Appendix A

1996 EFOIA Amendments House Report (Excerpts)

IV. EXPLANATION OF THE BILL

A. Overview

The highlights of the Electronic Freedom of Information Amendments include:

Electronic records.— Records which are subject to the FOIA shall be made available under the FOIA when the records are maintained in electronic format. This clarifies existing practice by making the statute explicit on this point.

Format Requests.— Requestors may request records in any form or format in which the agency maintains those records. Agencies must make a "reasonable effort'' to comply with requests to furnish records in other formats.

Redaction.— Agencies redacting electronic records (deleting part of a record to prevent disclosure of material covered by an exemption) must note the location and the extent of any deletions made on a record. This provision, however, applies only if the agencies have the technology to comply with it.

Expedited Processing.— Certain categories of requestors would receive priority treatment of their requests if failure to obtain information in a timely manner would pose a significant harm. The first category of requestors entitled to this special processing includes those who could reasonably expect that delay could pose an imminent threat to the life or physical safety of an individual. The second category includes requests, made by a person primarily engaged in the dissemination of information to the public, and involving compelling urgency to inform the public.

Multitrack processing.— Agencies will be able to establish processes for processing requests of various sizes on different tracks. Because of this procedure, larger numbers of requests for smaller amounts of material will be completed more quickly. Requestors will also have an incentive to frame narrower requests.

Agency Backlogs.— Agencies can no longer delay responding to FOIA requests because of "exceptional circumstances'' simply as a result from a predictable agency request workload. This strengthens the requirement that agencies respond to requests on time.

Deadlines.— The deadline for responding to FOIA is extended to 20 workdays from the current 10 workday requirement for initial determinations.

Reporting requirements.— The legislation expands certain reporting requirements, and requires agencies to make more information available through electronic means.

B. Section by Section

Section 1. Short title

The Act should be cited as the "Electronic Freedom of Information Act Amendments of 1996.''

Section 2. Findings and purposes

The findings make clear that Congress enacted the FOIA to require Federal agencies to make records available to the public through public inspection and at the request of any person for any public or private use. They further acknowledge the increase in the Government's use of computers and encourages agencies to use new technology to enhance public access to Government information.

Section 3. Application of requirements to electronic format information

The section explicitly states that a "record'' under the FOIA includes electronically stored information. This articulates the existing general policy under the FOIA that all Government records are subject to the Act, regardless of the form in which they are stored by the agency. The Department of Justice agrees that computer database records are agency records subject to the FOIA. \31\ The bill defines "record'' to "include any information that would be an agency record subject to the requirements of this section if maintained by an agency in any format, including an electronic format.''

\31\See "Department of Justice Report on `Electronic Record' Issues Under the Freedom of Information Act,'' Senate Hearing 102 1098, 102d Cong., 2d Sess. P. 33, 1992. This section clarifies the meaning of the term "record'' and similar terminology used in the FOIA. Several important points are worth making.

Breadth of Policy.—First, the FOIA usually uses the term "record,'' but other terms are also used occasionally, including "information'' and "matter.'' The terms are used interchangeable. The section makes clear a comprehensive policy that records in electronic formats are agency records subject to the Act. The language of the section should leave no doubt about the breadth of the policy. As noted previously, a number of statutes set Federal Government information policy. This bill is not intended to be dispositive of all aspects of those policies. For example, matter not previously subject to FOIA when maintained in a non-electronic format is not made subject to FOIA by this bill.

Storage Media.—Second, the section clarifies that a record in electronic format can be requested just like a record on paper or any other format, and within enumerated exceptions, can potentially be fully disclosed under the law. The format in which data is maintained is not relevant under the FOIA. Computer tapes, computer disks, CD ROMs, and all other digital or electronic media are records. Microfiche and microforms are records. When other, yet-to-be invented technologies are developed to store, maintain, produce, or otherwise record information, these will be records as well. When determining whether information is subject to the FOIA, the form or format in which it is maintained is not relevant to the decision.

The requirements for the disclosure of information exist elsewhere in the Act. No matter how it is preserved, information that passes the threshold test of being an agency record, remains a record. This provision should restrain agencies from evading the clear intent of the FOIA by deeming some forms of data as not being agency records and not subject to the law. The primary focus should always be on whether information is subject to disclosure or is exempt, rather than the form or format it is stored in. This provision, however, does not broaden the concept of agency record. The information maintained on a computer is a record, but the computer is not.

Rejected Definitions.—Third, the Committee rejects the definition of record in the substitute to S. 90, as reported by the Senate Committee on the Judiciary on April 25, 1996. The Senate bill had incorporated a definition of record drawn from the Records Disposal Act. \32\

\32\44 U.S.C. *3301 (1994).

A case in point comes from the decision in *SDC Development Corp. v. Mathews*. \33\ The decision has previously been sharply criticized by this Committee and its holding is inconsistent with the policies expressed in this legislation. \34\ The Court found that an agency-created computer database of research abstracts was not an agency record because it was library material. The court used the library material exclusion in the Records Disposal Act as an excuse to place these records beyond the reach of the FOIA. H.R. 3802 makes clear, contrary to *SDC v. Mathews*, that information an agency has created and is directly or indirectly disseminating remains subject to the FOIA in any of its forms or formats.\35\

\33\542 F.2d 1116 (9th Cir. 1976).

\34\See House Committee on Government Operations, Electronic Collection and Dissemination of Information by Federal Agencies: A Policy Overview, 99th Cong., 2d Sess. 32 36 (1986).

\35\A recent scholarly article examines the background and policy of the Records Disposal Act and the FOIA. It provides a more extensive discussion of the Court's misreading of the FOIA, the Records Disposal Act and the Copyright Act. See Robert Gellman, Twin Evils: Government Copyright and Copyright-Like Controls Over Government Information, 45 Syracuse Law Review 999, 1036 1046 (1995).

Section 4. Information made available in electronic format and indexation of records

This section of the bill requires that materials, such as agency opinions and policy statements, which an agency must "make available for public inspection and copying," pursuant to Section 552(a)(2), and which are created on or after November 1, 1996, be made available by computer telecommunications, and in hard copy, within one year after the date of enactment. If an agency does not have the means established to make these materials available on-line, then the information should be made available in another electronic form, e.g., CD ROM or disc. The bill would thus treat (a)(2) materials in the same manner as it treats (a)(1) materials, which under the Government Printing Office Electronic Information Access Enhancement Act of 1993 \36\ are required, via the Federal Register, to be made available on-line.

\36\44 U.S.C. 4101 (1993).

This section would also increase the information made available under Section 552(a)(2). Specifically, agencies would be required to make available for public inspection and copying, in the same manner as other materials made available under Section 552(a)(2), copies of records released in response to FOIA requests that the agency determines have been or will likely be the subject of additional requests. In addition, they would be required to make available a general index of these previously-released records. By December 31, 1999, this index should be made available by computer telecommunications. Since not all individuals have access to computer networks or are near agency public reading rooms, requestors would still be able to access previously-released FOIA records through the normal FOIA process.

As a practical matter, this would mean that copies of previously-released records on a popular topic, such as the assassinations of public figures, would subsequently be treated as (a)(2) materials, made available for public inspection and copying. This would help to reduce the number of multiple FOIA requests for the same records requiring separate agency responses. Likewise, the general index would help requestors in determining which records have been the subject of prior FOIA requests. By diverting some potential FOIA requests for previously-released records with this index, agencies can better use their FOIA resources to fulfill new requests.

This section also makes clear that to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes the index and copies of previously-released records.

Finally, this section would require an agency to indicate the extent of any deletion from the previously-released records. This provision is consistent with the "Computer Redaction'' section of the bill. Both provisions similarly temper this requirement by giving agencies the flexibility to show that marking the place on the record where the deletion was made was not technically feasible. Agencies need not reveal information about deletions if such disclosure would harm an interest protected by an exemption.

Section 5. Honoring form or format requests

This section requires agencies to help requestors by providing information in the form requested, including requests for the electronic form of records, if the agency can readily reproduce it in that form. The section would overrule *Dismukes v. Department of the Interior*, which held that an agency "has no obligation under the FOIA to accommodate plaintiff's preference [but] need only provide responsive, nonexempt information in a reasonably accessible form.'' \37\

\37\603 F. Supp. 760, 763 (D.D.C. 1984)

This section also requires agencies to make reasonable efforts to search for records kept in an electronic format. An unreasonable effort would significantly interfere with the operations of the agency or the agency's use of its computers. Electronic searches should not result in any greater expenditure of agency resources than would have occurred with a conventional paper-based search for documents.

The bill defines "search'' as a "review, manually or by automated means,'' of "agency records for the purpose of locating those records responsive to a request.'' Under the FOIA, an agency need not create documents that do not exist. Computer records found in a database rather than in a file cabinet may require the application of codes or some form of programming to retrieve the information. Under the definition of "search'' in the bill, the review of computerized records would not amount to the creation of records. Otherwise, it would be virtually impossible to get records maintained completely in an electronic format, like computer database information, because some manipulation of the information likely would be necessary to search the records.

Current law provides that most requestors receive the first two hours of search time for free. Ten years ago, computer time was expensive and carefully metered. Today, computer time is generally no longer a scarce resource. Except in unusual cases, the cost of computer time should not be a factor in calculating the two free hours of search time. Often, searching by computer will reduce costs because computer

searches are generally faster, more thorough and more accurate, than manual searches. In those unusual cases, where the cost of conducting a computerized search significantly detracts from the agencies'' ordinary operations, no more than the dollar equivalent of two hours manual search time shall be allowed for two hours free search time. For any searches conducted beyond the first two hours, an agency shall only charge the direct costs of conducting such searches.

Section 6. Standard for judicial review

Section 5 requires a court to accord substantial weight to an agency's determination as to both the technical feasibility of redacting non-releasable material at the place on the record where the deletion was made, under paragraphs (2)(C) and subsection (b), as amended by this Act, and the reproducibility of the requested form or format of records, under paragraph (3)(B), as amended by this Act. This deference is warranted because agencies are the most familiar with the availability of their own technical resources to process, redact, and reproduce records.

This section does not affect the extent of judicial deference that a court may or may not extend to an agency on any other matter. There is no intent with this provision, either expressly or by implication, to affect the deference or weight which a court may extend to an agency determination or an agency affidavit on any other matter. The provision applies narrowly to agency determinations with regard to technical feasibility.

Section 7. Ensuring timely response to requests

The bill addresses the single most frequent complaint about the operation of the FOIA: agency delays in responding to FOIA requests. This section encourages agencies to employ better records management systems and to set priorities for using their FOIA resources.

In underscoring the requirement that agencies respond to requests in a timely manner, the Committee does not intend to weaken any interests protected by the FOIA exemptions. Agencies processing some requests may need additional time to adequately review requested material to protect those exemption interests. For example, processing some requests may require additional time in order to properly screen material against the inadvertent disclosure of material covered by the national security exemption.

Multitrack First-In First-Out Processing.—An agency commitment to process requests on a first-in, first-out basis has been held to satisfy the requirement that an agency exercise due diligence in dealing with backlogs of FOIA requests. Processing requests solely on a FIFO basis, however, may result in lengthy delays for simple requests. The prior receipt and processing of complex requests delays other requests, increasing agency backlogs. The bill would permit agencies to promulgate regulations starting multitrack processing systems, and makes clear that agencies should exercise due diligence within each track. Agencies would also be required to give requestors the opportunity to limit the scope of their requests to qualify for processing under a faster track.

Unusual Circumstances.—The FOIA currently permits an agency in "unusual circumstances'' to extend for a maximum of ten working days the statutory time limit for responding to a FOIA request, upon written notice to the requestor setting forth the reason for such extension. The FOIA enumerates various reasons for such an extension. These reasons include the need to search for and collect requested records

from multiple offices, the volume of records requested, and the need for consultation with other components within the agency.

An extra ten days may still provide an insufficient time for an agency to respond to unusually burdensome FOIA requests. The bill provides a mechanism to deal with such requests, which an agency would not be able to process even with an extra ten days. For such requests, the bill requires an agency to inform the requestor that the request cannot be processed within the statutory time limits and provide an opportunity for the requestor to limit the scope of the request so that it may be processed within statutory time limits, and/or arrange with the agency a negotiated deadline for processing the request. In the event that the requestor refuses to reasonably limit the request's scope or agree upon a time frame and then seeks judicial review, that refusal shall be considered as a factor in determining whether ''exceptional circumstances'' exist under subparagraph (6)(C).

The Committee believes that the FOIA works best when requestors and agencies work together to define and fulfill reasonable requests. When a requestor can modify a request to make it easier for the agency to process it, this benefits everyone. Still, there will be circumstances in which a requestor and an agency cannot agree upon a modification that will speed processing. As long as a request meets the legal standards of the FOIA, each requestor has the right to frame his or her own request. If an agency determines by an objective standard that a requestor has unreasonably refused to modify a request, and a court concurs, then the court shall consider that refusal when determining whether exceptional circumstances exist.

However, if an agency determines on its own that a requestor has unreasonably refused to modify a request, the agency may not otherwise discriminate against that request or requestor. The request must be processed as it would have been had no modification been sought. An agency may not maintain a separate queue of ''unreasonable'' requests, nor may an agency constantly move ''unreasonable'' requests to the back of the queue. The Committee cautions agencies against using this limited test of ''reasonableness'' in any way other than the narrow way that the statute provides.

This provision does not relieve an agency of the responsibility of making a diligent, good-faith effort to complete its review of an initial request within the statutory time frame. An agency should seek an extension beyond the additional ten days already provided in ''unusual circumstances'' only in rare instances. This procedure will achieve one of the bill's important goals of encouraging a dialogue between an agency and a requestor. This enhances the opportunity of a requestor to obtain at least some of the records sought in a timely fashion, and could alleviate some of the agency's burden in responding to a request that could not otherwise be processed within the statutory time limits. In addition, it could provide a requestor with some certainty as to a time frame for processing his or her request.

Exceptional Circumstances. —The Freedom of Information Act provides that, in ''exceptional circumstances,'' a court may extend the statutory time limits for an agency to respond to a FOIA request, but does not specify what those circumstances are. The bill would clarify that routine, predictable agency backlogs for FOIA requests do not constitute exceptional circumstances for purposes of the Act. This is consistent with the holding in *Open America v. Watergate Special Prosecution Force*, \38\ where the court held that an unforeseen 3,000 percent increase in FOIA requests in one year, which created a massive backlog in an agency with insufficient resources to process those requests in a timely manner, can constitute ''exceptional circumstances.'' Routine backlogs of requests for records under the FOIA should not give agencies an automatic excuse to ignore the time limits, since this provides a

disincentive for agencies to clear up those backlogs. Nevertheless, the bill makes clear that a court shall consider an agency's efforts to reduce the number of pending requests in determining whether exceptional circumstances exist. Agencies may also make a showing of exceptional circumstances based on the amount of material classified, based on the size and complexity of other requests processed by the agency, based on the resources being devoted to the declassification of classified material of public interest, or based on the number of requests for records by courts or administrative tribunals.

\38\547 F.2d 605 (D.C. Cir. 1976)

Aggregation of Requests. —The amendments reported out of Committee had reflected an implicit assumption that agency regulations may permit the aggregation of requests by the same requestor, or requestors that an agency reasonably believes are acting in concert. An amendment clarifying this point is anticipated to be considered on the House floor.

Any aggregation must involve such clearly related material that should be considered as a single request. Multiple requests involving unrelated matters should not be aggregated. Existing agency procedures regarding entitlement for fee waivers already permit agencies to aggregate some multiple requests.

The purpose of this aggregation is to ensure the equitable treatment of similarly situated requestors. Aggregation would depend upon the factual circumstances of the requests, and particularly whether multiple requests were being used primarily to obtain a procedural advantage over other requests or requestors. Multiple or related requests could also be aggregated with requests seeking similar information for the purposes of negotiating the scope of the request and schedule. Where multiple requestors have not acted in concert, such aggregation must be with their consent. Applying the same principles, agencies should not aggregate groups of requests simply to delay responding to requests. For example, the filing of a subsequent request should not affect the processing of an initial request by the same requestor.

Section 8. Time period for agency consideration of requests

The bill contains provisions designed to address the needs of both agencies and requestors for more workable deadlines for processing FOIA requests.

Expedited Processing. —The bill would require agencies to promulgate regulations authorizing expedited access to requesters who show a "compelling need'' for a speedy response. The agency would be required to decide whether to grant the request for expedited access within ten days and then notify the requestor of the decision. The requestor would bear the burden of showing that expedition is appropriate. This section limits judicial review to the same record before the agency on the determination of whether to grant expedited access. Moreover, the section provides that the Federal courts will not have jurisdiction to review an agency's denial of an expedited access request if the agency has already provided a complete response to the request for records. The latter provision does not limit a court's ability to consider a requestor's application for the award of attorney's fees.
A "compelling need'' warranting faster FOIA processing would exist in two categories of circumstances. In the first category, the failure to obtain the records within an expedited deadline poses an imminent threat to an individual's life or physical safety. The second category requires a request by someone "primarily engaged in disseminating information'' and "urgency to inform the public

concerning actual or alleged Federal government activity.'' The section also permits agencies to elect to offer expedited processing in other circumstances.

The agencies are directed to establish rules and regulations for processing requests for expedited access. By requiring a "compelling need,'' the expedited access procedure is intended to be limited to circumstances in which a delay in obtaining information can reasonably be foreseen to cause a significant adverse consequence to a recognized interest.

Agency officials will be required to make factual and subjective judgments about the circumstances cited by requestors to qualify them for "expedited processing.'' To do so the requestors will need to explain in detail their basis for seeking such treatment. Agency discretion should be exercised with fairness and diligence. The credibility of a requestor who makes repeated claims for expedited processing that are determined to lack factual foundation may be taken into account when the same requestor makes additional requests.

The specified categories for compelling need are intended to be narrowly applied. A threat to an individual's life or physical safety qualifying for expedited access should be imminent. A reasonable person should be able to appreciate that a delay in obtaining the requested information poses such a threat. A person "primarily engaged'' in the dissemination of information should not include individuals who are engaged only incidentally in the dissemination of information. The standard of "primarily engaged'' requires that information dissemination be the main activity of the requestor, although it need not be their sole occupation. A requestor who only incidentally engages in information dissemination, besides other activities, would not satisfy this requirement.

The standard of "urgency to inform'' requires that the information requested should pertain to a matter of a current exigency to the American public and that a reasonable person might conclude that the consequences of delaying a response to a FOIA request would compromise a significant recognized interest. The public's right to know, although a significant and important value, would not by itself be sufficient to satisfy this standard.

Some agencies, such as the Department of Justice, already employ expedited access procedures that, in some respects, have a broader criteria for expedited access than contained in Section 7. \39\ Agencies are given latitude to expand the criteria for expedited access, "in other cases determined by the agency.'' However, the expedited processing procedure should be invoked in the circumstances as enumerated in the bill. Given the finite resources generally available for fulfilling FOIA requests, unduly generous use of the expedited processing procedure would unfairly disadvantage other requestors who do not qualify for its treatment.

\39\The Department of Justice's procedures for expedited access permits it if a delay would result in the loss of substantial due process rights and the information sought is not otherwise available in a timely manner.

Expansion of Agency Response Time. —To help Federal agencies in reducing their backlog of FOIA requests, the bill would double the time limit for an agency to respond to FOIA requests from ten days to twenty days. Attorney General Janet Reno has acknowledged the inability of most Federal agencies to comply with the ten-day rule "as a serious problem'' stemming principally from "too few resources in the face of too heavy a workload.'' \40\

Appendix A

\40\Reno, Janet, Attorney General, Memorandum for Heads of Departments and Agencies, October 4, 1993, "The Freedom of Information Act.''

Estimation of Matter Denied. —The bill would require agencies when denying a FOIA request to try to estimate the volume of any denied material and provide that estimate to the requestor, unless doing so would harm an interest protected by an exemption.

Section 9. Computer redaction

The ease with which information on the computer may be redacted makes the determination of whether a few words or 30 pages have been withheld by an agency at times impossible. The amendments require agencies to identify the location of deletions in the released portion of the record and, where technologically feasible, to show the deletion at the place on the record where they made the deletion, unless including that indication would harm an interest protected by an exemption.

Section 10. Report to the Congress

This section would add to the information an agency is already required to publish as part of its annual report. Specifically, agencies would be required to publish in their annual reports information regarding denials of requested records, appeals, a complete list of statutes upon which the agency relies to withhold information under Section 552 (b)(3), which exempts information that is specifically exempted from disclosure by other statutes, the number of backlogged FOIA requests, the number of days taken to process requests, the amount of fees collected, and the number of staff devoted to processing FOIA requests. The annual reports would be required to be made available to the public, including by computer telecommunications means. If an agency does not have the means established to make the report available on-line, then the report should be made available in another electronic form. The Attorney General is required to make each report available at a single electronic access point, and advise the Chairmen and ranking members of the Senate Committee on the Judiciary and the House Committee on Government Reform and Oversight that such reports are available.

Congress has undertaken several recent initiatives focused on streamlining government, making government processes more efficient, and improving the availability of government information. The Government Performance and Results Act requires a system of evaluation measures based on performance and results. The Paperwork Reduction Act of 1995 reexamines government information in the light of recent technological developments. Also, the Reports Elimination Act eliminates hundreds of reports to Congress required in a statute. Other pending legislation is likely to eliminate more than 200 statutorily required reports to Congress from the General Accounting Office.

In the spirit of these reforms, the Committee considered the reporting requirements of the Freedom of Information Act. Some new requirements were added to make the reports more useful to the public and to Congress. For the public, the FOIA reports should answer certain common questions, such as: How does one request documents? How does the Government respond to those requests, including an explanation of the reasons for not honoring a request? And, how long does it usually take for a request to be processed? For Congress, these reports should furnish a view of the agency workload and any backlog. The reports should identify the progress the agency is making toward eliminating that backlog. They should report on the resources devoted to answering FOIA requests, allowing for meaningful

comparisons among agencies about performance. Someone unfamiliar with the FOIA process should be able to understand a report without resorting to reading the statute. Jargon such as "(b)(3) exemptions'' should be replaced with more understandable language substituted. Guidance should be given to the agencies so that all reports contain terms with identical meanings.

Besides revising the contents of the reports to make them more useful, the Committee changed the timing and reporting period of the reports. Both changes were done to reduce the burden on the agencies, though it meant a delay in providing information and descriptive language to the public and Congress. FOIA reports have previously reported on a calendar year and have been due on March 1st of the following year. This bill changes the reporting period to a fiscal year to make it easier for agencies to compile the budget and staffing information required. This bill also gives agencies more time to prepare the reports from two to four months. Of course, agencies should strive to make their reports available sooner. In addition, the Committee has provided an additional two months to the Department of Justice to coordinate electronic access to these reports.

This bill also requires the availability of all FOIA reports by electronic means. The Committee anticipates that the Department of Justice will establish a home page for reaching all agency reports through a single site. Until a single site of electronic access is available for all reports, the Committee expects the Attorney General will forward to Congress print copies of all reports not available electronically. Agencies that do not provide electronic access should also make print reports available to the public, including distribution to Depository Libraries.

In drafting this legislation, the Committee rewrote the entire reporting section of the Freedom of Information Act. This was done to make it easier for the public to understand the new reporting requirements, without constant reference to existing law.

Three reporting requirements were added to aid the public and Congress to understand the work flow in each agency. Beginning in 1998, agencies will be required to report:

How many requests have not been resolved to the requestors' satisfaction at the end of the reporting period? What is the median number of days those appeals have been pending?

What is the number of requests received during the year, and the number of requests processed during the year?

What is the median number of days taken to process requests of different types? What is the volume of requests coming into the agency annually, and the number of requests processed by the agency that year? These requirements will give the public and Congress clear measures of any backlog that exists. This will allow Congress to monitor progress in responding to FOIA requests across time. It will help the public understand how long it takes an agency to respond to a request.

The Committee has requested that agencies provide the median number of days requests have been in the backlog queue, and the median number of days necessary to complete the processing of requests. The Committee elected to use medians as a statistical measure because of their appropriateness when the measure being summarized does not have a normal distribution, or when a few cases of extreme value would skew an average. For example, a few requests for excessively large numbers of documents could artificially inflate the average time taken to fill a request. Of course, if agencies determine that the

average time is a better measure of their performance, they can include that in the report along with the median. Medians are simple to calculate, simply requiring a distribution of the number of days each request has been pending, and do not increase the reporting burden on agencies. The Committee appreciates that some agencies with decentralized FOIA operations may have trouble in calculating a precise agency-wide median. In such circumstances reasonable estimates may be used. Finally, this bill requires that agencies report the number of staff assigned to processing FOIA requests, and their budget for processing FOIA requests.

Much comment is made of the adequacy of agency resources to comply with the statutory requirements of the FOIA. Effective future congressional oversight of the FOIA requires more detailed information about the level of resources that agencies devote to FOIA, the effectiveness of their utilization and the level of resources that might be required for agencies to fully comply with the FOIA. Agencies should inform Congress of the additional resources needed to fully comply with the FOIA. In the absence of such information on budget requests and management initiatives, the complaint by agencies that Congress has denied the resources necessary to comply with the statutory deadlines is unsupportable.

The Committee has rewritten the FOIA reporting requirements to make them more useful to the public and to Congress, and to make the information in them more accessible. With those goals in mind, we expect that the Department of Justice, in consultation with the Office of Management and Budget, will provide guidelines to the agencies so that all reports use common terminology and follow a similar format. The Attorney General and the Director of the Office of Management and Budget are required to develop reporting guidelines for the annual reports by October 1, 1997.

Section 11. Reference materials and guides

This section requires agencies to make publicly available, upon request, reference material or a guide for requesting records or information from an agency. This guide would include an index and description of all major information systems of an agency, and a handbook for obtaining various types and categories of public information from an agency.

The guide is intended to be a short and simple explanation for the public of what the Freedom of Information Act is designed to do, and how a member of the public can use it to access government records. Each agency should explain in clear and simple language, the types of records that can be obtained from the agency through FOIA requests, why some records cannot, by law, be made available, and how the agency makes the determination of whether or not a record can be released.

Each agency guide should explain how to make a FOIA request, and how long a requestor can expect to wait for a reply from the agency. In addition, the guide should explain the requestor's rights under the law to appeal to the courts to rectify agency action. The guide should give a brief history of recent litigation it has been involved in, and the resolution of those cases. If an agency requires that certain requests, such as applications for expedited access, be completed on agency forms, then the forms should be part of the guide.

The guide is intended to supplement other information locator systems, like the Government Information Locator System (GILS) called for in the Paperwork Reduction Act of 1995. \41\ Thus, the guide should reference those systems and explain how a requestor can obtain more information about them. Of course, any agency specific locator systems should be similarly referenced in the guide. \41\ The

Paperwork Reduction Act consists of (P.L. 96 511, 94 Stat. 2812) as amended by the Paperwork Reduction Act of 1986 (section 101(m) [Title VIII, Part A] of P.L. 99 500 and P.L. 99 591, 100 Stat. 1783) and The Paperwork Reduction Act of 1995 (P.L. 104 13, 109 Stat. 163). The Paperwork Reduction Act is codified at Chapter 35 of Title 44 of the United States Code.

It is expected that OMB will assist the agencies in assuring that all guides follow a common format so that a requestor picking up guides from two or more agencies can easily find the information they are seeking. Similarly, OMB should assure that all agencies use common terminology in describing record systems, how to file a FOIA request, and in describing other locator systems.

All guides should be available through electronic means, and should be linked to the annual reports. A citizen picking up a FOIA guide should learn how to access the annual reports. Similarly, any potential requestor reading an annual report should learn about the guide, and how to access it.

Section 12. Effective date

To provide agencies with time to implement new requirements under the Act, sections 7 and 8 shall become effective one year after the date of enactment. These sections concern multitrack and expedited processing, unusual and exceptional circumstances, the doubling of the statutory time period for responding to FOIA requests, and estimating the amount of material to which access is denied. The remainder of the bill will take effect 180 days after enactment.