as needed to ensure it remains a resource to facilitate the adoption of open data practices.

(a) Within 30 days of the issuance of the Open Data Policy, the CIO and CTO shall work with the Chief Information Officers Council, Chief Financial Officers Council, Chief Information Officers Council, and Federal Records Council to establish a Cross-Agency Priority (CAP) GOAL to track implementation of the Open Data Policy. The CIO shall work with agencies to set incremental performance goals, ensuring they have metrics and milestones in place to monitor advancement toward the CAP Goal. Progress on these goals shall be analyzed and reviewed by agency leadership, pursuant to the GPRA Modernization Act of 2010 (Public Law 111–352).

(b) Within 180 days of the issuance of the Open Data Policy, agencies shall report progress on the implementation of the CAP Goal to the CPO. Thereafter, agencies shall report progress quarterly, and as appropriate.

Sect. 4. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is hereby authorized and directed to publish this memorandum in the Federal Register.

SEC. 3. Implementation of the Open Data Policy. To facilitate effective Government-wide implementation of the Open Data Policy, the CIO and CTO shall:

(a) Within 30 days of the issuance of the Open Data Policy, the CIO and CTO shall publish an online repository of tools and best practices to assist agencies in integrating the Open Data Policy into their operations in furtherance of their missions. The CIO and CTO shall regularly update this online repository as needed to ensure it remains a resource to facilitate the adoption of open data practices.

(b) Within 90 days of the issuance of the Open Data Policy, the Administrator for Federal Procurement Policy, Controller of the Office of Federal Financial Management, and Administrator of OIRA shall work with the Chief Acquisition Officers Council, Chief Financial Officers Council, Chief Information Officers Council, and Federal Records Council to identify and integrate measures to support the integration of the Open Data Policy requirements into Federal acquisition and grant-making processes. Such efforts may include developing sample requirements language, grant, and contract language, and workforce tools for agency acquisition, grant, and information management and technology professionals.

(c) Within 90 days of the date of this order, the Chief Performance Officer (CPO) shall work with the President’s Management Council to establish a Cross-Agency Priority (CAP) Goal for implementation of the Open Data Policy. The CPO shall work with agencies to set incremental performance goals, ensuring they have metrics and milestones in place to monitor advancement toward the CAP Goal. Progress on these goals shall be analyzed and reviewed by agency leadership, pursuant to the GPRA Modernization Act of 2010 (Public Law 111–352).

(1) the term “agency” means agency as defined in section 552(a) of this title;

(2) the term “individual” means a citizen of the United States or an alien lawfully admitted for permanent residence;

(3) the term “maintain” includes maintain, collect, use, or disseminate;

See References in Text note below.